

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

Decision in terms of Section 43 of The Tribunals (Scotland) Act 2014 (“the 2014 Act”) and Rule 39 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the 2017 Rules”)

Reference number: FTS/HPC/PF/20/1889

Re The Property: 26 The Paddock, Hamilton, ML3 0RB (“the Property”)

The Parties:

Jack Fortune Limited, 2 Corstorphine High Street, Edinburgh, EH12 7ST (“the Applicant”)

Spiers Gumley Property Management, Red Tree Magenta, 270 Glasgow Road, Glasgow G73 1UZ (“the Respondent”)

Tribunal Members:

G McWilliams (Legal Member)

A McFarlane (Ordinary Member)

Decision

The Tribunal have considered matters in terms of the provisions of Section 43 of the 2014 Act and Rule 39 of the 2017 Rules and determined that it will not exercise its discretion to review its Decision, dated 4th March 2021, in respect of this Application.

Background and Reasons for Decision

- 1) The Tribunal made their Decision, dated 4th March 2021, as the Tribunal’s office had not received any contact from the Applicant following the lodging of the Application on 26th October 2020. In particular the Tribunal’s office had not received replies to various letters, emails and calls. The Tribunal did not have any confirmation from the Applicant that they were proceeding with the Application and were aware of evidential Hearing dates which had been scheduled in February and March 2021, after the Application was referred for determination, on 3rd December 2020. Communications were issued to the parties regarding the Application procedure but not responded to by the Applicant. The Tribunal therefore determined that the Applicant had failed to co-operate with them in order that the Application could be considered and

dealt with fairly and justly. In the circumstances the Tribunal dismissed the Application in terms of Rule 27 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure ("the 2017 Rules").

- 2) Mr M. Fortune sent an email to the Tribunal's office on 6th March 2021, after the Tribunal's office issued their Decision dated 4th March 2021. He referred to an email having been sent to the Tribunal's office on 10th February 2021. The Tribunal's office carried out detailed investigations and found no trace of receipt of an email from the Applicant dated 10th February 2021 nor receipt of any emails from Mr Fortune, or anyone else representing the Applicant, since the Application was lodged on 26th October 2020. Mr Fortune sent another email to the Tribunal's office, on 11th March 2021, in which he said that the Tribunal had made their "report based on incorrect information", this was "unlawful" and the Tribunal should "review by their own accord in order that natural justice is seen to have been done". The Tribunal's office did not receive any further emails from Mr Fortune or anyone acting for the Applicant between 11th March 2021 and 23rd December 2021. On the latter date Mr J Fortune sent an email to the Tribunal's office requesting an update on the Applicant's application for review and stated that the Applicant wished to add to their complaint against the Respondent.
- 3) The Tribunal consider that the Applicant did not set out any clear or detailed basis for review in the emails sent to the Tribunal's office on 6th March 2021 and 11th March 2021. The Tribunal made their Decision, dated 4th March 2021, as they had not received any contact from the Applicant since the Application was submitted on 26th October 2020. The Applicant's email of 6th March 2021 referred to an email, dated 10th February 2021 which had not been received at the Tribunal's office. The Applicant had not contacted, or responded to, the Tribunal's office following the initial lodging of the Application. They had not progressed their Application. The Tribunal's office had not been notified by the Applicant that they were aware of procedure, and evidential Hearing dates, in respect of the Application. In those circumstances the Tribunal fairly and reasonably determined that the Application could not be considered and dealt with fairly and justly and dismissed the Application. Accordingly, the Tribunal consider that an application for review is wholly without merit.
- 4) The Tribunal note from Mr J Fortune's email, of 23rd December 2021, that the Applicant has further information to provide. In the circumstances the Tribunal respectfully suggest that the Applicant gives consideration as to whether or not to make a fresh, full Application in terms of the Property Factor's (Scotland) Act 2011.
- 5) Therefore, the Tribunal have determined that it is not necessary in the interests of justice to review its decision in respect of the Application.

G McWilliams Legal Member

18th February 2022

Appeal

In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the First-tier Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.