



Decision with Statement of Reasons of H Forbes, Legal Member of the First-tier Tribunal with delegated powers of the Chamber President

Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules")

In connection with

Chamber Ref: FTS/HPC/PF/22/3644 & FTS/HPC/PF/22/4026

Parties:

Hidde Koomen ("the Homeowner")

Homesbook Factoring Ltd. ("the Property Factor")

1. The Homeowner submitted an application on Form C to the Tribunal on 5th October 2022, in terms of Section 17 of the Property Factor (Scotland) Act 2011 ("the 2011 Act"). On 24th October 2022, the Tribunal issued a request for further information and documents. The Homeowner was directed to provide further application forms C1 and C2, if applicable, to state the paragraphs of the Property Factor Code of Conduct ("the Code") that he alleged had not been complied with, and to submit a copy of the Property Factor's written statement of services ("WSS"). The Homeowner submitted a further application on form C2. No WSS was provided.
2. On 9th December 2022, the Tribunal issued a request for further information and documentation, stating that, in respect of FTS/HPC/PF/22/3644, form C was incorrect, and a form C1 should be lodged. The Homeowner was asked to make further notifications to the Property Factor and provide copies of the same with proof of sending. In respect of FTS/HPC/PF/22/4026, the Homeowner was asked to complete section 7A of form C2, make proper notification to the Property Factor, and provide copies of the same with proof of sending.
3. By email dated 21st December 2022, and 5th and 12th January 2023 the Homeowner submitted copies of notification emails to the Property Factor, and responses.
4. Requests for further information were made by the Tribunal on 6th and 21st March and 26th April 2023, as all previous information requested in the Tribunal's letter of 9th December 2022 had not been provided.

5. By email dated 26th April 2023, the Homeowner stated that he did not understand the questions being asked.
6. On 17th May 2023, the Tribunal sent the following to the Homeowner:

We refer to your email dated 26th April 2023 when you explain that you do not understand the questions we have asked.

We are an independent and impartial Tribunal and are not permitted to provide legal advice. You may wish to consider obtaining assistance with your application from a solicitor, the Citizen's Advice Bureau, Govan Law Centre or Strathclyde University Law Clinic.

We attach a copy of the following documents:

1. Our letter of 9th December 2022 which explains what you need to do to progress your application.
2. A copy of the 2012 Code of Conduct for Property Factors
3. A copy of the 2021 Code of Conduct for Property Factors
4. A copy of your application form (3644) form C for breaches of the 2012 Code of Conduct.
5. A copy of your application form 4026) form C2 for breaches of the 2021 Code of Conduct.
6. A template letter of notification for breaches of the 2012 Code of Conduct.
7. A template letter of notification for breaches of the 2021 Code of Conduct.
8. A template letter of notification for breaches of Property factor Duties.

Please:

(First) complete sections 7A of both forms detailing the sections of the Codes of Conduct you believe have been breached and return the two applications to us.

(Second) You must notify the Property Factor that they have breached the Codes of Conduct and Property factor Duties. You should send them the completed letters of notification.

(Third) Please provide us with copies of the letters of notification.

(Fourth) Please also provide us with evidence that you have sent the Property Factor the letters of notification (sent emails or recorded delivery letter).

Please reply to this office with the necessary information by 31 May 2023, when your application will be further considered by the Chamber President. If we do not hear from you within this time, the Chamber President may assume that the dispute has been resolved and consequently may reject the application in terms of Section 18(2) of the Act. It is, therefore, important that you respond within the timescale given.

7. A reminder was issued to the Homeowner on 5th June 2023. No response was received.

Decision

8. The Legal Member considered the application in terms of Rule 5 and Rule 43 of the Chamber Procedural Rules and Section 17 of the 2011 Act. Rule 5 provides: - (1) An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate. (2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgement have been met. (3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the requirement manner for lodgement.
9. After consideration of the application the Legal Member considers that the application should be rejected in terms of Rule 8(1)(c) which states that an application must be rejected if the Tribunal has "good reason to believe that it would not be appropriate to accept the application." The basis of the decision is that the Applicant has failed to comply with Rule 5 and Rule 43 and Section 17 of the 2011 Act.

Reasons for Decision

10. The Homeowner has failed to provide the information and documents required by Rule 43 of the Rules and Section 17 of the 2011 Act. The Homeowner has also failed to provide this information and documentation, having been directed to do so in a request for further information by the Tribunal, in terms of Rule 5(3) of the Rules. The Legal Member therefore determines that the application cannot be accepted. The application is rejected on that basis.

What you should do now:

If you accept the Legal Member's decision, there is no need to reply.

If you disagree with this decision –

An applicant aggrieved by the decision of the Chamber President, or any Legal Member acting under delegated powers, 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. Information about the appeal procedure can be forwarded to you on request.

Date: 12/07/2023