



**DECISION AND STATEMENT OF REASONS OF MARTIN J. MCALLISTER,
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

29 Kinneil House, The Furlongs, Hamilton, ML3 0DX ("the Property")

Case Reference: FTS/HPC/PF/21/1355

**Mr Vispy Bamboat, 29 Kinneil House, The Furlongs, Hamilton, ML3 0DX ("the
Homeowner")**

**WW.M.Cumming, Turner & Watt, Property Managers, 40 Carlton Place, Glasgow,
G5 9TS ("the Property Factor")**

BACKGROUND

1. The Homeowner submitted an application to the Tribunal dated 6th June 2021 in terms of Section 17 of the Property Factor (Scotland) Act 2011 ("the 2011 Act"). On 18th June 2021 the Tribunal issued a request for further information. The Homeowner was asked to provide evidence of the required notification to the Property Factor having been sent. He was also asked to provide additional information. The Homeowner was asked to provide the information by 16th July 2021. The Homeowner provided some information on 16th July 2021 but did not address all the issues raised in the letter of 18th June 2021. The Tribunal wrote to the Homeowner on 3rd August 2021 advising him that the Tribunal required a copy of the title to the Property and evidence that the appropriate notification had been given to the Property Factor in terms of Section 17 of the

2011 Act. The letter indicated that the information would require to be provided by 31st August 2021 and was advised that, if it were not provided, the President may consider rejecting the application. The Tribunal sent a further letter to the Homeowner on 1st September 2021 requiring the information to be provided by 8th September 2021, failing which the President may consider rejecting the application. No response has been received to the letters sent to the Homeowner dated 3rd August and 1st September 2021.

DECISION

2. 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 lodgment 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 lodgment. “

- 3. 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

4. The Homeowner’s application is in terms of Section 17 of the 2011 Act and Rule 43. Section 17 states that an application must set out “the homeowners reasons for considering the property factor has failed to carry out the property factor duties or, as the case may be, to comply with the section 14 duty” (Section 17(2)). Section 17(3) states that no application may be made unless the homeowner has notified the Property Factor in writing of the complaint and the property factor has refused or delayed resolving the matter. Rule 43 states, “(1) In addition to the homeowners reasons as required by Section 17(2) of the 2011 Act,...(2) The homeowner must attach to the application a copy of – (a) the notification from the homeowner to the property factor for the purposes of Section 17(3)(a) of the 2011 Act and (b) any response provided by or on behalf of the property factor to that notification.”
5. The Homeowner has failed to provide the information required by Rule 43 of the Rules and Section 17 of the 2011 Act. The Homeowner has also failed to provide this information and other 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.

Martin J. McAllister,
Legal Member

16th September 2021