



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 26 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

Case reference FTS/HPC/PF/21/2434

Parties

Miss Rachel Houghton (Applicant)

James Gibb Residential Factors (Respondent)

10 Woodlands Church, Woodlands Road, Thornliebank, Glasgow, G46 7SE (Property)

Tribunal Member: Jacqui Taylor (Legal Member)

The Tribunal rejects the application by the applicant dated 7th October 2021, being an application under section 17(1) of the Property Factors (Scotland) Act 2011. The Tribunal sent the applicant a letter dated 14th October 2021 which was in the following terms:-

'A legal member of the Tribunal with delegated powers of the Chamber President has considered the application and has determined that further information is required before matters can progress:

1. We require evidence that you have notified the factor of the Code of Conduct breaches. It is noted that you sent a template letter to the property factor but it is not considered to comprise sufficient notification. Section 17(3) of the Property Factors (Scotland) Act 2011 states that an application cannot be made unless- (a) The homeowner has notified the property factor in writing as to why the homeowner considers that 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, and (b) The property factor has refused to resolve, or unreasonably delayed in attempting to resolve, the homeowner's concern.

2. Please write to the property factor, setting out in turn each specific paragraph of the Code you believe it has failed to comply with, and setting out the reasons why you believe it has failed to comply with each of these paragraphs. We enclose a template notification letter relating to breaches of the Code which you may wish to use. This is the letter which states 'I believe you have failed to comply with the Code of Conduct for Property Factors since the date you became a registered property factor'. (You may want to use a

continuation sheet so that you have space to set out each section of the Code and your reason for stating why it has been breached.)

3. Please send us a copy of your letter of notification, together with proof of sending, which may be a copy of a sent email, proof of sending by recorded delivery or a written acknowledgement from the property factor. Please also send us any response you receive from the property factor. You must allow the property factor a reasonable period of time to respond to your letter. Please allow a period of 21 days for the property factor to respond, and let us know if you have not received a response within that timescale. Please let us have a copy of any response received from the property factor.

4. You have ticked the box at Part 7B of your application form. This is used where you wish to make a complaint about a failure to carry out the property factor's duties. 'Property factor's duties' is generally taken to apply to any duties other than those under the code of conduct. The source of a property factor's duties could be, for example, the factor's written statement of services, the title deeds for the property, any other relevant contract, or the general law of agency. You must also notify the property factor about this complaint(s) before we can take your application forward. You will need to write to the property factor stating clearly why you believe it has failed to comply with its duties, which duties you believe have been breached, and the source of these duties. You may wish to use the enclosed template notification letter in relation to property factor's duties. This is the letter which states 'I am writing to inform you that I believe that you have failed to carry out your property factor duties as set out in section 17 (5) of the Property Factors (Scotland) Act 2011'. Again, a continuation sheet may be necessary.

5. Please send us a copy of your letter of notification, together with proof of sending, which may be a copy of a sent email, proof of sending by recorded delivery or a written acknowledgement from the property factor. As with the code of conduct complaints, you must allow the property factor a reasonable period of time to respond to this letter. Please allow a period of 21 days for the property factor to respond, and let us know if you have not received a response within that timescale. Please send us a copy of any response you receive from the property factor.

6. If the property factor insists that you complete its internal complaints procedure, then this requires to be exhausted before we may proceed with your application. Alternatively, your property factor may consider that their internal procedure is at an end or they do not see any point in starting it, in which case recourse may be taken directly to the Tribunal. Please let us know either way what the position is.

7. The application states that you consider that the property factor has failed to comply with every paragraph of the Code in Sections 2,5,6 and 7. Is this correct? We suggest that you need to read each paragraph in the sections referred to and decide which paragraphs you think have been breached. As an example, it is assumed that you are not stating that the property factor has failed to comply with paragraph 5.9? Once you have considered matters, you may need to amend the application. The application also requires to mirror the notification to the property factor in relation to the paragraphs of the Code which you think have not been complied with.

8. Please provide a copy of your title.

Please respond by 11 November 2021, failing which the President may decide to reject the application.'

The applicant has not provided the Tribunal with the required information despite sending a reminder to the applicant dated 15th November 2021.

Accordingly the Tribunal have good reason to believe that it would not be appropriate to accept the application and reject the application in terms of rule 8 (1)(c) of the Tribunal Rules.

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the 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

.....Legal Member Date: 30 November 2021