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

Decision on homeowner's application: Property Factors (Scotland) Act 2011 Section 19(1) (a).
Regulation 28 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017

Chamber Ref: FTS/HPC/PF/17/0423 and FTS/HPC/PF/17/0340

6c Glenford Place, Ayr,South Ayrshire, KA7 1LB
("the Property")

The Parties:-
Mr Alan Lush
6c Glenford Place, Ayr, KA7 1LB
("the Homeowner")

James Gibb Property Management Ltd
65 Greendyke Street, Glasgow, G1 5PX
("the Property Factor")

Tribunal Members:
Martin J. McAllister (Legal Member)
Andrew McFarlane (Ordinary Member)

DECISION

The Hearing fixed for 30th January 2018 is postponed to another date to be intimated.

Parties are allowed until 9th February 2018 to make written representations on the application before the Tribunal.

Introduction

In this decision the Property Factors (Scotland) Act 2011 is referred to as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors is referred to as "the Code"; and the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 are referred to as "the Rules"

Background

By applications dated 31st August 2017 and 29th October 2017 the Homeowner intimated that he considered that the Property Factor had not complied with terms of the Code and had not carried out the Property Factor's duties.

On 20th December 2017 parties were advised that the matter had been referred to members of the Tribunal for determination and that a Hearing to consider matters would be held on 30th January 2018.

Request for adjournment

On 11th January 2018 Ms Debbie Rummens, Operations Director of the Property Factor emailed the Tribunal office explaining that she had been absent from work since 19th December 2017 and had only that day returned to business. The email requested that the Hearing be adjourned to allow her to fully investigate matters and provide the appropriate written representations.

Ms Rummens' application was intimated to the Homeowner who responded that he objected to the request because he considered that the Property Factor had had enough time to get her paperwork sorted because he had started his complaints in July 2017. Mr Lush intimated that he would be on holiday from 2nd to 14th February 2018.

Tribunal's consideration of the request for adjournment.

The Tribunal noted that the period of Ms Rummens' absence started prior to intimation of the date of the Hearing. The Tribunal considered the overriding objective set out in rule 2 of the Rules which stated that the Tribunal should deal with the proceedings justly. The Tribunal considered that the Property Factor could be disadvantaged if the Hearing proceeded on 30th January 2018. The Tribunal has powers in terms of rule 28 of the Rules to adjourn any Hearing and it determined that the Hearing on 30th January 2018 be adjourned to a date to be intimated to parties in due course.

Because of Ms Rummen's absence from work and the adjournment of the Hearing fixed for 30th January 2018, the Tribunal considered it just to allow parties more time to make written representations and it determined that parties be allowed to make such representations prior to 9th February 2018.

Appeals

A homeowner or property factor 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.

M McAllister

Martin J. McAllister, legal member

22nd January 2018