



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/21/0078

Parties

Mr Gary Devlin (Applicant)

Morrison Walker (Respondent)

19 Brachelston Street, Greenock, PA16 9AE (Property)

Tribunal Member: Jacqui Taylor (Legal Member)

The Tribunal rejects the application by the applicant dated 10th January 2021, being an application under section 17(1) of the Property Factors (Scotland) Act 2011. The Tribunal sent the applicant an email dated 18th January 2021 which requested further information to enable the application to be processed. The said email dated 18th January 2021 was in the following terms:-

1. *We note from your application form that you wish to complain that the property factor has failed to comply with various sections of the code of conduct for property factors. Under section 17(3) of the Property Factors (Scotland) Act 2011, an application cannot be made to the tribunal unless the homeowner has notified the property factor in writing as to why s/he considers that it has failed to comply with the code of conduct for property factors. It is noted that you appear to have sent a letter to the property factor with regard to an alleged breach of property factor's duties. You require to notify the property factor as to why you consider that it has failed to comply with the Code. Your application refers to various sections of the Code. A template letter is attached which you may want to use to send to the property factor with regard to breaches of the Code. Please note that the intimation should provide enough information to the property factor so that it knows **why** you consider it has failed to comply with the Code. It is not enough to list sections of the Code. There has to be detail.*
2. *You have also indicated at Part 7B of your application form that you wish to make a complaint about a failure to carry out the property factor's duties. Under section 17(3) of the Property Factors (Scotland) Act 2011, an application cannot be made to the tribunal unless*

the homeowner has notified the property factor in writing as to why s/he considers that it has failed to comply with the code of conduct for property factors. '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. Most factor duties are covered by the code of conduct. It appears from your application that your complaints about duties may be covered by your complaints under the code and you should consider whether or not this is the case. You have sent a letter to the property factor which is in regard to property factor's duties. The copy you provided us with is undated and unsigned. Please provide us with a full copy of the letter duly signed and dated. If you do not have a signed copy, please let us know the date on which you sent the letter.

3. *The Tribunal requires to be satisfied that any notifications given to the property factor have been received and it will need to see evidence of this which might be an acknowledgement from the property factor, proof of a received email or of received recorded delivery mail.*
4. *Please advise whether or not you have engaged with the property factor's complaints process. If you have not, you should consider doing so.*
5. *Please provide us with a copy of the written statement of services which the property factor should have provided you with.*
6. *Please provide us with a copy of your title sheet.*
7. *The property factor requires to be given an opportunity to respond to the intimations you give in connection with alleged breaches of the Code and failure to carry out the property factor's duties in terms of the Act.*

The Applicant sent the Tribunal an email dated 25th January 2021 but did not provide the required information.

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: 17 March 2021