



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

NOTICE OF DECISION TO DISMISS

The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 Paragraph 27

FTS/HPC/PF/25/0916

Re 59 Oakshaw Street West, Paisley, PA1 2DE

(“the Property”)

The Parties:-

Mr Gareth Whyte, 59 Oakshaw Street West, Paisley, PA1 2DE

(“the Applicant”)

91BC Property Management, Garscadden House, 3 Dalsetter Crescent, Glasgow G15 8TG

(“the Respondent”)

Tribunal Members:

Mr Iain MacRae (Legal Member)

Elizabeth Dickson (Ordinary Member)

Representation

Applicant: Absent

Respondent: Mr Alec Cruden, Senior

Decision (in the absence of the Applicant)

The Tribunal determined that in terms of Paragraph 27(2)(b) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”) the Applicant had failed co-operate with the First-tier Tribunal to such an extent that the First-tier Tribunal could not deal with the proceedings justly and fairly and therefore dismissed the Application.

Background

- 1 This is an application for an order under Rule 43 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 and section 17 of the Property Factors (Scotland) Act 2011 (“the 2011 Act”). The applicant alleged breaches of the Property Factors Code of Conduct by the respondent.
- 2 The main issue seemed to be the failure of the respondent to return the property owners’ funds of £16,000 following on from the termination of the agreement with effect from Friday 28 February 2025. Further matters were the failure to deal with written requests for the return of the money; issuing of invoices in March 2025 (after the agreement had been terminated) and a failure to maintain a functional 24/7 contact number, making communication impossible. The application had sought return the £16,000, cancellation the March 2025 invoices, an apology, and compensation for the stress caused.
- 3 The Form C2 is dated Monday 3 March 2025 so the next business day after the agreement had ended. It and supporting documents were submitted to the Tribunal on the same day. On 28 March 2025 the Tribunal, sought further information from the applicant. By email dated 5 April 2025 he provided a timeline of events.
- 4 On 1 May 2025 the application was referred to a case management discussion (CMD) to be held by teleconference on 26 August 2025. The Tribunal gave notice of the CMD to the parties in accordance with Rule 17(2) of the Rules on 17 July 2025. This Notice stated

*Your written representations on the whole application **must** be returned to this office by 7 August 2025. If you wish more time to make written representations, or to make a request to make oral representations, you must contact the tribunal to request more time. Any change to the date given will be notified to both property factor and homeowner.*

- 5 The Tribunal did not receive written representations from either party. Reminders were sent to them on 13 August 2025. Whilst the failure to lodge written representations would not be fatal, it is noted that written representations play an important part in the effective case management of applications. They can allow for cases to be determined at a CMD or to focus any issues that will need to be resolved at a hearing. They assist the tribunal members in the discharge of their functions and duties.
- 6 The applicant did not dial in to today's CMD. Mr Cruden had stated that the homeowner funds had been paid over on 30 April 2025, with an apology. This is within two months of the factoring agreement ending. The respondent would have been responsible for charges incurred up to the end of February 2028. Final accounts would need to be prepared to include any charges incurred up to the termination date for which invoices may not immediately be available. The March invoices had been sent in error and when that was pointed out they were cancelled. The applicant had emailed the respondent on 22 August 2025 seeking proposals for compensation for the stress caused and time wasted.
- 7 At the request of the members the clerk attempted to contact the applicant by telephone at about 2.20pm. He checked to ensure that no emails not before the members had been received. By 2.45pm the applicant had made no contact with the Tribunal to inform of any difficulties accessing the call.
- 8 The Tribunal reviewed the application again. The Tribunal was of the view that, in light of it and the information from Mr Cruden, there was insufficient information or detail for it to make any findings in fact and to make any meaningful decision without making assumptions. For example the applicant complained that the advertised 24/7 emergency contact line has been non-functional, limiting effective communication, but no examples were given of unsuccessful attempts at contacting the 24/7 emergency contact line. It was said that there was a unilateral amendment to the Written Statement of Services without consent, introducing a new 90 day notice period to terminate. It is noted from the

applicants' own timeline that on 20 January 2025 the owners submitted a termination notice to the respondent terminating the factoring agreement with effective from 28 February 2025. The respondent did not seek to hold the applicant to a 90 day notice period. Whilst the applicant had emailed the respondent on 22 August 2025 he had not provided the Tribunal with any information.

- 9 Rule 27(1)(b) of the 2017 Rules states that the First-tier Tribunal may dismiss the whole or part of the proceedings if the applicant has failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings justly and fairly.
- 10 The Applicant had failed to cooperate in failing to provide written representations or at least inform the Tribunal that the homeowner funds had been paid over. He had failed to attend the CMD today. The purpose of a CMD is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved. In the absence of written representations from or the appearance of the applicant that was not possible.
- 11 As noted above the tribunal, the Clerk had attempted, without success, to call the applicant. The applicant had not been in touch with the Tribunal since after the homeowners funds had been transferred. He had not advised if the main or indeed any of the issues of his complaint were still outstanding and whether he still wished to proceed with the application before the Tribunal.
- 12 The overriding objective requires the tribunal to deal with these proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties and avoid delay, so far as compatible with the proper consideration of the issues. The issues raised in the application appeared relatively straightforward. Adjourning the CMD to ascertain whether the applicant wished to continue with it would cause delays which would be incompatible with the proper consideration of the issues. Parties must assist the Tribunal to further the overriding objective. The applicant had failed to do so.

- 13 In all the circumstances the tribunal determined that the applicant had met the test set out in Paragraph 27(2)(b). The Tribunal therefore exercised its discretion and dismissed the application.

Right of Appeal

- 14 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.

26 August 2025

Iain MacRae Legal Member

Date