

Housing and Property Chamber
First-tier Tribunal for Scotland



**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

10 Windsor Street, Clydebank, G81 3AE ("the Property")

Case Reference: FTS/HPC/PF/24/2591

Margaret McGhee and Kenneth McGhee ("the Applicant")

Lowther Homes Ltd ("the Property Factor")

1. The Applicant submitted an application to the Tribunal in terms of Section 17 of the Property Factor (Scotland) Act 2011 ("the 2011 Act"). It was received on 7 June 2024. On 2 July 2024, the Tribunal issued a request for further information to the Applicant. The Applicant was asked to provide evidence that notification had been given to the Property Factor in terms of Section 17 (3) (a) of the 2011 Act. The Applicant was also asked to provide a copy of the written statement of services and a copy of power of attorney or a mandate to evidence that they had authority to make the application. No response was received. On 23 July 2024, the Tribunal issued a further communication directing the Applicant to provide a response to the request. No response has been received to either of the requests for information.

DECISION

2. The Legal Member considered the application in terms of Rule 5. 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) of the Rules.” Rule 8 (1) (c) 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 of the Rules and Section 17 (3) (a) of the 2011 Act.**

REASONS FOR DECISION

4. The Application is in terms of Section 17 of the 2011 Act and Rule 43 of the Rules. Section 17 (3) (a) of the 2011 Act states that an application cannot be made “unless 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’s duties or, as the case may be, to comply with the section 14 duty” No evidence has been produced by the Applicant to confirm that this has been done.
5. Rule 43 (2) (d) of the Rules requires an application to be accompanied by a copy of the written statement of services provided by the property factor to the homeowner. This was not submitted.

6. The Applicant has failed to provide information, 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

13 August 2024