

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

5 Park Gardens, Glasgow, G3 7YE ("the Property")

Case Reference: FTS/HPC/23/1056

Neil Gibson ("the Applicant")

James Gibb Residential Factors ("the Property Factor")

1. The Applicant submitted an application dated 24 March 2023 to the Tribunal in terms of Section 17 of the Property Factor (Scotland) Act 2011 ("the 2011 Act"). On 3 May 2023 the Tribunal issued a request for further information to the Applicant. The Applicant was asked to provide clarification with regard to whether his application was restricted to an alleged breach of property factor's duties alone. He was also asked to provide evidence that he had notified the Property Factor of the alleged breaches as required to do so by Action 17 of the Act. No response was received. On 25 May 2023, the Tribunal issued a further communication directing the Homeowner 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 and Rule 43.

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 and Rule 43.**

REASONS FOR DECISION

4. The Application is in terms of Section 17 of the 2011 Act and Rule 43. Section 17 states that an application must set out “the homeowners reasons for considering 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” (Section 17(2).”
5. Section 17 (3) (a) of the 2011 Act requires a homeowner to notify the property factor in writing why it is considered that it has failed to carry out the property factor’s duties or failed to comply with the Code. No evidence has been produced that the applicant has done so.
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
29 June 2023