

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

Grooms, Glen Estate, Innerleithen, EH44 6PX ("the Property")

Case Reference: FTS/HPC/

Andrew Brown ("the Applicant")

Rettie & Co ("the Property Factor")

1. The Applicant submitted an application dated 24th February 2023 to the Tribunal in terms of Section 17 of the Property Factor (Scotland) Act 2011 ("the 2011 Act"). In the application, the Applicant referred to him having a landlord in respect of the Property. On 21st March 2023 the Tribunal issued a request for further information to the Applicant. The Applicant was asked to provide confirmation that he was a homeowner as defined in Section 10 (5) of the Property Factors (Scotland) Act 2011. No response was received. On 5th April 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. 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) (a) and 8(1) (c) of the Rules. Rule 8 (1) (a) states that the application must be rejected “if the Tribunal considers that it is frivolous or vexatious” and 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.**

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. It is a prerequisite that any applicant must be a homeowner as defined in Section 10 of the 2011 Act where such is stated to be “an owner of land used to any extent for residential purposes” or “an owner of residential property”
6. The Application refers to a landlord and PAT testing being carried out in the

Property which would be indicative of the Applicant being a tenant.

7. 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

05 May 2023