



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,
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

Case Reference: FTS/HPC/PF/23/3955

41 Belmont Gardens, Ashgrove Road, Aberdeen ("the Property")

Elaine Mercer, 41 Belmont Gardens, Ashgrove Road, Aberdeen ("the Homeowner")

Atholls Chartered Surveyors, 16 North Silver Street, Aberdeen ("the Property Factor")

1. The Homeowner submitted an application to the Tribunal in terms of Section 17 of the Property Factor (Scotland) Act 2011 ("the 2011 Act") and Rule 43 of the Tribunal Procedure Rules 2017. The Tribunal issued a request for further information and documents on 22 November 2023. The Homeowner was directed to provide an amended application form, as the form submitted did not provide full reasons for the complaints, evidence that the Property Factor had been notified of the complaints before the application was made and a copy of the Property Factor's written statement of services ("WSS"). The Applicant responded and confirmed that the information and documents would be submitted. No further correspondence was received and the Applicant did not respond to reminders issued on 11 and 22 January 2024.

DECISION

2. The Legal Member considered the application in terms of Rule 5 and Rule 43 of the Chamber Procedural Rules and Section 17 of the 2011 Act. 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) which 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 and Section 17 of the 2011 Act.

REASONS FOR DECISION

4. The Homeowner’s 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)). Section 17(3) states that no application may be made unless the homeowner has notified the Property Factor in writing of the complaint and the property factor has refused or delayed resolving the matter. Rule 43 states, “(1) In addition to the homeowners reasons as required by Section 17(2) of the 2011 Act,...(2) The homeowner must attach to the application a copy of – (a) the notification from the homeowner to the property factor for the purposes of Section 17(3)(a) of the 2011 Act; and (b) any response provided by or on behalf of the property factor to that notification....and (d) any statement of services provided by the property factor to the homeowner as required by the property factor code of conduct”
5. The Homeowner has failed to provide the information and documents required by Rule 43 of the Rules and Section 17 of the 2011 Act. The Homeowner has also failed to provide this information and documentation, 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.

Josephine Bonnar, Legal Member
22 February 2024