

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Decision by the Tribunal
In an Application under section 17 of the Property Factors (Scotland) Act 2011
("the 2011 Act")**

**Robert Crawford, 40 Homeshaw House, 27 Broomhill Gardens, Newton Mearns
G77 5HP ("the Applicant")**

**Bield Housing & Care, 79 Hopetoun Street, Edinburgh EH7 4QF ("the
Respondent")**

Chamber Ref: FTS/HPC/PF/18/2626

**Re: Flat 40, Homeshaw House, 27 Broomhill Gardens, Newton Mearns G77 5HP
("the Property")**

Tribunal Members:

John McHugh (Chairman) and Elizabeth Dickson (Ordinary (Housing) Member).

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") hereby determines that the Applicant's application for review is wholly without merit and refuses the application.

The decision is unanimous.

Reasons for Decision

The Decision under Review

On 21 February 2019, the Tribunal issued its decision that the Respondent had not failed to carry out its property factor's duties or its duties under section 14 of the 2011 Act.

The Applicant has, by email dated 4 March 2019, asked that the Tribunal review its Decision in respect of six matters referred to, mostly, by reference to the headings contained within the Decision being: 1 The Circumstances surrounding the sending of a letter to the Applicant; 2 the circumstances surrounding the sending of a letter to the Respondent; 3 the attempt to ballot residents; 4 the incident involving the Manager and the Respondent's handling of the Applicant's complaint; 5 The Respondent treating homeowners and Tenants in the same way; and 6 the right to a fair trial under Article 6.

Basis for Review

1 The Circumstances surrounding the sending of a letter to the Applicant

The Tribunal found in the Decision there to be no breach of property factor's duties or of the Code in this respect. The Respondent rehearses arguments already made in the Tribunal. He complains about how illegible the postman's/ Respondent's representative's signatures were on the receipt relating to the posting. He complains that he was told that the Royal Mail can make mistakes. He complains that the envelope used by the Respondent was flimsy by reference to the Respondent's GDPR policy. These are factual matters upon which we have reached a decision and we see no reason to alter our findings. The Applicant makes reference to the detail of the investigation by the Royal Mail and complains that this is not mentioned in the Decision. The fact of the Royal Mail investigation is mentioned in our Decision and the detail mentioned has no effect upon our findings.

The Applicant complains that his complaint should have been formally treated as such by the Respondent but we accepted the Respondent's evidence that it had dealt with the matter by investigating and responding to the Applicant and we do not see that treating the matter as a complaint would have led to any materially different outcome to the Respondent's response.

2 The circumstances surrounding the sending of a letter to the Respondent

The Tribunal found in the Decision that there had been no breach of the Code or of property factor's duties. The Applicant asks why the Tribunal has not made any findings regarding the content of the letter in question. The Applicant's complaint concerned the Respondent's (subsequently corrected) mistaken position that it had not received the letter. We consider that the letter's content is irrelevant to our Decision.

3 The Attempt to Ballot Residents

The Tribunal found in the Decision that there had been no breach of the Code or of property factor's duties. The Applicant has narrated a history of events concerning this matter and that he says he awaits certain information from the Respondent. We are unable to relate the Applicant's comments to any basis for review of the Decision.

4 The incident involving the Manager and the Respondent's handling of the Applicant's complaint

The Tribunal found in the Decision that there had been no breach of property factor's duties or of the Code. The Applicant narrates the history of the matter and expresses the view that he cannot believe that we have not identified any breach in our Decision. That may be so, but no basis for review is identified.

5 The Respondent treating homeowners and Tenants in the same way

The Tribunal found in the Decision that there had been no breach of the Code or of property factor's duties. The Applicant expresses the view that the Tribunal should read what the SPSO and Scottish Housing Regulator have to say about the duties of factors, without explaining what that may be or why that is relevant to a review. He repeats comments made at the hearing to the effect that he regards the Respondent as the customer of the homeowners. We continue to consider this to be a mischaracterisation of the relationship between the parties but, in any event, no basis for review is identified.

6 Right to a fair trial under Article 6 of the European Convention on Human Rights

The Applicant complains on the basis that the "Chairwoman of Bield" is said to be a member of the Tribunal. The Members of the Tribunal hearing this case are unaware of the identity of the Chairwoman of the Respondent and therefore do not know whether it is true that she is a Member of the Tribunal. In any event, the only Members who were involved in reaching the Decision in respect of which review is

sought are those named in the written Decision, neither of whom hold any office with the Respondent.

If it is true that another Member of the Tribunal holds office with the Respondent, that is irrelevant to the Decision since that other Member had absolutely no involvement in reaching the Decision nor in influencing its terms.

Overall, we have identified no factors justifying setting aside or altering the Decision.

Decision

We consider the application for review to be totally without merit in terms of Rule 39(3) of the Tribunal Procedure Rules. The application is refused.

This Decision is not subject to appeal.

Signed

Date 7 March 2019

JOHN M MCHUGH

Chairing Member