

Housing and Property Chamber
First-tier Tribunal for Scotland



**Decision: Housing Scotland Act 2014 Section 48 and the First-tier Tribunal for Scotland
Housing and Property Chamber (Procedure) Regulations 2017 Rule 27**

Chamber Reference: FTS/HPC/LA/18/1174

Parties:

**Mr Brendan Carbery, per his agents Messrs McCartney Stewart Solicitors, 1B Paisley Road,
Renfrew, PA4 8JH (“the Applicant”) and**

Lets by Location, 83/87 Cadzow Street, Hamilton, ML3 6DY (“the Respondent”)

Tribunal Members:

Andrew Cowan (Legal Member) and David Maclver (Ordinary Member) “The Tribunal”

Decision

**The Tribunal dismissed the Application as the Tribunal considered they did not have
jurisdiction in relation to the Application.**

Background

1. By an Application dated 17 May 2018 the Applicant applied to the Tribunal for a determination that the Letting Agent had failed to comply with various paragraphs of the Letting Agent Code of Practice (“the Code”). By Letter dated 18 June 2018 the Tribunal wrote to parties to advise that the Tribunal would hold a hearing in relation to the Application on 13 August 2018. On 19th July 2018 the Tribunal issued directions to the parties whereby the parties were ordered to lodge various documents with the Tribunal in advance of the hearing fixed for 13 August 2018.
2. By email dated 7 August 2018 the Applicant’s representatives lodged with the Tribunal documentation as required by the Tribunal’s directions dated 19th July 2018.

The solicitor for the Applicant sought to persuade the Tribunal that the Respondents continued to provide Letting Agent services to the Applicant after 31 January 2018 and accordingly they were bound by the Code of Practice and that the Tribunal accordingly had jurisdiction to consider the Application. In particular the Respondent's solicitor made reference to the fact that the Respondents had made arrangements for a new tenant to take entry to the property on or around 26 January 2018 and had thereafter held the keys for the property until the beginning of February 2018.

The Tribunal were not persuaded that there was a sufficiency of evidence to establish the Respondents continued to act as Letting Agents for the Applicant on or beyond 31 January 2018. The Tribunal were not satisfied that there was evidence that the Respondents were acting as Letting Agents as at the date the Letting Agent Code of Practice came into force.

Accordingly the Tribunal were not satisfied that they could consider the Application further, as the Code of Conduct did not apply to the Respondent and the Tribunal could not accordingly has jurisdiction.

2. The Tribunal had also noted that the Application had been raised against "Lets by Location". The Tribunal were not satisfied that "Lets by Location" were a legal entity against whom they could consider making an order in terms of the Housing Scotland Act 2014. "Lets by Location" appeared to be a trading name. The solicitor for the Applicant confirmed that she understood that it was a trading name and that the Application may have to be amended to substitute a new party as the Respondent. The Applicant's solicitor was not in a position to provide evidence of the name of the party who could be so substituted. The Tribunal were not satisfied that there was sufficient evidence to establish the true identity of the legal entity which had acted as the Letting Agent on behalf of the Applicant. There was no written evidence before the Tribunal to establish the identity of such a party and no other evidence was produced before the Tribunal to clarify this point.

3. The Tribunal did not consider the merits of the Application, except in so far as necessary to determine whether the Tribunal had jurisdiction to consider the Application.
4. The Tribunal, having determined that they did not have jurisdiction to consider the matter decided to dismiss the Applicant's case in accordance with Rule 27 of the Regulations.

Rights of Appeal

1. In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.
2. Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed

Date

15/8/18.

Legal Member