

Housing and Property Chamber First-tier Tribunal for Scotland



**First-tier Tribunal for Scotland (Housing and Property Chamber)
Decision issued by the Tribunal in respect of the Homeowners application made under the
Property Factors (Scotland) Act 2011 Section 19**

Chamber Reference: FTS/HPC/PF/18/2074

The Parties:-

Mr Douglas Macdonald residing at 32 Cowane Street, Stirling, FK8 1JR ("the Homeowner")

And

Hacking and Paterson Management Services, having offices at 1 Newton Terrace, Glasgow, G3 7PL
("The Property Factor")

Decision by the First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') in an Application under Section 17 of the Property Factors (Scotland) Act 2011 ("the Act")

Tribunal:

Mr James Bauld (Legal Member)
Mr Mike Links (Ordinary Member)

Introduction & Background

1. By application dated 15 August 2018 the Homeowner made an application to the Tribunal alleging several breaches of the Code of Conduct for Property Factors.
2. The Tribunal issued a direction dated 18 December 2018 requiring the Homeowner to lodge certain documents. Those documents were eventually lodged by the Homeowner.
3. The Tribunal then set a hearing to take place on 27 March 2019 and intimation of that hearing was given to both the Homeowner and to the Property Factor. In advance of the hearing the Property Factor lodged a response indicating that they believed that the application was premature and that it should be dismissed. The Property Factor also lodged various documents in support of that submission and had other submissions regarding the progress of the application.

The Hearing

4. On 27 March 2019 the Tribunal members convened at Wallace House in Stirling for the hearing. Mr David Doran a director of the Property Factor was in attendance. The Tribunal hearing commenced at 10.05am. At that time the Homeowner was not present. The Tribunal heard submissions from Mr Doran regarding the application and in particular noted that in the

Property Factor's submission the application was premature. The Homeowner had never gone through their formal complaints process and accordingly the Tribunal were invited to determine that in terms of section 17 (3) (b) of the Act that the Tribunal did not have jurisdiction to determine the matter.

5. The Tribunal were aware of another decision made under chamber reference FTS/HPC/PF/18/1855 which involved the same Property Factor and which was issued by another Tribunal which had sat on 23 January 2019. The Tribunal on that date included the ordinary member who was the Tribunal member in this case. The facts in the current application were almost identical to the facts contained within the application in the other case.
6. In that case, the Tribunal had considered whether the tests contained in section 17 (3) (b) had been met. That test is a two stage test which requires that a Property Factor must be firstly notified in writing why the Homeowner considers that they have failed to carry out their duties or have breached the Code and secondly that the Property Factor has refused to resolve or has unreasonably delayed in attempting to resolve the Homeowner's concerns.
7. In this case, although the Property Factor had been advised of the complaints made by the Homeowner, he had at no stage gone through the formal complaints process used by this particular Property Factor. The Tribunal noted that in the other case it had been held by the Tribunal that the complaints procedure used by this Property Factor, although more cumbersome and time consuming than some others, was in the view of the Tribunal reasonable overall. This Tribunal agrees with that view.
8. The Homeowner having completely failed to allow the Property Factor to even attempt to resolve with this complaint prior to remitting the matter to the Tribunal, the application fails the test in section 17 (3) (b) of the Act .
9. The Tribunal note that the Homeowner failed to attend the hearing which was held in his home town. He did not contact the Tribunal at any time to advise of any difficulty with attending the hearing nor has any contact been received since indicating any reason for his failure to attend. The Tribunal concluded its consideration of matters at approximately 10.25 a.m. and even at that time the Homeowner was not present.
10. Accordingly the decision of the Tribunal is that this application is premature. It does not meet the tests in section 17 (3) (b) and accordingly the Tribunal do not have jurisdiction to determine the application and the Tribunal dismisses the application.
11. The decision of the Tribunal is unanimous.

Right of Appeal

12. 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. The party must seek permission to appeal within 30 days of the date the decision was sent to them.

J Bauld

Jim Bauld

18 April 2019
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Date