

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Decision under Section 46(3)(a) of the Tribunals (Scotland) Act 2014 and Rule 38(3) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

Chamber Ref: FTS/HPC/PF/21/0456

The Property: 64 Silvertrees Wynd, Bothwell G71 8FH (“the Property”)

The Parties:

**Mrs Moira Gardner, 64 Silvertrees Wynd, Bothwell G71 8FH (“the Applicant”)
and**

**Mrs Caroline Adams, 18 Silvertrees Wynd, Bothwell G71 8FH (“the Applicant’s
Representative”) and**

**Miller Property Management Limited, Suite 2.2 Waverley House, Caird Park,
Hamilton ML3 0QA (“the Respondent”)**

Tribunal Members:

**G McWilliams Legal Member and
M Lyden (Ordinary Member)**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) considered the Respondent’s application for permission to appeal in terms of Section 46(3)(a) of the Tribunals (Scotland) Act 2014 and determined to refuse permission to appeal in terms of Rule 38(3) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”).

Background:

1. The First-tier Tribunal for Scotland (“the Tribunal”) had considered an Application from the Applicant which was brought in terms of Section 17(1) of the Property Factors (Scotland) Act 2011 (“the 2011 Act”). In the Application the Applicant complained that the Respondent had acted in breach of Sections 2, 3, 5 and 6 of the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors (“the 2011 Code”).
2. After determinations were made by the Tribunal on 16th May 2021 and 26th October 2021, and then by the Upper Tribunal for Scotland (“the Upper Tribunal”) on 8th April 2022, the Application was returned to the Tribunal for re-determination in respect of the Applicant’s complaint that the Respondent had not complied with Section 3 of the 2011 Code.
3. The Tribunal considered the relevant legislative provisions, case law, documentation lodged by the parties and the oral evidence and submissions given at Hearings on 5th July 2022 and 11th April 2023, including submissions made after the continued Hearing on 11th April 2023, and determined that the Respondent had failed to comply with its duties under Section 14(5) of the 2011 Act in that they did not comply with Section 3 of the 2011 Code. The Tribunal proposed to make a Property Factor Enforcement Order (“PFEO”) in the following terms:
 - i) The Respondent is to make a compensation payment to the Applicant, in the sum of £200.00, within 28 days of the date of issue of the PFEO; and
 - ii) The Respondent is to provide a letter of intimation of proposed works, additional to the repair, renewal and maintenance works which the Respondent routinely carries out at the Property and the development within which it is situated, with confirmation of the cost of such proposed works, to the Applicant, as well as all other homeowners at the development, in the event of such additional works being proposed, and prior to the execution of such works, from the date of this decision until the Respondent ceases to be the property factor for the Property. The Respondent is to provide a template letter of intimation of such proposed, additional works to the Tribunal within 28 days of the date of issue of the PFEO.
4. The Tribunal’s written decision and Proposed PFEO, both dated 11th July 2023, were issued to the parties on 21st July 2023.
5. On 7th August 2023 the Respondent sent an email to the Tribunal’s office requesting that the Tribunal review its decision.
6. In their application for review the Respondent sought that the Tribunal make corrections and amendments to their written decision dated 11th July 2023. The Respondent listed a number of statements and/or findings in the decision which they said were incorrect and/or inaccurate. The Respondent stated that they

wished the Tribunal to review the decision. They stated that if the Tribunal did not correct errors in the decision they would appeal to the Upper Tribunal.

7. The Tribunal consider that they justly determined the Application after proper consideration of the available evidence, and submissions, and without erring in law. The Tribunal, therefore, refused the Respondent's application for review of their decision, dated 11th July 2023, as being without merit, in terms of Rule 39 of the 2017 Rules, on 13th October 2023 and the Tribunal's decision, in this regard, was issued to the parties on 16th October 2023.

Application for Permission to Appeal:

8. By way of email dated 27th November 2023, the Respondent has requested permission to appeal the Tribunal's decision dated 11th July 2023. The Respondent fails to raise any points of law in his request for appeal of the decision. In the said email the Respondent refers to issues which were considered at the Hearings and again refers to a number of statements and/or findings in the said decision which they say are incorrect and/or inaccurate. The Respondent is critical of the Tribunal's reliance on the Respondent's failure to provide documentation to support the Respondent's assertion that the developer of the blocks of flats, within which the Property is situated, paid for hedge planting costs when the Tribunal made their finding in fact that homeowners were collectively overcharged in respect of those costs.

Reasons for Decision

9. The Tribunal considered matters in terms of the provisions of Section 46 of the 2014 Act and Rules 37 and 38 of the Rules.
10. Section 46 of the 2014 Act states:

Appeal from the Tribunal

(1) A decision of the First-tier Tribunal in any matter in a case before the Tribunal may be appealed to the Upper Tribunal.

(2) An appeal under this section is to be made—

(a) by a party in the case,

(b) on a point of law only.

(3) An appeal under this section requires the permission of—

(a) the First-tier Tribunal, or

(b) if the First-tier Tribunal refuses its permission, the Upper Tribunal.

(4) Such permission may be given in relation to an appeal under this section only if the First-tier Tribunal or (as the case may be) the Upper Tribunal is satisfied that there are arguable grounds for the appeal.

(5) This section—

(a) is subject to sections 43(4) and 55(2),

(b) does not apply in relation to an excluded decision.

11. Rule 37 of the Rules states:

Application for permission to appeal a decision of the First-tier Tribunal

(1) A person must make a written application to the First-tier Tribunal for permission to appeal.

(2) An application under paragraph (1) must—

(a) identify the decision of the First-tier Tribunal to which it relates;

(b) identify the alleged point or points of law on which the person making the application wishes to appeal; and

(c) state the result the person making the application is seeking.

12. Rule 38 of the Rules states:

First-tier Tribunal's consideration of application for permission to appeal

(1) The First-tier Tribunal must decide whether to give permission to appeal on any point of law.

(2) The First-tier Tribunal must provide a record of its decision to the parties and any interested party as soon as reasonably practicable.

(3) If the First-tier Tribunal refuses permission to appeal on any point of law, it must provide its decision—

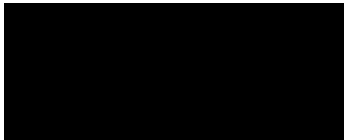
(a) a statement of its reasons for such a refusal; and

(b) notification of the right to make an application to the Upper Tribunal for permission to appeal and the time within which, and the method by which, such an application must be made.

13. The Tribunal determined that the application for permission to appeal is refused. Whilst the application for permission to appeal does identify the decision to which it relates it does not state any point of law upon which the Respondent relies. The request for permission to appeal reiterates issues which were considered at the Hearing, and upon which the Tribunal made a determination upon hearing evidence and submissions Paragraphs 25 to 33 of the Tribunal's decision set out the Tribunal's determination and reasoning in this regard. The Respondent disagreeing with the Tribunal's determination following the hearing of evidence and submissions, and considering all of the available documentary evidence, is not in itself a ground of appeal. In the application for permission to appeal the Respondent gives no specification as to the basis upon which they consider that they have an arguable ground of appeal.
14. Accordingly, the Respondent's request for permission to appeal the Tribunal's decision of 11th July 2023 is refused.

G McWilliams

Date: 19th January 2024



Tribunal Legal Member

A party aggrieved by the decision of the tribunal may seek permission to appeal to the Upper Tribunal for Scotland on a point of law only. That party must seek permission to appeal within 30 days of the date the decision was sent to them. The request for permission to appeal must be in writing.