

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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

**Decision on Applications: Rule 18 (1) of the First tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Rules (“the 2017 Rules”) contained in the Schedule to the First tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017**

**Chamber Ref: FTS/HPC/LM/23/-277 and FTS/HP/LM/23/1775**

**The Property: Garage, 48 Ravelston House Park, Edinburgh, EH4 3LZ (“the Property”)**

**The Parties:-**

**Ms Carolyn Cuthbert, residing at 18 East Court, Ravelston House Park, Edinburgh, EH4 3LZ (“the Applicant”) and**

**Trinity Factoring Services Limited, 209/211 Bruntsfield Place, Edinburgh, EH10 4DH (“the Respondent”)**

**Tribunal Members:**

**Mr G. McWilliams (Legal Member)**

**S. Brydon (Ordinary Member)**

### **Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) decided to refuse the Applications in terms of Rule 18(1)(a) of the 2017 Rules.**

### **Background, Case Management Discussion and Reasons for Decision**

1. Ms Cuthbert submitted two Applications to the Tribunal in respect of alleged breaches of the Code of Conduct for Property Factors, effective from 16<sup>th</sup> August 2021, (“the 2021 Code”) against Trinity Factoring Services Limited (“Trinity”).
2. A Case Management Discussion (“CMD”) took place by remote tele-conference call at 10am on 23<sup>rd</sup> January 2024. Ms Cuthbert attended. Mr N. Philp, Property

Manager, Mr G. McGuire, Managing Director, and Ms S. Laird, Head of Property Management, attended for Trinity.

3. At the CMD it was agreed between Ms Cuthbert and Mr Philp, Mr McGuire and Ms Laird that Trinity are not factors for the above garage Property. The Tribunal heard from Ms Cuthbert and Mr Philp, and also Mr McGuire, that Trinity act as recovery agents in respect of an annual garage levy fee charged by Ravelston Heights Proprietors Association ("RHPA") to the owners of 18 individual garages. The garages are located at the East Block which is adjacent to Ms Cuthbert's home and the nearby development of flats at Ravelston Heights. Ms Cuthbert and Mr Philp and Mr McGuire, agreed that Trinity act as property factors for the development at Ravelston Heights and that, as matter of convenience, were also instructed by RHPA to recover the garage levy. Ms Cuthbert stated that she understood that the garage levy covered costs incurred by RHPA in having a caretaker carry out some cleaning and maintenance works to the outside of the individual garages. Mr Philp stated that Trinity did not carry out any works in respect of the garages.
4. During the CMD Ms Cuthbert stated she had objected to being asked to pay a levy for the year 2021 as there was no caretaker carrying out any work during that year. Mr McGuire re-iterated an offer which had been made previously by RHPA, through Trinity, to waive the levy charge to Ms Cuthbert for that year. Ms Cuthbert accepted the offer and Mr Philp stated that he would confirm this agreement in writing shortly.
5. Ms Cuthbert also stated that she was content to pay for maintenance carried out to the garage Property provided that she receives details of what maintenance works have been carried out, and that she is reassured that levy monies collected from the garages owners are kept separate from factors fees paid by owners of properties within the Ravelston Heights development. Mr McGuire undertook to use his best endeavours to arrange a meeting between Ms Cuthbert, RHPA, and, in the first instance, Trinity to seek to resolve the issue of the rendering of charges, and the clarity of detail of those charges, as well as the separation of funds issues which are of concern to Ms Cuthbert, as soon as possible. Mr Philip stated that Trinity had previously, and erroneously, referred to the garage levy monies sought as being factoring costs and stated that they had now corrected this in their document issuing system. Mr McGuire confirmed that RHPA are an unincorporated association, whose current Chair is Mr Paul Neils McLachlan.
6. In the circumstances, and as Trinity are not factors for the above garage Property, the Applications must be refused. This was accepted by Ms Cuthbert and those attending the CMD on behalf of Trinity.
7. The Tribunal encourage Ms Cuthbert, Trinity, and RHPA, to resolve matters as soon as possible in order to avoid further formal proceedings, such as Court action, having to be commenced.

### **Outcome**

8. The Applications are refused.

### **Appeal**

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 within 30 days of the date the decision was sent to them.

**G McWilliams**

**Legal Member**

**23<sup>rd</sup> January 2024**