



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 26 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

Case reference FTS/HPC/PF/24/0837

Parties:

WI Care Ltd (Applicant)

Hacking and Paterson Management Services (Respondent)

Business Centre, 7 Broomlands Street, Paisley, PA1 2LS (Property)

Tribunal Member: Jacqui Taylor (Legal Member)

The Tribunal rejects the application by the applicant dated 20th February 2024, being an application under section 17(1) of the Property Factors (Scotland) Act 2011. The Tribunal sent the applicant a letter dated 6th March 2024 which was in the following terms:-

'Your application to the Chamber under Section 17(1) of the Property Factors (Scotland) Act 2011 has been referred to the Chamber President for consideration. She has indicated that further information is required before a decision can be made on the validity of your application or whether it should be referred to a tribunal.

1. The application appears to be raised in the name of WI Care Limited. All of the accompanying correspondence seems to have been sent by or to a firm called Nicolson Contracts. Please explain the connection between these two entities. Please confirm who is the owner of the premises in question? It may be helpful to provide a copy of any relevant title deed to the property.

2. Section 17 (3) of the Property Factors (Scotland) Act 2011 states that no application can be made to the Tribunal unless the homeowner has notified the property factor in writing as to why it is considered that the property factor has failed to carry out the property factor's duties or comply with the Code Of Conduct and the property factor has refused to resolve, or unreasonably delayed in attempting to resolve, the homeowner's concern.

3. *It is appreciated that you have submitted some copies of correspondence sent by email but it is not considered that this constitutes notification in terms of the Act. You will require to give notification to the property factor which states which particular paragraph(s) of the Code you think have not been complied with and why you consider that the property factor has failed to comply. A template letter is attached which you may find useful. Continuation sheets may be necessary.*

4. *If you are sending a letter of notification, the Tribunal requires to have a copy and evidence that the property factor has received it such as an acknowledgement , copy of sent email or proof that the letter has been delivered such as by recorded delivery. An application requires to mirror the letter of notification.*

5. *You have completed section 7B of the application form and indicated that you want to include breach of property factor's duties as part of the application. 'Property factor's duties' is generally taken to apply to any duties other than those under the code of conduct. The source of a property factor's duties could be, for example, the factor's written statement of services, the title deeds for the property, any other relevant contract, or the general law of agency. It may be that, on reflection, you consider that an application in respect of alleged failure to comply with the Code is sufficient. If you do want this to be part of your application, you must also notify the property factor about this/these complaint(s) before we can take the application forward. You will need to write to the property factor stating clearly why you believe it has failed to comply with its duties, which duties you believe have been breached, and the source of these duties. A template notification letter in relation to property factor's duties is attached. This is the letter which states 'I am writing to inform you that I believe that you have failed to carry out your property factor duties as set out in section 17 (5) of the Property Factors (Scotland) Act 2011'. The Tribunal would also require to have a copy of the letter of notification and evidence that the property factor has received it just as has been detailed above .*

6. *Please note that a property factor requires to be given an opportunity to respond to any Section 17 notification sent by a homeowner. Please provide copies of any responses subsequently received. Please reply to this office with the necessary information by 27 March 2024, when your application will be further considered by the Chamber President. If we do not hear from you within this time, the Chamber President may assume that the dispute has been resolved and consequently may reject the application in terms of Section 18(2) of the Act. It is, therefore, important that you respond within the timescale given.'*

The applicant has not provided the Tribunal with the required information despite sending a reminder to the applicant dated 28th March 2024.

Accordingly the Tribunal have good reason to believe that it would not be appropriate to accept the application and reject the application in terms of rule 8 (1)(c) of the Tribunal Rules.

In terms of Section 46 of the Tribunal (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



.....Legal Member

Date: 10th April 2024