

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision under Rule 93 of the First Tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (Procedure Rules) in relation to a request for extension of time to consider an application for registration as a Letting Agent under section 30 of the Housing (Scotland) Act 2014 (Act)

In connection with

Chamber File Reference Number: FTS/HPC/XA/20/1318

Parties:

The Scottish Ministers (Applicant)

The Scottish Government (Applicant's Representative)

Robert Smith T/A Property Management OptionsI (Respondent)

Tribunal Member:

Alan Strain (Legal Member)

Decision

The Tribunal determined that the Applicant's application by email of 16 June 2020 to have the time for consideration of the Respondent's application for registration as a Letting Agent under section 30 of the Act extended to 18 December 2020 be granted.

Background

This is an application under Rule 93 of the Procedure Rules in relation to a request for extension of time to consider an application for registration as a Letting Agent under section 30 of the Act. The application seeks to extend the time for consideration until 18 December 2020.

The Tribunal had regard to the following documents:

1. Application under Rule 93 received and dated 16 June 2020;
2. Notice of Acceptance dated 26 June 2020;
3. Tribunal Direction dated 26 June 2020;
4. Written Representations from Applicant dated 30 June 2020;
5. Written Representations from Respondent dated 15 July 2020.

Reasons for Decision

The Tribunal had issued a Direction to Parties on 26 June 2020 in the following terms:

“Considering that the Tribunal has power to determine the application without a hearing in terms of Rule 18 of the Regulations, the parties are required to provide the Tribunal with any written representations they wish considered as to whether or not they would wish a hearing to be fixed and their reasons for seeking a hearing. This is in addition to any written representations which parties would wish to lodge with the Tribunal on the content of the application and outcome sought in advance of the Tribunal making a decision on the application.”

Parties were directed to lodge Written Submissions.

Both Parties lodged Written Representations agreeing that the Tribunal could determine the matter without a Hearing.

The Tribunal considered the application and noted that the extension was being sought due to the Applicant considering that the Respondent required to:

1. obtain bank accounts as required by paragraph 121 of the Letting Agent Code of Practice (**Code**);
2. provide confirmation that the accounts meet the conditions in paragraph 122 of the Code;
3. obtain client money protection insurance which complies with paragraph 126 of the Code;
4. provide the Applicant with documentation to confirm that it holds the client money protection insurance.

The Applicant would then need time to consider the application.

This was confirmed in the Respondent's Written Submissions lodged in response to the Tribunal Direction. The Respondent also informed the Tribunal of the delays which had been experienced in obtaining the documentation.

The Tribunal considered the terms of Rule 18:

Power to determine the proceedings without a hearing

18.— (1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties;

In the circumstances the Tribunal considered that it was able to make sufficient findings to determine the case and that to do so would not be contrary to the interests of the Parties.

The Tribunal accordingly decided that it could determine matters without a Hearing and proceeded to consider the application.

The Tribunal made the following findings in fact:

1. The Applicant is the Letting Agent Registration Body for Scotland;
2. The Respondent is a Letting Agent;
3. The Respondent had applied for registration under section 30 of the Act on 21 June 2019;
4. The Applicant had assessed the application and informed the Respondent that the Respondent required to provide certain banking and insurance documentation;
5. The Respondent was in the process of obtaining the appropriate documentation;
6. The Applicant applied for an extension of time on 16 June 2020 to consider the Respondent's application for registration until 18 December 2020 to enable the Respondent to obtain the documentation and for the application to be assessed;
7. The Respondent agreed to the extension of time in written submissions lodged with the Tribunal dated 15 July 2020.

Having made these findings in fact the Tribunal noted that the application had been made within 12 months of the application for registration and was accordingly in time and complied with section 33(4) of the Act.

The Tribunal considered that it was in the interests of justice and in accordance with the overriding objective to grant the extension sought.

The Tribunal accordingly grants the application and extends the time for consideration by the Applicant of the Respondent's application for registration to 18 December 2020.

Appeal Provisions

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 and you may wish to consult the Scottish Courts and Tribunals Service Website which includes an application form with information on the details required.

A Decision of the Upper Tribunal relating to a permission to appeal request cannot be appealed or reviewed.



Legal Member: Alan Strain

Dated: 11 August 2020