

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules) in relation to an application for extension of time limit to determine application for registration as a letting agent under Rule 93 of the Procedure Rules.

Chamber Ref: FTS/HPC/XA/19/3044

Parties:

The Scottish Government ("the Applicant")

Cairn Letting Limited ("the Respondent")

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

Tribunal Member: Jacqui Taylor (Legal Member)

Background

1. The Applicant submitted an Application to the Tribunal under Tribunal Rule 93 for an extension of time to determine the Respondent's application for registration as a letting agent in terms of section 33(3) of the Housing (Scotland) Act 2014. The Application was dated 30th September 2019.

The Application stated:

'The application was made under section 32 of the Housing (Scotland) Act 2014 and was received by the Scottish Ministers on 27 September 2018. The registration team began processing the application on 27 March 2019.

Due to the issues encountered by a number of agents in obtaining a client bank account as a consequence of changes to the UK money laundering regulations, the Scottish Government took action through the Letting Agent Registration (Scotland) Amendment Regulations 2018 to allow applications to be made to the Scottish Letting Agent Register where an applicant did not have a client bank account or a client money protection insurance policy. As these regulations only came into force on 1 October 2018, applications to the register by those who did not meet the client money requirements in the code before the 1 October 2018 were held in abeyance until the 1 October 2018 at which point they became a valid application. This applies to the application received from the Respondent. The date by which Scottish Ministers require to determine this Respondent's application, or apply to the tribunal for an extension, is therefore 30 September 2019.

The Respondent has encountered difficulties in obtaining a client account and in obtaining a client money protection insurance policy. They currently in the process of changing banks in order to obtain a client account, and hope to be able to obtain client money protection insurance thereafter.

The Applicant therefore seeks an extension to the time limit to determine the Respondent's application to join the Scottish Letting Agent Register. This extension is to enable the Respondent to do the following:

- 1) Obtain a client bank account (as required by paragraph 121 of the letting agent code of practice).
- 2) Provide to the Applicant written confirmation from their bank that the client bank account meets the requirements of the Letting Agent Code of Practice (as per paragraph 122)
- 3) Obtain a client money protection insurance policy (as required by paragraph 126 of the letting agent code of practice)
- 4) Provide evidence to the applicant that they have met the client money protection insurance requirements set out in paragraph 126 of the Letting Agent Code of Practice.
- 5) Provide evidence to the applicant that they have met the professional indemnity insurance requirements set out in paragraph 130 of the Letting Agent Code of Practice and
- 6) To enable the Applicant to fully assess the additional documentation and information provided by the Respondent in relation to the reasons above.

The Applicant seeks an extension to the time limit to determine the application for registration as a letting agent to the 30 March 2020.'

2. Decision

2.1. Requirements of Section 93 of the Procedure Rules.

In connection with the requirements of section 93 the Application correctly detailed the requirements of section (i), (ii), (iii) (iv) and (v) of section 93 the Procedure Rules namely:-

- (i) The address of the Scottish Ministers.
- (ii) The name and address and profession of the representative of the Scottish Ministers.
- (iii) The name, address and registration number of the Respondent.
- (iv) The reason why an extension is sought and
- (v) The date of receipt by the Scottish Ministers of the application under section 32 of the 2014 Act, namely 1st October 2018.

The Application had been signed and dated by Charlotte McHaffie, a representative of the Scottish Ministers, as required.

2.2 Requirements of section 33 of the Housing (Scotland) Act 2014.

Section 33(2) of the Housing (Scotland) Act 2014 requires the Scottish Ministers to determine an application for registration of a Letting Agent within 12 months of receiving the application.

Section 33(3) of the said Act provides that the Scottish Ministers may apply to the First- tier Tribunal for an extension of the time limit by such period as the Tribunal thinks fit.

Section 33(4) of the said Act provides that the Tribunal may not extend a period unless the Scottish Ministers apply for the extension before the period expires.

The Scottish Ministers received the completed application from the Respondent on 1st October 2018. They submitted the application for extension to the First tier Tribunal on 30th September 2019 ('The Tribunal Application'). The Tribunal Application had been received timeously.

2.3 In terms of Tribunal Rule 18(1) the Tribunal may make a decision without a hearing where the facts are not disputed and to do so would not be contrary to the interests of the parties.

Tribunal Rule 18(2) provides that before making a decision under Tribunal Rule 18(1) the Tribunal must first consider any representations submitted by the parties.

The Tribunal issued a Direction to the parties dated 2nd October 2019 directing them to provide the Tribunal with written representations as to whether or not they would wish a hearing to be fixed.

The Applicants sent the Tribunal written representations on 17th October 2019 which confirmed that they are content that no hearing is fixed provided the Respondent is in agreement and the Tribunal is minded to grant the Application.

The Respondents sent the Tribunal Administration a letter and email dated 23rd October 2019 explaining the difficulties they are experiencing opening a client account. They confirmed that they are doing everything in their power to have the client account in place.

The Tribunal determine that a decision will be made without a hearing as the facts are not disputed and it is not contrary to the interests of the parties to do so.

The Tribunal determine that the time period for the Scottish Ministers to determine the application for registration of the Respondent as a Letting Agent under section 30 of the Housing (Scotland) Act 2014 is extended to 30th March 2020 as the Respondent agrees with the Application and it is in the Respondent's interest for the Application to be granted.

J Taylor

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..... Legal Member

30th October 2019