

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision by the Convener with Delegated Powers of the Chamber President

Under Rule 8 of the Schedule 1 to the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) (Regulations) 2017 ('the 2017 rules')

Re: Application to First-tier Tribunal made under Section 17 of the Property Factors (Scotland) Act 2011 and Rule 43 of the 2017 rules

Chamber Reference Number: FTS/HPCPF/19/1822

Re: 81 Pennelton Place, Bo'ness EH51 0PD

Parties:

**Mr Robert Scott (the homeowner)
Weslo Housing Management (the property factor)**

Decision

After careful consideration of the homeowner's application in terms of rule 8 of the 2017 rules, **I have decided that the application should be rejected.**

Reasons for the decision and grounds for rejection

I have considered the application in terms of Rule 8 of the 2017 rules. Rule 8 provides as follows:

Rejection of application

8.—(1) The Chamber President or another member of the First-tier Tribunal under the delegated powers of the Chamber President, must reject an application if—

- (a) they consider that the application is frivolous or vexatious;
- (b) the dispute to which the application relates has been resolved;
- (c) they have good reason to believe that it would not be appropriate to accept the application;

- (d) they consider that the application is being made for a purpose other than a purpose specified in the application; or
- (e) the applicant has previously made an identical or substantially similar application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, there has been no significant change in any material considerations since the identical or substantially similar application was determined.

(2) Where the Chamber President, or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, makes a decision under paragraph (1) to reject an application the First-tier Tribunal must notify the applicant and the notification must state the reason for the decision.

Reasons for decision

The homeowner's application, received on 12 June 2019, alleged that the property factor had failed to comply with section 2.1 of the code of conduct for property factors. The basis of the homeowner's complaint was that the property factor was not entitled to charge him in respect of common repairs and maintenance because the feudal system was abolished by the Title Conditions (Scotland) Act 2003.

It appears that the homeowner may be unclear as to the nature of the role of Weslo Housing Management's role as a property factor, which is different to its role as a registered social landlord. The property factor has explained to the homeowner that the abolition of the feudal system does not affect his responsibility to contribute towards common repairs and maintenance. The homeowner has a responsibility under the Deed of Conditions for the estate to pay a share of the cost of maintaining the estate open spaces and common areas.

The property factor is the registered property factor for the estate where the homeowner's property is situated, including his property. The written statement of services states that the property factor has authority to act as Estate Manager for the estate under the Deed of Conditions which applies to the estate. The property factor therefore has the right to charge the homeowner for his share of the cost of maintaining the estate open spaces and common areas.

I have therefore decided to reject your application under Rule 8 (c) of the 2017 rules, as I have good reason to believe that it would not be appropriate to accept the application.

For the reasons stated above, your application is rejected.

What you should do now

If you accept the Convener's decision, there is no need to reply.

If you disagree with this decision –

A party aggrieved by the decision of the Chamber President or the Convener 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. Information about the appeal procedure can be forwarded to you on request.

Yours sincerely

Sarah O'Neill
Convener
Legal member of the First-tier Tribunal for Scotland (Housing and Property Chamber)

16 July 2019