



**DECISION AND STATEMENT OF REASONS OF MARTIN J. MCALLISTER,
LEGAL MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED
POWERS OF THE CHAMBER PRESIDENT**

**Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property
Chamber Rules of Procedure 2017 ("the Rules")**

in connection with

**Common and Amenity Areas at
15 Broomhill Court, Nethybridge, Grantown, PH25 3EH ("the Property")**

Case References: FTS/HPC/LM/23/1991 and FTS/HPC/LM/23/1992

Gemma Hendry ("the Applicant")

Highland Residential (Inverness) Ltd ("the Property Factor")

1. The Applicant submitted two applications dated 119 June 2023 to the Tribunal in terms of Section 17 of the Property Factor (Scotland) Act 2011 ("the 2011 Act"). One application was in connection with failure to comply with the 2012 version of the Code and the other was in connection with failure to comply with the version of the 2021 Code.
2. On 14 July and 9 August 2023, the Tribunal issued a request for further information to the Applicant. The Applicant was asked to provide evidence that the Property Factor had been notified about her concerns in terms of Section 17(3) of the 2011 Act, and the Applicant was asked to provide a copy of the written statement of services issued by the Property Factor. The applicant was also asked to clarify the question of whether she wanted failure to carry out property factor's duties to be included in the applications.

DECISION

3. The Legal Member considered the application in terms of Rule 5 and Rule 43 (2) (a). Rule 5 provides: - (1) An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate. (2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgment have been met. (3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the requirement manner for lodgment. “ Rule 43 (2) (a) provides that that a homeowner must attach to the application a copy of “ the notification from the homeowner to the property factor for the purposes of section 17(3)(a) of the 2011 Act.”

4. **After consideration of the application the Legal Member considers that the application should be rejected in terms of Rule 5 (1) and Rule 8 (1) (c) of the Rules. Rule 8 (1) (c) states that an application must be rejected if the Tribunal has “good reason to believe that it would not be appropriate to accept the application.” In terms of Rule 5 (1) the Applicant has not lodged in the manner set out in Rule 43 of the Rules.**

REASONS FOR DECISION

5. The Application is in terms of Section 17 of the 2011 Act and Rule 43. Section 17 states that an application must set out “the homeowners reasons for considering the property factor has failed to carry out the property factor duties

or, as the case may be, to comply with the section 14 duty” (Section 17(2).”

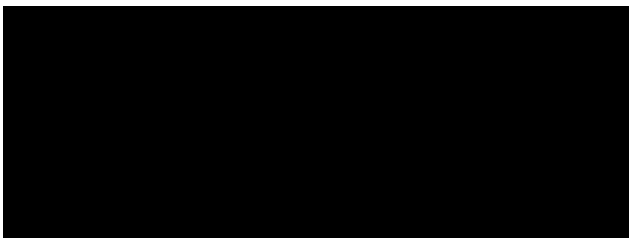
6. The Applicant has failed to provide evidence of notification to the Property Factor in terms of Section 17 (3) of the 2011 Act.
7. The Applicant has failed to provide information, having been directed to do so in a request for further information by the Tribunal, in terms of Rule 5(3) of the Rules. The Legal Member therefore determines that the application cannot be accepted. The application is rejected on that basis.

What you should do now

If you accept the Legal Member’s decision, there is no need to reply.

If you disagree with this decision –

An applicant aggrieved by the decision of the Chamber President, or any Legal Member acting under delegated powers, 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.



Martin J. McAllister, Legal Member
13 September 2023