



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 71 of the Private Housing  
Tenancies (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/EV/21/2873**

**Re: Property at Flat 18 G/R Barbadoes Road, Kilmarnock, East Ayrshire, KA1  
1SY (“the Property”)**

**Parties:**

**Mr Martin Lamberth, c/o Slater Hogg and Howison, 31-33 John Finnie Street,  
Kilmarnock, Ayrshire, KA1 1BL, per Ms Siobhan Brown, Trainee Solicitor, Clarity  
Simplicity Ltd (“the Applicant”)**

**Ms Janice McGill, Flat 18 G/R Barbadoes Road, Kilmarnock, East Ayrshire,  
KA1 1SY (“the Respondent”)**

**Tribunal Members:**

**David Preston (Legal Member) and Leslie Forrest (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that the application be dismissed.**

**Background**

1. By application dated 19 November 2021 the applicant applied for an Order for Eviction of the respondent from the property which she occupied in terms of a Private Residential Tenancy Agreement between the parties dated 26 October 2018.
2. By Notice of Acceptance dated 23 December 2021 a legal member of the First-tier Tribunal with delegated powers to so to do, accepted the application for determination and appointed the case to a Case Management Discussion (“CMD”).
3. A CMD took place by telephone on 1 March 2022. Ms Siobhan Brown, Trainee Solicitor attended and represented the applicant. The respondent attended and represented herself.

4. The tribunal had before it: application Form E dated 19 November 2021; Private Residential Tenancy Agreement dated 26 October 2018 (“the PRT”); Section 11 Notice; letter from Countrywide to the applicant dated 18 August 2021; emails from Countrywide to the applicant dated 31 August and 14 September 2021; Affidavit of applicant dated 22 November 2021; email from respondent to Countrywide dated 17 August 2021; written representations on behalf of the applicant; emails from the respondent dated 9 and 23 February 2022.

## **Discussion**

5. Ms Brown referred to the written submissions lodged on behalf of the applicant and his Affidavit. She confirmed the applicant’s position as being that the respondent had terminated the tenancy by Notice of Termination in terms of section 48 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). She submitted that the notice had been given by the respondent freely and without coercion of any kind and after she had begun to occupy the property. The notice was in writing and stated the date on which the tenancy would end which was a date after the expiry of the minimum period of notice. On this basis she submitted that the notice satisfied the requirements set out in section 49 of the 2016 Act and as such was a valid notice on which the landlord was entitled to depend.
6. Ms Brown acknowledged that the respondent had thereafter made a request to rescind the notice, but for the rescission of the notice to be of effect, section 48(3) of 2016 Act requires the landlord to agree to the request, which the applicant did not do. It was also submitted that to be effective the request to rescind was subject to clause 4 of the PRT which provides in this case that the notice should have been in writing and be in hard copy, delivered personally or by recorded delivery. It was contended that in this case the request to rescind the notice had been made in a telephone call to the letting agents.
7. Ms Brown advised that on the strength of the notice of termination the applicant had decided to sell the property. She explained that the applicant’s wife is undergoing treatment for cancer and their current flat is unsuitable for her, so he intends to sell both their current flat and the property to enable him to buy a more suitable property.
8. The respondent’s position was as outlined in her emails of 9 and 23 February 2022. She acknowledged that she had given notice of termination by email on 17 August 2022 but had subsequently sought to rescind it. She claimed to have followed up the telephone call informing of her wish to rescind the notice with an email. She explained that she has a disability and has particular access requirements which are satisfied in the rented property. However, she had identified an alternative, larger, property which would have been more suitable to accommodate her daughter when she returned home. Unfortunately, the alternative property fell through, and she had been unable to identify another suitable property and had accordingly sought to rescind the notice of termination. She maintained that she had heard nothing from the letting agent following her request to rescind and had not been advised that the landlord did not agree to the notice of termination being

withdrawn. She also advised that she had not received any Notice to Leave which she understood would be required for an eviction order to be granted. She said that following the request to withdraw the notice to terminate, the first that she had heard from the letting agents was on 26 January 2022 when they attended to carry out a biannual inspection and appeared to have no knowledge of the application which had been made.

9. The tribunal referred Ms Brown to the provisions of clause 4 of the PRT and sought to confirm the basis upon which it was contended that the notice to terminate could be said to have been effective as it had been made by email and not, as required, as a hard copy delivered personally or by recorded delivery. Beyond re-iterating the applicant's dependence upon the notice being in compliance with the requirements of section 49 of the 2016 Act, she was unable to advance any further argument.

### **Reasons for Decision**

10. Rule 17 of the Regulations states that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision. The tribunal decided that, on the basis of the information presented to it, it was able to determine the application at the CMD.
11. The tribunal determined that the purported notice to terminate the tenancy of 17 August 2021 was not a valid notice in terms of clause 4 of the PRT and, as such, was ineffective, thereby failing to bring the tenancy to an end.
12. The tribunal had sympathy with both parties for the situation which had arisen. However, it determined that it was required to apply the terms of the legislation as well as clause 4 of the PRT, all of which set out clearly the requirements of a notice to leave being served by the tenant to bring it to an end. Accordingly, the notice required to be in writing and in a hard copy delivered by personal delivery or by recorded delivery. This was a specific term of the PRT which had been accepted by both parties. At the very least the letting agent could have reverted to the respondent to advise her that the notice was invalid and require a fresh notice to be given in proper form, which would have avoided the problems which have subsequently arisen.
13. Standing the findings of the tribunal, it is neither necessary to consider the form or effect of the request to rescind the notice of termination nor the lack of intimation by the letting agent of the landlord's refusal to agree to its rescission. Similarly, it is not necessary to consider the form of the application which has been lodged in a form which brings it within the scope of section 51, regardless of whether it is stated to be under that section or section 71, of the 2016 Act.

### **Right of Appeal**

**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.**

David Preston

1 March 2022