



**Decision and statement of Reasons of the First Tier Tribunal (Housing and Property Chamber)**

**Under Rule 8 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ‘the Rules’.**

In respect of application by Mr Brian Wordie and Mrs Kathi Wordie in terms of Rule 109 of the Rules.

**Case reference FTS/HPC/EV/23/4672**

At Glasgow on the 11 March 2024, Lesley Anne Ward, legal member of the First –Tier Tribunal ‘the Tribunal’ with delegated powers of the Chamber President, rejected the above application in terms of Rule 8(1)(a) and (c) of the Rules.

1. This is an application made by Mr Brian Wordie and Mrs Kathi Wordie, the owner and landlord of the property at 5 Pentland Terrace Dunfermline KY11 4RS ‘the property’, for recovery of possession of the property in terms of Rule 109 of the rules. The application was made on their behalf by Mr Daniel Halasz of IV Properties.
2. The application was accompanied by the following:-
  1. Tenancy agreement for let of the property from 1 August 2020.
  2. Notice to leave dated 29 September 2023.
  3. S11 notice.
  4. Post office receipt for the purchase of one first and one second class stamp.
  5. Letter from applicants dated 25 December 2023 stating that they intend to live in the let property.

3. The Tribunal wrote to the applicant’s representative on 29 December 2023 asking for the following:

Before a decision can be made, we need you to provide us with the following:

- (1) You have provided proof of posting of the Notice to Leave. Please provide proof of delivery.
- (2) The screenshot of the email to the local authority is not dated. Please provide a dated copy of the email to the local authority. Please reply to this office with the necessary information by 12 January 2024. If we do not hear from you within this time, the President may decide to reject the application.
4. The applicants' representative responded on 1 January 2024 by sending a copy of the email sending the section 11 notice. Her also sent a letter from one of the tenant's dated 1 January 2024 stating:
- I, John Smith, lead tenant of 5 Pentland Terrace, Dunfermline, KY11 4RS, am writing to confirm receipt of the notice to leave dated 29/09/2023. I confirm on behalf of all tenants (Erica Smith, Aidan Smith, Logan Smith, and Emily Smith) that we received this letter via post.
5. The in-house convenor reviewed the application and a further letter was sent to the applicants' representative on 2 February 2024 as follows:
- (1) The application appears to have been made against the tenants' children as well as the tenants. The application should only name the tenants. Please confirm that the other names should be removed.
- (2) The Notice to leave appears to have been served by ordinary post. This is not a competent method of service. The Notice has to be served personally, by email or by recorded delivery post. Please provide evidence of valid service of the Notice which also shows when it was served. Please reply to this office with the necessary information by 16 February 2024. If we do not hear from you within this time, the President may decide to reject the application.
6. The representative responded on 8 February 2024. He confirmed that the tenants' children should be removed from the application. He also stated that he was attaching proof of delivery and proof of receipt of the notice to leave.
7. I have reviewed this application today. Evidence of service of the notice to leave has not been produced. What has been produced is evidence that the applicants' purchased a first and second class stamp on 29 September 2023, and a letter from one of the tenants dated 1 January 2024 stating that he received the notice to leave in the post.
8. Section 26 of the Interpretation and Legislative Reform Act 2010 governs service of notices to leave under the Private Housing (Tenancies)(Scotland) Act 2016. It provides:

**Service of documents**

(1) This section applies where an Act of the Scottish Parliament or a Scottish instrument authorises or requires a document to be served on a person (whether the expression "serve", "give", "send" or any other expression is used).

(2) The document may be served on the person—

(a) by being delivered personally to the person,

(b) by being sent to the proper address of the person—

(i) by a registered post service (as defined in section 125(1) of the Postal Services Act 2000 (c. 26)),  
or

(ii) by a postal service which provides for the delivery of the document to be recorded, or

(c) where subsection (3) applies, by being sent to the person using electronic communications.

(3) This subsection applies where, before the document is served, the person authorised or required to serve the document and the person on whom it is to be served agree in writing that the document may be sent to the person by being transmitted to an electronic address and in an electronic form specified by the person for the purpose.

(4) For the purposes of subsection (2)(b), the proper address of a person is—

(a) in the case of a body corporate, the address of the registered or principal office of the body,

(b) in the case of a partnership, the address of the principal office of the partnership,

(c) in any other case, the last known address of the person.

(5) Where a document is served as mentioned in subsection (2)(b) on an address in the United Kingdom it is to be taken to have been received 48 hours after it is sent unless the contrary is shown.

(6) Where a document is served as mentioned in subsection (2)(c) it is to be taken to have been received 48 hours after it is sent unless the contrary is shown.

9. This means that notices to leave must be served by personal delivery, registered post or email.

10. Looking at the written agreement between the parties, clause 4 provides for service of the notice to leave by hard copy by personal delivery or recorded delivery.

11. I am rejecting this application as sending the notice by first class post does not comply with the requirements of section 26 of the Interpretation and Legislative Reform Act 2010. Further, the parties agreed personal service or recorded delivery in the tenancy agreement and this was not complied with.

12. Section 52 of the Private Housing (Tenancies)(Scotland) Act 2016 provides:

## **52 Applications for eviction orders and consideration of them**

(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b)any of sections 54 to 56 (but see subsection (4)).

(3)An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4)Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.

(5)The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

(a)is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or

(b)has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.

13. The Tribunal is not to entertain an application if it is not accompanied by the notice to leave given to the tenant. In this case the notice to leave has not been 'given' to the tenant in a recognised mode of service, or in accordance with the method of service agreed in the tenancy agreement.

14. Rule 8(1)(a)of the Rules allows an application to be rejected by the Chamber President if '*they consider that an application is vexatious or frivolous*'.

15. "Frivolous" in the context of legal proceedings is defined by Lord Justice Bingham in R-v- North West Suffolk (Mildenhall Magistrates Court (1998) Env.L.R.9. At page 16 he states:- "What the expression means in this context is, in my view, that the court considers the application to be futile , misconceived, hopeless or academic".

16. I consider that this application is hopeless and has no reasonable prospect of success for the reasons given above. Further, in terms of Rule 8(c) of the rules I have good reason to consider that it would not be appropriate to accept this application as there is a fundamental defect in connection with service of the notice to leave.

**NOTE: What you should do now.**

If you accept this decision there is no need to reply.

If you disagree with this decision you should note the following:

An applicant aggrieved by this 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 seek permission to appeal within 30 days of the date the decision was sent them. Information about the appeal procedure can be forwarded on request.

L A. Ward

Lesley Anne Ward

Legal Member