



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)**

**Chamber Ref: FTS/HPC/EV/23/3906**

**Re: Property at 224 Stoneywood Brae, Aberdeen, AB21 9FA (“the Property”)**

**Parties:**

**Crucible Residential Properties LTD, 1 Curzon Street, London, W1J 5HD (“the Applicant”)**

**Mr David Gibbs, 224 Stoneywood Brae, Aberdeen, AB21 9FA (“the Respondent”)**

**Tribunal Member:**

**Alastair Houston (Legal Member) and Ann Moore (Ordinary Member)**

**Decision (in absence of the parties)**

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

**1. Background**

1.1 This is an application under rule 109 of the Chamber Rules whereby the Applicant sought the eviction of the Respondent from the property. The application was accompanied by copies of the private residential tenancy agreement between the parties, the notice to leave given to the Respondent, a rent statement and, following requests for further information, the notice sent to the local authority under section 11 of the Homelessness etc (Scotland) Act 2003.

1.2 The Case Management Discussion took place on 9 May 2024 by teleconference. The Applicant was represented by Rita Valiukaite of Dandara Living, letting agents. The Respondent was neither present nor represented. This decision ought to be read in conjunction with the Case Management Discussion note produced.

1.3 The Tribunal had identified a preliminary issue regarding the validity of the Notice to Leave given to the Respondent. The Applicant's representative indicated she wished time to consider the position. The Tribunal adjourned the Case Management Discussion for the time being and issued a direction requiring submissions as to the validity of the Notice to Leave. Thereafter, the Tribunal indicated that it would consider those submissions and, if the application fell to be refused, the decision would be issued administratively without the need for a further Case Management Discussion.

## **2. Reasons For Decision**

2.1 The Notice to Leave had been emailed to the Respondent on 28 September 2023. At part 4, it stated that an application would not be made to the Tribunal prior to 27 October 2023. In terms of s.62(5) of the 2016 Act, the Respondent would have been deemed to have received the notice to leave 48 hours after it was sent, being 30 September 2023. As the notice to leave specified paragraphs 10 and 12A of schedule 3 of the 2016 Act, the relevant notice period defined by section 54(2) of the 2016 Act was 28 days. The said notice period would begin on 30 September 2023, expiring on 27 October 2023. The date that would therefore have required to be inserted at part 4 in order to comply with section 62(1)(b) and (4) of the 2016 Act was 28 October 2023.

2.2 In the response to the direction, the Applicant's representative conceded the error in the notice to leave. It was highlighted that the issue had been raised during the sifting process and that the Applicant's representative believed that the explanation provided at that stage had been accepted. Furthermore, the arrears accrued by the Respondent were significant, totalling £23,878.00 and that, given the Notice to Leave contained an error amounting to one day, this ought to be overlooked and the application allowed to proceed.

2.3 If the Notice to Leave does not comply with section 62 of the 2016, it cannot be said to be a "notice to leave" under that Act. In terms of section 52 of the 2016 Act, the Tribunal is not to entertain an application unless it is accompanied by a copy of the notice to leave given to the tenant. In the present application, the Tribunal does not consider such a notice to leave to have been to the Respondent. In coming to this conclusion, the Tribunal is adopting the reasoning of the Tribunal in *Holleran v McAlister* FTS/HPC/EV/18/3231. Accordingly, the present application falls to be refused.

## **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.**

# A Houston

---

Legal Member/Chair

27 June 2024  
Date