



**DECISION AND STATEMENT OF REASONS OF PETRA HENNIG MCFATRIDGE 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 Procedural Rules")

in connection with

Case reference FTS/HPC/EV/24/2322

**Parties**

**Ewan Tobias Property Investment Company Ltd (Applicant)**

**Mr John David Fletcher (Respondent)**

**Wardhaugh Property (Applicant's Representative)**

**5 Marine Court, Hill Court, Arbroath, DD11 1BF (House)**

1. The application dated 20.5.24 was lodged by the applicant's letting agent Wardhaugh Property with the First-tier Tribunal, Housing and Property Chamber (FTT) under Rule 109 of the Procedural Rules and S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act). The application was accompanied by a Private Residential Tenancy Agreement between Tobias Property Investment Company Ltd, the Respondent and the joint tenant Erin Catherine Ann Lawrence, a S 11 notice to the Local

Authority together with cover email to Angus Council, a Notice to Leave to the Respondent dated 22.3.24 giving as the date in part 4 18.4.24, together with email dated 22.3.24 sending same to the Respondent and photographs and an explanatory paper apart showing the state of the property. The ground stated in the application was ground 11 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act).

2. On 3.6.24 the FTT wrote to the applicant's letting agent in the following terms: "•A Legal Member has considered your application. Before it can be accepted we need you to provide the following information:- •Can you please clarify the name of the Applicant and landlord in this case. The application form states the landlord to be "Euan Tobias Property Investment Company Ltd". However the title deeds state the owner to be "The Tobias Property Investment Company Ltd" which aligns with the tenancy agreement and landlord registration. Please resubmit the application with the correct applicant details if required. •The tenancy appears to be a joint tenancy between John Fletcher and Erin Lawrence however the application is against John Fletcher only. Can you please explain why Erin Lawrence is not included in the application and the current status of the joint tenancy. •You may wish to take advice from a solicitor or housing advisory service before responding. Please respond within 14 days. Upon receipt of the above information, a decision can then be taken on whether the application is valid and whether it should be accepted and referred to the tribunal for full determination. If you fail to provide the necessary information the tribunal may reject your application. Please reply to this office with the necessary information by 17 June 2024. If we do not hear from you within this time, the President may decide to reject the application."
3. No reply was received.
4. All file documents are referred to for their terms and held to be incorporated herein brevitatis causa.

## DECISION

5. I considered the application in terms of Rule 8 of the Procedural Rules. That Rule provides:-

*"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."*

6. After consideration of the application, the attachments and correspondence from the Applicant, I consider that the application should be rejected in terms of Rule 8 (c) of the Rules of Procedure on the basis as the FTT has good reason to believe that it would not be appropriate to accept the application.

## **REASONS FOR DECISION**

### **I Applicable Legislation:**

*S 51 (1) of the Private Housing (Tenancies) (Scotland) Act 2016 states:*

#### **51 First-tier Tribunal's power to issue an eviction order**

*(1)The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.*

*S 62 states:*

#### **62 Meaning of notice to leave and stated eviction ground**

*This section has no associated Explanatory Notes*

*(1)References in this Part to a notice to leave are to a notice which—*

*(a)is in writing,*

*(b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,*

*(c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and*

*(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.*

*(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.*

*(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).*

*(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.*

*(5) For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.*

*S 54 of the said Act states:*

***54 Restriction on applying during the notice period***

*(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.*

*(2) The relevant period in relation to a notice to leave—*

*(a) begins on the day the tenant receives the notice to leave from the landlord, and*

*(b) expires on the day falling—*

*(i) 28 days after it begins if subsection (3) applies,*

*(ii) 84 days after it begins if subsection (3) does not apply.*

*(3) This subsection applies if—*

*(a) on the day the tenant receives the notice to leave, the tenant has been entitled to occupy the let property for not more than six months, or*

*(b) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*

*(i) that the tenant is not occupying the let property as the tenant's home,*

*(ii) that the tenant has failed to comply with an obligation under the tenancy,*

*(iii) that the tenant has been in rent arrears for three or more consecutive months,*

*(iv) that the tenant has a relevant conviction,*

*(v) that the tenant has engaged in relevant anti-social behaviour,*

*(vi) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour.*

*(4) The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3).*

S 52 of the Act states:

### **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.*

S 73 of the Act states:

### **73 Minor errors in documents**

*(1) An error in the completion of a document to which this section applies does not make the document invalid unless the error materially affects the effect of the document.*

*(2) This section applies to—*

...

*(d) a notice to leave (as defined by section 62(1)).*

S 78 states:

### **78 Interpretation**

*(1) In this Act—*

*“eviction ground” means a ground named in schedule 3 on the basis of which an eviction order may be issued,*

*“eviction order” means an order issued under section 51,*

*“First-tier Tribunal” means the First-tier Tribunal for Scotland,*

*“private residential tenancy” means a tenancy which is a private residential tenancy by virtue of section 1,*

*“rent” means any sums payable periodically by the tenant to the landlord in connection with the tenancy (and includes, for the avoidance of doubt, any sums payable in respect of services, repairs, maintenance or insurance),*

*“rent-increase notice” has the meaning given by section 22(1),*

*“rent officer” has the meaning given by section 43 of the Rent (Scotland) Act 1984,*

*“statutory term” has the meaning given by section 7(1),*

*“tenancy” (the meaning of which is extended by section 4) includes sub-tenancy,*

*“tenant” includes sub-tenant.*

*(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Act to the landlord are to all of those persons unless stated otherwise.*

*(3) In a case where two or more persons jointly are the tenant under a tenancy, references in this Act to the tenant are to all of those persons unless stated otherwise.*

**Rule 109 of the Procedural Rules states:**

- i. the name, address and registration number (if any) of the landlord*
- ii. the name, address and profession of any representative of the landlord,*
- iii. the name and address of the tenant, and*
- iv. the ground of eviction,*

*(b) be accompanied by –*

*i evidence showing that the eviction ground or grounds has been met;*

*ii a copy of the notice to leave given to the tenant as required under section 52 (3) of the 2016 Act, and*

*iii a copy of the notice given to the local authority as required under section 56(1) of the 2016 Act, and*

*(c) be signed and dated by the landlord or a representative of the landlord.*

**II Findings and Reasons:**

1. In terms of S 52 (3) of the Act and rule 109 (b) (ii) of the Rules of Procedure an application must be accompanied by a copy of the Notice to Leave. I consider that this means that a valid Notice to Leave must be submitted with the application. The issue here is whether

or not the Notice to Leave was a valid Notice to Leave and thus fulfills the requirement of S 52 (3) of the Act and rule 109.

2. The Applicant states the Notice to Leave was served on the Respondent by email on 22.3.24. In part 4 the Notice to Leave states as the date when proceedings can first be raised 18.4.24. For the grounds stated in the application, which are grounds to which S 54 (3) applies, the notice period in terms of S 54 (2) is 28 days. The date to be entered into the Notice to Leave, if accepting the notice was served on 22.3.24 by email, should have been 22.4.24, this being calculated on the basis of a 28 days notice period and stating the date after the expiry as the date when proceedings could first be raised as required in terms of S 62 (4) of the Act.
3. Paragraph 10 of schedule 1 of the Coronavirus (Scotland) Act 2020, which allowed the Tribunal discretion to deal with wrongly calculated periods in a Notice to Leave has been repealed by the Coronavirus (Scotland) Acts (Early Expiry of Provisions) Regulations 2022.
4. The legislation sets out explicitly the dates and periods which have to be observed to create a valid Notice to Leave. This is further described in detail in the guidance notes on the Notice to Leave. A tenant, having so been advised, must then be able to rely on the accuracy of the information provided in the Notice to Leave. The date stated on the notice is not the correct date but a date 3 days prior to the correct date. The calculation overlooks the correct notice period for a notice issued on the grounds in question and the provisions of S 62 (5) regarding the addition of 48 hours service period to the calculation of the date where service is achieved by email or mail and of S 62 (4) of the Act, which states: *“(4)The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.”* The notice stated a date which only takes into account the actual 84 day notice period.
5. The Tribunal has considered whether S 73 of the Act may be applicable in this case to assist the applicant. This states: (1) An error in the completion of a document to which this section applies does not make the document invalid unless the error materially affects the effect of the document.
6. In the Tribunal’s view, the word “effect” in section 73 (and in the explanatory note) denotes the effect the notice is intended to have if it is completed without error. It follows from section 62(1)(b), (c) and (d) that a notice to leave completed without error will give the tenant certain information, namely: 1. the day on which the landlord under

the tenancy in question expects to become entitled to make an application for an eviction order to the FTT, being the day after the notice period expires (section 62(1)(b)). This date is stated in part 4 of the prescribed form, in which the tenant is expressly advised that “An application will not be submitted to the Tribunal for an eviction order before [the date]”, 2. The eviction ground on which the landlord intends to seek an order (section 62(1)(c)), which is indicated by ticking the appropriate box in part 3 of the prescribed form, 3. Details and evidence of the eviction ground (section 62(1)(d) and part 3 of the prescribed form, 4. The tenant’s details (section 62(1)(d) and part 1 of the prescribed form), 5. The name, address and telephone number of the landlord or his agent (section 62(1)(d) and part 2 of the prescribed form). All these parts of the form require to be completed.

7. In the Tribunal’s view, an error in completion “affects the effect” of the notice to leave if, as a result of the error, the notice does not give the tenant that information. In this case, the error clearly “affects the effect” of the notice to leave, because a correct notice would have informed the Respondent of the correct date on or after which an application to the Tribunal could be submitted. That was not done.
8. The notice should, at the very least, correctly inform the tenant of the “why” (the statutory ground) and the “when” of the proceedings that the landlord anticipates raising.
9. To state an earlier date than the date on which, in terms of the Act, the landlord is entitled to raise proceedings is not, in the view of the Tribunal, “an obviously minor error” which could then be dealt with in terms of S 73 of the Act by the Tribunal. It is an error which causes the notice to fail in achieving one of its fundamental purposes.
10. For these reasons, the Tribunal finds that, in terms of section 73, the error of stating 18.4.24 rather than 22.4.24 in part 4 of the notice to leave materially affects the effect of the notice and makes it invalid. It is not a “Notice to Leave” meeting the requirements stated in S 62. Therefore, the document which accompanied the application to the First-tier Tribunal was not, for the purposes of section 52(3), “a copy of a notice to leave”, and accordingly, given section 52(2)(a), the Tribunal cannot entertain the application.
11. The Tribunal considered whether S 52 (4) of the Act could be of assistance to the Applicant. All S 52(4) allows is to consider an application made in breach of S 54 if it considers it is reasonable to do so. However, stating the wrong date in the Notice to



Leave is not a breach of S 54 but a breach of S 62 (1) (b), which prescribes the information to be included in the Notice to Leave. Had the Notice to Leave stated the correct date but had the application been made before that date, then the Tribunal could have considered whether it would have been appropriate to consider the application made e.g. due to time pressure because of antisocial behavior. S 54 relates, as the title states, to “Restriction on applying during the notice period” and it is only a non compliance with that which the Tribunal has discretionary power to consider. The breach in this case is not of S 54 but of S 62. The Tribunal has no discretionary power to entertain this application as the date stated in the Notice to Leave had been wrongly stated in terms of that provision. As stated above, the only other power potentially applicable, that in S 73, does not apply in this case.

12. It would not be appropriate for the Tribunal to accept an application based on an invalid Notice to Leave, which thus does not meet the lodging requirement of rule 109 (b) (ii) of the Rules of Procedure and the requirement for a valid application in terms of S 52 (3) of the Act.
13. Furthermore, the application is only made against one of two joint tenants. In terms of S 78 (3) of the 2016 Act, in a case where there are joint tenants the word “tenant” is to be interpreted as to apply to all joint tenants. An application for eviction in terms of S 51 (1) of the said Act requires to be made against the “tenant”, which in this case would include both joint tenants. The Notice to Leave and the Application and the S 11 notice only relate to one of the two joint tenants. The Applicant was asked to provide an explanation and none was forthcoming. I consider that an application for eviction in a case where there are joint tenants thus requires the application to be made against both tenants, the Notice to Leave to be issued against both joint tenants and the S 11 notice to be completed accordingly. This was not the case as the application, Notice to Leave and S 11 notice make to reference to Miss Lawrence. Thus the Notice to Leave and the S 11 notice are not valid notices as required under rule 109 and the application is not made against the correct Respondents. It would not be appropriate to accept an application that does not meet the requirements of rule 109.
14. For the above reasons the application has to be rejected.

### **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.**

**Petra Hennig McFatridge**

Petra Hennig McFatridge

Legal Member

10 July 2024