



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

**Chamber Ref: FTS/HPC/EV/23/4395**

**Re: Property at 3 The Pleasance, Kelty, KY4 0AZ (“the Property”)**

**Parties:**

**Mr Craig Gilmore, Dorothy Gilmour, The Swallows, Blairforge, Kelty, Fife, KY4 0JD; The Swallows, Blairforge, By Kelty, KY40JD (“the Applicants”)**

**Mr Stuart Hunter, 3 The Pleasance, Kelty, KY4 0AZ (“the Respondent”)**

**Tribunal Members:**

**Nairn Young (Legal Member) and Frances Wood (Ordinary Member)**

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

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

- Background

This application is for an eviction order to remove the Respondent from the Property, which he occupies in terms of a private residential tenancy agreement with the Applicants. It called for a case management discussion (‘CMD’) by teleconference at 11:30am on 22 July 2024. The Applicants were represented on the call by Mr Dalziel of Abbey Forth Property Management Ltd.. The Respondent did not call in to the hearing and was not represented.

- Findings in Fact

1. The Applicants rent the Property to the Respondent in terms of a private residential tenancy with a start date of 20 September 2019.
2. On 6 November 2023, the Applicants sent a notice purporting to be a notice to leave to the Respondent by email, at the address stipulated in the tenancy agreement for him.
3. The notice indicated the eviction ground to be used in any application to follow would be ground 12 of schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 ('the Act'): that the tenant has been in rent arrears for three or more consecutive months.
4. The notice stated that an application for an eviction order would not be submitted to the Tribunal before 6 December 2023, being the earliest date such an application could be made.
5. The Respondent has continued to occupy the property following service of the notice.

- Relevant Law

6. In order for the Tribunal to consider an application for an eviction order, a landlord must have given the tenant a notice to leave. This requirement is imposed by section 52 of the Act, which states (so far as relevant):

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

...

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

(a) subsection (3),

...

(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.”

7. A ‘notice to leave’ is defined in the Act at s.62, as follows:

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

(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.

...

(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.”

8. In relation to the date to be entered in terms of s.62(1)(b), the notice period is defined at s.54 of the Act, which reads:

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

...

(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—

...

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

...

(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).”

9. The Act also states at s.73:

**“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)).”

- Discussion

10. In terms of s.62(5), the notice is assumed to have been received on 8 November 2023. The notice period therefore ended on 6 December 2023 and the date that should have been entered on the notice in terms of s.62(1)(b) is 7 December 2023. The notice therefore does not meet the definition of a ‘notice to leave’ in the Act. The Tribunal thus cannot entertain the application, in terms of s.52(2), and it must be refused.

11. The error in the date materially affects the effect of the notice, therefore s.73 of the Act cannot be used to avoid this conclusion. The error shortens the

statutory notice period by one day. This is not a minor error, but one that goes to the heart of the purpose of the notice (i.e. to indicate to the tenant how much time they have before an application may be made to Tribunal to evict them). The fact that, in this case, the application was not in fact made until after the expiry of the correct notice period is not relevant to this consideration. The validity of the notice cannot be made contingent on events happening after service. To conclude otherwise would mean that a notice giving only a day's notice would also have to be held to be valid, provided no application was made until a month after that. That would obviously be absurd. If it were the intention of the legislator that such flexibility could be introduced around this date in a notice to leave, it would not have taken such painstaking care to lay out how to calculate the correct date in the Act; nor would it have made that date intrinsic to the definition of the 'notice to leave' *per s.62(1)(b)*.

- Decision

### **Application 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.**

Nairn Young

**22<sup>nd</sup> July 2024**

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**Legal Member/Chair**

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**Date**