



**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/23/3519**

**Re: Property at 14 Arthur Henderson Avenue, Paisley, PA2 7EZ (“the Property”)**

**Parties:**

**Miss Claire Lunday, 7 Auchinairn Gardens, Bishopbriggs, Glasgow, G64 1GZ (“the Applicant”)**

**Mrs Jane Haryadi, 14 Arthur Henderson Avenue, Paisley, PA2 7EZ (“the Respondent”)**

**Tribunal Members:**

**Nairn Young (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

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

- Background

This is an application for an eviction order against the Respondent, who occupies the Property in terms of a private residential tenancy agreement with the Applicant. It called for case management discussion (‘CMD’) at 2pm on 19 July 2024, by teleconference. The Applicant and Respondent were on the call in-person.

- Findings in Fact

The Tribunal took the following facts into account in reaching a decision. Insofar as these relate to matters prior to the raising of the application, the Tribunal has proceeded on the basis of the position as set out by the Applicant, without considering whether there is any dispute in relation to those points, given that this decision relates to a preliminary question of validity:

1. The Property is let to the Respondent and her husband by the Applicant in terms of an unwritten private residential tenancy agreement with a start date of 3 July 2020.
2. There has not at any point been any written agreement on the part of the Respondent to receive notices relating to the tenancy in electronic format.
3. On 27 June 2023, the Applicant sent a notice to leave to the Respondent by email.
4. No other service of the notice to leave has been completed.
5. This application was made on 6 October 2023, purporting to rely on the notice to leave sent by email only.

- Reasons for Decision

6. This application is refused because it attempts to proceed on the basis of a notice to leave that has not been given to the Respondent, within the terms of the legislation governing these matters. Section 52 of the Private Housing (Tenancies) (Scotland) Act 2016 ('the Act') states (so far as is 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.”

Section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010 states (so far as is relevant):

“26 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.”

7. In this case, no email address was agreed to which notices could be given (or served, or sent), as required by s.26(3). This therefore means that that form of service was not available. It follows that the Tribunal cannot entertain the application, since that was the only form of service attempted of the notice to leave.

- 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.**

Legal Member:

**Nairn Young**

**Date: 19<sup>th</sup> July 2024**