



**Decision Under Rule 8(1)(a) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”)**

Case reference FTS/HPC/EV/24/1851

**Parties**

**Kirsteen Critchlow Waugh (Applicant)**  
**Corbett and Shields (“the Applicant’s Representative”)**  
**Nicole Lincoln (Respondent)**

**Flat 1/2, 66 Dempster Street, Greenock, PA15 4EB (the Property)**

1. By application received by the Tribunal on 24 April 2024 the Applicant sought an eviction order against the Respondent under Rule 109 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”).
2. On 16 May 2024 the Tribunal emailed the Applicant’s representative raising a query regarding the Notice to Leave, amongst other matters. In particular the Tribunal wrote:-

*“The copy Notice To Leave (“NTL”) you have provided is dated 21 March 2024 and indicates you will not apply to the tribunal until after 19 April 2024. Can you please have regard to the relevant provisions in the Private Housing (Tenancies) (Scotland) Act 2016 (and particularly sections 54(2), 62(4) and 62(5) of that Act) and explain why the NTL meets the requirements of those sections with particular regard to both the required period of notice to be given and the effective date to be inserted into a NTL and whether it should be regarded as valid.”*

3. On 21 May 2024 the Applicant’s representative emailed in response to the Tribunal’s request for information. With regard to the Notice to Leave the Applicant’s representative stated “NTL is valid”.
4. The Tribunal wrote again to the Applicant’s representative by email on 6 June 2024 in the following terms:-

*“Please provide your comments on the validity of the Notice to Leave (“NTL”). You have produced an email dated 21 March 2024 to the tenant attaching the Notice to Leave. In terms of section 62(5) of the Private Housing (Tenancies) (Scotland) Act 2016, it is assumed that the tenants will receive the notice 48 hours after it is sent. If the notice was served on 21 March 2024, the tenant*

would be assumed to have received it on 23 March 2024. The period of notice therefore did not expire until 20 April 2024. Further, you will note that part 4 of the notice to leave states "An application will not be submitted to the Tribunal for an eviction order before (insert date). This is the earliest date that Tribunal proceedings can start and will be at least the day after the end date of the relevant notice period...." It appears that the date which should have been entered at part 4 was 21 April 2024. Unless you can demonstrate that the tenant received the NTL on 21 March 2024, it appears that the NTL is invalid. Please advise whether you wish to withdraw the application or alternatively clarify the basis upon which you think the application can be accepted."

5. The Applicant's representative responded by email on 18 June 2024 and provided a second Notice to Leave. The Notice to Leave was dated 18 June 2024 and stated that proceedings would not be raised any earlier than 18 July 2024.

6. The Tribunal emailed the Applicant's representative again on 26 July 2024 in the following terms:-

*"You have applied under Section 51 of the Private Housing (Tenancies) Scotland Act 2016 and Rule 109 of the Tribunal Rules. It is not clear from the information you have supplied what you intend to do ie whether you are of the view that the current Notice to Leave is valid and that you intend to proceed with the current application and whether you accept that the current Notice to Leave is not valid. If it is the latter, you must consider withdrawing the application and to start again on the basis of the "new" Notice to Leave. The "new" Notice to leave postdates the date of the application and so cannot be relied on for the current application. Please clarify this by 2 August 2024 or your application will be rejected."*

7. The Applicant's representative provided a response by email on 30 July 2024 stating "Notice to Leave was issued on 18 June 2024. Notice to Leave date was 18 July 2024."

8. The Tribunal then emailed the Applicant's representative on 2 September 2024 in the following terms:-

*"The tribunal acknowledges receipt of your email of 30 July 2024 and notes its contents.*

*This does not fully deal with the issues raised in our previous email to you dated 26 July 2024, nor the issues raised in our previous emails of 16 May and 6 June.*

*In application for an eviction order (reference FTS/HPC/EV/24/1851), it was indicated to you that It is not possible for you to rely on a notice to leave ("NTL") prepared and served months after your tribunal application has been lodged. If you accept that your original notice, prepared and served in March 2024, was invalid then you require to withdraw this eviction application, prepare and serve*

*a fresh notice to leave and lodge a fresh application when that notice becomes "live".*

*It is noted that you appear to have served another notice to leave upon your tenant dated 18 June and becoming effective on 18 July. You have provided no evidence of this notice being served on the tenant. In any event, we would again refer you to the relevant provisions in the Private Housing (Tenancies) (Scotland) Act 2016 (and particularly sections 54(2), 62(4) and 62(5) of that Act) which set out the rules relating to both the required period of notice to be given and the effective date to be inserted into a NTL.*

*Please confirm you wish to withdraw the eviction application on the reference number.*

*Alternatively please advise why you believe it is competent for you to proceed with this eviction application with appropriate reference to any relevant legislation and any relevant case authorities."*

9. On 3 September 2024 the Applicant's representative responded in the following terms:-

*"Notice to Leave attached = sent 18 June for 18 July leaving date.*

*Please see email sent to Nicole with NTL (also forwarded to HPCAdmin)*

*I would like to proceed with the application for eviction as the tenant is still not paying rent despite having a new job and agreeing to make some payments to her rent.*

*The landlord has been patient for a long time however there have been some communal repairs and the lack of communication with the tenant has impacted communal repairs."*

10. 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". "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".
11. I consider that this application is frivolous and has no reasonable prospect of success in its current form. Section 62 of the Private Housing (Tenancies) (Scotland) Act 2016 clearly defines the criteria for a Notice to Leave. In particular section 62(1) states that the notice must specify the day on which the landlord expects to become entitled to make an application for an eviction order to the Tribunal. In accordance with sections 62(4) and 62(5), the specified day must be the day falling after the day on which the notice period defined in section 54(2) will expire, and it must be presumed that the tenant will receive

the notice to leave 48 hours after it has been sent. The notice period does not therefore commence until 48 hours after the notice has been sent to the tenants.

12. The grounds for possession stated in the notice to leave in this case are grounds 11 and 12 of Schedule 3 of the 2016 Act. In terms of section 54(2) the relevant notice period for an application relying upon those grounds is 28 days. The notice to leave was emailed to the tenant on 21 March 2024. Taking into account the provisions of section 62, the date that should have been specified in the notice to leave is 21 April 2024, not 19 April 2024. The notice does not therefore comply with the requirements of a notice to leave under Section 62 of the 2016 Act.
13. The Applicant's representative has subsequently provided a second Notice to Leave. In terms of section 54(1) of the 2016 Act a landlord may not make an application to the 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. The expiry of the relevant period is stated in the second Notice to Leave as 18 July 2024. This application was received on 24 April 2024. The Applicant cannot therefore rely upon the second Notice to Leave for the current application as to do so would render the application premature in terms of section 54(1) of the 2016 Act.
14. The Applicant has not put forward any legal authority as to why her application should be accepted. Accordingly, I conclude that the application cannot be entertained by the Tribunal in this case. The application is futile and falls to be rejected.
15. I note that this is the second application under rule 109 in respect of this tenancy that has been rejected by the Tribunal at the sifting stage. I would strongly encourage the Applicant and her representative to seek advice from a solicitor or advice agency in relation to any future application.

**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.

**Ruth O'Hare**

**Ruth O'Hare, Legal Member**  
**1 October 2024**