



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Rule 17(4) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) in respect of an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the Rules**

**Chamber Ref: FTS/HPC/EV/24/1975**

**Re: 23 Gryffebank Avenue, Houston, PA6 7LZ (“the Property”)**

**Parties:**

**Mrs Balbir Kaur Benning (“the Applicant” ) per her agents, Mr Saqib Deen Apex Property Services (Scotland) Ltd 65A Berkeley Street Glasgow G3 7DX (“the Applicant’s Agents”) 23 Gryffebank Avenue, Houston, PA6 7LZ (“the Respondent”)**

**Tribunal Members:**

**Karen Moore (Legal Member) and Elaine Munroe (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory procedure not having been carried out properly, the Tribunal had no power to grant the Order sought and so the Tribunal refused the Application.**

**Background**

1. By application received 1 May 2024 and 18 June 2024 (“the Application”), the Applicant’s Agents applied to the Tribunal for an Order for eviction and possession of the Property based on the Ground that the tenant has “substantial rent arrears”.

2. The Application comprised copy Notice to Leave in terms of Ground 12 of Schedule 3 to the Act dated 8 February 2024, the tenant has been in rent arrears for three or more consecutive months, with proof of service; copy Notice under Section 11 in respect of the Homelessness Etc (Scotland) Act 2003, redacted copy bank statements and a rent statement showing arrears of £12,750.00 due and owing at 1 May 2024. No pre-action requirement letters accompanied the Application.
3. The Applicant's Agents were advised of issues and errors with the Notice to Leave and the Grounds raised and they appeared to take the view that these were minor errors and indicated that they did not wish to withdraw the Application.
4. The Application was accepted by the Tribunal Chamber, subject to the Notice to Leave and the Grounds to be dealt with as preliminary matters at the Case Management Discussion (the "CMD").

#### **CMD**

5. The CMD took place on 13 December 2024 at 14.00 by telephone. The Applicant was not present and was represented by Mr. Deen of the Applicant's Agents. The Applicant's husband was present as an observer. The Respondent, Mrs. McKay, was present and was not represented.
6. The Tribunal explained that it had to be satisfied on three points: that the correct statutory procedure had been carried out, that the grounds for the eviction are satisfied and that it is reasonable to grant the Order.
7. Mrs. McKay advised that the Tribunal that she did not formally oppose the Application and began to explain that she had had considerable personal difficulties in recent times, including the deaths of her husband and her parents and serious injury which meant that she could not work. The Tribunal advised that there were preliminary issue to be considered before the Tribunal could proceed to hear anything further.

#### **Preliminary Matter**

##### **i) Notice to Leave.**

8. The Tribunal noted that the Applicant's Agent, Mr. Deen, had had prior notification that notice period in the Notice to Leave was incorrect and asked for his views in respect of the error. Mr. Deen explained that it was another agent who prepared the Notice to Leave. He accepted that insufficient Notice

had been given and stated that as the Application was not lodged with the tribunal until a period outwith the notice period, there had been no prejudice to Mrs. McKay. He asked that the error be treated as a minor error which did not invalidate the Notice to Leave.

9. The Tribunal had regard to Section 62 (1) of the Act which states: “*(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.*”
10. The Tribunal also had regard to Section 73 of the Act which 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. (2)This section applies to .....(d)a notice to leave (as defined by section 62(1)).*”
11. The Tribunal took the view that, as the Application had been lodged after the statutory period of notice, the error in the Notice to Leave does not materially affect its effect and so found that the Notice to Leave is valid.

## **Preliminary Matter**

### **ii) Ground for Eviction.**

12. The Tribunal noted that the ground for eviction in the Notice to Leave is Ground 12, the tenant has been in rent arrears for three or more consecutive months, and, that the ground applied for in the Application is “substantial rent arrears”, which was Ground 12A, until repealed on 31 March 2024. The Tribunal pointed out to Mr. Deen that, as the Application had been lodged on 1 May 2024, Ground 12A as cited in the Application had been repealed.
13. Mr. Deen explained that this error arose because the other agent had prepared the Notice to Leave.
14. The Tribunal explained that the error was not in the Notice to Leave, which gave a correct ground which is still in force, but in the Application itself which cited an incorrect ground. The Tribunal explained that the ground cited in the Application was not only a ground not named in Schedule 3 to the Act, it was

not the ground cited in the Notice to Leave. Therefore, notice of the ground cited in the Application had not been given to the Respondent. Had the ground in the Notice to Leave been cited as Ground 12A, substantial rent arrears, the difficulty with the Application requesting an eviction order in terms of Ground 12A may not have arisen.

15. Mr. Deen asked that the Tribunal amend the Ground in the Application in respect of the error.

15. The Tribunal had regard to Section 51 of the Act which sets out the Tribunal's power to issue an eviction order. Sections 51 (1) and 51 (2) of the Act state :  
*"(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. (2) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies."*

16. The effect of Section 51(1) is that the Tribunal is able to issue an eviction order only if an eviction ground named in Schedule 3 to the Act applies. The effect of Section 51(2) is that the Tribunal has no discretion to issue an eviction order on any other grounds. In this case, the ground specified in the Application had been repealed before the Application was lodged and remained repealed at the date of the CMD. The Notice to Leave cites a ground named in Schedule 3 to the Act and so the Application does not have the benefit of transitional measures.

17. The Tribunal then had regard to Section 73 of the Act which 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. (2) This section applies to (a) a notice under section 14(3), 16(3)(c), 22(1) or 61(1), (b) the document by which a referral is made to a rent officer under section 24(1), (c) the document by which an application is made to a rent officer under section 42(1), and (d) a notice to leave (as defined by section 62(1))."*

18. Although Section 73 of the Act allows the Tribunal a discretion to treat minor errors as not invalidating documents, Section 73 of the Act does not extend to the written application for an eviction order. The effect of Section 73 of the Act is that the Tribunal cannot exercise a discretion and treat the Application as valid.

## **Decision of the Tribunal**

19. The Tribunal having found that it has no power to issue an eviction order in terms of Section 51 of the Act and that it has power to exercise a discretion in terms of Section 73 of the Act, refuses the Application.

20. This Decision is unanimous.

**Note to Parties.**

21. The Tribunal explained to the Parties and to the respondent, Mrs. McKay, in particular that the issue of rent arrears remains and urged Mrs .McKay to pursue applications for housing costs and for discretionary housing payment with the local authority. The Tribunal emphasised that she should make regular contact with housing advisors and keep in touch with the Applicant's Agents in respect of rent and arrears payments.

**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.

**K Moore**

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**Legal Member/Chair**

**13 December 2024.**

**Date**