



**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/24/3871

**Parties**

**Mr Glen Wright (Applicant)**

**Miss Sandra Dickson (Respondent)**

**McJerrow & Stevenson (Applicant's Representative)**

**9 Townhead Street, Lockerbie, DG11 2AG (House)**

**A PROCEDURAL BACKGROUND:**

1. The application under Rule 109 of the Procedural Rules being an application for an eviction order under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) was received by the Tribunal on 22.8.24. The application stated as the ground for the application at that point grounds 3 and 4 of schedule 3 of the Act and was

accompanied by a Notice to Leave dated 18.7.24 based on ground 11 only. The applicant also included a tenancy agreement and the S 11 notice and service evidence.

2. On 16.9.24 the FTT wrote to the agent as follows: If the application is to proceed – 1. Please clarify the eviction grounds. In the form you refer to 3 and 4 but the only ground in the Notice is ground 11. Please provide an amended form which sets out the correct grounds 2. If you wish to include 3 and 4, please provide a notice to leave which has been served on these grounds or advise if you intend to ask the Tribunal to consider these grounds although not specified in the Notice. Please note that this would not be decided at the application stage and you will require to satisfy the Tribunal at the CMD that it would be reasonable to do so.  
3. Please provide evidence in support of all of the eviction grounds which are relied upon.
3. The agent replied on 23.9.24 now providing a fresh Notice to Leave based on grounds 3, 5 and 11, dated 20.9.24 with a date of 22.10.24 entered in part 4 and an explanatory note stating: Explanatory Note for Ground 4 – landlord’s family member intends to live in property Erin Kay Wright, Sure Hotel, Old Annan Road, Lockerbie wishes to become independent and no longer wishes to live in the family home with her parents and siblings. As her father owns 9 Townhead Street she would take over the property. The agent provided a track and trace confirmation for 21.9.24 and a further S 11 notice with service evidence.
4. Ground 4 was not one of the grounds referred to in the Notice to Leave.
5. The FTT wrote again on 30.10.24 in the following terms: Thank you for replying to our request for further information. However, the information which you have provided is not sufficient to allow the application to be accepted by the tribunal chamber. On 16 September we wrote to you to point out significant errors. We told you that your copy Notice to Leave is invalid and asked you to clarify why it should be accepted. We suggested withdrawing the Notice to Leave and starting afresh. We pointed out that the application form states different Grounds to the Notice to Leave and, if not restarting the process, suggested you amend the application. We explained that you must be provide evidence in support of all of the eviction grounds which are relied upon. This is required by Rule 109 of the Tribunal Rules and by the Private Housing (Tenancies) Act 2016 (“the Act”). By email dated 23 September 2024, you have sent a copy of a different Notice to Leave dated 20 September 2024, with proof of posting. This copy Notice to Leave is incomplete in respect of the content of the prescribed form. It cites Grounds 3, 5 and 11 of Schedule 3 to the Act but does not provide any evidence of these Grounds. This copy Notice to Leave provides 32 days’ notice to 22 October 2024. Grounds 3 and 5 require 84 days’ notice plus 48 hours for service and receipt and so the Notice is not competent for these Grounds. Moreover, your application is dated 22 August 2024 and was raised with the tribunal

chamber on 23 August 2024. The application has not been amended to include Ground 11, breach of tenancy, and no evidence of the breach(es) has been submitted. If you are now relying on the Notice to Leave dated 20 September 2024 and Ground 11, you will need to amend the application and explain why a post-dated Notice to Leave should be accepted as valid. You should also submit a full copy of the Notice to Leave as sent to the Respondent and should provide evidence of the tenancy breaches sent to her. With your email of 23 September 2024, you sent a further copy of the Section 11 Notice. It is not clear why you sent this. Please clarify how you wish to proceed and provide the relevant information by 13 November 2024, or your application will be rejected.

6. On 8.11.24 the agent provided a further copy of the application amended to only ground 11, dated 8.11.24 and explaining that the relevant clauses were 17 and 21. The agent included a further copy of the tenancy agreement, the separate clauses 17 and 21, the previously lodged Notice to Leave dated 20.9.24 based on grounds 3, 5 and 11 and a letter dated 18.7.24 to the tenant advising her the agent had been instructed to serve an Notice to Leave and the notice gives until 16.8.24 for her to move out.
7. The email sending these documents stated: We refer to your email of 30 October 2024. We attach amended Form E showing that the application is under Ground 11 in that the tenant has failed to comply with Clause 17 and Clause 21 of the Tenancy Agreement. There has been damaged caused to the property which the tenant has not rectified. The property was not damaged in any way at the beginning of the tenancy and the tenant has permitted visitors into the property who have caused the damage. The tenant has stated that he will carry out the repairs but has not done so. We attach a copy of the Clauses from the Tenancy Agreement which were sent to the tenant together with a copy of the letter sent to the tenant explaining why the Notice to Leave was being served. A copy of the Tenancy agreement and the Notice to Leave are also attached. We wish to proceed with this Application for an Eviction Order so that the landlord can refurbish the property. Once the property has been refurbished a member of the landlord's family intends to move into the property. An Explanatory Note is attached. If there is anything further you require please let us know.
8. The case documents and all correspondence in the case are referred to for their terms and held to be incorporated herein.

## **B DECISION**

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."*

**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 Tribunal has good reason to believe that it would not be appropriate to accept the application.**

## **C REASONS FOR DECISION:**

### **I Applicable Legislation:**

*S 62 of the Private Housing (Tenancies) (Scotland) Act 2016 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)).*

## **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 served the Notice to Leave on 21.9.24 by recorded delivery on the Respondent. The grounds on the Notice to Leave are grounds 3, 5 and 11 and thus the grounds are not solely grounds stated in S 54 (3) of the Act. Thus in terms of S 54 (2) (ii) of the Act a notice period of 84 days applied, since the tenancy had been entered into on 15.11.24 and thus more than 6 months prior to the issuing of the Notice to Leave. The date stated in part 4 is 22.10.24, which is 32 days after 20.9.24, the date of the Notice to Leave.
3. The date to be entered into the Notice to Leave, if accepting the notice was dated 20.9.24 and served by email or recorded delivery service, should have been 16.12.24, this being calculated on the basis of a 84 days notice period, adding 48 hours for service as per S 62 (5) of the Act 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.
4. 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.
5. 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 2 days prior to the correct date. The calculation overlooks the interaction of 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 is based on a 28 day notice period, which does not apply to this Notice to Leave.
6. 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.

7. 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.
8. 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.
9. 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.
10. 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.
11. For these reasons, the Tribunal finds that, in terms of section 73, the error of stating "22.10.24" 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.

12. 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.
13. Because the Tribunal does not have discretion in the matter and the Notice to Leave is not a valid Notice to Leave which meets the statutory requirements, the application is not complete.
14. 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.
15. The first Notice to Leave included with the application dated 18.7.24 had clearly been superseded by the later notice and thus cannot be relied upon at this stage.
16. For the above reasons the application has to be rejected.

#### **D 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 McFatrige  
Legal Member  
12 December 2024