



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 (1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/EV/23/4606**

**Re: Property at 1/1, 26 Nithsdale Drive, Glasgow, G41 2PN (“the Property”)**

**Parties:**

**Mr Saleem Yousuf, Mr Nassar Yousuf, 1/1, 268 Tantallon Road, Glasgow, G41 3JP (“the Applicant”)**

**Mr Colin Lennox Wylie, 1/1, 26 Nithsdale Drive, Glasgow, G41 2PN (“the Respondent”)**

**Tribunal Members:**

**Mary-Claire Kelly (Legal Member) and Ann Moore (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to dismiss the application.**

**Background**

1. By application dated 13 December 2023 the applicants seek an order for eviction relying on ground 1 in schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 – landlord intends to sell the property.
2. The applicants submitted the following documents
  - Copy Private Residential Tenancy agreement with a commencement date of 1 November 2020
  - Notice to leave
  - Recorded delivery postage receipts
  - Section 11 notice

- Agreement with Clyde Property Ltd relating to the sale of the property.
  - Photographs of the property
  - Affidavit of Nassar Yousuf dated 29 May 2024
  - Extract from notebook belonging to Nassar Yousuf
  - Statement of Saleem Yousuf
  - Tenant reference
  - Letter from Community Relations Officer regarding anti-social behaviour.
3. The respondent's solicitor submitted written submissions opposing the application.
  4. A case management discussion ("cmd") was assigned for 16 September 2024.

#### **CMD - 16 September 2024 – teleconference**

5. The applicants were represented by Mr McKeown, solicitor from Jackson Boyd solicitors. The respondent was represented by Ms McBride from Govanhill Law Centre.
6. Mr McKeown sought an order for eviction. Ms McBride opposed an order being granted.
7. Ms McBride did not dispute that the applicants intended to sell the property however she opposed the application on the basis that the notice to leave had not been validly served and that it was not reasonable to grant an order for eviction.
8. Notice to leave - service: The notice to leave which had been served on the respondent was dated 22 August 2023. It specified the earliest date proceedings could be raised as 16 November 2023. The applicants had produced a recorded delivery slip showing that the notice had been sent by recorded delivery on 23 August 2023. The required period of notice for the ground the applicants seek to rely on is 84 days. In terms of section 62 of the Private Housing ( Tenancies) (Scotland) Act 2016 the date stated in the noticed should be the day falling after the date on which the notice period will expire. Section 62 also states that it will be assumed that the tenant receives a notice 48 hours after it is sent. A notice to leave sent by recorded delivery on 23 August would not comply with the notice periods set out in the Act. The applicants' position was that as well as sending the notice by recorded delivery Nassar

Yousuf had hand delivered the notice into the hands of the tenant on 23 August 2023 . An affidavit from Nassar Yousuf was lodged with the application stating that he had hand delivered the notice to leave no 23 August 2023. The affidavit stated that the notice was also sent by WhatsApp on that date. The position as stated in the affidavit was different from information previously provided to the Tribunal by Saleem Yousuf on 19 February 2024 when he stated that he had posted the notice through the letter box in the presence of his son. Mr McKeown explained that the correct position was as stated in the affidavit and submitted that was sufficient evidence of proper service of the notice. Ms McBride disputed the position in relation to service of the notice. She submitted that further evidence would be required in order for that to be determined in light of the inconsistency between the information initially provided by the applicants and that set out in the affidavit.

9. Reasonableness- the parties were in dispute as to whether it was reasonable to grant an order.

The Tribunal fixed a hearing to consider the application in light of the disputed matters.

#### **Hearing – 14 February 2025 – videoconference**

10. All parties were in attendance. The applicants were again represented by Mr McKeown, solicitor from Jackson Boyd Solicitors. The respondent was represented by Ms McBride from Govanhill Law Centre.
11. The Tribunal determined that the issue of the validity of the notice to leave should be considered first as if the notice had not been validly served the application would fall to be dismissed as incompetent. The Tribunal heard evidence from both applicants and the respondent in respect of the service of the notice to leave.
12. A summary of the witnesses evidence is set out below. For the avoidance of doubt this is not an exact record of what was said by the witnesses but summarises the relevant information provided.

#### **Summary of Saleem Yousuf's evidence**

13. Saleem Yousuf is the joint owner of the property with his brother Nassar Yousuf. Saleem Yousuf stated that the notice to leave had been served by Nassar Yousuf by hand on 23 August 2023. This was in addition to the notice being sent by recorded delivery on the same date and by WhatsApp message. Saleem Yousuf stated that before service of this notice there had been an earlier notice to leave served on the respondent. Saleem Yousuf stated that he had served that earlier notice by hand in the presence of his son. This had taken place in November 2022. He stated that there had been an error in that notice and he had received correspondence from Govanhill Law Centre dated 21 June 2023 in relation to that notice. Saleem Yousuf was referred to an email he had sent to the Tribunal dated 7 February 2024. In that email Saleem Yousuf had written:

*“The document was posted through the mail box by myself Saleem Yousuf co-owner landlord as the tenant did not attend the door and as a witness my son was with me. A copy of the recorded delivery notice was also sent as was one also sent normal post.”* Saleem Yousuf stated that this email was a mistake and that it had been his brother who had personally served the notice. Saleem Yousuf referred to the large amount of stress he had been under personally as a result of the process of trying to remove the respondent from the property. He stated that he had confused service of the notice dated 23 August 2023 with service of the earlier notice in November 2022 when he had hand served the notice. Saleem Yousuf stated that he and his brother were the landlord of a number of properties and this was the first time they had to take action to evict a tenant. He stated that he had found the process to be very stressful and frustrating. Saleem Yousuf questioned the respondent’s truthfulness and stated that the respondent’s statement that he had not met with him in 6 years was untrue.

#### **Summary of Nassar Yousuf’s evidence**

14. Nassar Yousuf confirmed that he resides with his brother Saleem Yousuf. He is an accountant. He stated that it had been decided that he would serve the notice to leave. He stated that he just wanted to make sure that the job was done properly and the notice was hand delivered. He stated that he recalled going to the property on the evening of 23 August 2023. He stated that the flat

is accessed via a common stair. He rang the buzzer and was admitted to the common stair. He stated that when the respondent opened the door to the property he handed him the notice to leave. The respondent asked what the document was. Nassar Yousuf stated that Saleem Yousuf had consulted landlord forums to get information on how to serve notices however legal advice from a solicitor had not been obtained prior to the notice being served. Nassar Yousuf was referred to an excerpt from a notebook where a handwritten note stated: "28/3/23 – gave notice to 1/1 – Colin". He stated that this was a notebook where he recorded notes related to his work and showed that he had made a note after the notice to leave had been served. Nassar Yousuf stated that the respondent had often seemed tired when he had met with him.

### **Summary of Colin Wylie's evidence**

15. Mr Wylie advised that in terms of the management of the property he usually dealt with Nassar Yousuf. He stated that he had met with him to sign the original tenancy agreement and met with him once a year to sign an updated agreement. He stated that he had very few interactions with Saleem Yousuf and had not seen him for 6 years. Mr Wylie stated that he had not been hand delivered a notice by Nassar Yousuf on 23 August 2022. He stated that he had not been hand delivered a notice previously. He stated that he had received a notice by recorded delivery.
16. Ms McBride submitted that as there is conflicting information there is reasonable doubt over the hand delivery of the notice to leave. She submitted that the notice to leave service should be considered to be served by recorded delivery. Accordingly, the date specified in the notice to leave would be incorrect and the application could not competently proceed.
17. Mr McKeown stated that as was heard in evidence the statement from Saleem Yousuf that he had served the notice by hand had been sent to the Tribunal in error and that correct position in relation to service was that the notice had been served by Nassar Yousuf by hand on 23 August 2024 and

accordingly sufficient notice had been provided to allow the application to competently proceed.

### **Findings in fact**

18. Parties entered into a private residential tenancy agreement with a commencement date of 1 November 2020.
19. The applicants intend to sell the property.
20. A notice to leave dated 22 August 2023 was sent to the respondent by recorded delivery post on 23 August 2023.
21. The notice to leave specified ground 1 – landlord intends to sell as the ground for recovery of possession at part 2 of the notice.
22. The notice to leave specified at part 4 that an application would not be submitted to the Tribunal before 16 November 2023.
23. The notice to leave stated below the signature- “Document hand delivered 22 August 2023”.
24. The notice to leave was not served by hand delivery on 23 August 2023.
25. The notice to leave does not state the correct date for the earliest date that the landlord can submit an application to the Tribunal.

### **Reasons for the decision**

26. The Private Housing (Tenancies)(Scotland) Act 2016 states:

#### ***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),*

*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.*

#### ***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 ...*

*(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).*

## **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 purposes of subsection (4), it is to be assumed that the tenant will receive the Notice to leave 48 hours after it is sent.*

27. Also relevant is section 26 of the Interpretation and Legislative Reform

(Scotland) Act 2010 which states:

## **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....*

*(5) Where a document is served as mentioned in subsection (2)(b) on an address in the United Kingdom it is to be taken to have been received 48 hours after it is sent unless the contrary is shown.*

28. It was not disputed that the notice to leave had been sent by recorded delivery on 23 August 2023 and that this means of service did not provide the notice period required in terms of the legislation. A notice sent recorded delivery on 23 August 2023 would be assumed to be received 48 hours after postage. The correct date to insert in the notice in terms of section 62 (4) would be the day after the expiry of the period of notice i.e. 18 November 2023. The notice that has been produced specified 16 November 2023.
29. The applicants' position is that as the notice was hand delivered on 23 August 2023 the required notice period has been given, as the assumption that the notice will be received 48 hours after postage does not apply.
30. The Tribunal had regard to the decision of the Upper Tribunal in *Smith v McDonald and Munro* [2021] UT 20 – in that decision the Upper Tribunal found that the purpose of the provisions of the 2016 Act is to ensure that a tenant has a minimum period of notice. If notices are hand delivered section 62(5) does not apply. The notice period begins when the tenants receive the notices – i.e. the day that they were delivered. Section 26(5) of the Interpretation and Legislative Reform (Scotland) Act 2010, only applies where a document is “sent” and “unless the contrary is shown.”
31. In light of the decision in *Smith v McDonald and Munro* if the Tribunal determined that the notice to leave had been hand delivered then adequate notice as required in the 2016 Act would have been provided as the presumption of 48 hours before notices were delivered would not apply.
32. The Tribunal had regard to the case of *Holleran V McAlister* FTS/HPC/EV/18/3231 in relation to the impact of an error in the date specified in the notice to leave –



*“the information expressly required by the primary legislation, in section 62(1)(b) and (c), may be regarded as fundamental to the notice to leave. 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. 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”. It is an error which causes the notice to fail in achieving one of its fundamental purposes.”*

33. The decision in *Holleran v McAlister* also considered that had a date been specified in the notice that was later than the earliest date calculated in terms of section 62 then the Tribunal would have been reluctant to regard it as invalid, especially if the error was only a matter of a few days. However, in a case where the date specified was earlier than permitted the notice would be invalid.
34. The question for the Tribunal was whether, based on the evidence it was satisfied that the notice had been personally delivered to the respondent. If the Tribunal determined that the notice had not been delivered then following the approach in *Holleran v McAlister* to errors in notice, the application would be incompetent as it could not proceed without a valid notice to leave.
35. Given the fundamental importance of the validity of the notice to leave on the application the Tribunal required to be satisfied in relation to the means of service. In the present case there is a dispute between the parties as to the means of service. The respondent was clear in his evidence that he had not been hand delivered a notice. The applicants both stated that the notice had been hand delivered by the second applicant.
36. There were a number of facts which led the Tribunal to have doubts as to whether the notice to leave had been hand delivered. When the application was submitted to the Tribunal an email was sent to the first applicant on 7 February 2024 pointing out that service by recorded delivery had not provided sufficient notice and requesting information in relation to the hand delivery of the notice. In response the first applicant wrote: *“The document was posted though the mail box by myself Saleem Yousuf co-owner landlord as the tenant*

*did not attend the door and as a witness my son was with me. A copy of the recorded delivery notice was also sent as was one also sent by normal post.”.*

37. An affidavit of the second respondent was subsequently submitted stating that he had hand delivered the notice to the respondent on 23 August 2023. The explanation provided for this contradiction was that the first respondent had originally served a notice earlier in 2023 and that when emailing the Tribunal on 20 February 2024 the first respondent confused his delivering the earlier notice, upon which no tribunal proceedings have been raised, with the notice later delivered by his brother. No copies of the earlier notice referred to were produced. The Tribunal found this explanation showed that the applicants had been less than thorough in their management of the administration connected with the service of the notice and raised some doubts in relation to the accuracy of the paperwork submitted in relation to service.
38. The Tribunal gave significant weight to the fact that the notice to leave that had been submitted stated below the landlord's signature that it had been hand delivered on 22 August 2023. No explanation was provided as to why the notice stated a date that was different from 23 August 2023 – the date when the applicants stated it had been hand delivered. This raised a further doubt about the accuracy of the documents that had been submitted by the applicants and the accuracy of the information provided in relation to delivery of the notice.
39. The Tribunal took into account that the recorded delivery slip that had been submitted was dated 23 August 2023. It was not clear why the notice to leave had stated a different date for hand delivery from the date of postage and the date which the applicants stated that the notice had been hand delivered.
40. The Tribunal gave weight to the fact that the applicants had not taken any photographic evidence on delivery of the notice or had the respondent sign a written acknowledgement at the point of delivery. Given that the applicants sought to rely on hand delivery for the validity of the notice these would have been prudent steps to take particularly as the first respondent's evidence was that a previously served notice had been invalid.
41. In relation to the oral evidence heard from the parties the Tribunal found it to be of limited assistance particularly as no independent witness was available. The applicants maintained that the notice had been hand delivered. The

respondent maintained that he had received the notice by recorded delivery. The Tribunal considered that as all parties had a vested interest in stating their position on when and how the notice was delivered the value of the oral evidence was of limited weight in reaching a conclusion as to whether the notice had been hand delivered.

42. Given the opposing positions the Tribunal gave significant weight to the documentary evidence that had been submitted and the lack of any independent evidence verifying hand delivery of the notice.
43. Taking into account the evidence that had been submitted the Tribunal was not satisfied that the applicants had demonstrated that the notice had been hand delivered. The Tribunal found that the documentary evidence that had been submitted was contradictory both in terms of the dates stated for when the notice was delivered and who was said to have delivered. The Tribunal determined that the evidence fell below the standard necessary to prove service by hand delivery had been carried out.
44. The Tribunal determined that evidence had been submitted to show that the notice had been posted by recorded delivery however this had not been in compliance with the requirements of sections 54 and 62 of the 2016 Act. Accordingly the notice was invalid and the present action is dismissed.
45. As the application could not competently proceed in the absence of a valid notice to leave the Tribunal made no further findings in relation to the reasonableness of granting an order.

## **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.**

# M-C.Kelly

Legal Member/Chair

14 February 2025 \_\_\_\_\_  
Date