



**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/25/0271

Mrs Julie Rankin (Applicant)

106 Lower Bathuille, Armadale, West Lothian, EH48 2JS (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 22.1.25. The application stated as the ground for the application ground 1 of schedule 3 of the Act and was accompanied by a Notice to Leave dated 18.11.24 based on ground 1 and stating as the date when proceedings could first be raised 20.1.25.
2. On 21.2.25 the FTT wrote to the representative as follows: 1. Please provide a copy of the tenancy agreement. 2. Please provide a copy of the section 11 notice sent to

the local authority and evidence of it having been sent such as the covering email. 3. Please provide evidence supporting the ground for eviction such as a letter of engagement from an estate agent or solicitor regarding an instruction to sell the property. 4. Please provide evidence of service of the notice to leave. 5. The notice to leave is dated 18.11.24. The date narrated in part 4 as being the date before which an application will not be made to the Tribunal is 20.1.25. The ground for eviction is stated to be ground 1 which requires 84 days notice (unless the tenancy has endured for less than 6 months.) 20.1.25 is less than 84 days after 18.11.24. On the face of it, insufficient notice has been given to the respondent. Please provide your comments regarding the validity of the notice to leave.

3. The applicant provided a reply on 23.2.25 submitting a copy of the tenancy agreement commencing 21.2.21 but using the tenancy style of an assured tenancy, a S 11 notice and proof of sending this to the local authority, a further copy of the Notice to Leave and proof of posting same recorded delivery on 19.11.24. The applicant also stated "1. I attach a copy of the tenancy agreement from the first date the tenant entered my premises. 2. Until I received your e-mail I was unaware that I needed to serve the Council a Section 11 Notice, however I have done this today and attach the Section 11 Notice together with the e-mail which I sent with this. 3. We are selling the property privately and so it will not be going on the open market so no solicitors have been contacted at this stage. 4. I attach the Notice to leave. 5. You mention that the notice period should have been 84 days, however, on the tenancy agreement it states that I only need to give 2 months notice to ask a tenant to vacate the premises so I am confused about where the 84 days come in. I am obviously happy to comply with whatever is required so I am looking for advice from you on this."
4. On 3.4.25 the FTT again wrote to the applicant asking to clarify why they considered the Notice to Leave could be valid despite the issue of the notice given. The applicant replied on 3.4.25 as follows: "Thank you for your email pointing out a problem with my application to the First Tier Tribunal. I am very sorry about this as I was not aware that I needed to give the tenant an additional 48 hours to make sure she received the eviction notice which I gave her. This is a genuine mistake on my part. I sent her the eviction notice on 19/11/24 giving 2 months notice which I thought took it up to 19/01/25. I knew I had to wait until the

eviction period had expired before contacting you which I then did on 21/01/25 so this probably makes it that I contacted you 1 day too soon. Given that I have already sent all of the attachments required to make an application to you, the fact that it is one day before the date I should have contacted you and the fact that it was a genuine mistake, would it be possible for you to accept this email as the revised application date for contacting you to request that you consider granting an eviction notice. I am hoping that this would then allow you to make a decision on my application. I look forward to hearing from you. Thank you."

5. 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 date stated in part 4 is 20.1.25, which is 62 days after 19.11.24, the date of the Notice to Leave. The applicant served the Notice to Leave on the Respondent on 19.11.24 by Sheriff Officers. The ground on the Notice to Leave is ground 1 and thus a ground not 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. The two months period stated in the tenancy agreement is irrelevant as the wrong tenancy style was used. For a tenancy entered into after the Private Housing (Tenancies) (Scotland) Act 2016 came into effect the provision of S 54 of said Act applies regardless of what provision is made in the written agreement.
3. The date to be entered into the Notice to Leave in part 4 should have been 14.2.25, this being calculated on the basis of a 84 days notice period, adding 48 hours in terms of S 62 (5) due to the manner of service 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 weeks prior to the correct date. The calculation overlooks the interaction of the correct notice period for a notice issued on the ground in question and of sections 62 (4) and (5). The notice stated a date which is not based on a 84 day notice period.
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 “20.1.25” 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. 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 MCFATRIDGE

Petra Hennig McFatridge
Legal Member
23 April 2025