Housing and Property Chamber
First-tier Tribunal for Scotland

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

Chamber Ref: FTS/HPC/EV/24/2361

Property at 163A High Street, Dumfries, DG1 2QT ("the Property")

Parties:

Mr Adrian Doyle, Mrs Nicolette Doyle, Auchenstroan Cottage, Moniaive, Thornhill, DG3 4JD ("the Applicant")

Ms Lorraine Keogh, 163A High Street, Dumfries, DG1 2QT ("the Respondent")

Tribunal Members:

Josephine Bonnar (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be refused.

Background

1. The Applicant submitted an application for an eviction order in terms of Section 51 of the 2016 Act. A tenancy agreement, Notice to Leave, Section 11 Notice and evidence in support of the eviction ground were lodged with the application. The application is based on ground1 of schedule 3 of the Act, the landlord intends to sell the let property.

2. The application was served on the Respondent by Sheriff Officer and a CMD took place on 20 September 2025. Both parties were represented at the CMD, and the Respondent's agent advised the Tribunal that the application is opposed. He said that both the intention to sell and the issue of reasonableness were in dispute. The Tribunal determined that the application should proceed to a hearing. In a note issued following the CMD, the Tribunal set out timescales

for the lodging of further documents and the names of any witnesses.

3. The parties were notified that a hearing would take place at Easterbrook Hall, Bankend Road, Dumfries on 14 April 2025 at 11am. Neither party lodged any further documents or the names of any witnesses. Prior to the hearing taking place, the Legal Member of the Tribunal was replaced by a different Legal Member, due to the original Legal Member being unavailable.

4. The hearing took place on 14 April 2025. The Applicants attended and were represented by Mr Gilius. The Respondent also attended and was represented by Mr Bryce.

The Hearing

5. Mr Gilius advised the Tribunal that the Applicants were still seeking an eviction order. Mr Bryce confirmed that the application was still opposed.

6. The Legal Member advised the parties that, although not raised at the CMD, there is an issue with the Notice to Leave lodged with the application. It is dated 6 February 2024 and had been sent to the Respondent by email on that date. The date specified in Part 4, 2 May 2024, appears to be incorrect. As a result, the Notice is potentially invalid. In response to a question from the Tribunal, Mr Gilius said that he believed that the Notice had only been served by email. The parties were provided with a copy of the decision of the Tribunal in the case of Holleran v McAllister (HPC/EV/18/3231). The hearing was adjourned for a short period so that the parties could consider the decision and make submissions to the Tribunal regarding the validity of the Notice.

7. Following the adjournment, Mr Gilius said that the hearing should proceed, notwithstanding the issue that had been raised in relation to the Notice. The Respondent had not been prejudiced by the defect, and there would be considerable prejudice to the Applicants if the hearing did not proceed. The application to the Tribunal had not been lodged until the end of May 2024, so additional time had been allowed. Neither agent had noticed the error, and the Tribunal had not noticed it until the hearing. The Respondent has also had an additional year in the property. Mr Gilius confirmed that he was not seeking an adjournment of the hearing to investigate the matter further and simply invited the Tribunal to hear the evidence.

8. In response, Mr Bryce said that he agreed with the arithmetical calculation and stated that, in terms of the statutory provisions, the date in Part 4 of the Notice is wrong as it should be 3 May 2024. Although he had sympathy with the Applicants situation, the reasoning in the Holleran case is quite clear. The Notice was defective at the time it was sent, and it was not possible to get round that issue based on what happened later. There is a fundamental nullity.

9. Following a further short adjournment, the Tribunal advised the parties that they would not hear evidence on the merits of the application. The Tribunal had

considered the submissions and was satisfied that the Notice to leave is invalid, and that the application must therefore be refused.

Findings in Fact

10. The Applicants are the owners and Landlords of the property.

11. The Respondent is the tenant of the property in terms of a private residential tenancy agreement.

12. The Applicant served a Notice to leave on the Respondent by email on 6 February 2024. The Notice states that the earliest date that Tribunal proceedings can start is 2 May 2024.

Reasons for Decision

13. The application to the Tribunal was submitted with a Notice to Leave dated 6 February 2024 and a copy email which establishes that it was sent to the Respondent on that date. The Notice to leave states that an application to the Tribunal is to be made on ground 1, the landlord intends to sell the let property. Part 4 of the notice indicates that the earliest date that an application to the Tribunal can be made is 2 May 2024. The application to the Tribunal was made after the expiry of the notice period. The relevant sections of the 2016 Act are as follows;

> **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**.
> (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.
>
> **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**

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))

14. For the purposes of section 62(1)(d), the relevant regulations are the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017, schedule 5 of which sets out the prescribed form for a notice to leave. Part 4 of that form is set out as follows:

Part 4 THE END OF THE NOTICE PERIOD

An application will not be submitted to the Tribunal for an eviction order before (insert date). This is the earliest date that the Tribunal proceedings can start and will be at least the day after the end date of the relevant notice period (28 days or 84 days depending on the eviction ground or how long you have occupied the Let Property).

15. As ground 1 is not one of the grounds specified in Section 54(3), the notice period is 84 days and not 28 days. As the Notice was sent by email, Section 62(5) applies, and the Applicant had to allow an additional 48 hours when calculating the date to be inserted in Part 4 of the Notice. However, the date specified in Part 4 of the Notice is 2 May 2024. This is clearly incorrect. In terms of section 62(4) of the 2016 Act, the Notice must state a date being "**the day falling after the day on which the notice period defined in section 54(2) will expire."** As the 84-day notice period started on 8 February 2024 (48 hours after it was sent), the date in Part 4 should be 3 May 2024.

16. Having determined that the date specified in Part 4 of the Notice is incorrect, the Tribunal considered the implications of the error for the application. The Tribunal had regard to the decision of the Tribunal in the case of Holleran v McAllister (HPC/EV/18/3231). As it is a decision at first instance, it is not binding on the Tribunal. However, the Tribunal is satisfied that the reasons for the decision in that case are correct. In Holleran, an application was submitted to the Tribunal with a Notice to leave which was dated 1 August 2018. The Applicant lodged evidence that it had been sent to the tenant by recorded delivery post on the same date. The date specified in Part 4 was 29 August 2018. As 48 hours had to be allowed for sending the notice by post, the Tribunal determined that the date ought to have been 1 September 2018, the day after the notice period had expired. The application was refused on the grounds that it was incompetent as the Notice was not a "notice to leave" in terms of section 62. This meant that the Tribunal could not entertain the application in terms of section 52(2)(a).

17. As the Tribunal points out in the decision with statement of reasons in the Holleran case, the opening words of Section 62 indicate that a Notice to Leave has to fulfil the four requirements specified in Sections (a) to (d) of that section. It follows that a Notice to Leave which does not fulfil these requirements is not a "Notice to leave" in terms of the 2016 Act. The Notice submitted with the present application does not fulfil the requirement specified in Section 62(b), as it wrongly indicates that the Applicant expected to be able to make an application to the Tribunal on 2 May 2024. As a result, the Notice which has been submitted is not a "Notice to leave" in terms of Section 62. This calls into question the competency of the application. As the application to the Tribunal has to be accompanied by a "Notice to Leave", the Applicant has failed to comply with Section 52(3) of the 2016 Act and the Tribunal cannot entertain the application.

18. In terms of Section 73, an error does not invalidate the notice unless it "materially affects the effect" of the notice. As the Tribunal points out in the Holleran case, this means that where an error does "materially affect the effect" the notice is invalid. The explanatory note to Section 73 in the 2016 Act says, "Any errors …do not invalidate the document if they are sufficiently minor that they do not materially alter the effect of the document…" The word "effect" appears to refer to the effect the notice is supposed to have if there had been no error. Section 62 defines a Notice to leave. It stipulates the information that the landlord must give to the tenant when giving notice. This includes (Section 62(b)) the day on which the landlord expects to be able to make an application for an eviction order. When a landlord uses the prescribed form, this date is specified in Part 4. In the present case, the Respondent has not been given that information because the date inserted is earlier than the date upon which the Applicant would become entitled to make the application. As such, the error **does** affect the effect of the notice because if there had been no error, the date specified would have been 3 May 2024.

19. The question which then arises is whether the effect is "materially" affected. In the Holleran case, the Tribunal rejected the argument that there was no prejudice to the tenant as the application was not made until sometime after the correct date had passed. The Tribunal's reasoning (which is endorsed by this Tribunal) is that the validity of a notice cannot be determined (and defects in the notice cannot be cured) by events which have occurred after the notice is served. Either the notice was valid or invalid when it was given to the tenant. Section 73 is clearly designed to protect landlord from minor errors which may be made when completing a notice to leave, such as spelling mistakes in names and addresses or using the wrong version of the notice. However, an error in relation to a fundamental aspect of the notice as defined by Section 62 cannot be regarded as minor. It is perhaps arguable that if a later date had been inserted, the Notice would have been valid. This is because Part 4 of the prescribed from states that the date must be "**at least the day after**" the expiry of the notice period. However, that was not the situation with the Notice served on the Respondent in this case.

20. For the reasons outlined, the Tribunal refuses the application on the ground that it is incompetent as the application has not been accompanied by a valid Notice to leave.

.

Decision

21. The Tribunal determines that the application should be refused.

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.

J Bonnar

Josephine Bonnar, Legal Member **18 April 2025**