



**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/24/4582

Re: Property at 18 Albert Den, Aberdeen, AB25 1SY (“the Property”)

Parties:

**Aberdeen Leasing Investments LTD, 162 Anderson Drive, Aberdeen, AB15 6FR
 (“the Applicant”)**

**Mr Michael McLeod, Miss Ailsa Fyfe, 18 Albert Den, Albert Lane, Aberdeen,
AB25 1SY (“the Respondent”)**

Tribunal Members:

Graham Harding (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

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

Background

1. By application dated 13 September 2024 the Applicant’s representatives, Caroline Walker Property Leasing Ltd, Aberdeen applied to the Tribunal for an order for eviction under ground 12 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016. The Applicant’s representatives submitted a copy tenancy agreement, rent statement, rent increase notice, copy correspondence with Respondents and a Section 11 Notice in support of the application.
2. By email dated 5 December 2024 the tribunal administration wrote to the applicant’s representatives advising that following further information being provided the Notice to Leave had not been served by a valid method and the date inserted at part 4 on the Notice to Leave was one day short of that required.

The Applicant's representative was advised that the application appeared to have no prospect of success and suggested it be withdrawn or alternatively the Applicant's representatives should provide written representations as to how the application could in the circumstances be accepted.

3. By email dated 5 December 2024 the Applicant's representatives responded to say that the Notice to Leave was hand delivered as the tenant was in the flat but would not open the door and then confirmed by email that he had received the Notice to Leave. The Applicant's representative advised the Tribunal administration as the Respondents were eight months in arrears of rent the application was not being withdrawn and requested the legal member reconsidered the application.
4. By Notice of Acceptance dated 13 January 2025 a legal member with delegated powers accepted the application and a Case Management Discussion was assigned.
5. By email dated 14 January 2025 the Applicant's representatives were informed that the application had been accepted but were also told:

The in-house convenor has accepted the application and it will now proceed to a case management discussion in due course. Please note that service of the notice to leave remains a live issue and whilst we have accepted the application, this does not mean the notice to leave and service of the notice to leave have been accepted as valid. This is likely to be a matter raised as a preliminary issue at the case management discussion.

6. Intimation of the CMD was served on the Respondents by Sheriff Officers on 10 April 2025.
7. By email dated 26 April 2025 the Respondents submitted written representations to the Tribunal.
8. By email dated 4 June 2025 the Respondents submitted further written representations to the Tribunal.
9. By email dated 23 June 2025 the Applicants submitted written representations to the Tribunal.

The Case Management Discussion

10. A CMD was held by teleconference on 3 July 2025. The Applicants had in attendance Mr Gordon Yule and Mrs Alison Yule and were represented by Mrs Caroline Walker from the Applicant's representatives. The Respondents attended in person.

11. After explaining the purpose of a CMD the tribunal explained that before considering the application on its merits there was a preliminary matter that required to be addressed. The Tribunal queried with Mrs Walker if she was in a position to comment on the issues raised by the legal member in the correspondence in December 2024. Mrs Walker said that it was her understanding that these had been dealt with and that they were no longer an issue.
12. The Tribunal referred Mrs Walker to the terms of the administration's correspondence of 14 January 2025 and that the validity of the Notice to Leave was still very much a live issue. The Tribunal referred Mrs Walker to the terms of Section 26(2)(a) of the Interpretation and Legislative Reform (Scotland) Act 2010 and that a document was served on a person if it was delivered personally to that person. The Tribunal indicated that this was not the same as depositing a document for the person to collect it and that a further two days would be required in that case in terms of Section 26(2)(c) unless the contrary could be shown.
13. Mrs Walker submitted that her colleague Ms Hutcheon had been aware that the Respondents were inside the property at the time she left the Notice to Leave for them on 15 July 2024 and that on the same day the Respondent Mr McLeod had acknowledged receipt of the document. Ms Walker submitted that the time period for calculating the 28-day notice period would therefore have commenced on 15 July 2024.
14. The Tribunal noted that even if that was the case and the notice period commenced on 15 July the 28-day period would end on 12 August 2024 and therefore the earliest date that an application could be made to the Tribunal would have been 13 August 2024 but the date inserted in part 4 of the Notice to Leave was 12 August 2024 as had been pointed out to the Applicant's representatives in the correspondence in December 2024.
15. Mrs Walker acknowledged there was an error in the document and asked if the Tribunal had any discretion to overlook it. The Tribunal explained that under the Coronavirus (Scotland) Act 2020 there had been temporary provisions in place that would have permitted the application to proceed but that these had ended in March 2022 and the Tribunal had no discretion in terms of Section 62 of the 2016 Act.
16. The Tribunal queried with the Respondent Mr McLeod if he had entered into another tenancy agreement as he was no longer living in the property. Mr McLeod said that Ms Fyfe had commenced a new tenancy and he was living with her as her carer. He explained he did not wish to give up the tenancy of the property as there were still issues with regards to the condition of the property which he said was uninhabitable and the subject of an RSEO that was ongoing. He confirmed the Respondents were retaining rent because of the condition of the property. Mrs Walker advised the Tribunal that there were difficulties accessing the property to complete the requirements of the RSEO

due to the non-co-operation of the Respondents and a separate application for access had been made to the Housing and Property Chamber.

Reasons for Decision

17. The Tribunal considered the written and oral submissions by Mrs Walker and also the written submissions from the Respondents. Despite it being suggested to the Applicant's representatives in the Tribunal administration's email of 5 December 2024 that the Notice to Leave delivered to the property on 15 July 2024 was not properly served and that the notice period was one day short, the Applicant's representatives refused to withdraw the application and re-serve the Notice to Leave even although they had been told there was no prospect of success.
18. Personal service involves delivering a document personally to a person. It is not the same as leaving it either by posting it through a letterbox or attaching to a door. In these circumstances it is assumed that delivery occurs 48 hours later unless the contrary can be shown. In the first instance therefore as the Notice to Leave was not handed personally to either Respondent the assumption is that they would have received the document on 17 July and the notice period would have started from then. However, Mrs Walker was insistent that Mr McLeod acknowledged receipt of the document by email on 15 July 2024 and therefore the notice period could have commenced on that date.
19. At the CMD, taking Mrs Walker's submissions at their highest even if it was accepted that the Notice to Leave had been properly served on 15 July 2024 as Mr McLeod had acknowledged receipt by email that day that still left an issue with the date on which an application could be made to the Housing and Property Chamber as this should have been 13 August 2024 and not 12 August 2024 as was stated in part 4 of the Notice to Leave.
20. An error in the date in part 4 of the Notice to Leave is material. It means that the Notice does not comply with Section 62 (1)(d) and (4) of the 2016 Act and is therefore not a "notice to leave" as defined in that section. The Tribunal does not have any discretion to overlook the fact that an error in the earliest date an application can be made to the Tribunal and there have been numerous decisions of the First tier Tribunal rejecting applications on that ground.
21. For that reason, although it is unfortunate in the extreme the Tribunal finds that the Notice to Leave is invalid and refuses the application.

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.

G.Harding

Legal Member/Chair

3 July 2025
Date