



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

Chamber Ref: FTS/HPC/EV/24/2880

Re: Property at 31 Forth Avenue, Foxbar, Paisley, PA2 0QF (“the Property”)

Parties:

Miss Elaine Moynihan, 8 Sandholes street, Paisley, PA12EQ (“the Applicant”)

Mr Kaleb Lavelle, 31 Forth Avenue, Foxbar, Paisley, PA2 0QF (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

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

Background

1. On 25th June 2024 the Applicant lodged an Application with the Tribunal under Rule 109 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order to evict the Respondent from the property under Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the Act”).
2. The Applicant did not lodge all the documentation required to support the application and she was sent a number of emails by the Tribunal, dated 31st July 2024, 9th September 2024, 29th October 2024, 16th December 2024, 29th January 2025 and 11th March 2025, all requesting further information and documents.
3. At the point where the Tribunal decided to fix a Case Management Discussion the applicant had successfully lodged the following:

- i. Copy Private Residential Tenancy Agreement showing a commencement date of 12th June 2023 and a rent of £395 per month;
 - ii. Copy Notice to Leave dated 14th January 2024;
 - iii. Section 11 Notice and proof of service;
4. The Applicant was asked in each email from the Tribunal to lodge proof of service of the Notice to Leave. It was explained in many of the emails exactly what the Tribunal was looking for. The Applicant did not seem to understand.
 5. On 19th March 2025 the In House Convenor decided to put the case to a Case Management Discussion and issued a Direction as follows:

“The Tribunal, on its own initiative and for the purpose of making inquiries, give the following Direction to the Parties as to the conduct and progress of this Application in terms of Section 16 of Schedule 1 to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017:

By 30 April 2025 the Applicant is required to lodge with the Tribunal :

1. A copy of the communication sent to the Respondent attaching the Notice to Leave dated 14 January 2024. The communication should show the address to which it was sent (which may be an email address) and the date on which it was sent.

Reason for Direction

The Application was lodged on 25 June 2024. The Tribunal has asked the Applicant to lodge evidence of the Notice to Leave having been sent to the Respondent. The Applicant has lodged multiple screenshots of messages sent to the Respondent. The Tribunal has reviewed each of these screenshots but has been unable to identify evidence of the Notice to Leave having been served. The Notice to Leave is dated 14 January 2024. Amongst the screenshots lodged is one dated 15 January 2024 which appears to contain an attachment. This may be a screenshot of an email serving the Notice to Leave. At a Case Management Discussion the Tribunal will require to be satisfied that the Notice to Leave has been competently served and that adequate notice was provided to the Respondent, failing which the Application may be dismissed at the Case Management Discussion.”

6. The Application was served on the Respondent by Sheriff Officers on 29th May 2025.

Case Management Discussion

7. The Case Management Discussion (“CMD”) took place by teleconference. The Applicant represented herself. The Respondent also represented himself.

8. The Chairperson explained the purposes of a CMD in terms of Rule 17 of the Rules.
9. The Respondent said that he had not known anything about the Applicant's desire to evict him until he received service of the papers by Sheriff Officer. He said that he had not received any emails from the Applicant. He said that the email address the Applicant had been using, kaleb7@live.co.uk was not correct. He said his email address, as clearly shown on the Tenancy Agreement was kayleb7@live.co.uk. He said that he had tried to obtain legal advice, and was seeking extra time to do so.
10. The Applicant was extremely defensive. She said that the Respondent had told her right at the beginning that his email address was kaleb7@live.co.uk and he had said that the one in the tenancy agreement was wrong. She then said that she had posted the Notice to leave through his door. She had no evidence of this and could not be clear about the date she had done so. The Respondent said that nothing had been put through the door.

Findings in Fact

- a. The parties entered into a Private Residential Tenancy Agreement in respect of the property commencing 12th June 2023 and a rent of £395 per month;
- b. A Notice To Leave, dated 14th January 2024, was produced by the Applicant;
- c. A section 11 notice was served on the local authority;
- d. The Application was served on the Respondent by Sheriff Officer on 25th February 2025;
- e. The Applicant did not serve the Notice to leave on the Respondent using the method laid out in the tenancy agreement, being by email to kayleb7@live.co.uk;
- f. The Applicant did not establish that she had served the Notice to Leave by any other means.

Reasons for Decision

11. Section 51 of the Act provides the Tribunal with the power to make an eviction order.
12. Section 52 of the Act states as follows:
 - (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.

13. The practical effect of the section is that the Tribunal cannot grant an eviction order unless they are provided with a copy of the Notice to Leave which has been given to the tenant. In this case the Applicant produced the copy Notice to Leave, but she could not show that it had been given to the tenant. On that basis the Tribunal had no alternative but to dismiss 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.

Alison Kelly

19/06/25

Legal Member/Chair

Date