

**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/24/5158

**Re: Property at 8 Kerrycroy Street, Toryglen, Glasgow, G42 0AD (“the
Property”)**

Parties:

**The Estate of The Late Charles McMurray c/o Stuart McMurray, Suite 444, 145-
149 Kilmarnock Road, Glasgow, G41 3JA (“the Applicant”)**

**Mr Martin Crockwell, 8 Kerrycroy Street, Toryglen, Glasgow, G42 0AD (“the
Respondent”)**

Tribunal Members:

Ruth O'Hare (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) refused the application.

Background

- 1** This is an application under section 51 of the 2016 Act and Rule 109 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”). The Applicant relied upon ground 1 as the ground for possession, stating his intention to sell the property.
- 2** The application was referred to a case management discussion (“CMD”) to take place by teleconference on 9 July 2025. The Tribunal gave notice of the CMD to the parties under Rule 17(2) of the Rules. Both parties were invited to make written representations.
- 3** On 21 May 2025 the Tribunal received written representations from Govanhill Law Centre on behalf of the Applicant. In summary, the Respondent opposed the application on the basis that he had not been given a notice to leave that

complied with the relevant provisions of the 2016 Act. Whilst the Applicant had produced a private residential tenancy agreement, which commenced on 1 May 2024, the Respondent had in fact resided in the property since 1 October 2019. A partial tenancy agreement was produced in support of this. The Respondent had therefore been entitled to occupy the property for more than six months, and the relevant notice period should therefore have been 84 days, as opposed to 28 days.

- 4 On 9 June 2025 the Tribunal received written representations from the Applicant's representative, Ritehome. The Applicant's representative advised that they had taken over the property on 1 May 2024. A new private residential tenancy agreement had been signed by the Respondent. The notice to leave had a 28 day notice period as it was given to the Respondent within the first six months of the tenancy. The Applicant's representative was unaware of the history or background to the tenancy before their involvement. The Applicant submitted a further copy of the tenancy agreement together with a rent statement, the notice to leave, and correspondence from the Applicant to the Applicant's representative.

The CMD

- 5 The CMD took place on 9 July 2025 by teleconference. The Applicant was represented by Miss Lauren Whittle of Ritehome. The Respondent was represented by Ms Lyndsay McBride of Govanhill Law Centre.
- 6 The Tribunal had the following documents before it:-
 - (i) Form E application form;
 - (ii) Title sheet and Confirmation document;
 - (iii) Excerpt from the online landlord register;
 - (iv) Private residential tenancy agreement between the parties;
 - (v) Notice to leave and proof of delivery upon the Respondent;
 - (vi) Section 11 notice and proof of delivery;
 - (vii) Copy email from the Applicant to Ritehome regarding the sale of the property;
 - (viii) The Respondent's written representations; and
 - (ix) The Applicant's written representations.
- 7 The Tribunal heard submissions from the parties on the application. The following is a summary of the key elements of the submissions and does not constitute a verbatim account.
- 8 The Tribunal noted that the Respondent had raised a preliminary issue regarding the notice to leave. The Tribunal invited Ms McBride to make submissions on this point.
- 9 Ms McBride explained, with reference to the Respondent's written representations, that the notice submitted with the application did not provide the correct notice period. The period should have been 84 days in accordance

with section 54(2)(b)(ii) of the 2016 Act, not 28 days as stated. Section 54(3)(a) of the 2016 Act did not apply. Whilst the Applicant had lodged a private residential tenancy agreement which commenced on 1 May 2024, section 53(3)(a) applied to the length of time the tenant had been entitled to occupy the property. Ms McBride referred to the private residential tenancy agreement dated 1 October 2019, which had been submitted with the Respondent's written representations. The Respondent had in fact been entitled to occupy the property for approximately 7 years. Section 54(3)(b) of the 2016 Act was also not applicable as the ground for possession included in the notice to leave was ground 1. The notice did not therefore meet the criteria for a notice to leave under section 62 of the 2016 Act and the application should be refused.

- 10 Miss Whittle explained that she was covering the CMD on behalf of her colleague who had been dealing with the tenancy and was on annual leave. Ritehome had taken over management of the property on 1 May 2024. At that time, the Applicant did not appear to have any tenancy agreement in place. A new private residential tenancy agreement was therefore signed by the Respondent, which commenced on 1 May 2024. Miss Whittle's colleague believed that as the notice to leave was going to be served within six months of that tenancy commencing the 28 day notice period would apply. Miss Whittle confirmed that the property was owned by the Applicant's late father, and would be sold as part of his estate.
- 11 The Tribunal asked Miss Whittle if the Applicant had any reason to question the earlier tenancy agreement produced by the Respondent. Miss Whittle stated that he did not. She reiterated that Ritehome had little information regarding the history of the tenancy. The Tribunal asked if Ritehome had carried out any checks when taking over the management of the tenancy. Miss Whittle stated that in hindsight this would have been prudent, but she was unable to speak to what discussions had taken place at the time as her colleague had been dealing with the matter.
- 12 The Tribunal adjourned the CMD to deliberate before resuming the proceedings and confirming the outcome.

Findings in fact

- 13 The late Mr Charles McMurray is the registered owner of the property.
- 14 The property was let by Mr Charles McMurray to the Respondent in terms of a private residential tenancy agreement, which commenced on 1 October 2019.
- 15 On 3 April 2024 the Respondent signed a second private residential agreement with Mr Charles McMurray in respect of the property.
- 16 The Respondent has been entitled to occupy the property since 1 October 2019.

- 17 On 4 October 2024 the Applicant sent the Respondent a notice which purported to be a notice to leave. The notice included ground 1 and stated that an application would not be made to the Tribunal any earlier than 2 November 2024.

Reasons for decision

- 18 The Tribunal was satisfied it had sufficient information before it to make relevant findings in fact and reach a decision on the application having regard to the application paperwork and the submissions heard at the CMD. In terms of Rule 17(4) and Rule 18(1) of the Rules the Tribunal determined that it could make a decision at the CMD as there were no issues to be resolved that would require a hearing.
- 19 The Tribunal considered whether it could entertain the application under section 51 of the 2016 Act. In particular, the Tribunal considered the wording of section 52 of the 2016 Act which provides as follows:-

“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.”

- 20 Therefore, in terms of section 52(3) the Tribunal can only entertain an application for an eviction order if it is accompanied a notice to leave. The Tribunal went on to consider whether the notice submitted with the application was a notice to leave for the purposes of the 2016 Act.
- 21 Section 62(1) of the 2016 Act provides the criteria that a notice must meet in order to be considered a notice to leave for the purposes of section 52(3) of the 2016 Act:-

“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.”

- 22** In order to calculate the day on which a landlord can expect to become entitled to make an application to the Tribunal in compliance with section 62(1)(b), one must look to section 54 of the 2016 Act which provides as follows:-

“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).”*

- 23** The Applicant relies upon ground 1 in this case as the ground for possession, which is not a ground specified in section 54(3)(b) of the 2016 Act. It therefore falls that the relevant notice period is 84 days, unless the tenant has been entitled to occupy the property for less than six months.

- 24** The Tribunal accepted that the Respondent has been entitled to occupy the property since 1 October 2019, having considered the terms of the private residential tenancy agreement between the parties of that same date which was not challenged by the Applicant. Whilst a second private residential agreement had been signed by the parties in April 2024, nonetheless the wording of section 54(3)(a) is clear in that it is the tenant's entitlement to occupy the property that is the key issue when determining the statutory notice period under section 54. Section 54(3)(a) did not therefore apply in this case as the Respondent has been entitled to occupy the property for more than six months. Accordingly, the relevant period under section 52(2)(a)(ii) is 84 days.
- 25** The notice submitted with the present application does not therefore fulfil the requirement specified in Section 62(b) of the 2016 Act, as it does not provide the correct notice required under section 54(2)(b)(ii). The notice is not therefore a "notice to leave" in terms of Section 62. 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.
- 26** The Tribunal therefore refused the application for the reasons outlined above. The decision of the Tribunal was unanimous.

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.

Ruth O'Hare

9 July 2025

Legal Member/Chair

Date