

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/24/4703

Re: Property at 11 Couston Street, Dunfermline, KY12 7QW (“the Property”)

Parties:

M Keith Willox, 40/2 Learmonth Avenue, Edinburgh, EH4 1HT (“the Applicant”)

Miss Elizabeth Low, 11 Couston Street, Dunfermline, KY12 7QW (“the Respondent”)

Tribunal Members:

Nairn Young (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

- Background

This is an application for an eviction order against the Respondent, who occupies the Property in terms of a private residential tenancy agreement with the Applicant. It called for case management discussion (‘CMD’) at 10am on 2 September 2025, by teleconference. The Applicant was represented on the call by Ms Sarah Scott, of Martin & Co.. The Respondent was not on the call or represented. The commencement of the CMD was delayed by 10 minutes in case she was experiencing any technical difficulty; but there remained no contact from her.

The application and notice of the CMD were served on the Respondent by sheriff officers on 18 March 2025. Thereafter, the Applicant’s request for a postponement of

the date of the CMD was granted and the matter rescheduled for this date. Notice of the revised date was sent to the Respondent by recorded delivery post on 17 July 2025. The Tribunal was therefore satisfied that she was aware of the CMD and had chosen not to oppose the application.

- Findings in Fact

The Tribunal considered the following unopposed facts as relevant to its decision:

1. The Applicant lets the Property to the Respondent in terms of a private residential tenancy agreement with a start date of 4 October 2018.
2. On 9 July 2024, the Applicant's representative emailed a notice to leave to the Respondent, stating that he would rely on Ground 1 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 ('the Act') in any application to the Tribunal to follow.
3. On the notice, the date identified as the earliest an application could be made was 2 October 2024.
4. This application was first submitted on 9 October 2024 and was accepted by the Tribunal on 20 December 2024.
5. The Applicant is the owner of the Property.
6. The Applicant intends to sell the Property for market value, or at least put it up for sale, as soon as the Respondent ceases to occupy it.

- Reasons for Decision

7. Given that this application proceeds on the basis of a notice which does not contain the date required by s.62(1)(b) of the Private Housing (Tenancies) (Scotland) Act 2016 ('the Act'), the Tribunal had to consider the applicability of s.73 of the Act to that error and whether it could thereby entertain the

application. It is not immediately clear that s.73 may be applied to a notice with such a deficiency, given that s.73(2)(d) extends the ability to overlook minor errors only to notices to leave, “as defined by s.62(1).” A notice without the date required by s.62(1)(b) perhaps does not meet that latter definition. It is also not immediately clear that an error that shortens the length of the notice period to be given does not, “materially affect the effect,” of the notice, as is required for s.73 to operate.

8. Nonetheless, the Tribunal is aware of the case of *Halcrow v. Davies and Hunter* (UTS/AP/25/0019), in which the Upper Tribunal considered whether s.73 should be applied to an error of a similar type. Sheriff Collins clarified the law in that case, to the effect that an error in a notice to leave is susceptible to being overlooked in terms of s.73; and that an error shortening the period of notice is not automatically excluded from such treatment. The whole facts and circumstances surrounding the practical effect of the error are to be taken into account by the Tribunal in determining whether it materially affects the effect of the notice.
9. The Tribunal considered that, in this case, considered in that way, the error does not materially affect the effect of the notice. The error shortens the period of notice by two days, as a result of the assumption set out in s.62(5) that the email was not received until two days following its being sent. Against a total notice period of 84 days, this is a slight shortening only. In addition, the application was not in fact made until some days after the correct notice period had elapsed. Still longer passed before it was accepted and served upon the Respondent. In practice, therefore, she has had significantly longer than the notice period to be aware of the potential that she might be evicted and take relevant action in response. Additionally, the Respondent has not entered opposition to the application and, following the *Halcrow* case, may thereby be taken not to consider her interests to have been materially prejudiced by the error (para.27 of that case). The error may therefore be overlooked and the matter proceed, as if the notice to leave had been completed correctly.

10. Following that conclusion, the Tribunal determined that Ground 1 is established and, in particular, it is reasonable for the order to be granted. On the face of things, the Applicant should be allowed to sell and the Respondent has not presented any information to suggest otherwise.

- Decision

Eviction order granted.

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.

Nairn Young

Legal Member/Chair

2 September 2025

Date