



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/25/4022**

**Re: Property at 113 Kelvin Gardens, Hamilton, ML3 9NR (“the Property”)**

**Parties:**

**Excel Property, 37-39 Glenburn Rd, College Milton, East Kilbride, G74 5BA (“the Applicant”)**

**Mr Stefan Galluccio, Catriona Cain, 113 Kelvin Gardens, Hamilton, ML3 9NR (“the Respondents”)**

**Tribunal Members:**

**Lauren Rae (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application is refused and makes no order for payment against the Respondents.**

**Background**

1. By application dated 19 September 2025, the Applicant sought a payment order in terms of section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 and section 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
2. The application was accompanied by:-
  - An (incomplete) copy of the private residential tenancy between the parties;
  - A rent statement;
  - Copy rent increase notice addressed to both Respondents dated 9 April 2025
  - Postage receipt dated 11 April 2025

3. On 28 November 2025 the application was accepted by the Tribunal for determination.
4. In the application, the Applicant sought an order for payment of rent arrears in the sum of £692.10. It was the Applicant's position that the Respondents had failed to pay the increased monthly rent of £625 (from £403.20).
5. A Case Management Discussion ("CMD") was fixed for 11 May 2026 via teleconference. The application was served on the Respondents via Sheriff Officer on 31 March 2026. All parties therefore had adequate notice of the date and time of the CMD.

### **Case Management Discussion**

6. The CMD took place on 11 May 2026 at 10am. The Applicant, Mr Docherty, was in attendance. The Respondent, Mr Galluccio appeared on his own behalf and on behalf of Ms Cain.
7. The Tribunal explained the purpose of the CMD and the powers available to the Tribunal including making a decision.
8. Mr Docherty invited the Tribunal to grant a payment order. It was his position that the rent increase notice dated 9 April 2025 had been served on the Respondents by recorded delivery post. He referred to the Law of Property Act and stated that the proof of postage was sufficient evidence of service and it did not matter whether the notice had, in fact, been received by the Respondents. It was Mr Docherty's position that the Respondents had failed to object to the rent increase and accordingly, the rent had been increased from £403.20 to £625 per calendar month. The Respondents had continued to pay rent at the rate of £403.20 and arrears of £692.10 had accumulated and continued to accrue. He explained that he had no choice but to increase the rent because he was operating at a loss.
9. The Tribunal questioned the Applicant on why he had purported to serve the rent increase notice by recorded delivery when parties had agreed in terms of the tenancy agreement that notices ought to be served by email. The Applicant's position was that notwithstanding the terms of the lease, he was entitled to serve the notice via recorded delivery which he viewed as being more secure for legal documents. The tribunal enquired whether he had tracked delivery of the notice via the Royal Mail website to confirm it had been delivered. The Applicant advised he had not done so nor had he known to do so. His position was that the receipt from the post office lodged in process was evidence of postage and that was sufficient. The tribunal enquired about an earlier rent increase and whether the Respondents had objected to that increase. The Applicant could not recall the circumstances of earlier rent increase but speculated that it had been challenged by the Respondent on account of the rent not being a round figure (£403.20). The Applicant advised the Tribunal that there was no further evidence upon which he wished to rely and nothing further to be produced.

10. The Respondent, Mr Galluccio, opposed the application for payment. It was Mr Galluccio's position that the rent increase notice had not been received by either he or Ms Cain. As soon as he became aware of the purported rent increase, he notified the Applicant that the rent increase notice had not been received. The Applicant had not attempted to re-serve the notice or issue it via email. Had he or Ms Cain received the notice, they would have challenged the proposed increase given it represented a significant increase of £221.80 per month (55% increase). The Respondents had challenged an earlier rent increase successfully resulting in the rent being increased to a lesser figure than the Applicant had proposed.
11. The Tribunal questioned whether the Respondents experienced problems with receiving mail at the Property. Mr Galluccio said no. The Tribunal enquired whether Mr Galluccio's position was that the notice should have been served by email standing the terms of clause 4 of the lease agreement. Mr Galluccio agreed and stated that the Applicant had never tried to re-issue a rent increase notice despite being made aware the original had not been received. The Tribunal enquired whether there was any additional information upon which Mr Galluccio wished to rely that was not before the Tribunal. Mr Galluccio confirmed all the evidence was before the Tribunal.
12. Following conclusion of the CMD, the Tribunal noted that the lease agreement lodged in process by the Applicant was incomplete and had not been picked up during the sift. The Tribunal, via the administration, emailed both parties asking for a complete copy to be produced. The complete copy of the lease agreement was received from the Applicant on 15 May 2026

### **Findings in Fact**

13. The parties entered into a private residential tenancy agreement which commenced on 16 July 2021.
14. The initial monthly rent was £360. It was subsequently increased to £403.20 from 8 July 2024 following a rent review determination.
15. In terms of Clause 4 of the private residential tenancy, parties agreed that any notices under the tenancy would be sent via email.
16. The Applicant purported to serve one rent increase notice dated 9 April 2025 addressed to both Respondents increasing the rent from £403.20 to £625 with effect from 14 July 2025.
17. The proposed rent of £625 per month amounted to an increase of 55%.
18. The Applicant posted the rent increase notice by recorded delivery on 11 April 2025.
19. Service of the rent increase notice via recorded delivery did not comply with the terms of Clause 4 of parties' tenancy agreement.

20. The rent increase notice was not validly served on the Respondents.
21. The purported increase of the monthly rent to £625 from 14 July 2025 is invalid.
22. The Respondents have continued to pay rent at the rate of £403.20.
23. The Respondents are not in arrears of rent.
24. *Esto*, recorded delivery was a valid method of service for the rent increase notice (which is denied), the rent increase notice was not received by the Respondents:-
  - (i) There is no tracking information available to show that the rent increase notice was delivered to the Respondents.
  - (ii) Had the rent increase notice been received by the Respondents, on the balance of probabilities, the Respondents would have objected to the proposed 55% rent increase.
  - (iii) The Applicant failed to serve a rent increase notice on each of the Respondents individually.
  - (iv) The Respondents have rebutted the presumption of deemed service of the rent increase notice.

## Reasons for Decision

25. There are no provisions in the **Private Housing (Tenancies) (Scotland) Act 2016 (the “2016 Act”)** as regards service of notices.
26. Accordingly, the rules in **section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010** apply:-

### **“26 Service of Documents**

*(1) This section applies where an Act of the Scottish Parliament or a Scottish instrument authorises or requires a document to be served on a person (whether the expression “serve”, “give”, “send” or any other expression is used).*

*(2) The document may be served on the person—*

*(a) by being delivered personally to the person,*

*(b) by being sent to the proper address of the person—*

*(i) by a registered post service (as defined in section 125(1) of the Postal Services Act 2000 (c. 26)), or*

*(ii) by a postal service which provides for the delivery of the document to be recorded, or*

*(c) where subsection (3) applies, by being sent to the person using electronic communications.*

*(3) This subsection applies where, before the document is served, the person authorised or required to serve the document and the person on whom it is to be served agree in writing that the document may be sent to the person by being transmitted to an electronic address and in an electronic form specified by the person for the purpose.*

*(4) For the purposes of subsection (2)(b), the proper address of a person is—*

*(a) in the case of a body corporate, the address of the registered or principal office of the body,*

*(b) in the case of a partnership, the address of the principal office of the partnership,*

*(c) in any other case, the last known address of the person.*

*(5) Where a document is served as mentioned in subsection (2)(b) on an address in the United Kingdom it is to be taken to have been received 48 hours after it is sent unless the contrary is shown.*

*(6) Where a document is served as mentioned in subsection (2)(c) it is to be taken to have been received 48 hours after it is sent unless the contrary is shown.”*

27. Clause 4 of the private residential tenancy between the parties states:-

**“4. COMMUNICATION**

*The Landlord and Tenant agree that all communications which may or must be made under the Act and in relation to this Agreement, including notices to be served by one party on the other will be made in writing using:*

*[ ] hard copy by personal delivery or recorded delivery; or  
[X] the email addresses set out in clause 2 or 3 and 1*

*For communication by email it is essential that the Landlord(s) and Tenant(s) consider carefully whether this option is suitable for them. It should be noted that all notices will be sent by email, which includes important documents such as a rent increase notice and a notice to leave the Let Property.”*

28. The Applicant and Respondents had solely elected for service of notices and all other communications to be made via email.
29. By virtue of that election and in terms of section 26(2)(c) and (3), the Applicant was not entitled to serve the rent increase notice on the Respondents via recorded delivery post. Accordingly, the rent increase notice was not validly served on the Respondents.
30. As a consequence, the Respondents' rent remains at £425 per calendar month not £625. There are no arrears of rent.
31. In reaching that decision, the Tribunal had regard to the cases of **Higgins v Harley (EV19/2868)**, **Scott v Hards (EV/19/3690)** and **Kaur v Milligan (EV/19/3750)**. Whilst those cases are not binding on the Tribunal, they are all cases where the Landlord purported to serve notices (to leave) in a manner not specified in the tenancy agreements.
32. Had parties agreed that service of notices could be made via recorded delivery in terms of the tenancy agreement and notwithstanding the terms of section 26(5) of the 2010 Act, the Tribunal would have accepted the evidence of the Mr Galluccio that the notice had not been received, for the following reasons:-
- (i) The Applicant, by his own admission, failed to use the tracking number to confirm receipt of the notice. Due to the passage of time, no tracking information is available.
  - (ii) The Applicant was purporting to increase the rent by 55%.
  - (iii) The Respondents had challenged an earlier rent increase and applied for a rent determination which resulted in a lower rent than had been proposed by the Applicant (£403.20).
  - (iv) Had the Respondents received the rent increase notice, and (a) given the proposed level of rent increase and (b) their objection to an earlier rent increase, on the balance of probabilities, the Respondents would have taken steps to object to the proposed increase.
  - (v) In any event, the Applicant served one rent increase notice addressed to both Respondents. In circumstances where the tenancy is a joint one, each tenant ought to receive a notice addressed individually to them. Even if the Tribunal accepted that the notice was validly served and received by the Respondents, it had no way of knowing whether one or both of the Respondents were aware of the notice. Given the level of the proposed increase, the Tribunal required to be satisfied that both Respondents had had appropriate notice. The Tribunal was not so satisfied.
33. Both the Applicant and Mr Galluccio confirmed to the Tribunal that there was no additional evidence that required to be placed before the Tribunal and therefore nothing to preclude the Tribunal making a decision at the CMD in terms of Rule 17 of the 2017 Rules.

## **Decision**

**The application for an order for payment is 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.**

**Lauren Rae**

**Legal Member/Chair**

**18 May 2026**

**Date**

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