



**DECISION AND STATEMENT OF REASONS OF PETRA HENNIG MCFATRIDGE LEGAL
MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER
PRESIDENT**

Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules
of Procedure 2017 ("the Procedural Rules")

in connection with

Case reference FTS/HPC/EV/26/0640

Parties

Mr Ahmed Al-Hussein (Applicant)

16a Constitution crescent, Dundee, DD3 6TT (House)

1. On 10.2.2026 the First Tier Tribunal for Scotland Housing and Property Chamber (FTT) received the application, which was made under rule 109 of the Procedure Rules and stated as the grounds applicable grounds 1.
2. The applicant, following some further correspondence with the FTT, lodged a partial copy of the tenancy agreement, the S 11 notice and email sending same, a Notice to Leave dated 16.6.2025 with a date of 12.9.2025 stated as the date in part 4 when proceedings could first be raised together with a certificate of service from Sheriff Officers confirming the service of said notice having been carried out on 18.12.2025.

He also provided authorisation from the joint owner.

3. On 20.4.2026 the FTT wrote to the applicant in the following terms: A Legal Member of the Tribunal has reviewed your application. Before a decision can be made on whether your application can proceed, we require you to provide us with the following information:- 1. The Notice to Leave that you have provided is dated 16 June 2025 and states that an application will not be submitted to the Tribunal for an eviction order before 12 September 2025. The Sheriff Officer's execution of service that you provided with your application was dated 18 December 2025. Please clarify if this is indeed the correct execution to go with this Notice to Leave? If so, the Notice to leave was dated 6 months prior to when it was served, and accordingly has not been served timeously. Your application would appear to be incompetent on that basis. If there is either (i) a different proof of service from June 2025 when the Notice is dated or (ii) a later Notice, please provide this. Please provide the information no later than 4 May 2026. Upon receipt of the information a Legal Member will consider your response and may seek further information from you before a decision is made on whether your application can proceed. In the absence of a response your application may be rejected without further notice. You may wish to consult a solicitor or advice agency if you require further guidance regarding your application. The Tribunal cannot provide you with legal advice but there are details of advice agencies under the Useful Links section of the Tribunal website.
4. On 23.4.2026 the applicant replied as follows: Please see the attached emails from Scott & Law LLP, the Messenger-at-Arms, and the Sheriff Officer confirming that the execution of the sheriff officer's charge was indeed carried out and received by the tenant on 1 December 2025. Unfortunately, for technical reasons, when I later requested a copy of the execution, they issued it with the date 18 December 2025 instead of the actual date of service. To avoid any misunderstanding, I wish to clarify that the execution was effected and received on 1 December 2025, and the later date reflects only an administrative error when the copy was produced.
5. The file documents are referred to for their terms and held to be incorporated herein.

DECISION

6. I considered the application in terms of Rule 8 of the Procedural Rules. That Rule provides:-

"Rejection of application

8. —(1) The Chamber President or another member of the First-tier Tribunal under the delegated powers of the Chamber President, must reject an application if –

(a) they consider that the application is frivolous or vexatious;

(b) the dispute to which the application relates has been resolved;

(c) they have good reason to believe that it would not be appropriate to accept the application;

(d) they consider that the application is being made for a purpose other than a purpose specified in the application; or

(e) the applicant has previously made an identical or substantially similar application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, there has been no significant change in any material considerations since the identical or substantially similar application was determined.

(2) Where the Chamber President, or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, makes a decision under paragraph (1) to reject an application the First-tier Tribunal must notify the applicant and the notification must state the reason for the decision."

7. After consideration of the application, the attachments and correspondence from the Applicant, I consider that the application should be rejected in terms of Rule 8 (c) of the Rules of Procedure on the basis as the Tribunal has good reason to believe that it would not be appropriate to accept the application.

REASONS FOR DECISION

Relevant Legislation:

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.

(2)In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3)References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4)The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.

(5)For the purpose of subsection (4), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

73Minor errors in documents

(1)An error in the completion of a document to which this section applies does not make the document invalid unless the error materially affects the effect of the document.

(2)This section applies to—

(a)a notice under section 14(3), 16(3)(c), 22(1) **[F1, 43L(1),]** 61(1),

(b)the document by which a referral is made to a rent officer under section 24(1) **[F2 or 43N(2)],**

F3(c).

[F4(ca)the document by which a request for review is made to a rent officer under section 43Q(1),

(cb)the document by which a request is made for the landlord’s consent under section 64B(1) or 64I(1), and**]**

(d)a notice to leave (as defined by section 62(1)).

8. The document required in terms of rule 109 (b) ii was not provided, despite the FTT having requested this. The Tribunal considers that what is required in terms of rule 109 (b) ii is a valid Notice to Leave as defined in S 62 of the Act.
9. The Applicant has provided a Notice to Leave document on ground 4, which is dated 16.6.2025 and showed as the date when the proceedings first could be raised 12.9.2025. The certificate of service from Sheriff Officers shows that the service did not take place until 18.12.2025. Even if the applicant is correct in stating that the Notice to Leave was actually served on 1.12.2025, which is not accepted as the official certificate of service shows the later date of 18.12.2025, the effect would still be that the Notice to Leave showed a date in part 4 which is prior to the date of service and there is no indication that the tenant received any notice in December 2025 advising when proceedings could commence. Effectively the notice period stated in the Notice to Leave had already expired when the document was served.
10. The Tribunal considered the application of S 73 of the 2016 Act in light of the recent ruling of the Upper Tribunal in 2025UT68 Halcrow v Davies and Hunter regarding the consideration of the validity of a Notice to Leave. Sheriff Collins stated:
 23. *I am unable to accept the FTS' reasoning. It proceeds on too narrow a reading of the statutory language. It assumes that absent compliance with section 62(1)(b) a notice to leave is thereby invalid, and therefore that compliance with this subsection must be 'fundamental'. The correct analysis is that a notice to leave which contains an error – including a failure to comply with section 62(1)(b) - is on the face of it valid unless that error materially affects the effect of the notice by reference to section 73. It is plainly an important purpose of the notice to tell the tenant when the landlord expects to apply for an eviction order. But this does not necessarily mean that an error in stating the correct date will 'materially affect this effect'. It is a matter of facts and circumstances. In some case it might do so, in others it need not. If the tenant is entitled to 28 days notice, and the landlord states a date 7 days hence, then it is easy to see that there will be a material affect on the information which is to be given to the tenant by the notice, and so the effect of it. But if the tenant is entitled to 84 days notice, and the landlord states a date which gives only 83 days, it is hard to see why such an error is so fundamental that the notice must be regarded as invalid, and so incapable of permitting an application to the FTS to proceed for this reason alone.*
 24. *In effect, the FTS in Holleran conceded this, by accepting that stating the wrong date such as to give the tenant a day or two more notice than stipulated by the statute, would not necessarily invalidate a notice to leave. If that is correct – as I consider it is – then there is no reason in principle why a day or two less notice than stipulated must necessarily do so. If the correct date is 'fundamental' information, it is hard to see why it ceases to be so just because the error is – on one view – in the tenant's favour. As is stated at paragraph 105 of the Explanatory Notes to the 2016 Act, section 73 is intended to ensure that "a common sense approach can be taken to meeting [the requirements of a notice to leave], and a party is not penalised for an obviously minor error. The protection applies equally to landlords and tenants." Such a common sense approach is particularly apposite given the complexity of sections 54 and 62, discussed above, and the consequent possibility of an innocent but immaterial error in completion of the notice to leave. Miscalculating the part 4 date by one day in 84 is an obviously minor error.*

25. The FTS in Halloren - and in the present case - rejected submissions for the landlords based on an absence of prejudice to the tenant. In the first place, it was said that as a matter of generality the validity of a notice to leave cannot be determined by circumstances which occur after it is served. If that was so, it was suggested, the FTS could not determine whether a notice was valid without first determining what happened after service. In the second place, it was said that "section 73 provides the only route by which validity may be achieved notwithstanding an error in completion." This involved assessing whether the notice itself contained requisite information, which could not be cured by events after the tenant had received it. 26. I am unable to accept this reasoning either. The exercise required is not one of determining the validity of a notice to leave, but in assessing whether an error in it is so material that it is thereby invalidated.

11. In the present case the Notice to Leave did not provide the tenant with any relevant date of expiry of the notice period. The Notice to Leave was served months after the period stated in the document had already expired. Thus the tenant would not have received any relevant information as to when the notice period would expire and did not give the tenant any notice at all prior to the date when proceedings could be raised as stated on the Notice to Leave. In those circumstances the Tribunal considers that S 73 does not assist the applicant because the error is so material that it invalidates the notice. By serving a Notice to Leave in December 2025 that states as the date of the notice 16 June 2025 and as the date after the notice period expires 12 September 2025, the minimum required information stated in S 62 (1) (b) and S 62 (4) of the 2016 Act is not provided at all. The Tribunal thus considers that the Notice to Leave is invalid. Because the requirements for lodging a valid application in terms of rule 109 are not met, it would not be appropriate for the Tribunal to accept the application, which remains incomplete.
12. Furthermore, the ground stated on the application, ground 1, is clearly not the correct ground for the application. The applicant states he wishes to move into the property, not that he has the entitlement and intention to sell it. However, given the reasons stated above the FTT did not consider that the applicant should be asked to amend the application by stating the correct ground as this would not have altered the outcome of the decision.
13. The application is accordingly rejected.

What you should do now

If you accept the Legal Member's decision, there is no need to reply.

If you disagree with this decision:-

An applicant aggrieved by the decision of the Chamber President, or any Legal Member acting under delegated powers, 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. Information about the appeal procedure can be forwarded to you on request.

Petra Hennig McFatridge
Legal Member
15 May 2026