

Housing and Property Chamber
First-tier Tribunal for Scotland



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 (“the 2016 Act”)

Chamber Ref: FTS/HPC/EV/25/3734

Re: Property at 29 Bowes Place, Edinburgh, EH16 4WL (“the Property”)

Parties:

Mrs Sarah Sarwar, 26 Tobias Street, Edinburgh, EH16 4WG (“the Applicant”)

Mr Michal Bronikowski, UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Evan Crainie (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision (in absence of the Respondent)

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

Background

1. By application dated 2 September 2025 (“the Application”), the Applicant sought an Eviction Order against the Respondent under Section 51 of the 2016 Act. The Ground relied on was Ground 12 of Schedule 3 to the Act, namely that the tenant has been in rent arrears for three or more consecutive months.
2. The application was accompanied by copies of:
 - i. Copy Private Residential Tenancy Agreement between the Parties, commencing on 23 June 2024, with a monthly rent of £1000;
 - ii. Copy Notice to Leave dated 15 July 2025 together with proof of sending to the Respondent;
 - iii. Copy notice under Section 11 of the Homelessness Etc. (Scotland) Act 2003 to City of Edinburgh Council being the relevant local authority; and
 - iv. Rent statement showing rent arrears amounting to £1,500 as at September 2025.
3. On 12 June 2026, the Tribunal advised the Parties of the date and time of a Case Management Discussion (“**CMD**”), and the Respondent was invited to

make written representations by 3 July 2026. The Respondent did not make any written representations to the Tribunal.

The CMD

4. A CMD was held by means of a telephone conference call on 17 July 2026. The Applicant was represented by Mr Hannan Sarwar. The Respondent was not present or represented.
5. The Legal Member advised the Applicant's representative that the Tribunal was aware of potential issues with the Notice to Leave ("**NTL**") in this matter, namely that (i) the NTL does not follow the prescribed form set out in Schedule 5 to the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017; and (ii) the Respondent received less than the required 28 days' notice (per section 54(2)(b)(i) of the 2016 Act). The Tribunal explained that it had reviewed the written submissions on this in the case papers but invited the Applicant's representative to make any further oral submissions.
6. The Applicant's representative explained that the NTL had been served on 15 July 2025 by posting through the letterbox and by email. Email service was allowed in terms of the tenancy agreement. In terms of the form of the NTL itself, the Applicant's representative considered that the relevant information was covered i.e. the grounds, amount of arrears etc. At this point the Tribunal adjourned to consider the Applicant's representatives further oral submissions on the validity of the NTL.
7. Upon returning from the adjournment and having considered the oral submissions, the Tribunal was satisfied that the NTL was invalid and therefore the Application must be refused.

Findings in Fact

8. The Applicants are the owners and the Landlords of the Property.
9. The Respondent is the tenant of the Property in terms of a private residential tenancy agreement.
10. The Applicant served a NTL on the Respondent by email on 15 July 2025. This NTL did not follow the prescribed form/style set out in Schedule 5 to the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017.

Reasons for Decision

11. The relevant sections of the 2016 Act are as follows:

"52 Applications for eviction orders and consideration of them

...

(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.

...

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.

...

(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).

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.

...

(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.

73 Minor 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—

...

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

12. For the purposes of section 62(1)(d), the relevant regulations are the Private

Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017, Schedule 5 of which sets out the prescribed form for a NTL. The NTL used in this case not only does not follow the format of the prescribed form, but large swathes of the information in the prescribed form is missing from the NTL used in this case. In particular, the following information is missing in its entirety from the NTL used in this case:-

- i. the “*Important information for the Tenant(s)*” section; and
- ii. “Part 4”.

13. Other information is included in the NTL but does not follow the prescribed form of wording used in the form. Indeed, some parts of the NTL used in this case could lead to confusion. An example being the NTL in this case stating, “*For information about your rights and how to get help, contact the First-tier Tribunal or seek legal advice*”. Notably, there is no signposting in the prescribed form to the Tribunal, one would assume this is because the Tribunal are an impartial judicial body and are therefore unable to provide advice on individuals' personal circumstances.
14. Having determined that the NTL used in this case does not follow the prescribed form/style, the Tribunal considered the implications of this for the application. The Tribunal had regard to the decision of the Upper Tribunal in the case of *McAnally v Boyle* 2025 UT 53 which is binding on the Tribunal. In this case, the Upper Tribunal addressed the distinction between a notice that is not in accordance with the prescribed style and errors contained within a notice that is otherwise in the prescribed form. The Upper Tribunal held that if the notice given to the tenant is not in accordance with the prescribed style, that is an error which cannot be rectified.¹ This means that failure to use the prescribed form invalidates the NTL and prevents the Tribunal from accepting the application.
15. The position differs where a NTL is in the prescribed form but contains errors in its completion. Section 73 of the 2016 Act provides that an error in 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. Section 73 applies to a NTL.
16. In *McAnally v Boyle*, the Upper Tribunal explained that provided the notice is in the prescribed style, then Section 73 of the 2016 Act can be engaged in order to determine whether any error contained within the four corners of the prescribed style of notice does, or does not, fall to be regarded as material and thus affect the effect of the notice.²
17. In *Halcrow v Davies* 2025 UT 68, the Upper Tribunal held that the starting point is that a notice is valid notwithstanding any errors in it, and it will be invalid if, and only if, such an error materially affects the effect of the notice.³ The Upper Tribunal clarifies that the correct analysis is that a NTL which contains an error

¹ *McAnally v Boyle* 2025 UT 53 at paragraph 50.

² *McAnally v Boyle* 2025 UT 53 at paragraph 50.

³ *Halcrow v Davies* 2025 UT 68 at Paragraph 21

is on the face of it valid unless that error materially affects the effect of the notice by reference to section 73.⁴ The Upper Tribunal noted that Section 73 of the 2016 Act provides that an error in completion of a notice does not of itself invalidate the notice.⁵

18. The case law establishes a clear distinction between two types of defect in a NTL. A notice that is not in the prescribed form at all cannot be saved by section 73 and will invalidate an application for eviction. However, a notice that is in the prescribed form but contains errors in how it has been completed may still be valid if the error does not materially affect the effect of the notice for the purposes of section 73.
19. Given that the NTL in this case is not in the prescribed style, section 73 of the 2016 Act cannot be engaged. Therefore, the application falls to be refused on the grounds that it is incompetent as the NTL was not a “notice to leave” in terms of section 62. This means that the Tribunal cannot entertain the application in terms of section 52(2)(a).
20. The opening words of Section 62 indicate that a NTL has to fulfil the four requirements specified in Sections (a) to (d) of that section.
21. It follows that a NTL which does not fulfil these requirements is not a NTL in terms of the 2016 Act. The NTL submitted with the present application does not fulfil the requirement specified in Section 62(d), as it does not fulfil the requirements of the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017. It does not fulfil the requirements as it fails to follow the format/style of the prescribed form as well as missing out entirely, parts of the prescribed form.
22. As a result, the Notice which has been submitted is not a NTL in terms of Section 62. This calls into question the competency of the application. As the application to the Tribunal has to be accompanied by a NTL, the Applicant has failed to comply with Section 52(3) of the 2016 Act and the Tribunal cannot entertain the application.
23. Having made these findings, the Tribunal did not have to further consider the issue in respect of whether enough notice had been provided to the Respondent in terms of s54(2)(b)(i).
24. For the reasons outlined, the Tribunal refuses the application on the ground that it is incompetent as the application has not been accompanied by a valid NTL.

Decision

25. The Tribunal determines that the application should be refused.

⁴ *Halcrow v Davies* 2025 UT 68 at Paragraph 23

⁵ *Halcrow v Davies* 2025 UT 68 at Paragraph 21

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.

17.7.26

Legal Member/Chair

Date