



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

**Chamber Ref: FTS/HPC/EV/19/1951**

**Re: Property at G01 24 Springvale Street, Saltcoats, KA21 5LP (“the Property”)**

**Parties:**

**Mrs Anne Elizabeth McCauley, c/o Ayrshire Letting and Sales, 26 Ritchie Street, West Kilbride (“the Applicant”)**

**Mr Andrew Cambridge, G01 24 Springvale Street, Saltcoats, KA21 5LP (“the Respondent”)**

**Tribunal Member:**

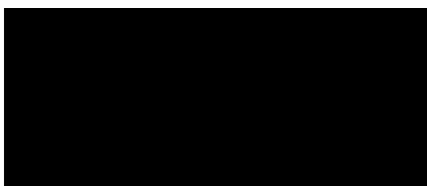
**Lesley Ward (Legal Member)**

**Decision (in absence of the respondent):**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) decided that the notice to leave served by the applicant’s agents upon the respondent was invalid and therefor the application cannot be entertained by the Tribunal and accordingly the application is refused.**

This is a case management discussion ‘CMD’ regarding an application in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Rules 2017, ‘the rules’ and s51 of the Private Housing (Tenancies)(Scotland) Act 2016 for eviction in relation to a private residential tenancy , ‘PRT’. The tribunal had before it the following copy documents:

1. Application dated 19 June 2019 and received by the tribunal on 20 June 2019.
2. Notice to leave dated 10 April 2019.
3. PRT dated 19 September 2018.
4. S11 notice dated 15 April 2019.



5. Execution of service of notice to leave.
6. Power of Attorney by Mrs Anne McCauley in favour of Kathleen Anne Chapman.
7. Mandate by Ms Chapman authorising Ayrshire Sales and Letting to act on her behalf.
8. Land certificate.
9. Sheriff Officer's execution of service of the application and CMD papers on the respondent dated 22 July 2019.

Ms Kathleen McCallum and Ms Leanne Austin of Ayrshire Letting and Sales attended the CMD on behalf of the applicant's attorney.

The respondent did not attend and was not represented. The tribunal had sight of item 9 above and was satisfied that the respondent had received appropriate notice in terms of rule 24. The tribunal proceeded with the CMD in the respondent's absence in terms of rule 29.

#### **Preliminary matters for discussion**

1. The tribunal noted that the notice to leave referred to a rent statement with rent arrears of £1745.70. The rent statement lodged with the application had arrears of £2443.80 and was dated 19 June 2019. Ms Austin sought to lodge a statement dated 19 April 2019 with arrears of £1745.70 which she stated was attached to the notice to leave. The tribunal accepted this.
2. The tribunal noted that the notice to leave was dated 10 April 2019 but the date given at part 4 of the notice was 6 July 2019. Part 4 of the notice therefore stated that the application would not be made to the tribunal before 6 July 2019. There were two issues with this notice which the tribunal raised with the applicant's representatives:
  - (a) The application was lodged with the tribunal before the notice expired. The application was made on 20 June 2019 but the notice in part 4 of the notice to leave stated that the application would not be submitted to the tribunal until after 6 July 2019.
  - (b) The notice period given in the notice to leave was 84 days when the notice period should be 28 days as required by s54(2) and (3) of the Act.

In relation to point (a) Ms Austin and Ms McCallum stated that they had made an earlier application to the tribunal and this had been rejected. They assumed that as this application had been accepted and had not come to a hearing until after 6 July 2019 the tribunal would not have an issue with it.

In relation to point (b) they stated that in their view given the lease had lasted more than 6 months, 84 days' notice was required and not 28 days. The tribunal adjourned to consider this point before proceeding further. The tribunal carefully considered the terms of s54 of the Act and was satisfied that the notice period in an application for eviction on the ground that the tenant has been in arrears for three or more consecutive months is 28 days and not 84 days.

The tribunal offered the applicant's representatives the opportunity of an adjournment of today's CMD for them or their client to seek independent legal advice in connection with the validity of the notice to leave. The tribunal also pointed out that there is a provision in terms of s73 of the Act which relates to minor errors in the notice to leave. The tribunal offered them the opportunity to take advice and if so advised make a submission in terms of s73 of the Act.

Ms Austin and Ms McCallum declined the opportunity of an adjournment. They stated that in their view 84 days' notice is required and not 28 days. This has always been their understanding for evictions where the tenant has occupied the tenancy for more than 6 months. They have been granted other applications where 84 days' notice has been given. If the tribunal's view is that the notice should be 28 days, they have given more notice than required and there is no prejudice to the respondent. They did however take the point regarding the premature lodging of the application but in their view this was not fatal and other tribunals have granted applications in similar circumstances. It was their view that as long as the CMD was after the notice period there should be no difficulty and if there was an issue this should have been picked up at the sifting stage.

### **Reasons**

The tribunal is not satisfied that the notice to leave served in this application is valid. The notice to leave served in the respondent states that the application will not be made to the tribunal until 6 July 2019. S 52 and 54 of the Act provide:

#### **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.

## 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,
    - ...
- (3) This subsection applies if-
  - ...
  - (b) The only eviction ground, or grounds, stated in the notice to leave is...
    - ...
    - (iii) that the tenant has been in rent arrears for three or more consecutive months,
  - (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).

What has happened here is that the application has been made in breach of s54(1) and the notice period given does not comply with s54(2)(b)(i).

The tribunal considered whether the error in the notice comes into the category of a minor error in terms of s73 of the Act. S73(1) states:

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.

The tribunal had regard to another tribunal decision from May 2019, in the case of Mr Andrew Holleran –v- Ms Anne Marie Mc Allister. In it the tribunal chair goes into considerable detail about the meaning of the words “materially affect” and he noted that the notice to leave has two main purposes, to correctly inform the tenant of the “why” (the statutory ground) and the “when” of the proceedings what the landlord anticipates raising. That case was in connection with insufficient notice being given in the notice to leave. It is arguable in this case that too much notice has been given but the result is that the respondent has not been given accurate information about *when* the proceedings will be raised. This is not a minor error and is not one which can be disposed of by the tribunal in term of s73 . The wrong period of notice was given and then proceedings were raised before the erroneous notice period had expired. S 54 of the Act has not been complied with and the tribunal is therefore unable to entertain an application for eviction in terms of s 52(2).

## **Right of Appeal**

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by a 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 of the decision was sent to them.**



**Lesley A Ward Legal Member**

**29 August 2019**

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**Date**