

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(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) and in terms of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/EV/19/3416

Re: Property at 6 Cairntoul Place, Glasgow, G14 0EZ (“the Property”)

Parties:

Mr Mansoor Khalid, 13 Cairntoul Place, Glasgow, G14 0EZ (“the Applicant”) per his agents, Northwood Domino Estates, 4/5, 45, Finnieston Street, Glasgow G3 8JU (“the Applicant’s Agents”)

Mr Nazar Al - Musawi and Mrs Nidal Al - Musawi, 6 Cairntoul Place, Glasgow, G14 0EZ (“the Respondent”) per their agents, Brown and Co., Legal LLP, Fleming House, 134, Renfrew Street, Glasgow, G3 6ST (“the Respondents’ Agents”)

Tribunal Members:

Karen Moore (Legal Member)

Decision (in absence of the first –named Respondent)

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

1. By application dated 21 October 2019 comprising application form, copy Private Residential Tenancy between the Parties, copy Notice to Leave dated 25 July 2019 with an effective date of 19 October 2019 and copy notice in terms of the Homelessness etc (Scotland) Act 2003 together with proof of intimation (“the Application”) the Applicant’s Agents on behalf of the Applicant applied for a possession order in terms of Section 51 of the Act. A legal member of the Tribunal with delegated powers to do so, accepted the Application in terms of Rule 9 of the Rules and a Case Management Discussion (“CMD”) was fixed for 6 February 2020 at the Glasgow Tribunal Centre, 20 York Street, Glasgow, G2 8GT. The CMD was intimated to the Parties.

2. Prior to the CMD, the Respondents' Agents lodged a written submission that the Notice to Leave a copy of which forms part of the Application ("the Notice to Leave") does not comply with the Act and so is not a valid notice to leave. Therefore, the Application is not a valid one. The said written submission went on to state that the ground for possession had not been properly established. The written submission was intimated to the Applicant and the Applicant's Agents.

CMD

3. The CMD took place on 6 February 2020 at the said Glasgow Tribunal Centre. The Applicant was not present and was represented by Ms. Philips of the Applicant's Agents. The first-named Respondent was not present. The second-named Respondent was present and was represented by Ms. Nelson of the Respondents' Agents.
4. The Tribunal was assisted by Mr. Hassan Al-Edani, an Arabic interpreter. Ms Fatima Al-Musawi, the Respondents' daughter, accompanied her mother as a supporter in terms of Rule 11 of the Rules. The Tribunal explained the purpose and procedures of the Tribunal and, in particular, the role Ms. Al-Musawi as a supporter.
5. The Tribunal then addressed the Respondents' preliminary issue in respect of competence of the Notice to Leave. The Respondents' position is that the notice period in the Notice to Leave is deficient by one day. The Respondents' position is that, as the Notice to Leave is dated 25 July 2019, in terms of Section 62(5) of the Act, the deemed date of receipt is 27 July 2019, and, as the notice period in Section 54(2) of the Act is 84 days from the date of receipt, the first date on which the Applicant can apply to the tribunal is 20 October 2019, being the day following the expiry of the notice period as prescribed by Section 62(4).
6. The Tribunal asked Ms. Philips to comment for her views. Ms. Philips submitted that the Notice to Leave is competent as it complies with the Act. She submitted that the start date for the calculation for the 84 day notice period is the 27 July 2019 and that the effective date stated in the Notice to Leave of 19 October 2019 is 84 days plus 1 day as required by Section 62(4).
7. Ms. Nelson referred the Tribunal to Section 54(1) which states "*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*" and to Section 54(2) which states that "*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 ... (ii) 84 days after it begins*". Ms. Nelson submitted that the word "after" implies that the date of receipt is not included in the calculation. Ms. Philips submitted that the relevant word is in subsection 54(2)(a) and that the notice period "begins" on the day of receipt and so the expiry date should be calculated from that date.
8. The Tribunal gave careful consideration of both submissions and took the view that Ms. Nelson's interpretation was preferable. The Tribunal took the view that the

wording on Section 54(2) makes a distinction between the “begin” day and other days. If the legislation had intend the notice period to begin on the day of receipt it would have stated “84 days from the date it begins”. By stating “84 days after it begins”, a later date is implied and so the legislative intention is that the tenant is given the full period of notice.

9. The Tribunal noted further that Section 54 of the Act at 54(2)(a) states that the notice period begins on the day the tenant receives the notice to leave from the landlord, and, at 54(2)(b), states that it expires on the day falling... 84 days after it begins. By using the word “the” rather than “a” in Section 54(2)(b), the Act specifies precise days on which the notice period begins and expires. The Tribunal's view is that this means the notice period begins on the day it is received and expires, in this case, on the day falling 84 days after the day it begins.
10. Accordingly, the Tribunal found that the Notice to Leave is not a competent notice to leave in terms of the Act.
11. Ms. Philips referred the Tribunal to Section 73 of the Act and sought leave to amend the Notice to Leave to adjust the effective date to 20 October 2019. Ms. Philips submitted that as the date was deficient by one day only, and as the Application had been dated and submitted at a later date, 21 October 2019, the notice period error was a minor one which did not materially affect the effect of the document and did not prejudice the Respondents.
12. Ms. Nelson submitted that the error relates to the expiry date of a period of notice and, by virtue of that fact, any error in the date is material to the purpose of the document.
13. The Tribunal had regard to the wording of Section 73 which states at Section 73(1) that “*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*” and at Section 73(2) states “*This section applies to... (d) a notice to leave (as defined by section 62(1)).*” Therefore, although Section 73 allows for errors in documents to be amended, it applies to a limited group of documents.
14. The Tribunal took the view that, with regard to Section 73 (2) of the Act, Section 73(1) applied to a notice to leave as defined by Section 62(1) of the Act. The Tribunal then had regard to Section 62(1) of the Act which defines a notice to leave as, *inter alia*, a notice which “*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*”. Having determined that the notice which forms part of the Application does not specify “the day” on which the Applicant is entitled to make an application for an eviction order to the tribunal, it follows that the notice which forms part of the Application is not a notice to leave in terms of Section 62(1) of the Act and so is not a notice capable of being amended in terms of Section 73(1) of the Act.
15. Accordingly, the Tribunal determined that the Applicant did not have the benefit of Section 73 to cure the defect in the Notice to Leave.

16. In any event, the Tribunal, having regard to the fact that a notice to leave in terms of the Act is a document of the same purpose and effect as a notice to quit at common law, took the view that the same legal principles ought to apply. In short, the law in respect of notices to quit is such that they must comply strictly with the common law and statute and, so, it is the Tribunal's view the same approach should apply to the statutory notice to leave. The Tribunal, therefore, agreed with Ms. Nelson's submission that the date relates to a period of notice and, by virtue of that fact, any error in the date is material to the purpose of the document. Had the Notice to Leave been capable of being amended in terms of Section 73(1) of the Act, the Tribunal would have determined that the error was one which materially affects the effect of the document.

Decision and Reasons for Decision

17. Having determined that the Notice to Leave is not valid in terms of the Act, the Tribunal then had regard to its powers in terms of the Act. Section 52 (2) of the Act states "*The Tribunal is not to entertain an application for an eviction order if it is made in breach of (a) subsection (3)*" which subsection states "*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.*" Having determined that no notice to leave accompanied the Application and that no notice to leave has been given to the Respondents, the Tribunal determined that it has no power to entertain the Application and so dismissed it.

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.

Karen Moore
Legal Member/Chair

6 February 2020
Date