

**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 Act”) and Rule 109 of the Rules**

**Chamber Ref: FTS/HPC/EV/21/2828**

**Re: Property at 24 Birchview Court, Inshes Wood, Inverness, IV2 5WA (“the Property”)**

**Parties:**

**Mr Simon Matthews, Taigh An Tursa, Tongue, Sutherland, IV27 4XJ (“the Applicant”)**

**Ms Fozia Siddique, 30 Moorfiel Street, Halifax, HX1 3AY and Adnan Abbas 24 Birchview Court, Inshes Wood, Inverness, IV2 5WA (“the Respondent”)**

**Tribunal Members:**

**Karen Moore (Legal Member) and Gordon Laurie (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Application be dismissed without Order.**

1. By application dated 12 November 2021 (“the Application”), the Applicant applied to the Tribunal for an Order for eviction and possession of the Property based on the Ground that the Applicant as Landlord intends to sell the Property. The Application comprised a copy of the private residential tenancy agreement between the Parties, copy Notice to Leave in terms of Ground 1 of Schedule 3 to the Act dated 12 May 2021, copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Highland Council, being the relevant local authority, copy emails from the Applicant to the Respondents stating that they should vacate the Property on 11 November 2021, and copy letter dated 12 October 2021 from Tailormade Moves of Inverness confirming that they had carried out a valuation of the Property.
2. The Application was accepted by the Tribunal and a Case Management Discussion (the “CMD”) was fixed for 20 January 2022 at 14.00 by telephone conference

**CMD**

3. The CMD took place on 20 January 2022. The Applicant and both Respondents took part.
4. The Tribunal sought the views of the Respondents in respect of the Application and was advised by Ms. Siddique that they did not oppose the Application but had struggled to find alternative accommodation.
5. The Tribunal advised the Applicant that the onus was on the Applicant to establish his case in respect of procedure, grounds and reasonableness and that the Respondents' position could be seen as matters relating to reasonableness.
6. The Tribunal advised the Applicant that it would deal with the procedural aspect of the Application and that, in its opinion, the Notice to Leave ("the Notice to Leave") issued by him is defective. The Tribunal explained that in terms of the Act, a full six months' notice must be given and that the date from which the six-month period is calculated as having ended is the day following the day after the period begins. The Tribunal explained that the day on which the notice period begins is two days after the notice to leave is sent. The Tribunal noted that in this case, the Notice to Leave is dated 12 May 2021 and provides that the day on which the notice period ends is 12 November 2021. In terms of the Act, the day on which the notice period ends should have been given as 15 November 2021. The Application was made on 12 November 2021 and the emails from the Applicant to the Respondents state that the end of the relevant six-month notice period is 11 November 2021. Therefore, the Respondents were not given the full notice period to which they were entitled in terms of the Act. The Applicant advised the Tribunal that the error in the Notice to Leave was his administrative mistake.

### **Findings in Fact.**

7. From the Application and the CMD, the Tribunal found the following:
  - i) There is a tenancy of the Property between the Parties;
  - ii) The Applicant sent the Notice to Leave dated 12 May 2021;
  - iii) The Notice to Leave stated that the earliest day on which proceedings could be raised is 12 November 2021, which date is incorrect in terms of the Act;
  - iv) The Applicant sent emails to the Respondents advising them to vacate the Property on 11 November 2021, which advice was incorrect in terms of the Act and
  - v) Tailormade Moves valued the Property for sale on 12 October 2021.

### **Decision of the Tribunal and Reasons for the Decision.**

8. The Tribunal adjourned to consider the effect of the defect in the Notice to Leave. The Tribunal had regard to the Application and the information before it. The Tribunal had regard to Section 73 of the Act and considered if it could treat the defect as a minor error which did not materially affect the Notice to Leave and took the view that the notice period is the core purpose of a notice to leave and so an error in the notice period is material and is not a minor error. The Tribunal had regard to the Coronavirus (Scotland) Act 2020 at Paragraph 10 of Schedule 1 which allows that errors in a notice

to leave does not render it invalid if the notice is relied upon during a time when the notice would be valid if it had been completed correctly. In this case, the proceedings were raised and the Notice to Leave was relied on before the correct notice period had expired. Accordingly, the Tribunal had no discretion to treat the Notice to Leave as valid in spite of its defect.

9. The Tribunal had regard to the emails sent by the Applicant to the Respondents and noted that these gave the Respondents notice that they must vacate the Property on 11 November 2021 and took the view that these emails did not assist in evidencing that the Respondents had been given the full statutory notice to which they were entitled.
10. Accordingly, the Tribunal determined that the Notice to Leave is not a valid notice to leave in terms of the Act and cannot be relied upon by the Applicant. Therefore, the Tribunal dismissed the Application and made no Order.
11. The Tribunal, having found that the Notice to Leave was not valid, did not require to consider the reasonableness test or the statutory grounds on which the Notice to Leave was sent but made the Parties aware that the legal meaning of “intend” is a firm and settled intention. The Tribunal advised the Parties that if further proceedings are to take place, the Parties should consider seeking legal advice.

## **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**

**20<sup>th</sup> January 2022**

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**Legal Member/Chair**

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**Date**