



**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**

**Chamber Ref: FTS/HPC/EV/19/0958**

**Re: Property at 11 Ashgrove Avenue, Stevenston, KA20 4EG (“the Property”)**

**Parties:**

**Mr Alan Speers, Mrs Margaret Speers, 66 Granagh Road, Cullybackey, Ballymena, Co Antrim, BT42 1PR (“the Applicants”)**

**Mr Steven Lindsay, 11 Ashgrove Avenue, Stevenston, KA20 4EG (“the Respondent”)**

**Tribunal Members:**

**Nairn Young (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

- Background

This is an application for an eviction order to evict the Respondent from the Property, which he occupies in terms of a private residential tenancy. It called for a case management discussion at 10am on 24 July 2019. The Applicants were not present, but were represented by Ms Jane Parks of MacKenzie Way Estate and Letting Agents. The Respondent was not present or represented.

- Findings in Fact

1. The Respondent occupies the Property in terms of a private residential tenancy with a start date of 30 March 2018. On 13 December 2018, the Applicants’ agents sent a notice purporting to be a notice to leave to the Respondent. That notice stated that, if the tenant failed to vacate the Property, an application for an eviction order would be made in terms of Ground 2 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act

2016 ('the Act') (i.e. 'The Let Property is to be sold by the mortgage lender). It also stated that the landlord expected to become entitled to make an application for an eviction order on 11 March 2019.

2. The Applicants received a letter dated 13 February 2019 from Mortgage Express, who hold a standard security over the Property, threatening to issue a formal demand for repayment of the full mortgage balance, due to an unspecified breach of the mortgage conditions.
- Reasons for Decision
3. Section 52(2) of the Act states that, "The Tribunal is not to entertain an application for an eviction order if it is made in breach of subsection (3)." Subsection (3) 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."
  4. A 'notice to leave' is defined in s.62 of the Act as a notice which, among other requirements, "specifies the day upon 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." Subsection (4) goes on to require that the day specified must be, "the day falling after the day on which the notice period defined in section 54(2) will expire."
  5. The notice period required by s.54(2) in this case begins two days after the date of sending the notice, on 15 December 2018: and ends 84 days after that date, on 9 March 2019. The day to be specified in the notice is therefore 10 March 2019. By specifying a different date, the notice fails to meet the requirements to be a notice to leave and the application should not be entertained by the Tribunal.
  6. Section 73 of the Act allows that minor errors do not invalidate the notice as a notice to leave, unless the error materially affects the effect of the document. The Tribunal does not consider that this exception applies in this case. A notice to leave has the effect of defining the notice period required (in terms of s.54 of the Act) and, thereby, the period of six months within which an application may be made. It is therefore intrinsic to a notice to leave that the correct period is stated. The Act gives a specific date that must be entered on the notice: it does not say that that date must be 'at earliest' the day after the expiry of the notice period. The Tribunal therefore considered that the statement of the wrong date was not a minor error.
  7. Even if that assessment is incorrect and the application should be entertained, the Tribunal would have refused the application, on the basis that the ground stated is not made out. Ground 2 requires that the property is to be sold by the lender. There was no evidence presented that the lender is in fact entitled to sell the property, or that it requires the tenant to leave the property for the purpose of disposing of it with vacant possession. The only evidence presented related to the lender's intentions was the letter of 13 February

2019, which only indicates an intention to serve a formal demand, if the breach of conditions is not remedied.

- Decision

Application refused.

### **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.**

N Young

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**Legal Member/Chair**

24 JULY 2019  
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**Date**