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 52 of the Private Housing Tenancies (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/25/5293

Re: Property at 6/6 West Pilton Avenue, Edinburgh, EH4 4BT ("the Property")

Parties:

Ms Shuang Pan, 11 Pearce Avenue, Edinburgh, EH12 8SW ("the Applicant")

Ms Justina Oladun Ogundolai, 6/6 West Pilton Avenue, Edinburgh, EH4 4BT ("the Respondent")

Tribunal Members:

Rory Cowan (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

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

- Background

By application dated 27 October 2025, the Applicant seeks an eviction order against the Respondent under ground 12 of schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (the Application). With the Application, the Applicant has submitted supporting documents including:

1) Notice to Leave dated 22 July 2025.
2) Lease dated 1 November 2022.
3) Rent Statement as at 27 October 2025.
4) Invoice dated 27 March 2025 for charges made due to late payments.
5) Copies of various letters and reminders issued to the Respondent regarding the arrears.

Following acceptance of the Application, a Case Management Discussion (CMD) was fixed for 26 June 2026 and heard by way of conference call. The CMD on 26 June 2026 was continued to allow the Applicant to consider her position in relation to issues

that had been raised relating to the validity of the Notice to Leave as well as to allow the Applicant to lodge a further rent statement. Full details of that discussion can be found in the CMD Note dated 26 June 2026. Following the CMD on 26 June 2026, the Applicant, by email dated 22 July 2026, the Applicant (through her representatives) intimated "further submissions" to deal with the issues raised at the CMD on 26 June 2026 and in relation to the related application under FTS/HPC/CV/25/5294. Attached to those further submissions was a rent statement showing arrears as at 1 July 2026. A further CMD was fixed to be heard by way of conference call on 16 October 2026. In advance of same, the Applicant through her representatives lodged a further rent statement on 15 October 2026. On 8 October 2026, representatives on behalf of the Respondent lodged written submissions.

- The Case Management Discussion

At the CMD the Applicant appeared and was represented by a Mr Akinosho and Mrs Rowley of Letslet Property Limited, the Applicant's letting agents. The Respondent did not appear but was represented by a Mr Wilson of Community Help and Advice Initiative (CHAI). Mr Akinosho confirmed that the Applicant was still seeking an Eviction Order due to arrears and pointed to the most recent rent statement that detailed those arrears as being £16,500. Mr Wilson indicated that this was opposed on the basis that the NTL had not been validly served, nor had it been completed properly in that Part 3 of the NTL simply referred to "*Tenant is in arrears of at least 3 consecutive months*". His fall back was that, in any event it would not be reasonable to evict the Respondent in the circumstances. He also stated that it was not accepted that the NTL had been received by the Respondent and stated that she first saw it when she received the Application paperwork, something Mr Akinosho disputed stating she had been in correspondence with them about arrears and was aware of the NTL.

Mr Akinosho referred to the email of 22 July 2026 which sets out the position regarding the NTL. The relevant parts of which were:

"2. Service of the Notice to Leave

Letslet Property Management acknowledges that the Notice to Leave dated 22 July 2025 was served by email.
Letslet Property Management accepts that the tenancy agreement did not contain an express provision authorising service of statutory notices by electronic communication, nor was there a separate written agreement in terms of section 26(3) of the Interpretation and Legislative Reform (Scotland) Act 2010.
However, Letslet Property Management submits that:
the Respondent received the Notice to Leave and has never suggested that she was unaware of it or deprived of the opportunity to understand its purpose;
the Respondent has actively engaged with the Letslet Property Management regarding the tenancy and the rent arrears throughout the relevant period;
the Respondent has participated fully in these proceedings and has suffered no prejudice arising from the method of service and that any defect did not materially affect the notice.
Accordingly, if the Tribunal concludes that there was a defect in the method of service, Letslet Property Management respectfully invites the Tribunal to consider

whether that defect materially affected the effect of the Notice to Leave for the purposes of section 73 of the Private Housing (Tenancies) (Scotland) Act 2016.

3. Content of the Notice to Leave

Letslet Property Management acknowledges that the Tribunal's observations regarding the information contained in Part 3 of the Notice to Leave.
The Notice identified the statutory eviction ground relied upon, namely that the tenant had been in rent arrears for at least three consecutive months.
Letslet Property Management's intention was to notify the Respondent of the statutory basis upon which possession was sought. Throughout the tenancy, the Respondent had received numerous reminders, correspondence regarding the arrears, and statements of account identifying the outstanding rent.
Although the Notice itself did not specify the precise amount of arrears or include a detailed rent statement, the Respondent was aware of the arrears position and had entered into a repayment arrangement with Letslet Property Management in March 2026, agreeing to pay an additional £500 per month towards the arrears, because the cooperative contribution group that she relied upon did not accept her on the scheme due to trust issues, respondent had agreed on payment of £5000 lumpsum to clear the arrears. This demonstrates that she understood both the existence and nature of the arrears.
The Letslet Property Management therefore submits that the purpose of the Notice— to inform the Respondent of the eviction ground relied upon and that possession proceedings could follow— was achieved. Any omission of further particulars did not materially prejudice the Respondent's ability to understand the basis of the proposed eviction or to respond to it.
Accordingly, if the Tribunal concludes that the Notice contains a procedural defect, the Letslet Property Management respectfully invites the Tribunal to determine that any such defect did not materially affect the effect of the Notice within the meaning of section 73 of the 2016 Act. 4.

Conclusion

Letslet Property Management respectfully submits that the Tribunal should be satisfied that the Respondent had actual notice of the proposed proceedings, understood the basis upon which possession was sought, and has suffered no material prejudice. Letslet Property Management therefore invites the Tribunal to allow the application to proceed to a substantive hearing."

Whilst there were additional discussions, the position advanced was as per the written submissions.

In response, Mr Wilson's position was that the NTL had not been validly served as there had been no consent (written or otherwise) given for email service to be used. He further stated that section 73 of the Private Housing (Tenancies)(Scotland Act 2016 (2016 Act) could not assist here as the issue was not one of minor errors in documents. In terms of the way Part 3 of the NTL had been completed, his position was that whilst some eviction grounds may not need very much detail in Part 3, when dealing with tenant conduct grounds a landlord required to provide detail of the conduct complained of. In relation to arrears, that would mean setting out the arrears

and when they were due so that a tenant could know what sum is due and from when. This would allow a tenant to know what it is the landlord is basing their claim on, but also what it is a tenant would need to do to remedy the situation.

- Reasons for Decision

The service of NTLs is governed by section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010. In particular, whilst section 26(2)(c) allows for service by "*electronic communications*" this is subject to section 26(3), which states as follows:

"(3) This subsection applies where, before the document is served, the person authorised or required to serve the document and the person on whom it is to be served agree in writing that the document may be sent to the person by being transmitted to an electronic address and in an electronic form specified by the person for the purpose."

As such, in order for a party to rely upon electronic communication for service of a NTL, there needs to be a written agreement to such communication which includes a specified electronic address for that purpose. It is a matter of agreement between the parties that no such written consent was given by the Respondent. As such and whilst section 26 is a permissive provision, without such written consent, the Applicant cannot demonstrate that the NTL was validly served on the Repsondent (irrespective of whether or not she actually received it). On that basis alone, the Application falls to be refused. Whilst Mr Akninosho suggested he could rely on section 73 of the 2016 Act as a fall back, this submission was not well founded. Section 73 provides that minor errors in certain documents listed by section 73(2) will not invalidate them. The point at issue here was whether or not there had been written authority for electronic service and, not one of the categories of documents section 73 relates to and as a result, section 73 could not assist the Applicant.

The Tribunal cannot entertain an application for an eviction order in certain circumstances. Section 52, in so far as relevant to this Application, provides:

"52 Applications for eviction orders and consideration of them
(1) ……..
(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of— (a) subsection (3) …
(b) ……...
(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) ……..."

The meaning of notice to leave and stated eviction ground is provided for by section 62 of the 2016 Act. This section provides:

"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.
(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.
(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).
(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."

In terms of section 62(1) of the 2016 Act the NTL must include four listed requirements. This includes fulfilling any requirements prescribed by Scottish Ministers by regulation. The appropriate style document was used by the Applicant. The introductory section to prescribed style NTL advises tenants that if they have any questions about the notice they should speak to their landlord or contact various listed agencies or individuals who may be able to assist or provide guidance.

Part 1 of the NTL is for the tenant's details. Part 2 is headed "EVICTION GROUND(S) BEING USED". After the contact details of the landlord or landlord's agent have been completed, Part 2 states:

"(I/We) inform you that if you choose not to leave the Let Property on the date shown in Part 4 of this notice I/we intend to apply to the Tribunal for an eviction order in respect of the Let Property on the following ground(s) which is the ground(s) for eviction as set out in schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016:"

In Part 2 of the notice there is then a list of the grounds to be found in Schedule 3 of the 2016 Act. This is a "tick-box" exercise, but each box is then followed by a summary of the nature of each ground.

Part 3 of the notice is headed "DETAILS AND EVIDENCE OF EVICTION GROUND(S)". There then appears the following:

"[I/We] also inform you that [I/we] are seeking eviction under the above ground(s) for the following reasons: [State particulars of how you believe the ground(s) have arisen – continue on additional sheets of paper if required. Please give as much detail as possible including relevant dates, and in cases of rent arrears insert the amount of arrears outstanding and the period over which it has built up.]"

After the space provided to give this information, there is a further pre-populated part of the NTL which states:

"It is important that the Tenant fully understands why you are seeking to evict them and that the action you are taking is justified. The provision of supporting evidence with this notice can help do that.
[I/We] attach the following evidence to support the eviction action;"

Finally, Part 4 of the notice is headed "THE END OF THE NOTICE PERIOD". The following appears there prior to a space for the notice to be signed and dated:

"*An application will not be submitted to the Tribunal for an eviction order before _____ (insert date). This is the earliest date that the Tribunal proceedings can start and will be at least the day after the end date of the relevant notice period (28 days or 84 days depending on the eviction ground).*"

Section 73 of the 2016 Act provides as follows:

"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—
(a) a notice under section 14(3), 16(3)(c), 22(1) or 61(1),
(b) the document by which a referral is made to a rent officer under section 24(1),
(c) the document by which an application is made to a rent officer under section 42(1), and
(d) a notice to leave (as defined by section 62(1))."

The NTL is an important document and is the basis under which a landlord can initiate the termination of a Private Residential Tenancy. A tribunal cannot entertain an application for an Eviction order without a NTL. Whilst it is not the case for every ground (for example ground 1 where very little is required to be said other than that the landlord wishes to sell a property), if a landlord seeks to rely on rent arrears as a basis for eviction, then as a matter of fair notice, the reasons for seeking eviction (and the basis or particulars of same) become more important. In relation to rent arrears, the purpose of the NTL is not just to start the eviction process and to warn the tenant of that process but also to provide a tenant with fair notice of the steps they can take (for example by paying the arrears) to avoid eviction. That means stating the actual arrears as well as the dates of non-payment. The wording in Part 3 of the NTL lodged with the Application and upon which it is based contains no such information. Whilst Mr Akinosho's primary position was no such detail was required for the NTL in Part 3, as an alternative, he sought the assistance of section 73 indicating that such an omission would be a "minor defect" and would therefore not render the NTL invalid. Whilst technically not something the Tribunal requires to opine upon due to the decision that the NTL was invalid due to service, even if it the NTL had been validly served, the Tribunal would have decided that the NTL itself was invalid due to the failure to complete Part 3 of same with details of the arrears. This failure in the view of the Tribunal was more than a "minor" error in that the wording used in the NTL fails to give fair notice of the particulars of the ground for eviction in question and upon which the Applicant intends to seek and Eviction Order.

- Decision

The Application for an Eviction Order is 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.

Rory Cowan

Legal Member/Chair **Date 16 October 2026_**