



**DECISION AND STATEMENT OF REASONS OF PETRA HENNIG MCFATRIDGE LEGAL  
MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER  
PRESIDENT**

Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules  
of Procedure 2017 ("the Procedural Rules")

in connection with

Case reference FTS/HPC/EV/22/2908

**Parties**

**Miss Lyndsey Robinson (Applicant)**

**Miss Melissa McLeod (Respondent)**

**18 Reston Drive, Glasgow, G52 2LW (House)**

**PROCEDURAL BACKGROUND:**

1. The application under Rule 109 of the Procedural Rules being an application for an eviction order under S 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) was made on 16.8.22.
2. The following documents were ultimately lodged in connection with the application:- S 11 Notice to Local Authority, Notice to Leave dated 14.7.22 with confirmation it was sent by email the same day, Copy Private Residential Tenancy Agreement, email to local authority enclosing Notice to Leave, correspondence between parties re Cannabis smell and text exchange regarding sending Notice to Leave, end of tenancy correspondence.

The PRT between the parties commenced on 12.10.20 and Notice to Leave was sent on 14.7.22 with the date of 13.8.22 stated in part 4 as the first day when proceedings could start. The grounds of eviction stated on the application were “rule 65- Housing (Scotland) Act 1988 ground 1 I intend to live in the property and ground 13 breach of tenancy agreement section 31”

3. On 13.9.22 the First-tier Tribunal asked the applicant to provide further information on the following issues:” 1. You have included two grounds of eviction in the Notice to Leave, which require separate notice periods. Ground 4 requires you to give 84 days’ notice, which you have not done. Ground 11 requires you to give 28 days’ notice, however, the period of notice provided would appear to be a day short of that required in terms of section 62 of the Private Housing (Tenancies) (Scotland) Act 2016, as there is a presumption that the Notice to Leave is received 48 hours after it is sent, and the earliest date on which proceedings can start is the following day. Please provide your written representations as to the validity of the Notice, also taking into account the provisions of section 54(3) of the 2016 Act. You may wish to take advice on these matters and consider whether you wish to withdraw your application and serve a further Notice giving the correct period of notice. 2. The application form refers to incorrect grounds of eviction. This is not a tenancy created under the Housing (Scotland) Act 1988. Subject to your response to the above point, please provide an amended page of the application form showing the correct grounds of eviction. 3. You have not provided a section 11 form, together with notification of service on the local authority, as required by section 56 of the 2016 Act. You have provided a copy of the Notice to Leave to the local authority, but this is not what is required. “
4. On 26.9.22 the Applicant asked for advice and was then advised on 25.10.22 by the FTT that no advice can be provided by the Tribunal and the Applicant was signposted to organisations providing legal advice.
5. On 11.11.22 the Applicant advised:” In regards to the 28 days notice + 2days. Raising the action a day early had been an admin error of mine. This error has been due to the stress I have been under being homeless with my 2 children. I was aware there has to an extra 2 days and said that on a “what’s app” message to the tenant within the property.” The Applicant provided a S 11 notice and amended the application as follows: “PART 3: TENANT’S CONDUCT Ground 11: Tenant has breached a term(s) of the tenancy agreement Ground 31 in tenancy agreement signed on 12 October 2020 section 31 states – The Tenant will not keep any animals or pets in the Let Property without the prior written consent of the Landlord. Any pet (where permitted) will be kept under supervision and control to ensure that it does not cause deterioration in the condition of the Let Property or common areas, nuisance either to neighbours or in the locality of the Let Property. The tenant failed to request permission for a dog she has at the property.”
6. The documents are referred to for their terms and held to be incorporated herein.

## DECISION

I considered the application in terms of Rule 8 of the Procedural Rules. That Rule provides:-

*"Rejection of application*

*8.—(1) The Chamber President or another member of the First-tier Tribunal under the delegated powers of the Chamber President, must reject an application if –*

*(a) they consider that the application is frivolous or vexatious;*

*(b) the dispute to which the application relates has been resolved;*

*(c) they have good reason to believe that it would not be appropriate to accept the application;*

*(d) they consider that the application is being made for a purpose other than a purpose specified in the application; or*

*(e) the applicant has previously made an identical or substantially similar application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, there has been no significant change in any material considerations since the identical or substantially similar application was determined.*

*(2) Where the Chamber President, or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, makes a decision under paragraph (1) to reject an application the First-tier Tribunal must notify the applicant and the notification must state the reason for the decision."*

**After consideration of the application, the attachments and correspondence from the Applicant, I consider that the application should be rejected in terms of Rule 8 (c) of the Rules of Procedure on the basis as the Tribunal has good reason to believe that it would not be appropriate to accept the application.**

## **REASONS FOR DECISION:**

### **Applicable Legislation:**

*S 62 of the Private Housing (Tenancies) (Scotland) Act 2016 states:*

*62 Meaning of notice to leave and stated eviction ground*

*This section has no associated Explanatory Notes*

*(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.*

*S 54 of the said Act states:*

*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,*

*(ii) 84 days after it begins if subsection (3) does not apply.*

*(3) This subsection applies if—*

*(a) on the day the tenant receives the notice to leave, the tenant has been entitled to occupy the let property for not more than six months, or*

*(b) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—*

*(i) that the tenant is not occupying the let property as the tenant's home,*

*(ii) that the tenant has failed to comply with an obligation under the tenancy,*

*(iii) that the tenant has been in rent arrears for three or more consecutive months,*

*(iv) that the tenant has a relevant conviction,*

*(v) that the tenant has engaged in relevant anti-social behaviour,*

*(vi) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour.*

*(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).*

*S 52 of the Act states:*

*52 Applications for eviction orders and consideration of them*

*(1) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.*

*(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.*

*(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so.*

*(5) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—*

*(a) is stated in the notice to leave accompanying the landlord's application in accordance with subsection (3), or*

*(b) has been included with the Tribunal's permission in the landlord's application as a stated basis on which an eviction order is sought.*

*S 73 of the Act states:*

*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—*

...

(d) *a notice to leave (as defined by section 62(1)).*

### **Findings and Reasons:**

1. In terms of S 52 (3) of the Act an application must be accompanied by a copy of the Notice to Leave. I consider that this means that a valid Notice to Leave must be submitted with the application. The issue here is whether or not the Notice to Leave was a valid Notice to Leave and thus fulfills the requirement of S 52 (3) of the Act.
2. The issue in this case is the calculation of the notice period. The expiry of the period stated in S 54 (2) (b) (ii) of the Act will be 84 days after the date of service as the tenant had been entitled to occupy the property for more than 6 months and one of the grounds stated in the Notice to Leave, ground 4, requires an 84 day notice period. The notice period is not 28 days despite one of the grounds stated, ground 11, being a ground listed in S 54 (3) (b) (ii). Ground 11 is not the only ground stated on the Notice to Leave and thus S 54 (3) does not apply. The correct notice period for the Notice to Leave given on grounds 4 and 11 is thus 84 days. The date of 13.8.22 stated in part 4 of the Notice to Leave is thus incorrect.
3. Even if one applied only ground 11 on the basis that the Applicant has since amended the application to ground 11 only, the Notice to Leave is still invalid as the date stated in part 4 is still wrongly stated. In terms of S 62 (5) of the Act it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent. This would then mean the notice to leave is assumed to have been received on 16.7.22 as it was emailed to the respondent on 14.7.22. The correct date which should have been entered in part 4 of the Notice to Leave would thus be 14.8.22 not 13.8.22 even for a 28 days notice period.
4. The applicant was made aware of the issue in the request for further information and explained this had been a calculation error on her part.
5. The calculation of the applicant is simply not correct. The legislation sets out explicitly the dates and periods which have to be observed to create a valid Notice to Leave. This is further described in detail in the guidance notes on the Notice to Leave. A

tenant, having so been advised, must then be able to rely on the accuracy of the information provided in the Notice to Leave. The date stated on the notice is not the correct date. The calculation overlooks the provision of S 62 (4) of the Act, which states: *“(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.”*

6. The calculation is based on the date on which the Notice to Leave was sent and adding 28 days notice period and 2 days in terms of S 64(5) of the Act. It omitted to take into account that the date stated in S 64(1) (b) falls the day after the expiry of the notice period and it did not take into account that due to the Notice to Leave being issued for 2 grounds, one of which requires a 84 day notice period, the notice period itself was wrongly calculated.
7. The Tribunal has considered whether S 73 of the Act may be applicable in this case to assist the applicant. This states: (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.
8. In the Tribunal’s view, the word “effect” in section 73 (and in the explanatory note) denotes the effect the notice is intended to have if it is completed without error. It follows from section 62(1)(b), (c) and (d) that a notice to leave completed without error will give the tenant certain information, namely: 1. 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 FTT, being the day after the notice period expires (section 62(1)(b)). This date is stated in part 4 of the prescribed form, in which the tenant is expressly advised that “An application will not be submitted to the Tribunal for an eviction order before [the date]”, 2. The eviction ground on which the landlord intends to seek an order (section 62(1)(c)), which is indicated by ticking the appropriate box in part 3 of the prescribed form, 3. Details and evidence of the eviction ground (section 62(1)(d) and part 3 of the prescribed form, 4. The tenant’s details (section 62(1)(d) and part 1 of the prescribed form), 5. The name, address and telephone number of the landlord or his agent (section 62(1)(d) and part 2 of the prescribed form). All these parts of the form require to be completed.
9. In the Tribunal’s view, an error in completion “affects the effect” of the notice to

leave if, as a result of the error, the notice does not give the tenant that information. In this case, the error clearly “affects the effect” of the notice to leave, because a correct notice would have informed the Respondent of the correct date on or after which an application to the Tribunal could be submitted. That was not done.

10. The notice should, at the very least, correctly inform the tenant of the “why” (the statutory ground) and the “when” of the proceedings that the landlord anticipates raising.

11. To state an earlier date than the date on which, in terms of the Act, the landlord is entitled to raise proceedings is not, in the view of the Tribunal, “an obviously minor error” which could then be dealt with in terms of S 73 of the Act by the Tribunal. It is an error which causes the notice to fail in achieving one of its fundamental purposes.

**12.** For these reasons, the Tribunal finds that, in terms of section 73, the error of stating “13 August 2022” in part 4 of the notice to leave materially affects the effect of the notice and makes it invalid. It is not a “notice to leave” under section 62. Therefore, the document which accompanied the application to the First-tier Tribunal was not, for the purposes of section 52(3), “a copy of a notice to leave”, and accordingly, given section 52(2)(a), the Tribunal cannot entertain the application.

**13. For the above reasons the application has to be rejected.**

### **What you should do now**

**If you accept the Legal Member's decision, there is no need to reply.**

**If you disagree with this decision:-**

**An applicant aggrieved by the decision of the Chamber President, or any Legal Member acting under delegated powers, 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. Information about the appeal procedure can be forwarded to you on request.**

Petra Hennig McFatridge

Legal Member

29 November 2022



