Upper Tribunal for Scotland

2025UT68
Ref: UTS/AP/25/0019

DECISION OF

SHERIFF SG COLLINS KC

ON AN APPEAL
IN THE CASE OF

Mr John Halcrow and Mrs Elizabeth Halcrow

Appellants

- and -

Mr Ben Johnson Davies and Miss Shauni Hunter

Respondents

FTS Case Reference: FTS/HPC/EV/24/2653

27 August 2025

Decision

The appeal is allowed. The failure of the notice to leave to correctly specify, in accordance with section 62(1)(b) of the Private Housing (Tenancies) (Scotland) Act 2016, the day on which the appellants expected to become entitled to make an application for an eviction order, is not an error which materially affects the effect of the document for the purposes of section 73. The notice to leave, and the application, are accordingly valid in this respect for the purpose of section 52(3). The case is remitted to the FTS to determine the application on its merits.

Introduction

1. The appellants are landlords of the property at 17 Scalloway Road, Lerwick ("the property"). The respondent are the tenants. The appellants applied to the First-tier Tribunal for Scotland ("the FTS") for an eviction order under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). On 10 December 2024 the FTS decided that the application should be rejected as invalid, as the notice to leave did not conform to section 62(1)(b) of the 2016 Act - by stating the wrong date for the purpose of this subsection - and thus that it, and therefore the application, were invalid for the purposes of section 52(3). The FTS therefore rejected the application as frivolous in terms of rule 8(1)(b) of the First-Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the 2017 Procedure Rules"). The FTS refused the appellants permission to appeal this decision by further decision of 8 February 2025, but limited permission was granted by the Upper Tribunal on 27 February 2025. By letter received 21 March 2025 the respondents indicated that they did not wish to oppose the appeal and offered no written response in answer to it. Neither party sought an oral hearing of the appeal, and so a paper case notification was issued on 25 April 2025.

Factual background

2. The respondents became tenants of the property on 27 January 2020, pursuant to a private residential tenancy agreement under the 2016 Act. In terms of clause 4 thereof the respondents agreed that any notices which might be served on them under the Act in relation to the tenancy could be sent by email.

3. On 6 December 2023 the appellant's letting agent drew up a notice to leave in terms of section 62 of the 2016 Act. This notice was on a form prescribed under section 62(1)(d) by Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 ("the 2017 Regulations"). In particular the notice intimated to the respondents that if they did not leave the property on the date shown in part 4 of the notice, the appellants would apply to the FTS for an eviction order on the ground that they intended to sell the property: 2016 Act, schedule 3, ground 1.

4. Part 4 of the notice is headed "The end of the notice period", and states that

> "An application will not be submitted to the Tribunal for an eviction order before 1st March 2024. This is the earliest date that 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)…"

This wording followed the prescribed form, but the date was entered into it by the appellant's agent. There is no dispute that the relevant period of notice was 84 days (12 weeks). The 1st of March 2024 was a Saturday.

5. The appellant's agent emailed the notice to the respondents. Her email was at 12.30pm on 6 December 2023, and reads:

> "As per my telephone call with [the first respondent] today, please find attached the notice to leave. If you have any further questions or queries, then please get in touch."

Eight minutes later the first respondent emailed the appellants' agent back, confirming receipt of the notice.

6. The respondents did not leave the property by or on 1 March 2024. However the appellants did not seek to lodge an application with the FTS seeking an order to evict the respondents until 11 June 2024, nearly 15 weeks later. Various queries were raised in relation to this application by the clerks to the FTS. Following an exchange of correspondence a revised application dated 6 November 2024 was lodged by the appellants and accepted by the FTS. This was eleven months after the notice to leave had been received by the respondents, and eight months after the end date of the notice period stated in it.

The legislation

7. Section 52 of the 2016 Act provides:

> "**52 Applications for eviction orders and consideration of them**
> …(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."

8. Section 54 of the 2016 Act provides as follows:

"**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)."

9. Section 62 of the 2016 Act provides as follows:

"**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."

10. 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))."

11. The Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 (SSI 2017/297) prescribe requirements for the purposes of section 62(1)(d). Regulation 6 provides that:

"**6. Notice to leave**

A notice to leave given by the landlord to the tenant under section 50(1)(a) (termination by notice to leave and tenant leaving) of the Act must be in the form set out in schedule 5."

12. The prescribed form in schedule 5 of the 2017 Regulations provides in particular:

> "**Part 4 – THE END OF THE NOTICE PERIOD**
>
> An application will not be submitted to the Tribunal for an eviction order before _____ (insert date). This is the earliest date that 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 or how long you have occupied the Let Property).
>
> Signed:
>
> (Landlord(s) or Agent):_____
>
> Dated:_____"

13. Sections 1, 21 and 26 of Interpretation and Legislative Reform (Scotland) Act 2010, insofar as relevant for present purposes, provide as follows:

> "**1 Application of Part 1**
> (1) This Part applies to—
> (a) Acts of the Scottish Parliament the Bills for which receive Royal Assent on or after the day on which this Part comes into force,
> (b) Scottish instruments made on or after that day … and
> (c) this Act…
> (2) This Part does not apply in so far as—
> (a) the Act or instrument provides otherwise, or
> (b) the context of the Act or instrument otherwise requires."
>
> "**21 Forms**
> Where a form is prescribed in or under an Act of the Scottish Parliament, a form that differs from the prescribed form is not invalid unless the difference materially affects the effect of the form or is misleading."
>
> "**26 Service of documents**
> (1) This section applies where an Act of the Scottish Parliament or a Scottish instrument authorises or requires a document to be served on a person (whether the expression "serve", "give", "send" or any other expression is used).
> (2) The document may be served on the person—
> …

(c) where subsection (3) applies, by being sent to the person using electronic communications.

(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.

…

(6) Where a document is served as mentioned in subsection (2)(c) it is to be taken to have been received 48 hours after it is sent unless the contrary is shown."

The decision of the FTS

14. Having set out the legislative background the FTS noted that the date specified in the notice to leave was 1 March 2024. It then held that:

> "This date is clearly incorrect. In terms of section 62(4) of the 2016 Act, the notice must state a date being "the day falling after the day on which the notice period defined in section 54(2) will expire". The 84 day period started on 8 December 2023 (48 hours after it was sent) and expired on 1 March 2024. The date in Part 4 should therefore be 2 March 2024… The opening words of section 62 indicate that a Notice to leave has to fulfil the four requirements in sections (a) to (d) of that section. It follows that a notice to leave which does not fulfil these requirements is not a "notice to leave" in terms of the 2016 Act. The notice submitted with the application does not fulfil the requirement specified in section 62(1)(b), as the Notice wrongly indicates that the applicant expected to be able to make an application to the Tribunal on 1 March 2024. As a result, the notice that has been submitted is not a notice to leave in terms of section 62. As the application to the Tribunal has to be accompanied by a notice to leave, the applicant has failed to comply with section 52 of the 2016 Act and, as a result, the Tribunal cannot entertain the application."

Accordingly the application was held to be frivolous in terms of rule 8(1)(a) of the 2017 Procedure Rules, being "futile, misconceived, hopeless or academic" (cf. *R v North West Suffolk (Mildenhall) Magistrates Court ex parte Forest Heath District Council* [1998] Env. LR 9 per Lord Bingham at page 16.

15. The appellants sought permission to appeal. In their first ground of appeal they argued, in effect, that on a proper construction of the statutory provisions the FTS had erred in concluding

that the notice to leave failed to comply with them. They relied in particular on section 62(5) of the 2016 Act, and submitted that the assumption in that subsection - namely that the tenant will receive the notice 48 hours after it was sent - did not apply where it was clear that the notice was in fact received earlier than this. This submission was rejected by the FTS as unarguable:

> "The [appellants'] argument fails to take account of the first part of [sub-section 62(5)] –"for the purpose of subsection (4)…" Subsection (4) states that the date that is to be "specified" in the Notice is "the day falling after the day on which the notice period defined in section 54(2) will expire." These provisions do not deal with the service of the Notice. They concern the calculation of the notice period by a landlord when preparing the notice for service.
>
> …There is no qualification or caveat in relation to the word "assumed". By contrast, section 26 [of the 2010 Act] states that documents sent by recorded delivery post or email are "taken to have been received 48 hours after" they are "sent unless the contrary is shown". This section would allow the recipient of a notice to challenge it on the grounds that he received it much later than the 48 hours specified. However, this qualification is absent from section 62(5).
>
> …The validity of the notice cannot be determined by circumstances which occur after the notice was sent. Either the notice was valid at the point it was sent or it was not. This benefits both parties. The landlord is entitled to rely on the notice even if it took longer to arrive than 48 hours. For example if the notice was issued by recorded delivery post and was not delivered within 48 hours the Landlord may have to delay the submission of his application to the Tribunal, but his notice would still be valid in terms of section 62."

The notice served by the appellants was therefore not a notice to leave for the purpose of section 62, and the FTS was therefore precluded from entertaining the application by virtue of section 52(3), which requires that it be accompanied by a notice to leave.

16. In a second ground of appeal the appellants argued, again in effect, that even if the notice did fail to comply with the statutory provisions in the manner stated this did not invalidate it. They sought to rely on section 73 of the 2016 Act, and argued that if there was an error in the notice it was minor, and did not invalidate it. This submission too was rejected as unarguable:

> "This argument was considered and rejected in [*Holleran v McAlister* FTS/HPC/EV/18/3231 (2 May 2019)]. The Tribunal took the view that the wording of the provision must mean that if an error does "materially affect the effect" then the error makes the document invalid. The Tribunal referred to section 21 of the

> 2010 Act… It is suggested that this provision might assist a landlord who has issued a form which is not in the prescribed format but otherwise complies with section 62. On the other hand, section 73 might assist where the correct form has been used but it contains an error. The Tribunal in *Holleran* also referred to the explanatory note to the 2016 Act and stated in the Tribunal's view the word "effect" denotes the effect that the notice is intended to have, if there had been no error. Section 62 sets out the information that must be provided to a tenant for the document to constitute a notice to leave. The effect of the notice is therefore affected, if this information is not provided. As the [appellants'] notice does not provide the date referred to in section 62(1)(b), the effect of the notice has been affected. The question is – has it been materially affected? The explanatory note talks about "an obviously minor error". This might refer to misspelling the name of the tenant or stating that a tenancy started in 2023 rather than 2024. However if the notice required to provide certain information in terms of section 62, this information must be fundamental to the notice to leave. If this is the case, a failure to provide a key piece of the specified information is not minor but material to the effect of the notice."

Accordingly, and in effect, the FTS held that for a landlord to state the wrong date in a notice to leave would always materially affect the effect of it, and therefore that notwithstanding section 73 such an error would always render the notice invalid.

17. The appellants repeated these two grounds of appeal in their application to the Upper Tribunal, and permission was granted in relation to both of them.

Analysis and decision

18. An application to the FTS for an eviction order must be accompanied by a notice to leave: 2016 Act, section 52(3). A notice to leave must comply with subsections 62(1)(a) to (d). It must therefore specify the day on which the landlord expects to become entitled to make an application to the FTS for an eviction order: subsection 62(1)(b). That day is the day falling after the day on which the relevant notice period will expire: subsection 62(4). The relevant notice period begins on the day the tenant receives the notice to leave from the landlord: subsection 54(2)(a). It expires on the day falling either 28 or 84 days after it begins, depending on which ground eviction may be sought: subsection 54(2)(b). But for the purposes of determining when the relevant notice period expires, it is to be assumed that the tenant will receive the notice 48 hours after it is sent: subsection 62(5). This assumption is not expressly subject to the contrary being shown, and such a qualification is not to be implied by section 26(6) of the 2010 Act. This is because the context of section 62(5) is the calculation of the notice

period, not the service of the notice itself, which is the issue towards which section 26(6) is directed: 2010 Act, section 1(2).

19. As the FTS observed at paragraph 44 of its decision in *Holleran*, these unnecessarily complex provisions set a trap for landlords. The working out of the correct date to be stated in the notice to leave, by reference to sections 54 and 62, presents an exercise that would challenge a legally qualified person let alone a lay person. As the FTS also noted, section 4 of the prescribed form is apt to mislead by its reference to "the day after the end date of the relevant notice period (28 days or 84 days…)". This fails to take account of section 62(5), and therefore to make clear that the relevant notice period will not start until 48 hours after the notice to leave is sent. A further point well made by the FTS in *Holleran* is that there is no margin for error in relation to identifying the correct day for the purpose of subsection 62(1)(b). Subsection 62(4) does not say, as for example it could have, that the 'day to be specified… is a day *no earlier than* the day falling after the day on which the notice period will expire'. This would have ensured that the tenant would get at least the minimum period of notice, but would enable the landlord to err on the side of caution by stating a later date without invalidating the notice. But in the absence of such wording, a notice to leave will fail to comply with section 62(1)(b) by giving the tenant too much notice, as well as too little. To this it may be added, in an age where many – perhaps most – notices will be sent electronically and so received immediately, that the 48 hour assumption for receipt of the notice in section 62(5) is outdated, or in any event unduly inflexible.

20. But be all that as it may, in relation to the first ground of appeal much of the reasoning of the FTS in the present case cannot be faulted. The notice was sent by email on 6 December 2023. Even though it was received and acknowledged almost immediately, for the purpose of calculating the date to be stated in part 4, it had to be assumed that the notice would not be received until 8 December 2023. This was therefore the day on which the period of notice began. This period expired on the day falling 84 days after 8 December 2023 (but not including it), that is, 1 March 2024. The day which had to be stated in part 4 of the notice to leave was therefore 2 March 2024, as the first day on which an application could be made to the FTS. As the day stated in the notice is 1 March 2024, it fails to comply with section 62(1)(b). That is so even though the tenants in fact had 84 days' notice between the date when they actually received the notice to leave on 6 December 2023 and 1 March 2024. And, it might be added, it is so even though 1 March 2024 was a Saturday and 2 March 2024 a Sunday, and therefore it was not practically possible for the respondents to make an application for eviction until Monday 3 March at the earliest.

21. Where I part company with the FTS, however, is its conclusion that merely as a result of the failure to comply with section 62(1)(b) the notice was thereby 'not a notice to leave in terms of the 2016 Act', that is, that it was necessarily invalid for the purpose of section 52(3). This conclusion fails to understand the wording and effect of section 73. This section provides 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 (emphasis added)." This applies to a range of specified documents and notices under the 2016 Act, including a notice to leave under section 62: subsection 73(2)(d). Accordingly, an error in the completion of a notice to leave does not of itself invalidate the notice. The starting point is that the notice is valid notwithstanding any errors in it. It will be invalid if, and only if, such an error materially affects the effect of the notice. The FTS therefore erred in moving directly from the conclusion that the notice did not comply with section 62(1)(b), to the conclusion that it was necessarily invalid. It could not hold the notice to be invalid without first considering, and determining, that the error materially affected the effect of it for the purpose of section 73.

22. The FTS in *Holleran* held that the word "effect" in section 73 denoted the effect the notice was intended to have, if completed without error (paragraphs 31 – 36). This was to give the tenant certain information, including the date on which the landlord expected to become entitled to make an application to the FTS for an eviction order, and the grounds on which they intended to do so. An error in the notice would therefore 'affect the effect' of the notice if it failed to give the tenant the correct date. That affect on the effect was material because, as the correct date was required by primary legislation, it was "fundamental" to the notice (paragraphs 40 – 42). To state an earlier date than that required by the statute could not be regarded as an obviously minor error - albeit that to state a later date might be (paragraph 46). It was irrelevant that there might be no prejudice to the tenant from the error (paragraphs 37 – 39). This analysis was, in effect, adopted and applied by the FTS in the present case.

23. I am unable to accept the FTS' reasoning. It proceeds on too narrow a reading of the statutory language. It assumes that absent compliance with section 62(1)(b) a notice to leave is thereby invalid, and therefore that compliance with this subsection must be 'fundamental'. The correct analysis is that a notice to leave which contains an error – including a failure to comply with section 62(1)(b) - is on the face of it valid unless that error materially affects the effect of the notice by reference to section 73. It is plainly an important purpose of the notice to tell the tenant when the landlord expects to apply for an eviction order. But this does not necessarily mean that an error in stating the correct date will '*materially* affect this effect'. It is a matter of facts and circumstances. In some case it might do so, in others it need not. If the tenant is entitled to 28 days notice, and the landlord states a date 7 days hence, then it is easy to see that there will be a material affect on the information which is to be given to the tenant by the notice, and so the effect of it. But if the tenant is entitled to 84 days notice, and the landlord states a date which gives only 83 days, it is hard to see why such an error is so fundamental that the notice must be regarded as invalid, and so incapable of permitting an application to the FTS to proceed for this reason alone.

24. In effect, the FTS in *Holleran* conceded this, by accepting that stating the wrong date such as to give the tenant a day or two *more* notice than stipulated by the statute, would not necessarily

invalidate a notice to leave. If that is correct – as I consider it is – then there is no reason in principle why a day or two less notice than stipulated must necessarily do so. If the correct date is 'fundamental' information, it is hard to see why it ceases to be so just because the error is – on one view – in the tenant's favour. As is stated at paragraph 105 of the Explanatory Notes to the 2016 Act, section 73 is intended to ensure that "a common sense approach can be taken to meeting [the requirements of a notice to leave], and a party is not penalised for an obviously minor error. The protection applies equally to landlords and tenants." Such a common sense approach is particularly apposite given the complexity of sections 54 and 62, discussed above, and the consequent possibility of an innocent but immaterial error in completion of the notice to leave. Miscalculating the part 4 date by one day in 84 is an obviously minor error.

25. The FTS in *Halloren* - and in the present case - rejected submissions for the landlords based on an absence of prejudice to the tenant. In the first place, it was said that as a matter of generality the validity of a notice to leave cannot be determined by circumstances which occur after it is served. If that was so, it was suggested, the FTS could not determine whether a notice was valid without first determining what happened after service. In the second place, it was said that "section 73 provides the only route by which validity may be achieved notwithstanding an error in completion." This involved assessing whether the notice itself contained requisite information, which could not be cured by events after the tenant had received it.

26. I am unable to accept this reasoning either. The exercise required is not one of determining the validity of a notice to leave, but in assessing whether an error in it is so material that it is thereby invalidated. Materiality is a matter of degree, requiring consideration and determination of all relevant facts and circumstances. This is not to be avoided by labelling certain aspects of the notice as 'fundamental'. In principle I can see no good reason why consideration of materiality must be confined with the four corners of the notice itself, and why it should not be relevant, in assessing it, to consider any evidence indicating prejudice to the party receiving the notice – or its absence. Accordingly, and for example, if a notice to leave states the wrong date, and gives the tenant say seven days less notice than the statute requires, the materiality of the affect on the effect of the notice may be greater if the landlord makes their application immediately after the erroneous date, and so prior to the end of the notice period to which the tenant was entitled. On the other hand, if the landlord states a date one day short of the prescribed statutory period, but does not then apply to the FTS until many weeks or months after this period has expired, the materiality of the affect on the effect of the notice may be less. Put simply, the error is less material given that the tenant will in practical terms have had a longer period of notice than that to which they were entitled.

27. And pertinent to the present case, if it is apparent that the tenant has in fact received a longer period of notice than that required by the statute notwithstanding the error - because they have received the notice by email, 48 hours earlier than the presumed date of service in section 62(4) - then it runs counter to a common sense approach to section 73 to exclude this from the

assessment of materiality. Still more so is that the case where, as here, the error in the date could have had no practical effect on the earliest date when the landlord could have lodged their application, because both the erroneous and the correct dates fell on a weekend. And still more so is that the case where, again as here, the tenants themselves do not seek to oppose this appeal, and so do not appear to regard the effect of the error as materially prejudicial to their interests.

28. It will be apparent from the foregoing that I do not consider that the FTS was entitled to treat the present application as 'frivolous' in terms of rule 8 of the 2017 Procedure Rules, and to reject it as invalid on this basis. The FTS should not have rejected the application, notwithstanding the error in the notice to leave, without first assessing whether this error materially affected the effect of it. There may be cases where the error is so egregious that it could never reasonably be regarded as immaterial, and so dealt with under rule 8. But in other cases, and this was one, it would have been appropriate to carry out the assessment of materiality at a case management discussion. I do not accept the bright line approach mandated by *Halloren* in relation to errors by landlords in calculation of section 62(1)(b) dates, and if this represents standard practice for the FTS it will have to change. There is however no need to remit the question of materiality to the FTS in the present case. There is sufficient undisputed material before the Upper Tribunal to establish that the error in the notice to leave was not material, and that it was therefore not invalidated by it.

Disposal

29. The appeal is allowed. The failure of the notice to leave to correctly specify, in accordance with section 62(1)(b) of the Private Housing (Tenancies) (Scotland) Act 2016, the day on which the appellants expected to become entitled to make an application for an eviction order, is not an error which materially affects the effect of the document for the purposes of section 73. The notice to leave, and the application, are accordingly valid in this respect for the purpose of section 52(3). The case is remitted to the FTS to determine the application on its merits.

Further rights of appeal

30. A party to this case who is aggrieved by this decision may seek permission to appeal to the Court of Session on a point of law only. A party who wishes to appeal must seek permission to do so from the Upper Tribunal within 30 days of the date on which this decision was sent to him or her. Any such request for permission must be in writing and must (a) identify the decision of the Upper Tribunal to which it relates, (b) identify the alleged error or errors of law

in the decision and (c) state in terms of section 50(4) of the Tribunals (Scotland) Act 2014 what important point of principle or practice would be raised or what other compelling reason there is for allowing a further appeal to proceed.

Sheriff SG Collins KC
Member of the Upper Tribunal for Scotland