



DECISION OF

Sheriff Ian Hay Cruickshank

**ON AN APPLICATION TO APPEAL
IN THE CASE OF**

Miss Emma McAnally
per Strathclyde law Clinic

Appellant

- and -

Ms Margaret Boyle
per R & G Estate Agents Ltd

Respondent

FTS Case Reference: FTS/HPC/EV/24/2452

11 August 2025

Decision

Refuses the appeal and upholds the decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) dated 17 March 2025.

Introduction



[1] A Private Residential Tenancy under the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) comes to an end if the tenant receives a notice to leave from the landlord and the tenant ceases to occupy the property. A notice to leave must fulfill certain statutory requirements. It must be in the form as set out in schedule 5 of the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations SSI 2017/297 (“the 2017 Regulations”). Following service of the notice, if the tenant does not leave, the landlord may apply to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the FTS”) to issue an eviction order.

[2] The matter to be determined in this appeal is to what extent a failure to complete all parts of the prescribed form of notice would invalidate its effect for the purposes of proceedings before the FTS. The respondent in this appeal lodged an application with the FTS under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the FTS Regulations”). The FTS determined that an eviction order should be granted against the appellant in terms of section 51 of the 2016 Act. In so doing the FTS rejected the appellant’s argument that there were material errors in the notice which rendered it invalid.

[3] On 7 May 2025, the FTS granted permission to appeal on one ground as advanced by the appellant and posed a question to the Upper Tribunal for Scotland (“the UTS”). The question posed is:

Did the FTS err in law in deciding that the Notice to Leave dated 14 February 2024 was a valid notice under section 50 of the 2016 Act?

[4] In this appeal the appellant was represented by Mr. Gray and Miss Naeem, student advisers with the University of Strathclyde Law Clinic, with Mr. Gray advancing submissions at the appeal hearing. The respondent was represented by Miss McNulty of R&G Estate Agents, Kirkintilloch.

The relevant facts



[5] The parties entered into a Private Residential Tenancy Agreement which commenced on 6 September 2022. On 14 February 2024 the respondent, via R&G Estate Agents, served a Notice to Leave on the appellant by email. This stated that the respondent sought to recover possession in terms of Ground 1 of Schedule 3 of the 2016 Act, namely, that the landlord intended to sell the property. The notice was in the prescribed style. Part 3 of the notice (headed “Details and Evidence of Eviction Ground(s)”) was completed by the respondent’s agent only to the extent of adding “this section is not applicable”.

[6] On 28 May 2024, an application was lodged with the FTS. On 19 June 2024, the FTS emailed the respondent in the following terms:

“It is not clear that the application is made on grounds 1 and 11, but the Notice to Leave has been marked as not applicable. This section is applicable and a failure to complete it may invalidate the Notice to Leave. Please provide your representations as to the validity of the notice.

You state that the application is made on grounds 1 and 11, but the Notice to Leave only indicates ground 1. If you wish to add additional grounds, you must make clear that is the case, and provide evidence to support the additional ground, bearing in mind that ground 11 specifically excludes rent arrears. The issue of whether to grant permission to include an additional ground will be considered at the case management discussion if the application is accepted.

You must provide evidence to support ground 1. The legislation states examples of such as a home report or letter of engagement with a selling agent.”

[7] The respondent’s agent confirmed by email dated 28 June 2024 that ground 11 was to be disregarded. Only ground 1 was to be relied upon and in that respect the email stated:

“Please disregard “not applicable” in section 3 of Notice to Leave – please see email attached confirming the appointment of R&G Estates Agents to sell (“the property”) ...In support of Ground 1, I attach a Market Appraisal Valuation ...”



[8] On 24 July 2024, the FTS issued a notice of acceptance. The application was served upon the appellant on 24 October 2024. The case first called by way of a Case Management Discussion on 29 November 2024. The appellant raised the matter of the validity of the notice at that point. The FTS directed that the respondent should lodge written submissions by 12 February 2025 to include a response as to why the notice should be treated as valid. Further orders for written submissions followed including an order that the appellant lodge submissions as to the reasonableness of granting an eviction order.

[9] The matter was assigned to a hearing of evidence on 26 February 2025. Prior to considering the application on its merits, the FTS considered the preliminary issue of the validity of the notice to leave. It rejected the appellant's argument that the notice was invalid.

The reasoning of the FTS

[10] In rejecting the appellant's argument, the FTS concluded that although Part 3 of the notice had not been completed correctly, in terms of section 73 of the 2016 Act, the failure did not materially affect the effect of the notice. The FTS was referred to the case of *Manson and Downie v Turner* [2023] UT 38 by the appellant as authority which supported submissions that the notice was invalid. The FTS did not consider this case supported the appellant's position.

[11] The reasoning for concluding that the notice was valid is provided in paragraphs 28 and 29 of the written decision. These paragraphs include the following:

"28. The Tribunal does not consider that the failure of the applicant to properly complete Part 3 of the Notice to Leave materially affects the effect of that Notice. It is clear from the terms of the Notice to Leave that the respondent is being given Notice to Leave the property as the applicant intends to sell the property...The Notice provides the respondent with a date which is the earliest date upon which the applicant could start Tribunal proceedings. Part 3 of the Notice requires the applicant to give reasons for seeking an eviction. Although no reason is given in that Part of the Notice, such reasons are clear from the Ground upon which the applicant relies for service of the Notice... It may be that, in certain situations, the



requirement to provide reasons for seeking an eviction are more critical. For example, where a tenant has rent arrears, it may be important for the landlord to specify on the Notice the amount of rent arrears due, or the frequency of a tenant's failure to pay rent due. That is giving the tenant fair notice of the reasons for the landlord's decision to serve the Notice to Leave...

29. Part 3 of the Notice also allows a landlord to provide evidence to support the eviction action. That part of the Notice is permissive, not compulsory. In any case, the applicant in this case did provide written evidence of her instructions to estate agents to value and market the property (albeit that such evidence did not accompany the Notice to Leave but were provided as part of the application to the Tribunal)."

[12] Having determined that the notice to leave was valid the FTS proceeded to consider the merits of the application. The decision on the merits to issue an eviction order is not a matter for consideration in this appeal.

Submissions

[13] Both parties lodged written submissions. These were supplemented by oral submissions at a hearing on 28 July 2025.

[14] The appellant submitted that failure to complete Part 3 invalidated the notice. Part 3 required a landlord to state their reasoning for using the ground advanced in Part 2 of the notice. In applying section 73 of the 2016 Act the FTS had erred in concluding that the failure did not materially affect the effect of the notice. This was not a procedural error in completion of the document which should have been excused. It was not a minor error. The information which should have been given was necessary to allow the appellant to be fully informed of the landlord's reasons for serving the notice. Proper application of section 73 of the 2016 Act should have led the FTS to conclude that the error was material.



[15] It was submitted that for the purposes of section 50 of the 2016 Act the notice to leave was not valid. The notice must not be ambiguous. By failing to complete the notice, the tenant was unfairly disadvantaged. Part 3 was an important section which should be completed with care and accuracy to allow the tenant to make arrangements and formulate a response. The FTS made a substantial procedural error by allowing additional documentation to be submitted to allow the application to be accepted.

[16] Although the case of *Manson and Downie v Turner* had been brought to the attention of the FTS it was accepted on appeal that this case was not of assistance in resolving the issue. Reference was made to *Smith v MacDonald* [2021] UT 20 and the comments in that case relating to the correct application of section 73 of the 2016 Act. The error here could not be regarded as sufficiently minor as not to materially alter the effect of the notice. In *Rafique v Morgan* [2022] UT 07 the UTS had considered the importance of Part 3 of the notice and had highlighted that its completion was a fundamental element of a notice to leave. If that was not the case, then there would be no need for it to exist as part of the style notice provided for by Schedule 5 of the 2017 Regulations. Specific reference was made to paragraphs 28 - 30 and 36 of the judgement.

[17] Whereas it was accepted that both the cases of *Smith* and *Rafique* related to circumstances where the basis of the eviction sought was on the ground of rent arrears, it was submitted that the comments referred to in each case applied equally to the circumstances of this appeal where eviction was sought on the basis that the landlord sought to sell the property. Part 3 was a fundamental element of the notice to leave. It was stressed in *Rafique* that the circumstances had to be correct at the time of submission of the application to the FTS. In this case the FTS itself had queried the validity of the notice and had sought further information from the respondent prior to accepting the application. In so doing the FTS had erred in law. The respondent should not have been permitted to retroactively amend Part 3 of the notice by providing further information which had not been contained in the notice.

[18] Reference was made to the Guidance Notes accompanying the 2016 Act. Reliance was also placed on "Guidance Notes for Landlords on the Notice to Leave" at paragraphs 4 – 6. It was submitted that Scottish Ministers intended Part 3 of the notice to be completed by the landlord to



satisfy the tenant that the ground relied upon was valid and, in this case, to show that the landlord had a proper intention to sell the property.

[19] Reference was also made to the case of *Thyme Property Developments v Mitchell* EV/18/0946. This was a decision of the FTS. It was an example of the FTS rejecting an application in terms of its rules of procedure where a notice to leave had not been properly completed and therefore fell to be regarded as invalid.

[20] In summary, the appellant invited me to answer the question posed by the FTS in the affirmative and uphold the appeal. If the appeal was successful, I was invited to quash the decision of the FTS and re-make the decision. This would lead to the application being refused and the order for eviction would also fall to be quashed.

[21] On behalf of the respondent, it was submitted that the FTS had not erred in law in concluding that the notice to leave was valid. The failure to complete Part 3 did not materially affect the effect of the notice. It had been accepted before the FTS that the evidence of intention to sell had been omitted and that this had been down to the inexperience of the individual who completed it. The evidence was provided when it was queried by the FTS. Although this was not included in the notice it could not be said that the terms of the notice would have left the appellant in any way confused or uncertain about the basis upon which the respondent sought to require the appellant to leave the property. It was clear from Part 2 of the notice that it was the landlord's intention to sell the property.

[22] It was submitted that the FTS had correctly applied section 73 of the 2016 Act. The FTS had been correct to conclude that completion of Part 3 of the notice was permissive and not compulsory. The respondent did not consider that the dicta in either the cases of *Smith* or *Rafique* required me to conclude that the error in completion of the notice was material and would therefore invalidate it. The respondent invited me to answer the question posed by the FTS in the negative and dismiss the appeal.

Discussion



[23] The landlord in this case sought eviction based on ground 1 of Schedule 3 to the 2016 Act. It is worthwhile laying out the terms of that ground:

1 Landlord intends to sell

- (1) It is an eviction ground that the landlord intends to sell the let property.
- (2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord —
 - (a) is entitled to sell the let property,
 - (b) intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and
 - (c) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.
- (3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example) —
 - (a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,
 - (b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.

[24] Ground 1 of Schedule 3 was previously a mandatory eviction ground. It is now discretionary as the FTS requires to determine whether it is reasonable to issue an order for eviction.

[25] The 2016 Act provides for security of tenure, but a private residential tenancy comes to an end if the tenant has received a notice to leave from the landlord, and the tenant has ceased to occupy the let property (section 50(1) of the 2016 Act). Following service of a notice to leave, if the tenant does not cease to occupy the property the landlord may seek an eviction order from the FTS in terms of section 51 of the 2016 Act.



[26] The FTS is not to entertain an application for an eviction order in certain circumstances. Section 52, in so far as relevant to this appeal, 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)

[27] 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.

[28] In terms of section 62(1) of the 2016 Act the notice to leave must include four listed requirements. This includes fulfilling any requirements prescribed by Scottish Ministers by regulation. That regulation is to be found in the 2017 Regulations. Regulation 6 states the following:

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.

[29] Schedule 5 of the 2017 Regulations provides the style document to be used as a Notice to Leave. This style document was used by the respondent in this case. It is important for the purposes of this appeal to review the terms of the style Notice to Leave in detail.

[30] The introductory section to the document 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. The introduction also advises tenants of the following:

“This notice informs you, the tenant, that your landlord is giving you notice to leave the let property, and if you do not leave the property once the relevant notice period has expired, your landlord can apply to the First-tier Tribunal for Scotland (the Tribunal) for an eviction notice.”

[31] Part 1 of the notice 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:"

[32] In Part 2 of the notice there is then a list of the eighteen permissible grounds to be found in Schedule 3 of the 2016 Act. This is effectively a "tick-box" exercise, but each box is then followed by a summary of the nature of each ground. In the present case the box for "Your Landlord intends to sell the Let Property" was ticked.

[33] 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.]"

[34] After the space provided to give this information, there is a further pre-populated part of the notice 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;"

[35] 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)."

[36] Accordingly, the FTS cannot entertain an application for eviction unless it is accompanied by a copy of the notice to leave which has been given to the tenant. It cannot accept a notice to leave unless it is in the form of the style provided for by the 2017 Regulations. That said, once the matter comes before the FTS, whereas a tenant can expect the application to proceed on the ground or grounds as stated in the notice to leave, the FTS has a discretion to grant permission for a ground to be included even if it did not appear in the notice. This would require evidence to accompany the application to support any additional ground (see Rule 109 of the FTS Regulations). The initial correspondence between the FTS and the landlord in this case referred to this prior to the application having been accepted.

[37] Guidance notes are provided for completion of the notice. These include the following:

"HOW TO COMPLETE THIS NOTICE

4. As a landlord you should complete Parts 1 to 4 of this notice.
5. If your tenant does not leave the Let Property... you will need to apply to the (FTS) to obtain an eviction order for their removal. The Tribunal will ask you to provide evidence to support the eviction ground(s) you are using to evict the tenant. It is advisable to include copies of any evidence along with the notice, in order to satisfy your tenant that the eviction ground you are using is valid. This may encourage them to move out at the end of the notice period without you having to refer the case to the Tribunal."

[38] In the present case the FTS applied the terms of section 73 of the 2016 Act. It 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)).

[39] In relation to section 73, the explanatory notes to the 2016 Act provide at paragraph 104: “Section 73 provides that any errors in specified documents do not invalidate the document if they are sufficiently minor that they do not materially alter the effect of the document. Of necessity, there are a number of documents which the Act requires the use of at certain times. This section ensures that a commonsense approach can be taken to meeting these requirements, and a party is not penalised for an obviously minor error. The protection applies equally to landlords and tenants.”

[40] The appellant referred to an FTS decision, being the case of *Thyme Property Developments v Mitchell*, in which a legal member, using delegated powers under the FTS regulations, refused to accept an application seeking an eviction order. This was on the basis that the legal member concluded that although a notice to leave followed the prescribed style it had not been completed following the guidance notes. Grounds 11 and 12 were relied upon in Part 2 (being breach of a term of the tenancy agreement and in rent arrears over three consecutive months respectively). Part 3 had been completed by adding “you have failed to pay rent as and when due and are now in considerable rent arrears”. There was no reference to the amount of arrears or the dates of non-payment. No specification was given as to how the tenancy agreement had been said to be breached. The legal member concluded that the necessary level of detail was lacking and that the notice was invalid. In terms of the FTS rules of procedure this was done on the basis that the legal member considered he was entitled to treat the application as frivolous (Rule 8 of the FTS Regulations).

[41] In *Smith v MacDonald* [2021] UT 20 the issue for the UTS related to whether the FTS had properly calculated time periods regarding when the date of service should be taken from. In



upholding the appeal, the UTS found it unnecessary to consider a secondary ground of appeal which related to the application of section 73 of the 2016 Act. In this context the UTS decision included the following obiter dicta:

“The decision I have made is sufficient for disposal of the appeal. There is a further ground which is whether section 73 of the 2016 Act can be applied. Given my decision in relation to the first ground of appeal there is no requirement that I address the second ground. However, had it been the case that the notice period had been less than that to which the tenants were entitled I would have upheld the FtT, upon the basis that the Notices were invalid. One of the purposes of the Notices to Leave is to provide tenants with an opportunity to consider what should be done in the period before proceedings are raised. What is at issue is the loss of a home. Tenants are statutorily entitled to a period of time to try to resolve issues prior to proceedings being raised.

Section 73 of the 2016 Act will only apply to errors which are sufficiently minor that they do not materially alter the effect of the document. Such a description could not apply to an error which reduces a period of notice to a tenant.” (Sheriff Fleming at paragraph 26)

[42] *Rafique v Morgan* [2022] UT 07 was an appeal against a decision of the FTS to refuse an application for an eviction order. The notice to leave had founded on the ground that the tenant was in arrears of rent for three or more consecutive months. On initial receipt of the application the FTS highlighted a difficulty on the face of the notice, namely that it did not appear the tenant was in arrears for the necessary period. Having received further representations, the application was accepted. The application was thereafter dismissed on the basis that the eviction ground was not satisfied at the time the notice to leave was served.

[43] In *Rafique* it was conceded that whilst what was written in the Part 3 of the notice was factually accurate it did not make out or satisfy Ground 12 of Schedule 3, being the ground relied upon, at the point of service of the notice. It was in this context that Sheriff Kelly made the following observations:

“31. The service of the notice to leave triggers a notice period Until the expiry



of that "relevant period" the landlord may not make application to the FtT for an eviction order However, if the factual basis does not exist at the time of the service of the notice, the landlord cannot know when there will exist a basis to apply to the FtT. The landlord will know, if the circumstances exist at the time of the service of the notice to leave, when he can apply to the FtT – that will be when the period referred to section 62(4) runs its course. It makes sense for the clock on the computation of that period to start running from when the tenant is told that he must leave and for that notice to contain information that at that point in time forms a sufficient basis in fact to amount to an eviction ground. The purpose of these requirements – the computation of the period of notice and the statement of the eviction ground – is difficult to make sense of if all that the landlord requires to intimate to the tenant when serving a notice to leave is that an application based upon a specified eviction ground may, at some unspecified point in the future, be made to the FtT.

32. On the other hand, these aspects of the statutory scheme are given content and meaning if the notice to leave is to provide specification such that, at the time of its service upon the tenant, it can be seen that the factual premise underpinning the content of such a notice - about why the tenancy is being brought to an end - has application at that point in time.

33. That much can also be gleaned from the statutory form which is to be used as a notice to leave. Regulation 6 of the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 provides that the notice to leave given to a tenant by a landlord must be in the form set out in Schedule 5. The statutory form enjoins the landlord, not simply to refer to the prospective ground upon which application may be made to the FtT, but also to outline the basis of the application and to provide details of the evidence of eviction grounds.

This is, after all, a notice directing the tenant to leave because a ground for eviction exists

36. The appellants' construction renders the service of the notice as a procedural nicety or technicality devoid of any real meaning or effect when it is served. That is difficult to



reconcile with the consequences – procedural and otherwise - that flow from the service of the notice.

If this were a sound construction, it is difficult to see why the form in Schedule 5 to the 2017 regulations has Part 3. The tick box exercise in Part 2 suffices for the appellants' construction to be given effect to. The addition of part 3 of the form as to the reasons for the landlord's action and the evidence upon which it is based would be rendered superfluous by the appellant's construction."

[44] The issue of the applicability of section 73 of the 2016 Act was not considered for the purposes of the appeal in *Rafique*. That section could not have been relied upon to correct the error identified in the notice to leave. This is on the basis that the notice to leave in *Rafique* was reliant on grounds which did not exist at the point when the notice was served.

Decision

[45] A notice to leave is an important document. It is the foundation upon which a landlord can initiate the ending of a private residential tenancy. In the absence of a notice to leave being served the FTS cannot entertain an application for eviction. Furthermore, to fulfil any other requirements prescribed by the Scottish Ministers in regulations, the notice must be in the prescribed style.

[46] The question to be posed in this appeal is what is the effect of a Notice to Leave? It is only once that question has been answered that consideration can be given to whether any specific error materially alters the notice's effect for the purposes of section 73 of the 2016 Act.

[47] The "effect" of a notice to leave is in my judgment synonymous with "purpose". To my mind the primary purpose and effect of the notice to leave is to correctly provide three important pieces of information to the tenant. First, the notice confirms the ground or grounds upon which the landlord seeks to rely in requesting that the tenant leave the property. Secondly, it confirms the statutory notice period which must be observed in giving notice to leave. Thirdly, it informs the tenant that should he or she choose not to leave the let property on the date shown in the notice



that it is the landlord's intention to apply to the FTS for an eviction order and provides the date from which such application can be made.

[48] The notice specifically allows for details and evidence to be given to provide the reasons which lie behind the landlord's request that the tenant leave the premises. I hesitate to classify that as the secondary purpose of the notice, but I do observe from guidance notes for completion of the notice that landlords are informed it is "advisable" to include copies of any evidence along with the notice. This is to satisfy the tenant that the eviction ground being used is valid and to ensure the tenant understands why they are being asked to leave. It allows the tenant the opportunity during the notice period to consider whether service of the notice to leave is justified and reasonable. If the tenant concludes that it is justified and reasonable he will vacate the property. If he does not reach that conclusion, he remains in the property in the knowledge that the landlord will be entitled to lodge an application for an eviction order with the FTS.

[49] Errors can occur in the completion of any document. Some can be regarded as excusable. Others can be fatal to the validity of the notice. As can be seen from the cases of *Smith* and *Rafique* erroneous calculations to necessary periods of time for notice purposes, or reliance on an eviction ground which cannot factually be established at the point of service are not rectifiable errors. These are material errors which would affect the validity of the notice. As such the notice could not be founded upon as valid thus allowing the FTS to consider the merits as to whether an eviction order should be granted.

[50] A further error which could not be rectified would be if the notice given to the tenant was not in accordance with the prescribed style. Provided the notice is in the prescribed style then section 73 of the 2016 Act can be engaged in order to determine whether any error contained within the four corners of the prescribed style of notice does, or does not, fall to be regarded as material and thus affect the effect of the notice.

[51] The necessary materiality of an error which would affect the effect of a notice to leave is not further defined by the 2016 Act. The relevant Guidance Note to the Act does give the hint that, when it comes to errors, a commonsense approach is to be advocated. That must be regarded as the correct approach. I conclude that provided an error does not frustrate the primary purpose of



the notice as I have outlined above then the error does not, in the first instance, materially affect the effect of the notice. It is sufficient in its terms to allow the FTS to entertain the application. It is for the FTS to exercise its discretion in holding that a notice to leave remains valid on the basis that any further error within the notice does not affect the effect of the notice.

[52] In this case the FTS did not consider that the failure of the applicant to properly complete Part 3 of the notice to leave materially affected the effect of the notice. It did so by balancing the terms of the notice against the ground relied upon. The FTS accepted that when relying on certain grounds, the example given being rent arrears, that the requirement to provide reasons for seeking an eviction was more critical. Fair notice would require that. Had Part 3 been properly completed in this case it is likely that very little would need to be stated. For example, had Part 3 stated “the landlord wishes to sell the let property. R & G Estate Agents have been appointed to market the property” it could not be argued that this would be insufficient detail for the notice to be valid. That level of detail would have reflected the factual position at the point in time when the notice was served.

[53] In its decision the FTS observed that completion of Part 3 of the notice was permissive rather than compulsory. I do not go that far. I do not consider whether Part 3 is completed should be an optional exercise. If an error is made in its completion, then the issue to be determined is whether the error falls to be excused as permissible by the terms of section 73 of the 2016 Act. That must be determined by the facts and circumstances of each case.

[54] I do not consider that the refusal to accept an application in the FTS case of *Thyme Property Developments* based on what was seen as a deficiency in the completion of the notice to leave leads to the conclusion that acceptance of the notice in the present case was erroneous. Equally, in reaching the decision that I have in this appeal I do not consider that my reasoning is at odds with the dicta in either the case of *Smith* or *Rafique*. In the present case the eviction ground relied upon was the reason in support of why the landlord served the notice to leave. The basis to satisfy the ground existed at the date of service of the notice. The notice periods given and stated in the notice were as required by relevant statute. The appellant decided not to leave the property. Any confusion caused to the appellant by the failure to complete Part 3 of the notice could not have



been material or at least no example of such materiality was founded upon. The respondent thereafter elected to seek an eviction order from the FTS after the date correctly given in this respect. Any error in completion of the document in this case did not materially affect its effect.

Conclusion

[55] The appeal is refused. I answer the question posed by the FTS in the negative. In terms of section 47(1) of the Tribunals (Scotland) Act 2014 I uphold the decision of the FTS.

*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 Ian Hay Cruickshank
Member of the Upper Tribunal for Scotland