



**DECISION AND STATEMENT OF REASONS OF JOAN DEVINE, 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 Rules")**

**in connection with**

**Flat 3/1, 27 Elizabeth Street, Glasgow G51 1SP ("the Property")**

**Case Reference: FTS/HPC/PR/25/5003**

**Mark Rushbury, 36-38 Tay Street, Perth PH1 5TR ("the Applicant")**

1. The Applicant lodged form F under rule 110 (application for a wrongful termination order) dated 19 November 2025. In the application the Applicant stated that the reason for making the application was "illegal vacate orders under the guise of selling property." Documents lodged in support of the application included a notice to quit and a notice under section 33 of the Housing (Scotland) Act 1988 ("1988 Act") requesting removal on 18 December 2024 along with a short assured tenancy agreement which commenced on 19 December 2016.
2. By email dated 8 December 2025 the Tribunal brought to the attention of the Applicant that the documentation lodged indicated that the Applicant had a short assured tenancy and that notices had been served to bring it to an end under the 1988 Act. The Tribunal referred the Applicant to section 36 of the 1988 Act and asked the Applicant to state whether they had grounds for bringing an application for wrongful eviction under that section. The Applicant responded on 20 December 2025 stating that they felt they had been wrongfully evicted as the landlord had stated an intention to sell but the Applicant believed they had no such intention as the property had been re-let.

3. On 29 January 2026 the Tribunal emailed the Applicant noting that the application had been made under rule 110 which relates to wrongful termination orders under the Private Housing (Tenancies)(Scotland) Act 2016 (“2016 Act”). The Tribunal noted that the Applicant’s tenancy had been a short assured tenancy under the 1988 Act and therefore the Applicant could not make an application under rule 110 which relates to tenancies under the 2016 Act. The Tribunal noted that no explanation had been provided for the basis of a claim under section 36 of the 1988 Act. The Tribunal asked the Applicant to provide a response by 12 February 2026. No response was received. The Tribunal followed up the request for further information by email dated 4 March 2026. No response was received.

## **DECISION**

4. The Legal Member considered the Application in terms of Rule 8 of the Chamber 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.

- 5. After consideration of the Application and documents lodged in support of same the Legal Member considers that the Application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Procedural Rules.**

#### **Reasons for Decision**

6. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in R v North West Suffolk (Mildenhall) Magistrates Court, (1998) Env LR9. He indicated at page 16 of the judgment; "What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic". It is that definition which the Legal Member has considered as the test in this application, and on consideration of this test, the Legal Member considers that this application is frivolous, misconceived and has no prospect of success.
7. The Applicant sought an order under rule 110 which relates to wrongful termination orders in respect of tenancies under the 2016 Act. The Applicant's tenancy was under the 1988 Act. They provided no basis for making an application for damages for wrongful eviction under section 36 of the 1988 Act. In all the circumstances, the Legal Member determines that the Application is frivolous, misconceived and has no prospect of success. The Application is rejected on that basis.

#### **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.

Joan Devine

Legal Member

29 April 2026