

Housing and Property Chamber
First-tier Tribunal for Scotland



**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 1-1, 1 Fox Street, Greenock PA16 8AT ("Property")

Case Reference: FTS/HPC/EV/26/1321

Steven Callaghan, 23A Ardgowan Street, Greenock PA16 8EG ("Applicant")

**Bowman Rebecchi Residential Letting Ltd, Suite 2, 32-36 Kempock Street,
Gourock PA19 1NA ("Applicant's Representative")**

1. The Applicant sought an order for possession of the Property in terms of Rule 109 of the Rules and Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 ("2016 Act"). The Applicant's Representative lodged form E dated 16 March 2026. The Applicant's Representative lodged a copy notice to leave dated 12 June 2023 which stated that an application would not be made to the Tribunal for an eviction order before 14 December 2023.
2. By email dated 30 April 2026 the Tribunal noted that in terms of section 55 of the Private Housing (Tenancies)(Scotland) Act 2016 a landlord may not make an application to the Tribunal for an eviction order using a copy of a notice to leave more than 6 months after the expiry of the notice period. The Tribunal noted that the deadline for making the application in this case was 14 June 2024 and that the application was received on 23 March 2026. The Tribunal invited the Applicant to withdraw the application. No response was received. The Tribunal sent further emails to the Applicant's Representative on 5 June and 16 July 2026. No response was received other than an email dated 13 July 2026 in which the Applicant's Representative asked if new notice required to be served.

DECISION

3. 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.

- 4. 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

5. '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.

6. The Applicant seeks recovery of possession of property let under a private residential tenancy. In terms of section 55 of the Private Housing (Tenancies)(Scotland) Act 2016 a landlord may not make an application to the Tribunal for an eviction order using a copy of a notice to leave more than 6 months after the expiry of the notice period. The notice to leave lodged in support of the application stated that the notice period expired on 14 December 2023. The application was lodged on 23 March 2026. The Applicant cannot rely upon the notice to leave lodged. In these 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
18 August 2026