



**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

170 Westwood Avenue, Ayr KA8 0RG ("Property")

Case Reference: FTS/HPC/EV/26/1741

Kenneth Ireland, 5 Walker Court, Hurlford KA1 5JZ ("Applicant")

Amanda Wallace ("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 lodged form E dated 26 March 2026. The Applicant lodged a copy notice to leave dated 3 February 2026 which stated that an application would not be made to the Tribunal for an eviction order before 5 March 2026. The notice to leave stated that the ground for eviction was ground 1, landlord intends to sell the let property. The Applicant told the Tribunal that a copy of the tenancy agreement was unavailable but that the tenancy commenced in October 2021. The Applicant told the Tribunal that the notice to leave was served by depositing in the letterbox of the property.
2. By email dated 27 July 2026 the Tribunal requested further information including a copy of the section 11 notice sent to the local authority and evidence of it being sent as well as evidence of the landlord's intention to sell such as terms of engagement with a solicitor or estate agent regarding the sale of the property. The Tribunal also noted that the period of notice required to be given in terms of the 2016 Act was 84 days plus 48 hours for service. As the notice

to leave was dated 3 February 2026 and stated that an application would not be made to the Tribunal before 5 March 2026, inadequate notice had been given. The tribunal noted that the notice to leave was invalid and invited the Applicant to withdraw the application.

3. The Applicant's Representative responded to the Tribunal by email dated 5 August 2026. No copy section 11 notice was provided or proof of delivery. The Applicant's Representative said that the Applicant had been unable to gain access to carry out a valuation. No comment was provide regarding the validity of the notice to leave.

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 seeks recovery of possession of property let under a private residential tenancy on the basis of ground 1, landlord intends to sell. In terms of section 54 of the 2106 Act, where the tenant has occupied the property for more than 6 months, the required notice period is 84 days. In this case, assuming delivery of the notice on 3 February 2026, the Applicant gave the Respondent only 30 days notice. In terms of section 56 of the 2016 Act a landlord may not apply to the Tribunal for an eviction order unless notice has been given to the local authority of the landlord's intention to do so. No evidence was provided of such notification having been given.
8. 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
27 August 2026