



**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 0-2, 35 Robert Street, Port Glasgow PA14 5RH ("Property")

Case Reference: FTS/HPC/EV/26/3009

FS Dreams Ltd, 2 Glasgow Road, Bonnybridge, Falkirk FK4 1QF ("Applicant")

**Corbett and Shields, 1 Ratho Street, Greenock PA15 2BU ("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 30 June 2026. Documents lodged in support of the application included a document head "lease agreement" which stated that the tenancy for the Property commenced on 1 June 2012 and a notice to leave dated 15 January 2025 which stated that an application for an eviction order would not be submitted before 10 February 2025. No evidence was provided of service of the notice to leave.
2. By email dated 30 July 2026 the Tribunal note that the tenancy commenced on 1 June 2012 and was therefore either short assured tenancy or an assured tenancy under the Housing (Scotland) Act 1988 which cannot be terminated by service of a notice to leave under the 2016 Act. No response was received. The Tribunal followed up the request for further information on 27 August 2026. No response was received.

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 the Housing (Scotland) Act 1988. The document lodged in support of the application was notice to leave under the 2016 Act. The tenancy of the Property cannot be brought to an end by service of a notice to leave. In any event, the notice to leave was dated some 16 months after expiry of the notice period specified in the notice to leave. The notice cannot therefore be relied upon in terms of section 55 of the 2016 Act. 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

Joan Devine, Legal Member
24 September 2026