

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

59 Roxburgh Court, Motherwell, ML1 4GQ ("the Property")

Case Reference: FTS/HPC/EV/24/5132

Anwar Hanif, 28 Vesuvius Drive, Motherwell ML1 2FA ("the Applicant")

1. By Application dated 3 November 2024 the Applicant sought an order for eviction under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 ("2016 Act") under rule 109 of the Rules.
2. By email to the Applicant dated 12 December 2024 the Tribunal noted that essential information and documents required to support the application had not been produced and asked the Applicant to lodge : a copy of the Notice to Leave served on the Respondent along with evidence of service as required by section 52 of the 2016 Act; a copy of the tenancy agreement; a copy of the section 11 notice sent to the local authority and evidence of it having been sent all in accordance with section 56 of the 2016 Act; and evidence to support the ground for eviction.
3. The Applicant did not provide the further information requested. A further request for that information was issued on 30 January 2025. 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. In terms of section 52(2) of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless the application is accompanied by a notice to leave that has been given to the tenant. Section 56 of the 2016 Act provides that a landlord may not make an application for an eviction order unless the landlord has given notice of that intention to the local authority in whose area the property is situated. The Applicant did not provide a copy notice to leave or evidence of it having been served. The Applicant did not provide a copy of the section 11 notice sent to the local authority or evidence of it having been sent. These requirements are fundamental to the validity of an application for an eviction order. Without these documents, the application cannot succeed.
8. 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.

J Devine

Joan Devine
Legal Member
19 March 2025