

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

2 Munro Walk, Saltcoats KA21 6HU ("the Property")

Case Reference: FTS/HPC/EV/24/5328

Patrick Durkan ("the Applicant")

Rentolease Property Manangement Ltd ("the Applicant's Representative")

1. By Application dated 19 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 17 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: documentation supporting the Applicant's entitlement to make the application as executor of Rina Doherty such as confirmation from the Court appointing the Applicant as executor or a copy of Rina Doherty's will; a copy of the tenancy agreement; evidence of the notice to leave having been delivered to the Respondent; 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 8 February 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 the absence of evidence of the Applicant having been appointed as executor on the estate of the late Rina Doherty, the Tribunal is unable to determine whether the Applicant has title and interest to make the application. In terms of rule 109 of the Rules an application for an eviction order requires to be accompanied by evidence showing that the eviction ground has been met. This was not provided. Without evidence of entitlement to make the application and evidence supporting the ground for eviction, 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.

Joan Devine
Legal Member
26 March 2025