

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**Decision with Statement of Reasons of Alan Strain, Legal Member of the First-tier Tribunal with delegated powers of the Chamber President of the First-tier Tribunal for Scotland (Housing and Property Chamber)**

**Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules")**

**Chamber Ref: FTS/HPC/EV/24/5432**

**Parties**

**Mrs Sharon Muir (Applicant)**

**Castle Residential (Applicant's Representative)**

**21 Katrine Drive, Paisley, PA2 9BS (House)**

**Tribunal Member:**

**Alan Strain (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined 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.**

**Background**

1. The application was received by the Tribunal under Rule 66 on 25 November 2024. The grounds for possession/eviction were clarified to be termination of a Short Assured Tenancy (**SAT**) under section 33 of the **Housing (Scotland) Act 1988 (Act)**. The SAT provided for an initial duration of 30/11/15 until 1/12/16. It then continued for periods of 2 months thereafter. The Notice to Quit specified the date to quit as 1 November 2024. The ish date was 1 December 2024 under the SAT.

2. The application was considered by the Tribunal and further information was requested by email of 5 February 2025 as follows:

*"A Legal Member of the Tribunal has reviewed your application. Before a decision can be made on whether your application can proceed, we require you to provide us with the following information: 1. We note from your email of 30 December 2024 that you*

wish to proceed with raising an application in terms of Rule 66 and under section 33 of the Housing (Scotland) Act 1988. You have agreed that the ish date of the tenancy agreement is 1 December 2024. However, the Notice to Quit issued to the tenant refers to a removal date of 1 November 2024, which does not tie in with the ish date. On that basis, please clarify how you consider that the Notice to Quit issued is valid? Please provide the information no later than 19 February 2025.”

3. The Applicant responded by email of 25 February 2025 in the following terms:

*“We have spoken to our obligatory body - apologies for the delay responding. Our obligatory body advised us Bringing a SAT to an end through the Section 33 route requires 2 months' notice, and should be served by Sheriff Officer or Recorded Delivery along with a Notice to Quit. This is what we have executed for this property. The ish date being the 1st. Please can you kindly advise and pass comments regarding the above.”*

### **Reasons for Decision**

4. The Tribunal 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;·*  
*(c) they have good reason to believe that it would not be appropriate to accept the application;*

*(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. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in ***R v North West Suffolk (Mildenhall) Magistrates Court, (1998) Env. L.R. 9***. At page 16, he states: - *“What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic”.*

6. The application seeks to proceed under Rule 66 and Section 33 of the Act. In order to do so the tenancy must have been a short assured tenancy validly terminated at its ish. The Notice to Quit does not specify an ish date of the SAT. The SAT has not been validly terminated and continues.

7. In light of the above reasons the Tribunal cannot grant the order sought. Applying the test identified by Lord Justice Bingham in the case of ***R v North West Suffolk (Mildenhall) Magistrates Court*** (cited above) the application is frivolous, misconceived and has no prospect of success. The application is accordingly rejected.

## Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.

# A. Strain

25 March 2025

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Legal Member/Chair

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Date