

**DECISION AND STATEMENT OF REASONS OF NICOLA IRVINE, 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 F 32 1/2 Whifflet Street, Coatbridge, North Lanarkshire, ML5 4EL ("the
Property")**

Case Reference: FTS/HPC/EV/25/0270

Miss Lynne Connelly ("the Applicant")

1. The Applicant submitted an application in terms of Rule 109 of the Rules dated 22 January 2025. In support of the application, the Applicant lodged the tenancy agreement, Notice to Leave ("NTL") along with evidence of service, a section 11 notice, along with evidence of service and email correspondence between the parties.

DECISION

2. 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.

- 3. After consideration of the application and the documents submitted by the Applicant 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 Rules.**

Reasons for Decision

4. '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.
5. On 21 February 2025, the Tribunal issued an email to the Applicant, observing that the NTL expired on 2 June 2024 and advising that a landlord may not make an application for eviction using a NTL more than six months after the expiry of the notice. The Tribunal invited the Applicant to consider withdrawal of the application.
6. The Applicant responded by email on 5 March 2025 explaining that she and the tenant agreed "an extension to the leave period". The Applicant invited the Tribunal to exercise its discretion to allow the application to proceed.

7. The relevant section of the Private Housing (Tenancies) (Scotland) Act 2016 considered by the Legal Member are:-

Section 55 provides

(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave more than six months after the day on which the relevant period in relation to that notice expired.

(2) In subsection (1), “the relevant period” has the meaning given in section 54(2).

(3) The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3).

8. In this case, the period of notice is dated 8 March 2024. The six month period expired on 2 June 2024. The application was made on 22 January 2025. The Tribunal has no power to exercise discretion to extend the period of time provided for in section 55. The Legal Member concluded that the application therefore has no prospects of success.

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.

N.Irvine

Legal Member

1 April 2025