



**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

5 Branxholme Terrace, Inverness IV2 4RD ("the Property")

Case Reference: FTS/HPC/EV/24/3752

Renate Chart, Rose Cottage, Croy IV2 5PG ("the Applicant")

1. By Application dated 12 August 2024 the Applicant sought an order for eviction under section 18 of the Housing (Scotland) Act 1988 ("1988 Act") under rule 66 of the Rules.
2. The Applicant lodged a short assured tenancy agreement which commenced on 22 August 2007. A termination date was not stated in the tenancy agreement. A notice to quit dated 24 May 2024 was lodged ("Notice to Quit"). It stated that the tenancy would terminate on 1 August 2024. A notice under section 33 of the 1988 Act was lodged dated 24 May 2024 which asked the Respondent to remove by 1 August 2024. An AT6 dated 23 May 2024 was lodged ("AT6"). It stated that the ground for eviction was "need to sell the house for our retirement".
3. By email dated 24 October 2024 the Tribunal sought clarification of a number of matters and noted that the notice to quit appeared to be invalid as was the AT6. The Applicant responded by email dated 15 January 2025 explaining they had been unable to obtain legal advice.

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 the Assured Tenancies (Notices to Quit Prescribed Information)(Scotland) Regulations 1988 section 2 where a notice to quit is given by a landlord to terminate an assured tenancy under the Housing (Scotland) Act 1988 that notice **shall** contain the information set out in the schedule to the Regulations. The Notice to Quit did not contain the information set out in the schedule to the Regulations. In addition, the Notice to Quit did not seek to terminate the tenancy at a valid "*ish*". The AT6 did not refer to a ground for eviction which is a valid ground in terms of the 1988 Act. Both the Notice to Quit and the AT6 are invalid.
8. 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
20 February 2025