

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

32 Merchants Way, Inverkeithing KY11 1PE ("the Property")

Case Reference: FTS/HPC/EV/25/0831

Charles McNeil, 11 Dovecot Way, Dunfermline KY11 8SX ("the Applicant")

1. By Application dated 20 February 2025 the Applicant sought an order for eviction under section 33 of the Housing (Scotland) Act 1988 ("1988 Act") under rule 66 of the Rules.
2. The documentation produced in support of the application included a short assured tenancy which was for the period 22 June 2017 to 22 December 2017 and month to month thereafter; a notice under section 33 of the 1988 Act dated 13 December 2024 which sought possession of the Property on 16 February 2025 and a notice to quit dated 13 December 2024 which sought to terminate the tenancy on 16 February 2025 ("Notice to Quit").
3. By email to the Applicant dated 29 March 2025 the Tribunal noted that the Notice to Quit appeared to be invalid as the termination date did not correspond with an ish date and sought comment from the Applicant. The Applicant replied by email dated 30 March 2025 in which he noted that the Tribunal was correct that the Notice to Quit did not match the ish date but expressed the hope that the application could proceed as no complaint had been raised by the Respondent.

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 33 of the 1988 Act the Tribunal can make an order for possession if satisfied (a) that the short assured tenancy has reached its end; (b) that tacit relocation is not operating; (c) that no further contractual tenancy is for the time being in existence; and (d) that the landlord has given to the tenant notice stating that he requires possession of the house. The Notice to Quit stated a termination date that was earlier than the end. A landlord cannot call upon a tenant to leave before the tenant is contractually obliged to do so. The Notice to Quit is ineffective. The Tribunal cannot overlook the fundamental defect simply because the Respondent has not raised a complaint.
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

Joan Devine
Legal Member
18 April 2025