



**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

0-2, 7 Fisher Court, Glasgow G31 2HP ("the Property")

Case Reference: FTS/HPC/EV/24/5736

Michael Borland, 18 Atholl Crescent Lane EH3 8ET ("the Applicant")

N and L Properties ("the Applicant's Representative")

1. By Application dated 12 December 2024 the Applicant sought an order for eviction under section 33 of the Housing (Scotland) Act 1988 ("1988 Act") under rule 65 of the Rules.
2. The documentation produced in support of the application was a section 11 notice which stated that the tenancy commenced on "27/06/224" and a notice under section 33 of the 1988 Act dated 10 July 2024 which sought possession of the Property on 27 September 2024.
3. By email to the Applicant's Representative dated 15 January 2025 the Tribunal sought further information including a copy of the short assured tenancy agreement; a copy of the AT5; a corrected section 11 notice; a copy of any notice to quit served; evidence of service of the section 33 notice and notice to quit; authorisation for the Representative to act on behalf of the Applicant and an amended application stating that it was brought under rule 66 not rule 65, if the application was based upon the section 33 notice. No response was received. The information was again requested on 15 March 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 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 Tribunal was provided with no evidence that the short assured tenancy had reached its end. The Tribunal was provided with no evidence of the terms of the tenancy to allow it to confirm that what was in place was a short assured tenancy. The Tribunal was provided with no evidence that the landlord had given to the tenant notice stating that he requires possession of the house.
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
28 April 2025