

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 8(1)(a) of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”)

Chamber Ref: FTS/HPC/EV/25/1045

Re: Property at 42 Highfield Avenue, Inverness, IV3 8QS (“the Property”)

Parties:

Mr Benjamin Clokie, Lindean, Manse Brae, Gargunnock, FK8 3BQ (“the Applicant”)

Tribunal Members: Ruth O’Hare, Legal Member with delegated powers from the Chamber President

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) considers that the application received by it from the Applicant on 11 March 2025 is frivolous. The Tribunal therefore rejects the application under Rule (8)(1)(a) of the Rules.

Background

- 1 This is an application for an eviction order under Rule 109 of the Rules and section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicant relied upon ground 1, citing his intention to sell the property.
- 2 In terms of Rule 5(2) of the Rules a Legal Member of the Tribunal with delegated powers from the Chamber President reviewed the application to determine whether the mandatory requirements for lodgement were met. On 12 March 2025 the Tribunal wrote to the Applicant requesting further documents under Rule 5(3) in the following terms:-

“A Legal Member of the Tribunal with delegated powers of the President has considered your application. Please provide the following

1. *An amended application which includes the joint landlord and joint tenant.*

2. *A copy of the tenancy agreement.*

3. *Evidence of service of the Notice to leave on both tenants.*

4. *A copy of the section 11 notice with evidence that it has been sent to the Local Authority.*

Please respond within 14 days or your application may be rejected.”

- 3 The Applicant responded by email on 26 March 2025. He advised that he had checked his documentation and had realised that he had only sent the notice to leave to one of the joint tenants. The notice under section 11 of the Homelessness etc (Scotland) Act 2003 was also in the name of that tenant alone. The Applicant asked if he needed to re-serve the notice to leave on that basis.
- 4 On 16 April 2025 the Tribunal wrote again to the Applicant highlighting the provisions of the 2016 Act which required that the notice to leave be sent to both tenants. The Applicant was encouraged to seek legal advice. The Tribunal invited the Applicant to withdraw the application if he had not sent the notice to leave to both tenants, otherwise the application may be rejected and a decision published on the Tribunal's website. The Tribunal asked the Applicant to provide his response no later than 30 April 2025.
- 5 The Tribunal has received no further response from the Applicant as at the date of this decision.

Reasons for decision

- 6 Rule 8(1)(a) of the Rules allows an application to be rejected by the Chamber President if “they consider that an application is vexatious or frivolous”. “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”*.
- 7 Section 51 of the 2016 Act gives the Tribunal the power to issue an eviction order under a private residential tenancy on an application by a landlord. In terms of section 52(2) of the Act *“an application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant”*. Section 78(3) of the 2016 Act states *“in a case where two or more persons jointly are the tenant under a tenancy, references in this Act to the tenant are to all of those persons unless stated otherwise.”* Accordingly, a landlord must give a notice to leave to each tenant prior to making an application to the Tribunal under section 51.
- 8 In this case the Applicant has conceded that the notice to leave has not been given to both tenants. The application does not therefore meet the requirements for an application under section 51 of the 2016 Act, and cannot be entertained by the Tribunal. For those reasons I have concluded that the application is futile and must be rejected under Rule 8(1)(a).

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.

R.O'Hare

30 May 2025

Legal Member/Chair

Date
