

**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

14 Glen Moriston Drive, Cairneyhill, Fife, KY12 8YS ("the Property")

Case Reference: FTS/HPC/EV/24/5287

Ms Angela Macdonald (Applicant)

1. The Applicant submitted an application in terms of Rule 109 of the Rules on 15 November 2024.

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. The Tribunal issued an email to the Applicant's representative on 18 December 2024, in the following terms:

Your application has been assessed by a Legal Member of the Tribunal with the delegated authority of the Chamber President. The Legal Member has requested the following information or documentation:

- 1. The notice to leave appears to be invalid as the date inserted at part 4 is one day short of that required if the notice was served personally by hand, and three days short if served by email or recorded delivery. The notice period is 84 days plus 48 hours, and the date to be inserted at part 4 is the day after the expiry of the notice period. Please consider withdrawing the application and serving further notice. You may wish to take advice to ensure the notice is completed and served correctly. You should also be*

aware of the following:

2. You are required to provide evidence of service of a notice to leave when making an application.

3. You are required to provide evidence of service of the section 11 notice when making an application.

4. The evidence of intention to support the ground of eviction is likely to be considered insufficient. The legislation suggests an affidavit.

5. You must provide an address for the Applicant. A care of address is not acceptable.

Please reply to this office with the necessary information by 1 January 2025.

If we do not hear from you within this time, the President may decide to reject the application.

No response was received.

6. The Tribunal issued a further email to the Applicant's representative on 13 February 2025, requesting a response to the email of 18 December 2024 no later than 27 February 2025. The Tribunal advised that if no response was received, the application will be rejected. No response was received.
7. The Tribunal issued a further email to the Applicant's representative on 28 March 2025, requesting a response to the email of 18 December 2024 no later than 11 April 2025. The Tribunal advised that if no response was received, the application would likely be rejected. No response was received.
8. The Applicant has been given several opportunities to provide further information and has failed to do so. The Legal Member therefore 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.

Nicola Irvine

2 June 2025