

**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

17 Aboyne Gardens, Kirkcaldy, KY2 6EL ("the Property")

Case Reference: FTS/HPC/EV/24/5342

Miss Pauline Harley ("the Applicant")

1. The Applicant submitted an application for an eviction order in terms of Rule 65 of the Rules and Section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act"). The application form was dated 1 November 2023 but was received by the Tribunal on 7 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. On 18 December 2024, the Tribunal sent a letter to the Applicant's representative requesting the following information: 1) an amended application form which specifies one of the eviction grounds in the Housing (Scotland) Act 1988. 2) a mandate from the Applicant authorising the representative to make the application on her behalf. 3) a copy of the tenancy agreement. 4) a copy of the Notice to quit and AT6 notice with evidence that they were served on the Respondent. 5) evidence to support the eviction ground. 6) a copy of the section 11 notice with evidence that it was sent to the Local Authority. The Applicant's representative responded, providing some information.
6. On 8 February 2025, the Tribunal issued an email to the Applicant's representative explaining that the Notice to Leave ("NTL") produced relates only

to private residential tenancies which started after 1 December 2017. The Tribunal requested a valid notice to quit. The Tribunal also advised that the form AT6 did not refer to a valid ground of eviction. The Tribunal suggested that the Applicant may wish to take legal advice before responding. The Applicant's representative responded by letter which was received on 24 February 2025

7. The Tribunal issued a further email to the Applicant's representative on 12 April 2025 advising that information was requested and that has not been provided. The Applicant's representative sent 3 emails on 15 April 2025 advising that a notice to quit had been served. No documentation was produced.
8. The Application is not supported by a valid Notice to Quit, nor a valid Notice of Proceedings as required by section 19 of the 1988 Act. 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.

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Nicola Irvine
Legal Member
22 May 2025