

**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

29 Finlas Place, Glasgow, G22 5EX ("the Property")

Case Reference: FTS/HPC/EV/24/4525

Mr Wai Hung Lai (Applicant)

1. The Applicant's representative submitted an application in terms of Rule 66 of the Rules on 30 September 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 19 March 2025, the Tribunal issued an email to the Applicant's representative in the following terms:-

Before a decision can be made, we need you to provide us with the following:

A Legal Member of the Tribunal with delegated powers of the President has considered your application.

You have resubmitted the application under rule 66. This rule applies when a short assured tenancy has been brought to an end under section 33 of the Housing (Scotland) Act 1988. At part 5 of the

application you state that the ground relied on is “ Ground 1 – the landlord intends to move back into the property.” As this ground proceeds under section 18 of the 1988 Act you would require to proceed under rule 65 to rely on this ground. PLEASE CONFIRM WHAT RULE YOU SEEK TO PROCEED ON. If you seek to proceed relying on both rules 2 separate application which may be conjoined are required.

In relation to the present application under rule 66 you must provide the following documents:

- A complete AT5 form.*
- You have provided an invoice relating to the service of an NTQ and section 33 notice. Please provide a sheriff officers certificate of service in relation to these documents.*
- The section 11 notice provided does not appear to identify the correct legislation the application is proceeding under namely the Housing (Scotland) Act 1988. Please provide a correct notice with proof of delivery to the local authority.*

Given the delays in providing the information required for the application to competently proceed, if it is not possible to provide the required documents, please confirm whether you seek to withdraw the application. Please note that if the required information is not provided within 14 days of the date of this email the application will likely be rejected by the Tribunal under rule 8.

Please reply to this office with the necessary information by 2 April 2025. If we do not hear from you within this time, the President may decide to reject the application.

No response was received.

6. On 22 April 2025, the Tribunal issued a further email to the Applicant's representative in the following terms:-

Thank you for your recent application which has been reviewed by a Legal Member of the Tribunal with delegated powers of the President. Please provide the following further information:

1. *The Tribunal sought further information by email dated 19 March 2025. You have not replied. Please now provide the further information failing which the application may be rejected.*

Please reply to this office with the necessary information by 6 May 2025. If we do not hear from you within this time, the President may

decide to reject the application.

No response was received.

7. The Applicant has been given two opportunities to provide further information and has failed to do so. The application has been extant for more than 8 months and does not meet the requirements of rule 66. 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

16 June 2025