

**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

**56 Academy Street, Dumfries, DG1 1BZ| ("the Property")**

**Case Reference: FTS/HPC/EV/25/0390**

**Executors of Archibald Alan Duncan (Applicant)**

1. The Applicant submitted an application in terms of Rule 109 of the Rules dated 23 January 2025 and received by post on 30 January 2025.

**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 9 April 2025 in the following terms:-

*I refer to your recent application which has been referred to the Chamber President for consideration.*

*Thank you for your email of 5 March 2025. Before a decision can be made on whether the application can proceed to a tribunal for determination we require you to provide the following information:-*

*1 You have submitted an amended Form E which states that the ground for possession is ground 4 – landlord intends to live in the property. However, you have selected ground 12 – rent arrears on the notice to leave. If you wish to rely upon a ground for possession that has not been included in the notice to leave you will require to provide written submissions in support of*

*this for the tribunal to consider. In terms of section 52(4) of the Private Housing (Tenancies) (Scotland) Act 2016, the tribunal must give permission for a ground to be included in the application where it has not been stated in the notice to leave. Please clarify the ground for possession in this case and submit an amended Form E, if required. Please also provide a version of the Form E that is signed and dated.*

*2 If you wish to rely upon ground 4, you require to provide evidence to support that ground. Such evidence may include an affidavit from the landlord confirming their intention to live in the let property.*

*3 It appears that the notice to leave may not be valid, in that it does not provide the tenant with the required notice. A notice to leave that includes ground 12 must give the tenant 28 days notice in accordance with section 54 of the Private Housing (Tenancies) (Scotland) Act 2016. Furthermore, the notice period commences when the tenant receives the notice. In terms of section 62 of the 2016 Act, the tenant is deemed to have received the notice 48 hours after it was sent. The date upon which proceedings can start must then be the day after the notice period has expired. If the notice to leave was sent to the tenant on 3 October 2024, the date upon which proceedings can start would be the 3 November 2024. Please explain why you believe the notice to leave is valid and the application can be entertained by the Tribunal.*

*Please provide the information no later than 23 April 2025. Alternatively please confirm if you wish to withdraw the application and resubmit once a valid notice to leave has been sent to the tenant.*

No response was received.

6. The Applicant has been given an opportunity 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  
Legal Member  
26 May 2025