

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF JOSEPHINE BONNAR,
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")**

Case Reference: FTS/HPC/EV/25/1439

42 Linburn Grove, Dunfermline ("the property")

Neil Foster, 31 Tarmachan Road, Dunfermline ("the Applicant")

1. The Applicant seeks an order for possession of the property in terms of Rule 65 of the Rules and Section 18 of the Housing (Scotland) Act 1988 ("the 1988 Act"). A tenancy agreement, Notice to Quit, and AT6 Notice were lodged in support of the application. The application form refers to ground 1 – landlord intends to sell the let property. The Notice to Quit calls upon the Respondent to vacate the property on 7 October 2024. The AT6 refers to ground 2 of schedule 5 of the 1988 Act.
2. The Tribunal issued a request for further information regarding the validity of the Notice to Quit and the AT6 Notice. The Tribunal noted that the Notice to Quit appears to be invalid as the date specified in the Notice is not an ish date. The AT6 also appears to be invalid as it specifies ground 2, which can only be used by a heritable creditor seeking recovery of a property where the owner of the property has mortgage arrears.
3. The Applicant initially requested additional time to respond, which was granted. However, no response was subsequently received to the request or to a reminder issued on 10 June 2025.

DECISION

4. 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.

- 5. After consideration of the application and documents lodged 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 Procedural Rules.**

Reasons for Decision

6. '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".
7. The application is rejected for the following reasons:-
- (a) The tenancy agreement lodged with the application states that the initial term of the tenancy is 1 April 2017 to 31 March 2018 with a provision that the tenancy will continue on a month to month basis after the initial term. The Notice to Quit calls upon the Respondent to vacate the property on 7 October 2024, which is not an ish. As a landlord cannot terminate the tenancy contract before the ish date, the Legal Member is satisfied that the Notice to quit is invalid.

- (b) The application form states that the order for possession is sought on ground 1 –the landlord intends to sell the let property. Ground 1 of Schedule 5 of the 1988 Act applies where the landlord intends to live in the let property. A landlord cannot seek recovery of possession of an assured tenancy on the grounds that he intends to sell as it is not one of the grounds specified in Schedule 5 and a landlord can only recover possession if one of these grounds applies.
 - (c) The AT6 notice is invalid as it refers to ground 2. Ground 2 can only be used by a heritable creditor who is entitled to seek possession of the property in order to sell it where the owner of the property has mortgage arrears.
8. For the reason outlined, 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.