



**DECISION AND STATEMENT OF REASONS OF ALISON KELLY, 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

**50 Balmoral Road, Dumfries, DG1 3BD ("the Property")**

**Case Reference: FTS/HPC/EV/25/1815**

**Alan Spence ("the Applicant")**

1. The Applicant seeks an order for eviction in terms of Rule 109 of the Rules having lodged an application with the Tribunal on 29<sup>th</sup> April 2025.
2. The Applicant provided a tenancy agreement showing that the tenancy commenced on 1<sup>st</sup> September 2024 and was therefore subject to the Private Housing (Tenancies)(Scotland) Act 2016. The grounds of eviction narrated in the application form were Grounds 8,10,12 and 15 of the Housing (Scotland) Act 1988. The Tribunal asked the Applicant to clarify.
3. The Applicant sent an email to the Tribunal on 25<sup>th</sup> May 2025 attaching a copy of the Notice to Leave, where he had ticked the ground "You have breached a term(s) of your tenancy agreement". His email stated that the tenants were in arrears of rent exceeding three months.

## 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 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

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"*. 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.

7. The ground which appears on the Notice to Leave states:

*Breach of tenancy agreement*

*11(1)It is an eviction ground that the tenant has failed to comply with an obligation under the tenancy.*

*(2)The First-tier Tribunal may find that the ground named by sub-paragraph*

*(1) applies if—*

*(a)the tenant has failed to comply with a term of the tenancy, and*

*(b)the Tribunal considers it to be reasonable to issue an eviction order on account of that fact.*

*(3)The reference in sub-paragraph (2) to a term of the tenancy does not include the term under which the tenant is required to pay rent.*

The ground is specific in that it does not include breach of a term where the tenant is required to pay rent. There is a separate ground for that. The Tribunal cannot accept an application where the ground being used does not appear on the Notice to leave, and accordingly the application must be rejected.

## 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.

# A.Kelly

Legal Member  
30th June 2025