

**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

16 Playingfield Road, Crosshouse, Kilmarnock, KA2 0JJ ("the Property")

Case Reference: FTS/HPC/EV/25/2740

Mrs Amy Dunlop (Applicant)

1. The Applicant's representative submitted an application in terms of Rule 109 of the Rules on 23 June 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. On 18 July 2025, the Tribunal issued an email to the Applicant's representative in the following terms:-

Your application has been assessed by a Legal Member of the Tribunal with the delegated authority of the Chamber President. The Legal Member has requested the following information or documentation:

1. The application is made under Rule 66, yet it would appear to be a private residential tenancy, which should be made under Rule 109. Please consider whether this is the correct rule and amend the relevant page of the application form.

2. Please amend the relevant page of the application form to show the address of the Applicant. We cannot accept an application without this information.

3. *It is stated in the application form that the application is made under ground 8A. There is no such ground in the legislation pertaining to private residential tenancies. Please amend the relevant page of the application form to show the correct ground which must match that in the notice to leave (ground 12).*

4. *Please provide a mandate from the Applicant authorising you to make the application on their behalf.*

5. *You have not provided a section 11 notice together with service upon the local authority. The application cannot be accepted without this.*

6. *Please provide a copy of the tenancy agreement. The application cannot be accepted without this.*

7. *Please provide a rent statement showing rent due, rent paid and a running total of rent arrears. We must be able to see the outstanding rent at any given time, and, particularly, at the time of serving the notice to leave.*

8. *Please provide evidence of the increase of rent.*

9. *The notice to leave is unsigned and undated and you have provided no evidence of service of the notice upon the Respondent. Please provide a signed and dated copy, if available, and evidence of service of the notice.*

10. *Please provide any available evidence of compliance by the Applicant with the pre-action protocol.*

Please reply to this office with the necessary information by 1 August 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 26 August 2025, the Tribunal issued a further email to the Applicant's representative in the following terms:-

It is noted that you have not responded to our request for further information. Please provide the requested information within seven days, or it is likely the application will be rejected. Please find the last email sent to you attached.

If you no longer intend to progress the application, it would be very helpful if you would confirm that you wish to withdraw it. Otherwise, it is likely that a rejection decision will be published on our website.

Please reply to this office with the necessary information by 2 September 2025.

No response was received.

7. The Applicant has been given two opportunities 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/Chair

22 September 2025