

**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

32 Cauldhame Farm Road, Falkirk, FK2 7FQ ("the Property")

Case Reference: FTS/HPC/PR/25/3498

Mrs Jemma McCulloch Griffin (Applicant)

1. The Applicant submitted an application in terms of Rule 103 of the Rules dated 1 July 2025 which was received by email on 14 August 2025. The Applicant stated that she paid a deposit of £3,600 and one month's rent in advance in the sum of £1,800. The claim was directed against the landlord's agent on the basis that payment was made to the landlord's agent.

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. Between 19 August 2025 and 17 October 2025, the Tribunal corresponded with the Applicant by email. In the course of that correspondence, the Applicant confirmed that she did not move into the Property. In summary, she received a private residential tenancy, she paid a deposit and one month's rent in advance but did not take up occupation. During the course of the email correspondence, the Applicant sent an email attaching an application under rule 111 but did not confirm whether the application under rule 103 was to be withdrawn.
6. The Tribunal explained to the Applicant that if no tenancy was entered into, the

Tribunal does not have jurisdiction to deal with the Applicant's claim, either under rule 103 or rule 111.

7. The Tribunal considered the following legislation in determining this application:-

S.1 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") provides:-

- (1) A tenancy is a private residential tenancy where—*
 - (a) the tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling,*
 - (b) the tenant occupies the property (or any part of it) as the tenant's only or principal home, and*
 - (c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.*
- (2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.*

Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the 2011 Regulations") provides:-

- (1) A tenant who has paid a tenancy deposit may apply to the First-tier Tribunal for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.*
- (2) An application under paragraph (1) must be made no later than 3 months after the tenancy has ended.*

8. The Tribunal concluded that there was no private residential tenancy in existence, because the conditions set out in S. 1 of the 2016 Act were not met. The Applicant did not occupy the Property as her only or principal home.
9. The Tribunal has jurisdiction to determine applications relating to private residential tenancies and certain other tenancies by virtue of section 16 of the Housing (Scotland) Act 2014. Having determined that there was no private residential tenancy in existence, or indeed any other tenancy between the parties, the Tribunal concluded that it does not have jurisdiction to determine an application under rule 103 or rule 111.
10. Even if the Tribunal had jurisdiction to deal with a claim under rule 103, any such claim must be directed against a landlord, since the 2011 Regulations impose a duty on a landlord, rather than on an agent. In addition, any

application under rule 103 must be lodged no later than 3 months after the tenancy has ended. The Tribunal therefore concluded that the application under rule 103 could not succeed.

11. In summary, although a tenancy agreement has been produced, the Applicant did not occupy the Property and therefore a private residential tenancy did not start. The Tribunal has no jurisdiction to adjudicate upon a dispute between the parties. 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.

N Irvine

Nicola Irvine
Legal Member
20 October 2025