

Housing and Property Chamber
First-tier Tribunal for Scotland



**DECISION AND STATEMENT OF REASONS OF JOAN DEVINE, 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

Flat 2 Airlie Court, 21 Lethington Avenue, Glasgow G41 3HA ("the Property")

Case Reference: FTS/HPC/EV/25/1914

Lesley Wood, 8 Lochlea Road, Glasgow G43 2XZ ("the Applicant")

1. By Application dated 6 May 2025 the Applicant sought an order for eviction under section 33 of the Housing (Scotland) Act 1988 ("1988 Act") under rule 66 of the Rules.
2. The documentation produced in support of the application included a letter dated 17 February 2025 addressed to the Respondent headed "notice to quit" which referred to 12 weeks' notice being given under section 33 of the 1988 Act and sought possession of the Property by 5 May 2025; copy text messages between the parties and a copy tenancy agreement between the parties which commenced on 16 June 2016 and did not specify a duration.
3. By email dated 18 July 2025 the Tribunal noted that a valid AT5 had not been produced which meant that the tenancy was not a short assured tenancy; that even if the tenancy was a short assured tenancy the notice to quit was not valid as it did not contain the required prescribed information and had not been served to an ish date and finally that a section 33 notice had not been lodged. The Tribunal suggested that the Applicant should consider withdrawing the application and seeking legal advice. The Applicant did not respond to the email from the Tribunal. The Tribunal sent a follow up email on 22 August 2025

asking for a response by 5 September 2025. No response was received.

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". 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. In terms of section 33 of the 1988 Act the Tribunal can make an order for possession if satisfied (a) that the short assured tenancy has reached its ish; (b) that tacit relocation is not operating; (c) that no further contractual tenancy is for the time being in existence; and (d) that the landlord has given to the tenant notice stating that he requires possession of the house.
8. The tenancy agreement provided referred to an AT5 having been given to the Respondent but the AT5 was not produced. In the absence of an AT5 the tenancy was not a short assured tenancy that could be brought to an end under section 33 of the 1988 Act.
9. If the tenancy was a short assured tenancy, as no term was stated in the tenancy agreement, it is presumed that the period of the tenancy was 1 year. The document produced headed "notice to quit" sought possession of the Property on 5 May 2025 which is not an ish date. In any event, the document did not contain the information which must be contained in a notice to quit in terms of the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988. As a valid notice to quit was not produced, the tenancy had not reached its ish as required by section 33. Further, the Applicant did not lodge a section 33 notice which had been served on the Respondent.
10. In all the circumstances, 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.

Joan Devine

Legal Member, 25 September 2025