

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

2/1, 20 Morefield Road, Drumoyne, Glasgow G51 4NG("Property")

Case Reference: FTS/HPC/EV/25/3069

Ryan Peter McCafferty, 1 Silver Birch Drive, Glasgow G51 4EF ("Applicant")

1. The Applicant sought an order for possession of the Property in terms of Rule 109 of the Rules and Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 ("2016 Act"). The Applicant lodged form E dated 16 July 2025 which named one Respondent. The Applicant lodged a copy of a private residential tenancy agreement which named two tenants and a copy Notice to Leave dated 31 March 2025 addressed to both tenants in which the ground for eviction was stated to be ground 1.
2. By email dated 6 August 2025 the Tribunal sought further information including: evidence of service of the Notice to Leave on each tenant; a copy of the section 11 notice and proof of it having been sent to the local authority; evidence to support the ground for eviction and clarification as to whether there should be two Respondents named in the Form E.
3. The Tribunal followed up the request for further information by emails dated 19 and 25 August 2025. The information requested was not provided.

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. The Applicant seeks recovery of possession of property let under a private residential tenancy. In terms of section 52(3) of the 2016 Act an application to the First-tier Tribunal for an eviction order against a tenant must be accompanied by a Notice to Leave which has been given to the tenant. In terms of section 56 of the 2016 Act, a landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant unless the landlord has given notice of intention to do so to the local authority in whose area the let property is situated. The Applicant failed to provide evidence that the Notice to Leave had been given to the tenant or to provide evidence that notice had been given to the local authority of intention to seek an order for possession. In the absence of evidence in respect of these matters, the application cannot succeed. In addition, it was unclear whether all Respondents had been included in the application and no evidence was provided to support the ground on which eviction was sought.
8. In these 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

Joan Devine
Legal Member
7 October 2025