



**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 3, 10 Ivanhoe Crescent, Edinburgh EH16 6AU ("the Property")

Case Reference: FTS/HPC/EV/25/3196

**James Froude and Simone Froude, 94 Gilmerton Dykes Crescent, Edinburgh
EH17 8JN ("the Applicant")**

**David Drummond, Drummond Partners, 4 Redheughs Rigg, Edinburgh EH12
9DQ ("the Applicant's Representative")**

1. By Application dated 27 July 2024 the Applicant sought an order for eviction under section 18 of the Housing (Scotland) Act 1988 ("1988 Act") and rule 65 of the Rules. The documents produced in support of the application were : an undated one page document headed "rental agreement – Scotland....on a short assured tenancy"; form AT5 dated 20 November 2023; a copy document headed "notice to leave"; copy email to the local authority dated 26 April 2024; a statement from the Applicant of intention to sell the Property and a copy email to the Respondent dated 26 April 2024.
2. By email to the Applicant's Representative dated 12 August 2025 the Tribunal raised a number of queries regarding the nature of the tenancy which formed the subject matter of the application and the validity of the documents lodged in support of the application. It was unclear whether the tenancy was a short assured tenancy under the 1988 Act or a private residential tenancy under the Private Housing (Tenancies) (Scotland) Act 2016 ("2016 Act"). The Tribunal requested sight of the tenancy agreement in full and clarification of the

procedure followed. It was noted that if the tenancy was a short assured tenancy under the 1988 Act then the appropriate notices had not been served in order to terminate the tenancy and if the tenancy was a private residential tenancy under the 2016 Act then the document produced headed “notice to leave” did not follow the template for a notice to leave under the 2016 Act prescribed by Scottish Ministers. The Applicant’s Representative did not respond to the email dated 12 August 2025. A follow up email was sent on 22 September 2025. No response was received.

DECISION

3. 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.

4. 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

5. '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.
6. The application was stated to be made under rule 65 which relates to short assured tenancies under the 1988 Act. If the tenancy was a short assured tenancy the Applicant had not lodged a section 33 notice, notice to quit or AT6 served on the Respondent which would be required to terminate a short assured tenancy before an application was made under rule 65. If the tenancy was a private residential tenancy under the 2016 Act the document lodged described as a notice to leave was not in the format prescribed by Scottish Ministers and therefore did not meet the requirements of section 62 of the 2016 Act.
7. 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

Joan Devine
Legal Member
4 November 2025