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

2/6 Restalrig Road, Smokey Brae, Edinburgh EH7 6LD ("the Property")

Case Reference: FTS/HPC/CV/25/3833

Jose Carlos Castro Garcia, 7/10 Albion Gardens, Edinburgh EH7 5QL ("the Applicant")

1. The Applicant lodged form F dated 1 September 2025 under rule 111. No information was provided at section 5 of the form F regarding the order sought.

2. The Applicant lodged a copy "flat share agreement" which identified as being the landlord. The agreement stated that Mr owned the property. The agreement further provided that the tenant acknowledged that the tenancy was not a Scottish Private Residential Tenancy by reason of being a tenancy granted by a resident landlord. The agreement commenced on 15 November 2024. The Applicant lodged a screenshot which indicate that a deposit of £500 had been paid by him.

3. By email dated letter dated 17 September 2025 the Tribunal noted that the flat share agreement lodged indicated that the landlord was a resident landlord and therefore the agreement was not a private residential tenancy. The Tribunal noted that it did not have jurisdiction to deal with the application. The Tribunal referred to correspondence regarding a conjoined application proceeding under reference PR/25/3774. The Applicant responded by email dated 17 September 2025 stating he believed the person named as Respondent was

subletting the property. The Tribunal responded by email dated 19 September 2025 noting that the Tribunal does not have jurisdiction to deal with the type of contractual arrangement between the Applicant and the Respondent. The Tribunal invited the Applicant to withdraw the application. 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. The Tribunal does not have jurisdiction in respect of a flat share agreement where the "landlord" is a resident landlord. 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
29 October 2025