



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 8(1)(a) of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”)

Chamber Ref: FTS/HPC/EV/25/5201

Re: Property at 94 White Street, Whitburn, West Lothian, EH47 0BQ (“the Property”)

Parties:

Mr Alexander Ferguson, Mrs Janette Ferguson, 30 St Mary’s Place, Bathgate, EH48 1DS (“the Applicant”)

Tribunal Members: Ruth O’Hare, Legal Member with delegated powers from the Chamber President

Decision

The Legal Member determined that this application received on 1 December 2025 is frivolous and should therefore be rejected under Rule 8(1)(a) of the Rules.

Background

- 1 This is an application for an eviction order under rule 109 of the Rules and section 51 of the Private Housing Tenancies (Scotland) Act 2016 (“the 2016 Act”). The application was received by the Tribunal on 1 December 2025.
- 2 The application was submitted by the Applicant’s representative, Allcourt Solicitors, who highlighted that *“the application should have been submitted some time ago....and wasn’t”*. The Applicant relied upon ground 1 of schedule 3 of the 2016 Act as the ground for possession, stating their intention to sell the property.
- 3 In accordance with rule 5(2) of the Rules, a Legal Member with delegated powers from the Chamber President reviewed the application to assess whether it met the mandatory requirements for an application under rule 109. Following said review, the Tribunal wrote to the Applicant’s representative on 22 December 2025 in the following terms:-

“Unfortunately, the Tribunal has no discretion to accept an eviction application submitted more than 6 months after the end of the notice period specified in the Notice to Leave, in terms of Section 55 of the 2016 Act. The notice period in the Notice to Leave expired on 7 December 2024.

Accordingly, you may wish to withdraw this application and re-submit a fresh application once a fresh Notice to Leave has been served on the tenant and the new notice period has expired. When re-submitting, please note that the Tribunal requires to see proof of the method and date of service of the Notice to Leave as well as the notice itself and evidence in support of the eviction ground, as well as an updated Section 11 notice/proof of notification to the local authority, together with the other supporting documentation, such as the tenancy agreement.

*Please respond by **9 January 2025** to confirm that you are withdrawing this application, as otherwise it will require to be formally rejected.”*

- 4 The Tribunal has received no response from the Applicant’s representative as at the date of this decision.

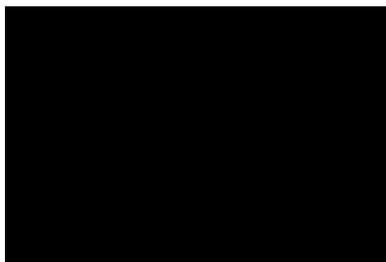
Reasons for decision

- 5 Rule 8(1)(a) of the Rules allows an application to be rejected by the Chamber President if **“they consider the application is vexatious or frivolous”**.
- 6 “Frivolous” in the context of legal proceedings is defined by Lord Justice Bingham in R v North West Suffolk (Mildenhall) Magistrates Council (1998) Env.L.R.9. At page 16 he states:- *“What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic”*.
- 7 Section 55 of the 2016 Act states that *“a landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave more than six months after the day on which the relevant period in relation to that notice expired.”*
- 8 The relevant period after which a landlord can apply to the Tribunal for an eviction order must be calculated in accordance with the provisions of section 54 and 62 of the Private Housing (Tenancies) (Scotland) Act 2016. In terms of section 54(2) of the 2016 Act, where a notice to leave includes ground 1, a tenant must be given 84 days notice. In terms of section 62(4) of the 2016 Act, the day upon which a landlord can apply to the tribunal must then be the day after the notice period has expired. Section 62(5) of the 2016 requires an additional 48 hours to be added to the notice period where the notice is delivered by email or recorded mail. The Applicant has not submitted evidence of the method of delivery in respect of the notice to leave. This means that the relevant notice period is either 85 or 87 days.

- 9 In this case, the notice to leave is dated 11 September 2024. The notice to leave states that an application will not be submitted to the Tribunal any earlier than 7 December 2024. It can therefore be assumed, in the absence of any contradictory evidence, that the notice to leave was delivered by email or recorded mail in view of the period of notice given to the tenant.
- 10 The six month period under section 55 of the 2016 Act within which an application could be made to the Tribunal expired on 7 June 2025. Regardless of the method of delivery for the notice to leave, the application is far beyond the statutory deadline and is out of time. The Applicant's representative appears to have acknowledged this in his correspondence with the Tribunal, and it can be reasonably assumed given the lack of response to the Tribunal's email of 22 December 2025 that he accepts the fundamental defect with the application.
- 11 There is no provision in the 2016 Act whereby the Tribunal can entertain an application received after the six month deadline. The application is therefore futile.
- 12 Accordingly, the Legal Member has concluded that the application must be rejected under rule 8(1)(c).

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.



Legal Member/Chair

11 February 2026

Date