



**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

("the property")

Case Reference: FTS/HPC/EV/25/4254

Property : 42 Pumpherston Road, Uphall Station EH54 5PT ("Property")

**Allan Ritchie and Wilam Lewis, 54 Nettlehill Drive, Uphall Station EH54 5PS
("the Applicant")**

1. The Applicant sought an order for possession of the property in terms of Rule 66 of the Rules and Section 33 of the Housing (Scotland) Act 1988 ("the 1988 Act"). The documents produced included a copy short assured tenancy for the period 1 February 2017 to 1 August 2017 plus notice to quit and section 33 notice both dated 17 July 2025 which stated that possession was sought on 1 October 2025.
2. The Tribunal issued a request for further information on 30 October 2025 in which the Tribunal noted that the tenancy was for the period 1 February 2017 to 1 August 2017 and did not provide that thereafter it continued on a month to month basis. In those circumstances the Tribunal noted that when the tenancy expired on 1 August 2017 it would continue for a further 6 months by virtue of the doctrine of tacit relocation. The Tribunal noted that the notice to quit, which specified an "ish" date of 1 October 2025 appeared to be invalid. The Tribunal sought comment from the Applicant. No response was received. The Tribunal followed up the request for further information by emails dated 3 December

2025 and 21 January 2026. 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 Applicant seeks recovery of possession of a short assured tenancy in terms of section 33 of the 1988 Act. In terms of section 33, the Tribunal shall make an order for possession if the criteria set out in section 33(1) are met. Those criteria include that the short assured tenancy has reached its ish and that tacit relocation is not operating. In order to prevent tacit relocation from operating, a valid notice to quit requires to have been served. To be valid, a notice to quit must specify the correct ish date. In this case the ish in each year would be 1 February or 1 August. The ish date specified in the notice to quit was 1 October 2025. That is not an ish date. The notice to quit is therefore invalid.
7. 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
20 February 2026