



**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**

**60 Niddry Road, Winchburgh, Broxburn EH52 6SA ("Property")**

**Case Reference: FTS/HPC/EV/25/4612**

**Ian McKillop, 15 Stewartfield Road, Broxburn EH52 5EP ("Applicant")**

**KnightBain, 4 Greendykes Road, Broxburn EH52 5AG ("Applicant's  
Representative")**

1. The Applicant sought an order for possession of the Property in terms of Rule 65 of the Rules and Section 18 of the Housing (Scotland) Act 1988 ("1988 Act"). The Applicant lodged form E dated 26 October 2025. The Applicant lodged a copy of a tenancy agreement which commenced on 12 September 2018 along with a notice to quit and notice under section 33 of the 1988 Act both dated 11 June 2025.
2. On 19 November 2025 the Tribunal emailed the Applicant's Representative seeking clarification as to whether they wished to proceed under rule 65 or rule 66 and pointing out the documents required under each rule. On 30 December 2025 the Applicant's Representative responded stating that the documents submitted and been submitted in error. They submitted a revised form E under rule 66 along with a further copy notice to quit and section 33 notice.
3. On 29 January 2026 the Tribunal emailed the Applicant's Representative noting that the tenancy commenced in September 2018 and was therefore a private residential tenancy in terms of the Private Housing (Tenancies)

(Scotland) Act 2016 (“2016 Act”), unless the saving provisions applied. The Tribunal noted that the application would require to be made under rule 109 and based upon one of the grounds set out in the 2016 Act. The Applicant’s Representative did not reply to the email. The Tribunal followed up the request for further information by email dated 6 March 2026 and sought a response by 20 March 2026. 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 Applicant seeks recovery of possession of a property let under a tenancy which commenced in September 2018 and is therefore a private residential tenancy under the 2016 Act. The Applicant did not provide any information to indicate that the saving provisions apply. 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. The Applicant failed to provide a copy Notice to Leave and evidence of service thereof. The documents lodged in support of the application were a notice to quit and section 33 notice which would be appropriate for termination of a short assured tenancy under the 1988 Act. In the absence of evidence of service of a Notice to Leave, the application cannot succeed. In addition, no evidence was provided to indicate that one of the grounds for eviction under the 2016 Act had been established.
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.

# J. Devine

23 April 2026

