



**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**

**Gilmerton Dykes Crescent, Edinburgh EH17 8JW ("Property")**

**Case Reference: FTS/HPC/EV/25/4246**

**Gary Dillon, 9 Southside Drive, Edinburgh EH17 8FP ("Applicant")**

1. The Applicant sought an order for possession of the Property in terms of Rule 109 of the Rules and Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 ("2016 Act"). The Applicant lodged form E dated 8 September 2025. The Applicant told the Tribunal that he no longer had a copy of the tenancy agreement but that it was a private residential tenancy which commenced on 31 January 2019. The Applicant lodged a copy Notice to Leave dated 3 April 2025 in which the ground for eviction was stated to be ground 1.
2. By email dated 6 November 2025 the Tribunal sought further information including: proof of service of the Notice to Leave; evidence to support the ground for eviction; a copy of the section 11 notice sent to the local authority and evidence of it having been sent. The Applicant responded on 19 November 2025 providing evidence of intention to sell the property and a further copy of the notice to leave. The Applicant did not provide the information requested regarding service of the notice to leave or the section 11 notice.
3. The Tribunal followed up the request for further information by emails dated 18 December 2025, 5 February 2026 and 18 March 2026. No response was received from the Applicant.

## 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 property let under a private residential tenancy. 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 evidence that the Notice to Leave had been given to the tenant. In the absence of evidence of service of the Notice to Leave, the application cannot succeed. In addition, no section 11 notice was provided along with evidence of it having been issued as required by section 56 of the 2016 Act.
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.

Joan Devine  
Legal Member  
5 May 2026