



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)**

**Chamber Ref: FTS/HPC/EV/26/1000**

**Re: Property at 35 Pagan Walk, Muirkirk, KA18 3PT (“the Property”)**

**Parties:**

**Miss Fiona Zadi, 14 Dundonald Road, Troon, South Ayrshire, KA10 6NR (“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 3 March 2026 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 submitted to the Tribunal by the Applicant’s representative, Be Listed, on 3 March 2026. The Applicant relied upon ground 1 as the ground for possession, stating her intention to sell the property.
- 2 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 10 April 2026 in the following terms:-

*“A legal member of the Tribunal has reviewed your application and has determined that further information is required before your application can progress.*

*The legal member has identified a potential defect with your application in that you have produced a notice to leave which states that an application will not be made to the Tribunal before 1 August 2025. In terms of section 55 of the*

*Private Housing (Tenancies) (Scotland) Act 2016, a landlord cannot rely upon a notice to leave more than six months after the notice period has expired. The deadline for making an application to the Tribunal would therefore have been 1 February 2026. The application was received by the Tribunal on 3 March 2026. The Tribunal has no discretion to extend the six month deadline.*

*Please confirm that you are withdrawing the application or produce a valid notice to leave that has been given to the tenant prior to making the application together with evidence of the method of delivery.*

*If the application is to proceed, the following information is also required:-*

- 1. A proper address for the applicant. This is a requirement under rule 109.*
- 2. A written mandate from the applicant authorising you to act as their representative in the Tribunal application.*
- 3. An amended Form E with a correct ground for eviction. Ground 1A is no longer in force.*
- 4. You have included grounds 1 and 2 in the notice to leave. Please clarify the position regarding the mortgage lender. Has the mortgage lender obtained a court decree against the applicant that entitles the lender to sell the property?*

*Upon receipt of your response we may seek further information from you before a decision is made on whether the application can proceed to a Tribunal for full determination.*

*You may wish to seek advice from a solicitor or advice service before providing your response. The Tribunal cannot provide advice as an independent judicial body but there are details of advice agencies available under the Useful Links section of our website.*

*Please reply to this office with the necessary information by **24 April 2026**. If we do not hear from you within this time, the President may decide to reject the application.”*

- 3 On 23 April 2026 the Tribunal received a response from the Applicant's representative in the following terms:-

*“In response to the points raised, I can confirm the following:*

- The Notice to Leave was hand delivered to the tenant on **8 May 2025**.*
- The property was placed on the market on **20 May 2025**, with the tenant's knowledge and agreement.*
- The property has remained actively marketed since that date, with viewings being carried out.*
- Mortgage enforcement action did not proceed further at this time as the property remained on the market and steps were being taken to sell the property.*

- *An offer for the property was accepted on **23 February 2026**.*
- *The Tribunal application was submitted on **3 March 2026**.*

*A revised application form is attached together with the additional documentation requested.”*

### **Reasons for decision**

- 4 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”*.
- 5 *“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”.*
- 6 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.”*
- 7 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 confirmed that the notice was personally delivered to the tenants. This means the relevant period is 85 days.
- 8 In this case, the notice to leave was given to the tenant on 8 May 2025. It states that an application will not be made to the Tribunal any earlier than 1 August 2025. The six month period under section 55 of the 2016 Act within which an application could be made to the Tribunal using that notice to leave therefore expired on 1 February 2026. The application was submitted to the Tribunal on 3 March 2026.
- 9 The Applicant's representative has not sought to address this point in their response to the Tribunal's request for information. Whilst the Tribunal understands the chronology of events that led to the submission of the application on 3 March 2026, there is no provision in the 2016 Act whereby the Tribunal can entertain an application received after the six month statutory deadline. The application is therefore futile and cannot succeed.

10 Accordingly, the Legal Member has concluded that the application must be rejected under rule 8(1)(a).

### **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.**

# R.O'Hare

20 May 2026

\_\_\_\_\_  
Legal Member/Chair

\_\_\_\_\_  
Date