



**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**

**5C Avon Grove, Penicuik EH26 8JL ("Property")**

**Case Reference: FTS/HPC/EV/25/5115**

**Lyne Properties, 8 Kirk Park, Edinburgh EH16 6HZ ("Applicant")**

**Northwood Edinburgh, 13 Comely Bank Road, Edinburgh EH4 1DR  
("Applicant's Representative")**

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 25 November 2025. The Applicant lodged a copy notice to leave dated 9 October 2025 which specified ground 12 as the ground for eviction; a copy email serving the notice to leave dated 9 October 2025 and a rent ledger dated 26 November 2025.
2. By email dated 30 January 2026 the Tribunal noted that ground 12, set out in schedule 3 of the 2016 Act, states that it is an eviction ground that the tenant has been in arrears for three or more consecutive months. The Tribunal noted that the rent ledger indicated that the rent first fell into arrears on 11 July 2025 and therefore had not been in arrears for three or more consecutive months until 11 October 2025 which was two days after service of the notice to leave. The Tribunal referred to the Upper Tribunal decision *Majid v Gaffney and Britton* 2019 UT 59, in which the Upper Tribunal stated that the 2016 Act was

clear that the ground for eviction must be satisfied at the date of service of the notice to leave. If it was not, the notice to leave is invalid. The Applicant's Representative responded to the Tribunal by email dated 25 June 2026 and said that the service of the notice to leave two days early was an administrative oversight.

## **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 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 notice to leave lodged was dated 9 October 2025 and was served by email on that date. It referred to eviction being sought on the basis of ground 12 which is that the tenant has been in rent arrears for three or more consecutive months. At the date of service of the notice to leave the rent had not been in arrears for three consecutive months. The notice to leave is therefore invalid. Reference is made to the Upper Tribunal decision in Majid v Gaffney and Britton.
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  
30 June 2026