



**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

Learmonth, Orebridge, Thornton KY1 4DS ("Property")

Case Reference: FTS/HPC/EV/26/0209

Christopher Bailie, 2 High Street West, Anstruther, Fife KY10 3DL ("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 14 January 2026. The Applicant lodged a copy notice to leave dated 25 October 2025 which referred to ground 4 for possession, landlord intends to live in the let property. No details were provided at section 3 other than "N/A". The Applicant lodged page 27 of a private residential tenancy agreement.
2. By email dated 5 February 2026 the Tribunal sought essential supporting documents including a full copy of the tenancy agreement; evidence of service of the notice to leave; evidence supporting the ground on which possession was sought and a copy of the section 11 notice and evidence of service thereof. On 11 March 2026 the Applicant provided a copy section 11 notice but did not provide evidence of service thereof. On 13 March 2026 the Applicant provided a copy of the tenancy agreement and a further copy of the notice to leave.
3. On 25 April 2026 the Tribunal requested evidence of service of the notice to leave; evidence to support the ground on which possession was sought; evidence of service of the section 11 notice and a submission as to the validity

of the notice to leave as key parts had been marked “N/A”.

4. On 8 May 2026 the Applicant emailed the Tribunal stating that he now intends to sell the let property. A copy home report was lodged. The Applicant indicated that the notice to leave had been served by hand but did not state the date of service, who served the notice and to whom it was delivered. On 29 May 2026 the Tribunal emailed the Applicant seeking information regarding : the date and method of service of the notice to leave; an amended application regarding the ground on which possession was sought; service of the section 11 notice and the validity of the notice to leave. No response was received.

DECISION

5. 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.

- 6. 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

7. '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.
8. The Applicant seeks recovery of possession of property let under a private residential tenancy. In terms of section 52(3) of the 2016 Act and rule 109 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. Rule 109 also provides that an application must be accompanied by evidence that the eviction ground has been met and a copy of the section 11 notice sent to the local authority. The Applicant did not explain the date and method of service of the notice to leave or explain why the notice to leave was valid when part 3 had been marked "N/A". The Applicant did not evidence service of the section 11 notice. The Applicant did not lodge an amended application clarifying the ground on which possession was sought. 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
7 July 2026