Housing and Property Chamber
First-tier Tribunal for Scotland

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

6A Church Street, Coatbridge ML5 3EB ("Property")

Case Reference: FTS/HPC/EV/25/5542

John Sexton, 13 Balfron Crescent, Hamilton ML3 9UH ("Applicant")

Select Premier Letting Ltd, 44a Ryde Road, Wishaw ML2 7DX ("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 19 December 2025. The application was accompanied by a notice to leave dated 13 November 2025 which stated that an application would not be submitted to the Tribunal before 14 December 2025 and which indicated that the ground on which eviction was sought was ground 15. The Applicant's Representative lodged a certificate of posting evidencing that the notice to leave was posted on 13 November 2025. The Applicant's Representative subsequently lodged evidence from Royal Mail that the envelope containing the notice to leave was not delivered to the Respondent or collected by them. By email dated 24 June 2026 the Applicant's Representative told the Tribunal that they delivered the notice to leave to the Property on 21 November 2025.

2. By email dated 3 August 2026 the Tribunal pointed out that delivery of the notice to leave on 21 November 2025 meant that the Respondent had not been

provided with sufficient notice as required by sections 54(2), 62(4) and 62(5) of the 2016 Act. By email dated 31 August 2026 the Tribunal told the Applicant's Representative that the notice to leave sent by recorded delivery could not be relied upon as it was not delivered. The Tribunal noted that the notice to leave lodged was dated 13 November 2025, stated that an application would not be submitted to the Tribunal before 14 December 2025 and was delivered by hand on 21 November 2025 which meant that the required 28 days notice had not been given. The Tribunal invited the Applicant's Representative to withdraw the application. No response was received.

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 the Property in terms of section 51 of the 2016 Act. In terms of section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order if it is made in breach of any of sections 54 to 56. The ground for eviction relied upon was ground 15. Section 54 of the 2016 Act provides that the period of notice to be given in a notice to leave based upon ground 15 is 28 days. The notice to leave was served on 21 November 2025 and stated that an application for an eviction order would not be made before 14 December 2025. The period of notice given to the Respondent was 6 days short. 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
16 October 2026