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

139 Vanguard Street, Clydebank G81 2LZ ("Property")

Case Reference: FTS/HPC/EV/26/3151

Frank Benson, 10 Westfarm Wynd, Cambusland G72 7RP ("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 7 July 2026. The application was accompanied by an email from the Respondent to the Applicant dated 28 May 2026 in which the Respondent gave 28 days notice of their intention to vacate the Property as well as copy emails which indicated the Respondent had been provide with alternative accommodation by the local authority.

2. By email dated 7 August 2026 the Tribunal pointed out that an application by a landlord for an eviction order required to be accompanied by a notice to leave served on the Respondent by the Applicant. The Tribunal also queried whether an order was required if the Respondent had vacated the Property. The Applicant responded by email again advising that the Respondent had given notice of their intention to vacate the Property and explained that the key for the Property had been left outside the Property on 27 July 2026. The Applicant told the Tribunal that they entered the Property and it appeared to no longer be occupied by the Respondent. The Tribunal responded to the Applicant by email dated 28 August 2026 explaining that the application could not proceed unless

a notice to leave had been served on the Respondent by the Applicant and again pointing out that if the Respondent had vacated, an order for eviction ws not required.. No reply 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 section 52(3) which states that an application for an eviction order must be accompanied by a notice to leave which has been given to the tenant. The Applicant provided no evidence that a notice to leave had been given to the Respondent. 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
21 October 2026