



**Decision with Statement of Reasons of Alison Kelly, Legal Member of the First-tier Tribunal for Scotland (Housing and Property Chamber) 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

19 Woodlands Bank, Dalgety Bay, Fife, KY11 9SX

**Chamber Ref: FTS/HPC/EV/19/2403**

**Parties:**

**Grange Consultants Ltd (“the Applicant”)**

**Miss Melissa Ross and Mr Marshall Purves (“the Respondent”)**

The Application was lodged under Rule 66 of the Rules on 2<sup>nd</sup> August 2019, being an application by a private landlord for possession on termination of a Short Assured Tenancy.

Lodged with the application were:

- i) Copy Tenancy Agreement
- ii) AT5 Notices
- iii) Section 33 Notices
- iv) Notices To Quit
- v) Section 11 notice
- vi) Authority to act as Landlord Representative document

The Short Assured Tenancy Agreement is signed by the Landlord and the tenants, all signatures being dated 30<sup>th</sup> November 2017.

Clause 1.9 of the Agreement states: “COMMENCEMENT date; from including 29/11/2017.”

The AT5 Notices are signed by the landlord and the tenants on 29<sup>th</sup> November 2017. They have not been served prior to the creation of the tenancy, as the tenancy began on the Commencement date of 29<sup>th</sup> November 2017.

## **DECISION**

I 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.*

After consideration of the application and supporting documentation, I consider that the application should be rejected on the basis that it is not appropriate to accept it in terms of Rule 8(1)(a) of the Procedural Rules.

## **REASONS FOR DECISION**

Section 32 of the Housing (Scotland) Act 1988 defines a Short Assured Tenancy as:

(1) A short assured tenancy is an assured tenancy—

(a) which is for a term of not less than six months; and

(b) in respect of which a notice is served as mentioned in subsection (2) below.

(2) The notice referred to in subsection (1)(b) above is one which—

(a) is in such form as may be prescribed;

(b) is served before the creation of the assured tenancy;

(c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under that tenancy; and

(d) states that the assured tenancy to which it relates is to be a short assured tenancy.

Recovery of possession under section 33 of the Housing (Scotland) Act 1988, and Rule 66 of the Rules can only apply to a Short Assured tenancy. The tenancy in question here cannot be a Short Assured tenancy as the T5 Notice has not been served prior to the creation of the assured tenancy, in terms of section 32(b).

### **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.

Alison Kelly

**Legal Member**

J

26/8/19

**Date**