

**Housing and Property Chamber**  
**First-tier Tribunal for Scotland**



**DECISION AND STATEMENT OF REASONS OF ALASTAIR HOUSTON, 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

12 Kennard Street, Lochgelly, Fife KY6 9DE

**Case Reference: FTS/HPC/EV/18/0585**

**MR JAMES SCHIAVONE ("the Applicant")**

**MISS HAZEL CELENTANO ("the Respondent")**

1. The application was made by the Applicant under Rule 66 of the Chamber Procedural Rules being an application by a private landlord for possession of rented property let under a short assured tenancy. Attachments were provided with the application form to support the application and these attachments included a Form AT5, a Notice under Section 33 of the Housing (Scotland) Act 1988 and Notice to Quit. A copy of the tenancy agreement was also attached.
2. The tenancy agreement commenced on 1 September 2008, with the initial period of let ending on 21 February 2009.
3. In the absence of any notice served by either party terminating the contractual tenancy agreement, it was to continue on a month to month basis from the 31 May 2003 in terms of Paragraph 4 of the tenancy agreement.

**DECISION**

4. The circumstances in which an application is to be rejected are governed by 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."

5. **After consideration of the application, the attachments and correspondence from the Applicant's solicitor, 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**

6. The Legal Member considers that this application has no prospect of success.
7. The issue identified in this application is whether the contractual tenancy agreement between the parties is a short assured tenancy agreement within the meaning of Section 32 of the Housing (Scotland) Act 1988. Section 32 provides:-

#### **32.— Short assured tenancies.**

(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.

(3) Subject to subsection (4) below, if, at the end of a short assured tenancy—

(a) it continues by tacit relocation; [...]<sup>1</sup>

[...]<sup>1</sup>

*the continued tenancy [...] <sup>2</sup> shall be a short assured tenancy, whether or not it fulfils the conditions in paragraphs (a) and (b) of subsection (1) above.*

*(4) Subsection (3) above does not apply if, before the beginning of the continuation of the tenancy [...] <sup>3</sup>, the landlord or, where there are joint landlords, any of them serves written notice in such form as may be prescribed on the tenant that the continued [...] <sup>4</sup> tenancy is not to be a short assured tenancy.*

*(5) Section 25 above shall apply in relation to a short assured tenancy as if in subsection (1) of that section the reference to an assured tenancy were a reference to a short assured tenancy.*

8. One of the two essentials in creating a short assured tenancy is an initial period of let of no less than 6 months. The tenancy agreement accompanying the present application, commenced on 1 September 2008 with the initial period of let ending 21 February 2009. This is a period of less than 6 months. Accordingly, the contractual tenancy agreement between the parties cannot be a short assured tenancy and an application under rule 66 is incompetent.

#### **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.

## **A Houston**

Mr Alastair Houston  
Legal Member  
6 April 2018