

# Housing and Property Chamber

## First-tier Tribunal for Scotland

---



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014 and Section 18 of the Housing (Scotland) Act 1988.**

**Chamber Ref: FTS/HPC/EV/24/0277**

**Re: Property at 22 Main Street, Crosshill, Fife, KY5 8BJ (“the Property”)**

**Parties:**

**Mr Brian Menzies, 73 Park Street, Crosshill, Fife, KY5 8BH (“the Applicant”); and**

**Mr Steven Duncan, 22 Main Street, Crosshill, Fife, KY5 8BJ (“the First Respondent”) and**

**Mrs Charmaine Duncan, 22 Main Street, Crosshill, Fife, KY5 8BJ (“the Second Respondent”)**

**Tribunal Members:**

**G McWilliams- Legal Member**

**T. Cain - Ordinary Member**

**Decision:**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant the Application.**

### **Background and Case Management Discussion on 11<sup>th</sup> July 2024**

1. This is an Application brought in terms of Rule 66 (Application for order for possession upon termination of a short-assured tenancy) of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure (“the 2017 Rules”).
2. The Applicant Mr Menzies had provided the Tribunal, in the Application, with copies of the parties’ short assured tenancy agreement, Form AT5, Notice to Quit (“NTQ”) and Sections 33 and 11 Notices with relevant Executions of Service. All of these documents and forms had been correctly and validly

prepared in terms of the provisions of the Housing (Scotland) Act 1988 (“the 1988 Act”), and the procedures set out in the Act had been correctly followed and applied.

3. A Case Management Discussion (“CMD”) proceeded remotely by telephone conference call at 10.00am on 11<sup>th</sup> July 2023. Mr Menzies and the Second Respondent Mrs Duncan attended. Mrs Duncan stated that she was attending on behalf of the both Respondents, herself and Mr Duncan.
4. Mr Menzies stated that he lets a number of other properties. He said that he has health conditions, is having to care for elderly parents, and requires to sell the Property in order to meet costs associated with his care and the care of his parents. He stated that he had engaged an estate agent to market the Property for sale when he is able to proceed in this regard. Mr Menzies stated that he empathised with Mrs Duncan and her family as he knew that she and her daughter suffer from medical conditions.
5. Mrs Duncan stated, candidly, that she wants the Application proceedings to be brought to an end and to have an eviction order granted. She said that she had been liaising with Fife Council who had informed her that they will deal with her and her family’s application for social housing when an eviction order has been granted. Mrs Duncan stated that both she and one of her two adult daughters suffer from medical conditions. Mrs Duncan said that she has multiple sclerosis. She said that she has been trying for some time to obtain a social housing tenancy which can be adapted to assist her in her day to day functioning, given her medical condition. Mrs Duncan said that she sympathised with Mr Menzies and she and her husband wanted him to be able to recover his property.
6. The Tribunal discussed with Mr Menzies and Mrs Duncan the possibility of agreeing a suitable enforcement date in respect of the eviction order which they both sought. They each said that they consider that the enforcement date should be stipulated, as usual, in accordance with the relevant legislation, that is that an eviction order should not be enforced for a period of 31 days from the date of grant.

### **Statement of Reasons**

7. In terms of Section 33 of the 1988 Act, the Tribunal shall make an order for possession of a house let on a tenancy if:

- (a) the short-assured tenancy has reached its end;
- (b) tacit relocation is not operating;
- (c) no further contractual tenancy (whether a short-assured tenancy or not) is for the time being in existence; and
- (d) the landlord has given to the tenant notice stating that he requires possession of the house.

8. The Tribunal considered all of the available evidence and the submissions of Mr Menzies and Mrs Duncan. The Tribunal found in fact that all of the

documentation regarding termination of the parties' tenancy agreement had been validly served on Mr and Mrs Duncan. The Tribunal further found in fact that the grant of an eviction order will assist both Mr Menzies, in enabling him to sell the Property to meet necessary costs, and also allowing Mrs Duncan to progress her application for alternative social housing. The Tribunal also found in fact that Mr Menzies, Mr Duncan and Mrs Duncan seek the grant of an eviction order and understand the consequences of the grant of such an order. Having made such findings in fact the Tribunal found in law that the parties' tenancy agreement had been lawfully brought to its end in terms of the relevant legislation, and that it is reasonable to grant an eviction order at this time.

9. The Tribunal commend both Mr Menzies and Mrs Duncan for their straightforward submissions at the CMD.

### **Decision**

10. The Tribunal grant an order for possession of the Property as sought in the Application.

### **Right of Appeal**

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal 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.**

# G McWilliams

**Legal Member**

**Date: 11 July 2024**