

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

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**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 Housing (Scotland) Act 1988 (“the 1988 Act”)**

**Chamber Ref: FTS/HPC/EV/24/4954**

**Property at 39 Balfour Street, Kirkcaldy, KY2 5HA (“the Property”)**

**Parties:**

**Ms Kim Taylor, 1 Comely Bank Avenue, Edinburgh, EH4 1EW (“the Applicant”)**

**Ms Maria Dorot, Mr Gabriel Colompar, 39 Balfour Street, Kirkcaldy, KY2 5HA;  
11 Lawson Street, Kirkcaldy, KY1 3JZ (“the Respondents”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member) and Mary Lyden (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for possession should be granted against the Respondents in favour of the Applicant. The Tribunal also ordered a delay in execution of the order until 25 July 2025 in terms of Rule 16A(d) of the Tribunal Procedure Rules 2017.**

**Background**

1. The Applicant seeks an order for possession in terms of Section 33 of the 1988 Act. A tenancy agreement, AT5 Notice, Notice to Quit, Section 33 Notice, and Section 11 Notice were lodged with the application.
2. A copy of the application was served on the Respondents by Sheriff Officer. The Second Respondent was served at his new address. All parties were notified that a case management discussion (“CMD”) would take place by telephone conference call on 9 May 2025 at 2pm and that they were required to participate. Prior to the CMD, the Applicant lodged a rent statement, an estimate for repair work and a letter from the Local Authority’s Housing

department addressed to Mrs Dorot which states that she has been awarded 35 points for poor housing conditions.

3. The CMD took place on 9 May 2025. The Applicant was represented by Mr Sargison. The Respondents did not participate and were not represented. They did not contact the Tribunal in advance of the CMD.

### **The Case Management Discussion**

4. Mr Sargison advised the Tribunal that Ms Dorot is still in occupation of the property. She lives there with her four children who are aged 8, 6, 2 and 1. Mr Colompar no longer lives there. The Respondents are originally from Syria. The property is a small flat with one double bedroom and one single bedroom. When the tenancy started in 2015, it was suitable for the family unit as there was only one child. However, it is now too small for the family. In response to questions about the rent arrears, and following a short adjournment, Mr Sargison said that since February or March 2025, the rent has been paid direct by the DWP. In addition, payments of £36.96 are being made to the arrears. As a result, the arrears are now gradually reducing. Mr Sargison told the Tribunal that essential repair work is required at the property. This involves joinery and extensive plumbing work and cannot be carried out while the property is occupied. In addition to the rent arrears, there have been noise complaints from neighbours. The Applicant has had no recent contact with Ms Dorot and is not aware of any health issues or disabilities affecting the household.
5. The Legal Member noted that the Applicant had requested that the Tribunal either dispense with or vary the period of the charge for recovery in terms of Section 216 of the Bankruptcy and Diligence (Scotland) Act 2007. Mr Sargison said that this is no longer insisted upon. In relation to the question of whether the Tribunal should order a delay in execution of the order for eviction, if granted, Mr Sargison said that he was in the Tribunal's hands. He said that the Applicant intends to have the repair work carried out. In due course she also intends to sell the property. It is understood to be her only rental, and she has an interest only mortgage over it.

### **Findings in Fact**

6. The Applicant is the owner and landlord of the property.
7. The Respondents are the tenants of the property in terms of a short assured tenancy agreement which started in 2015.
8. The Applicant served a Notice to Quit and Notice in terms of Section 33 of the 1988 Act on the Respondents on 4 July 2024.

9. The first Respondent resides at the property with four children. The second Respondent no longer resides at the property
10. The Applicant wishes to recover possession of the property to carry out repair work and because the Respondents have incurred arrears of rent. She also intends to sell the property in due course.
11. The Respondents have incurred rent arrears of £5000. The monthly rent charge is now being met by direct payments of universal credit from the DWP. In addition, the Applicant is receiving payments of £36 per month to the arrears.
12. As the property only has one double bedroom and one single bedroom it is too small for the Respondent's family's needs.

### **Reasons for Decision**

13. The application was submitted with a short assured tenancy agreement and AT5 Notice. The initial term of the tenancy was 29 May 2015 to 30 November 2015 with a provision that it would continue on a two monthly basis after the initial term.
14. Section 32 of the 1988 Act states "(1) A short assured tenancy is an assured tenancy - (a) which is for a term of not less than 6 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 on which - (a) is in such form as may be prescribed; (b) is served before the creation of the short 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 the tenancy; and (d) states that the assured tenancy to which it relates is to be a short assured tenancy."
15. The Tribunal is satisfied that the tenancy agreement between the parties was for an initial term of six months and therefore meets the requirements of Section 32(1) of the 1988 Act. The Tribunal is also satisfied that an AT5 Notice was given to the Respondents prior to the creation of the tenancy. In the circumstances, the Tribunal determines that the tenancy is a short assured tenancy in terms of section 32 of the 1988 Act.
16. From the documents submitted with the application, and information provided at the CMD, the Tribunal is satisfied that the Applicant served a Notice to Quit and Section 33 Notice on the Respondents on 4 July 2024. The Notice to Quit called upon the Respondents to vacate the property on 30 September 2024, an ish date. The Notice contains the information prescribed by the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988 and complies with the terms of Section 112 of the Rent (Scotland) Act 1984. The Tribunal is satisfied that the Notice to Quit is valid and that the tenancy contract has been terminated. The Section 33 Notice was also served on 4 July 2024 and gave the Respondents 2 months notice that the Landlord

wished to recover possession of the property. A Section 11 Notice was submitted with the application, with evidence that it was sent to the Local Authority. The Applicant has therefore complied with Section 19A of the 1988 Act.

17. Section 33 of the 1988 Act, (as amended by the Coronavirus (Recovery and Reform) (Scotland) Act 2022) states “(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the First-tier Tribunal may make an order for possession of the house if the Tribunal is satisfied – (a) that the short assured tenancy has reached its finish; (b) that tacit relocation is not operating; (d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house, and (e ) that it is reasonable to make an order for possession” Subsection 2 states “The period of notice to be given under subsection (1)(d) above shall be – (1) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period; (ii) in any other case, two months”. The Tribunal is satisfied that the tenancy has reached its finish and, as the Applicant has served a valid Notice to Quit, that tacit relocation is not operating. A valid notice in terms of section 33(d) has also been served on the Respondent, giving at least two months’ notice that the Applicant required possession of the property.
18. The Tribunal proceeded to consider whether it would be reasonable to grant the order for possession, in terms of Section 33(e) of the 1988 Act.
19. The Tribunal had regard to the following: -
  - (a) The Respondents did not attend the CMD or notify the Tribunal that the application is opposed.
  - (b) The Second Respondent no longer resides at the property and appears to have secured alternative accommodation.
  - (c) The Applicant wishes to carry out essential repair work and thereafter sell the property.
  - (d) The Respondents have incurred rent arrears of over £5000 with no rent being paid for a substantial period of time. The rent is now being paid direct by the DWP and small payments of £36 per month are gradually reducing the arrears.
  - (e) The property is no longer suitable for the first Respondent and her family. She has been in contact with the Local Authority and is on a waiting list for housing.
20. The Tribunal notes that there are four young children at the property. Two are under the age of three and two are of primary school age. Eviction is likely to be extremely disruptive for the family unit. The Tribunal also notes that, although the rent arrears are substantial, the monthly rent charge is now being

paid and the arrears are reducing. However, these factors are outweighed by the fact that the Respondents have not opposed the application, one of the Respondents already has accommodation elsewhere, the property is too small and is in need of repair. Weighing this up and also taking account of the Applicant's desire to sell the property, the Tribunal is satisfied that it would be reasonable to grant the order for eviction.

21. The Tribunal notes that the Applicant no longer seeks to expedite the eviction process by the Tribunal dispensing with or varying the period of the charge. The Applicant also did not try to persuade the Tribunal that they should not order a delay in enforcement. The Tribunal is satisfied, given the ages of the children, that a delay in execution is appropriate. This is to allow the older children to complete the school year and allow additional time for the family unit to be rehoused by the Local Authority.

## **Decision**

22. The Tribunal determines that an order for possession of the property should be granted against the Respondents and orders a delay in execution to the 25 July 2025.

## **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.**

**Josephine Bonnar**

**Josephine Bonnar, Legal Member**

**9 May 2025**