

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

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**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 of the Housing (Scotland) Act 1988 (“the Act”) and Rule 66 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)**

**Chamber Ref: FTS/HPC/EV/23/0530**

**Re: Property at 155B St Clair Street, Kirkcaldy, Fife, KY1 2BX (“the Property”)**

**Parties:**

**Mr Steven Clark, 81 Priorwood Drive, Dunfermilne, KY11 8FG (“the Applicant”) per his agents Landlord Specialist Services Scotland, 5 South Charlotte Street, Edinburgh, EH2 4AN (“the Applicant’s Agents”)**

**Miss Charlene Anderson, 155B St Clair Street, Kirkcaldy, Fife, KY1 2BX (“the Respondent”) per her agents Frontline Fife (“the Respondent’s Agents”)**

**Tribunal Members:**

**Karen Moore (Legal Member) and Angus Lamont (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the statutory procedure for terminating the tenancy having been carried out, it is reasonable to grant the Order sought and so the Tribunal granted the Order**

1. By application received between 20 February 2023 and 27 March 2023 (“the Application”), the Applicant’s Agents applied to the Tribunal for an Order for possession of the Property based on the ground that the tenancy was terminated by Notice in terms of Section 33 of the Act. The Application comprised a copy of the tenancy agreement between the Parties with Form AT5, copy Notice to Quit and copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Fife Council, being the relevant local authority.. The Application was accepted by the Tribunal and a Case Management Discussion (the “CMD”) was fixed for 15 June 2023 at 10.00 by telephone conference. The CMD was intimated to the Parties.
2. Prior to the CMD, the Respondent’s Agents submitted written representations that she did not oppose the Application, that she would be considered for local authority housing if an Order is granted and that the Property is not suitable for the Respondent and her

family due to its poor condition of repair and overcrowding as the Respondent shares a bedroom with one of her children.

### **CMD**

3. The CMD took place on 12 May 2023 at 10.30 by telephone, the Applicant's Agents having been delayed in joining the conference call. Neither party was present in person. Mr. Livingstone of the Applicant's Agents took part on behalf of the Applicant. Mrs. Walker of the Respondent's Agents took part on behalf of the Respondent.
4. The Tribunal noted from the Application and the written representations that the Application was not opposed.
5. The Tribunal asked Mr. Livingstone to confirm that the Applicant still sought the Order which he did. Mrs. Walker confirmed that the Respondent did not oppose the Order and was keen to be rehoused.
6. The Tribunal noted from the Application that the correct statutory procedures had been carried out and so the only issue for the Tribunal was reasonableness.
7. Mrs. Walker confirmed that the Fife Council would offer the Respondent alternative accommodation if the Order is granted and that the Respondent wishes to take up that offer. She confirmed that, as far as she knew, the offer of housing would meet the needs of the Respondent and her family.

### **Issue for the Tribunal**

8. The statutory procedure being established and the Application not being opposed, the issue for the Tribunal is to determine if it is reasonable to grant the Order. The Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal "*may do anything at a case management discussion .....including making a decision*". The Tribunal took the view that it had sufficient information to make a decision on reasonableness and so proceeded to determine the Application.

### **Findings in Fact**

9. From the Application, the written representations and the CMD, the Tribunal made the following findings in fact: -
  - i) There was a short assured tenancy of the Property between the Parties which was terminated in terms of Section 33 of the Act on 8 September 2022;
  - ii) The Respondent did not remove from the Property on termination of the tenancy;
  - iii) Tacit relocation did not apply to the tenancy;
  - iv) The Respondent has complained about the state of repair of the Property which is affecting the health of her and her three children;
  - v) The Respondent has three children, two of whom are of school age;
  - vi) The Property does not meet the needs of the Respondent and her children as it is in poor condition and is overcrowded;
  - vii) The Respondent has arranged alternative accommodation with Fife Council.

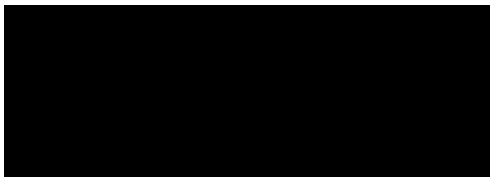
### **Decision and Reasons for Decision**

10. The Tribunal had regard to all the information before it and to its Findings in Fact.

11. The Tribunal then considered if it could be satisfied it is reasonable to issue an eviction order on account of those facts and on all of the information before it. The Tribunal had regard to the Respondent's strong wish to be re-housed by Fife Council. The Tribunal accepted that the Property does not meet the needs of the Respondent and her children and that re-housing by Fife Council would meet those needs. The Tribunal had regard to the fact that children reside in the Property and took the view that, if evicted, the children would be safeguarded from permanent homelessness by the local authority's statutory homelessness duties. Accordingly, the Tribunal was satisfied that it is reasonable to issue an eviction order.

### **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.**



**Legal Member/Chair**

**15 June 2023.**  
**Date**