



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/EV/22/1305**

**Re: Property at 3 Ballencrieff Mains Cottages, Longniddry, EH32 0PJ (“the Property”)**

**Parties:**

**Mr Charles Roberts Ogilvie and Magdalen Ogilvie, 10 Polwarth Terrace, Edinburgh, EH11 1ND (“the Applicants”)**

**Mrs Sharon Wilson and Robert Wilson, 3 Ballencrieff Mains Cottages, Longniddry, EH32 0PJ (“the Respondents”)**

**Tribunal Members:**

**George Clark (Legal Member) and Elizabeth Currie (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and issued an Eviction Order against the Respondents.**

**Background**

By application, received by the Tribunal on 5 May 2022, the Applicants sought an Eviction Order against the Respondents. The Ground relied on was Ground 1 of Part 1 of Schedule 3 to the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”), namely that the landlord intends to sell the Property.

The application was accompanied by copies of a Private Residential Tenancy Agreement between the Parties, commencing on 15 May 2019 at a rent of £500 per month, a Notice to Leave dated 18 October 2021, stating that an application would not be submitted to the Tribunal for an Eviction Order before 21 April 2022, proof of delivery of said Notice, and a Home Report dated 3 November 2021.

In the application, the Applicants referred to the Home Report and stated that they intended to sell the Property. They had already entered into missives with a potential purchaser, but it was a condition of the sale that the Applicants obtain vacant

possession. The Applicants submitted that it would be reasonable to issue an Eviction Order. They also confirmed that the First-named Applicant was an owner of a one-half pro indiviso share of the Property by virtue of his appointment as Trustee of the Charles Ogilvie Trust and that both Applicants were owners of the remaining one-half pro indiviso share by virtue of their appointment as Executors of the late Mary Black Ogilvie.

On 1 June 2022, Lindsays, solicitors, Edinburgh, confirmed to the Tribunal that they had been instructed in relation to the sale of the Property.

On 5 July 2022, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondents were invited to make written representations by 26 July 2020. The Respondents did not make any written representations to the Tribunal.

### **Case Management Discussion**

A Case Management Discussion was held by means of a telephone conference call on the afternoon of 9 August 2022. The Respondents were represented by Mr Adam Gardiner of Lindsays, solicitors, Edinburgh. The Respondents were not present or represented. Mr Gardiner told the Tribunal that the Property is one of five cottages, all of which have been sold to a single purchaser in arm's length transactions. The other cottages are now vacant, but the sale of the Property is dependent upon vacant possession being given. He stated that he understood that the Respondent Mr Wilson was no longer living at the Property and that he understood that Mrs Wilson did not have any dependants living with her. He had had a telephone call from Mrs Wilson on 8 July in which she had indicated that she was content for the Tribunal's decision to be made in her absence. He understood that she had been in contact with the local authority's Homelessness Team. Mr Gardiner stressed that he did not act for Mrs Wilson and that he had indicated to her that she should seek independent advice.

### **Reasons for Decision**

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Respondents had made no written representations and were not present or represented at the Case Management Discussion, and the Tribunal considered that it had sufficient information and documentation to enable it to decide the application without a Hearing.

Ground 1 of Part 1 of Schedule 3 to the 2016 Act states that it is an Eviction Ground that the landlord intends to sell the let property and that the Tribunal must find that Ground 1 applies if the landlord is entitled to sell the let property, intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it and the Tribunal regards it as reasonable to issue an Eviction Order.

The Tribunal was satisfied that the Applicants, as Trustee and as Executors, intend to sell the Property and have indeed agreed a sale and noted that the sale, along with the sales of the remaining four cottages, was to an arms-length purchaser. The only remaining question as to whether Ground 1 was established was whether it was

reasonable for the Tribunal to issue an Eviction Order. There was no evidence before the Tribunal to indicate that the Respondents were seeking to argue that it would not be reasonable to issue an Eviction Order and it appeared that one of the Respondents had already vacated the Property.

Having considered carefully all the evidence, written and oral, before it, the Tribunal decided the requirements of Ground 1 of Part 1 of Schedule 3 to the 2016 Act have been met. The Applicants are entitled to sell the Property, they intend to sell and have sold to an arms-length purchaser, sufficient evidence, namely the Home Report and confirmation form the Applicants' solicitors that they are instructed to sell the Property, has been provided showing the intention to sell, and it is reasonable in all the circumstances 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.**

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Legal Member: George Clark

9 August 2022  
Date