

**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/24/5062**

**Re: Property at 191 Waverley Crescent, Livingston, West Lothian, EH54 8JT  
("the Property")**

**Parties:**

**Wendy White, David White, 13 Duncan Green, Livingston, West Lothian, EH54  
8PR ("the Applicants")**

**Lukasz Nizalowski, Beata Nizalowska, 191 Waverley Crescent, Livingston,  
West Lothian, EH54 8JT ("the Respondents")**

**Tribunal Members:**

**Joel Conn (Legal Member) and Elizabeth Dickson (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the  
Tribunal") determined that**

**Background**

1. This is an application by the Applicants for an eviction order in regard to a Private Residential Tenancy ("PRT") in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended ("the Rules"). The PRT in question was by the Applicants to the Respondents commencing on 8 March 2018.
2. The application was dated 4 November 2024 and lodged with the Tribunal on that date.
3. The application relied upon a Notice to Leave in terms of section 50 of the Private Housing (Tenancies) (Scotland) Act 2016 dated 29 July 2024 and served upon the Respondents by email on that date in accordance with the Tenancy Agreement. The Notice relied upon Ground 1 of Schedule 3 Part 1 of the 2016

Act, being that “the landlord intends to sell”. In regard to Ground 1, the body of the notice stated the following:

*The property is being sold as the landlords are now retired. The plan to sell a number of rental properties was communicated to the tenants. The reason this property is being sold is the high cost of factors fees and mortgage payments.*

The Notice to Leave intimated that an application to the Tribunal would not be made before 24 October 2024.

4. The application papers included an undated email from the Applicants to Ewart Park estate agents instructing them to market the Property but saying little else. There was no response from the estate agent lodged. The application papers also contained an email of explanation from the Applicants describing Ewart Park as their “preferred provider for rental and sales” and that they have previously used them for both rental and sales of properties, but that the agent had not yet viewed the Property as the Applicants wished vacant possession prior to commencing marketing.
5. Evidence of a section 11 notice in terms of the Homelessness Etc. (Scotland) Act 2003 served upon West Lothian Council on 4 November 2024 was included in the application papers.

### **The Hearing**

6. The matter called for a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 1 July 2025 at 10:00. We were addressed by Gordon Caldwell, the son-in-law of the Applicants, as the Applicants had been abroad and were currently in transit back to Scotland and unable to dial in. Both the Respondents were in attendance and the First Named Respondent spoke on their joint behalf.
7. In regard to the Applicants, their representative confirmed that that they were 67 and 70 respectively. He said that around 2020 the Applicants had made a decision to sell off their rental property portfolio of eight properties at the rate of one per year. Their representative thought the rate of sales was likely to be tax-efficient. As for the reason for selling, the Applicants no longer wished to be landlords during their retirement, and the factor costs and mortgage costs were now high as a proportion of the rental income. The Applicants had informed all their tenants at the outset as to the likely date of each sale, and the Respondents had been told in 2021 that the Applicants intended to sell in 2023. Another property had then become vacant and the Applicants had chosen to sell that instead, and had updated the Respondents that the sale of the Property was now likely to be in 2024/2025. The Notice to Leave was then issued on 29 July 2024.
8. The Applicants’ representative confirmed that there were no complaints about Respondents and that they had been good tenants, but the Applicants wished to move on with their long-standing plan of selling the Property. It would be the fourth sale from the portfolio, with the fifth property now having reached the stage

of an application having been lodged with the Tribunal. The portfolio was a collection of similar types of properties with similar tenants. The Applicants' representative did not have the current mortgage payment for the Property but understood that its factoring costs were £166/month.

9. The Respondents opposed the application initially but raised no issue on any of the notices. They provided the following information which related to reasonableness:
  - a. They had not yet secured another suitable property. They had been looking on the private market for 7-8 months but had not found anything in their price range, with similar properties starting at £800/month and up to £1,000/month. (Parties agreed that the current rent for the Property was £592/month.)
  - b. The Respondents' view of suitable accommodation was another two-bedroom property (of any type) in Livingston so that it was within walking or public transport distance of both their places of work in the town. They did not have a car at present (and the Second Named Respondent did not have a driving licence).
  - c. They also wished to stay in Livingston for their children. They had two children of 3 and 5. The younger was to start nursery in January 2026 and the older was to start primary school in August 2025 and had already made friends in the area and was settled and ready for school.
  - d. Their budget was limited as the Second Named Respondent worked only part-time due to parenting commitments.
  - e. The Property was not specially adapted for the needs of anyone in their household.
  - f. The First Named Respondent conceded that he had not yet sought social housing but was intending to do that very shortly if he was not able to locate something in the private rental market by then.
10. In response to this, the Applicants' representative expressed surprise on three matters:
  - a. That the Respondents had only been looking for new accommodation for the last 7-8 months, given the amount of notice provided. We noted however that the application papers did not contain any evidence of any earlier informal notice, and the Notice to Leave was only dated from 11 months ago.
  - b. The Applicants' representative believed that the Respondents had been intending to return to Poland prior to their older child starting school, and noted that the Property seemed small for a family of four. In response to this the Respondents said that they had originally intend to move back to Poland but that their plans had changed around two years ago, as they were now quite settled and their children were making friends.
  - c. That the Respondents were budgeting so low for alternative accommodation. He believed that the market rent for the Property would likely around £850/month. The First Named Respondent acknowledged that they may need to consider increasing their budget for potential new accommodation.
11. Parties were agreed upon the following:

- a. There were no rent arrears, nor any other complaint as to the Respondents' conduct as a tenant.
  - b. The Property was a two-bedroom property flat.
- Along with these express agreements on facts, neither party raised any issue generally with the factual details of the other's submissions.
12. We thus sought submissions from the parties on procedure and broached with the Respondents as to whether the application was truly disputed or whether they simply sought adequate time to complete house-hunting. This led to the Respondents proposing that they would not oppose an order for eviction provided they were given up to three months to move out voluntarily. The Applicants confirmed that they were content with a three-month suspension. We clarified with the Respondents that they understood this meant that if they were not to leave voluntarily by 12:00 on 2 October 2025 then a formal eviction could be scheduled. They confirmed this was understood.
13. No motion for expenses was made by either party.

### **Findings in Fact**

14. On 8 March 2018, the Applicants let the Property to the Respondents under a Private Residential Tenancy with commencement on 8 March 2018 ("the Tenancy").
15. On or about 29 July 2024, the Applicants' agent drafted a Notice to Leave in correct form addressed to the Respondents, providing the Respondents with notice, amongst other matters, that the Applicants wished to sell the Property.
16. The Notice to Leave provided the Respondents with notice that no application would be raised before the Tribunal prior to 24 October 2024.
17. A copy of the Notice to Leave was served on the Respondents by email on 24 October 2024 in accordance with the Tenancy Agreement.
18. The Applicants raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying on Ground 1 of Schedule 3 Part 1 of the 2016 Act, on 4 November 2024.
19. A section 11 notice in the required terms of the Homelessness Etc. (Scotland) Act 2003 was served upon West Lothian Council on 4 November 2024.
20. In or around Summer 2024, the Applicants instructed Ewart Park estate agents to act for them in marketing the Property but only once vacant possession was obtained.
21. The Applicants wish to sell the Property with vacant possession in early course. They have made a decision to sell their entire property portfolio (of eight properties) in a structured manner so as:
- a. to realise the funds for their retirement; and

- b. to discontinue acting as landlords due to financial considerations, in particular the current monthly mortgage and factoring costs being high as a proportion of the rent income.
- 22. The Respondents reside with their two children (aged 3 and 5) at the Property.
- 23. The Respondents' older child is to start at a local primary school in August 2025.
- 24. The Respondents both work within an easy commute (by walking or public transport) of the Property.
- 25. The Respondents have made active attempts to obtain alternative accommodation but has thus far failed to identify a new tenancy in the local area at a rent equivalent to the current passing rent.
- 26. The Respondents are continuing to seek alternative accommodation and shall consider seeking social housing and/or whether to increase their budget for a new private tenancy.

### **Reasons for Decision**

- 27. The application was in terms of rule 109, being an order for eviction of a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been competently drafted and served upon the Respondents.
- 28. Ground 1 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
  - (1) *...the landlord intends to sell the let property.*
  - (2) *The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord—*
    - (a) *is entitled to sell the let property,*
    - (b) *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*
    - (c) *the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.*
  - (3) *Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)—*
    - (a) *a letter of engagement from a solicitor or estate agent concerning the sale of the let property,*
    - (b) *a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.*
- 29. The email to Ewart Hall constitutes the barest of evidence under paragraph (3) but it was augmented substantially by the submissions by the Applicants. We accepted that there was good reason why little could be undertaken by an estate agent pending vacant possession (and thus little more would be available as

documentation). We thus accept that paragraphs (2)(a) and (b) were satisfied. In any event, the Respondents did not appear to dispute that the material requirements of Ground 1 were satisfied.

30. We therefore considered whether it was reasonable to issue an eviction order under paragraph (2)(c). We accepted the Applicants' reasons for wishing to sell, and these were not disputed by the Respondents. Both sides' submissions on reasonableness were compelling and we were obliged to both for their candour and subsequent engagement with each other on whether an order subject to a suspension should be granted.
31. In light of the submissions, there was no necessity for a hearing to consider witness evidence and we required to consider whether to make a decision at the CMD on the basis of the agreed suspension of three months or whether to consider alternative procedure. We held that it was reasonable to grant an order for eviction with a three-month suspension at the CMD. Though there was no obvious reason why the Applicants were seeking to sell the Property as their 4<sup>th</sup> sale (as opposed to elsewhere in the sequence) they had good reasons to seek to bring the Tenancy to an end and the Respondents were willing to move provided they could find something suitable. We accepted that they had made some efforts but also held that they could make greater efforts, by seeking social housing and considering a more realistic budget for new accommodation.
32. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information held, we are thus satisfied to grant an order for eviction at this time but with the earliest date of eviction suspended until 12 noon on 2 October 2025.

## **Decision**

33. In all the circumstances, we grant an order against the Respondents for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 further to ground 1 of Schedule 3 of that Act, suspended as stated above.

## **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.**

1 July 2025

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**Legal Member/Chair**

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**Date**