



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in terms of Rule 17(4) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) in respect of an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of the Rules**

**Chamber Ref: FTS/HPC/EV/25/1283**

**Re: Property at 2 Willow Road, Kirkwall, Orkney, KW15 1PH (“the Property”)**

**Parties:**

**Wilhelm Riel, Bank Of Scotland House, Front Road, St Margaret's Hope, Orkney, KW17 2SL (“the Applicant”) per his agents Messrs. Bannatyne Kirkwood France & Co, 16, Royal Exchange Square, Glasgow, G1 3AG (“the Applicant’s Agents”)**

**Kelsey Johnston (“the First- named Respondent”) per her representative Mr.Steven Dunbar of the Citizen's Advice Bureau and Sean Thomson, 2 Willow Road, Kirkwall, Orkney, KW15 1PH (“the Second-named Respondent”)**

**Tribunal Members:**

**Karen Moore (Legal Member) and Gordon Laurie (Ordinary Member)**

**Decision**

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

## **Background**

1. By application received on 24 March 2025 (“the Application”), the Applicant’s Agents on his behalf applied to the Tribunal for an Order for eviction and possession of the Property based on Ground 1 of Schedule 3 to the 2016 Act, the landlord intends to sell the let property.
2. The Application comprised the following:
  - i) Copy private residential tenancy agreement between the Parties;
  - ii) copy valid Notice to Leave in terms of Ground 1 of Schedule 3 to the 2016 Act with sufficient proof of issue to both Respondents
  - iii) copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to Orkney Islands Council being the relevant local authority and
  - iv) copy letter from Lows, estate agents, evidencing an intention to sell.
3. The Application was accepted by the Tribunal Chamber and a Case Management Discussion (the “CMD”) was fixed for 14 August 2025 at 10.00 by telephone conference. The CMD was intimated to both Parties, and, in particular, was intimated to both Respondents, by Sheriff Officer service on 3 July 2025.

## **CMD**

4. The CMD took place on 14 August 2025 at 10.00 by telephone. The Applicant, Mr. Riel, was not present and was represented by Ms. Wooley of the Applicant’s Agents. The First-named Respondent, Miss Johnston, was present and represented by Mr. Dunbar. The Second-named Respondent was not present and was not represented. He did not submit any written representations. The Second-named Respondent had been served notice of the proceedings by

Sheriff Officer. The Tribunal, therefore, proceeded in his absence on the basis that there was no formal opposition to the Application by him.

5. Ms. Wooley confirmed that the Order was sought.
6. Mr. Dunbar advised that Miss Johnston did not oppose the Application and did not oppose the Order being granted but requested that the effective date of the Order be delayed to allow the local authority time to find suitable accommodation for her. Mr. Dunbar explained that the local authority, being an island authority, was under greater than most to deal with homelessness and other housing applications and was attempting to resolve this by offering accommodation off the island. Mr. Dunbar explained that this would not be suitable for Miss Johnston as she worked on the island.
7. The Tribunal adjourned briefly to allow Ms. Wooley an opportunity to take Mr. Riel's instructions on delaying the effective date of the Order and, following the adjournment, Ms Wooley advised the Tribunal that Mr. Riel did not object to the delay.
8. With regard to Mr. Riel's reason for selling, Ms. Wooley advised the Tribunal that Mr. Riel no longer wishes to act as a landlord. She explained that the Property is his only rental property. Ms. Wooley advised that the Respondents had been offered an opportunity to purchase but were not able to do so. She explained further that local estate agents advised that there is no investor market for the sale of tenanted properties on Orkney and so this was not an option for Mr. Riel.
9. With regard to Miss Johnston's personal circumstances, Mr. Dunbar stated that she lived alone with no dependants, worked on Orkney and suffered from anxiety, hence his representing her at the CMD. He confirmed that Miss Johnston had made contact with the local authority and was in the process of appealing their finding that she is not homeless.
10. With regard to the Second-named Respondent, Mr. Dunbar stated that, as far as he knew from Miss Johnston, the Second-named Respondent had vacated the Property some time ago. He understood that Mr. Riel was aware of this.

## **Issue for the Tribunal**

The Application not being opposed, the issue for the Tribunal was whether or not it should grant an Order for eviction in terms of Ground 1 of Schedule 3 to the Act as set out in the Application.

## **Findings in Fact**

11. From the Application and the CMD, the Tribunal made the following findings in fact: -

- i) There is a private residential tenancy of the Property between the Parties;
- ii) A valid Notice to Leave was issued by the Applicant to the Respondent;
- iii) The Applicant has evidenced an intention to sell the Property;
- iv) For personal reasons, the Applicant no longer wishes to act as a landlord;
- v) The Applicant intends to sell the Property;
- vi) The First-named Respondent remains residing in the Property;
- vii) The Second-named Respondent has vacated the Property;
- viii) The First-named Respondent does not oppose the Application and the grant of the Order;
- ix) The First-named Respondent cannot vacate the Property until she secures suitable alternative accommodation;

## **Decision and Reasons for Decision**

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

13. 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 and so proceeded to determine the Application.

14. The statutory ground and procedure being established, and the Application not being opposed, the issue for the Tribunal was to determine if it is reasonable to grant the Order.
15. The Tribunal then had regard to the circumstances of the Parties.
16. The Tribunal must establish, consider and properly weigh the “whole of the circumstances in which the application made” (Barclay v Hannah 1947 S.C. 245 at 249 per Lord Moncrieff) when deciding whether it is reasonable to grant an order for possession.
17. The Tribunal then looked to balance the rights and interests of both parties.
18. The Tribunal accepted that Mr. Riel no longer wishes to be a landlord, that he intends to sell the Property and that he requires to have vacant possession to secure the best price. The Tribunal noted that Mr. Riel is agreeable to an Order being suspended to allow a further time for Miss Johnston to secure accommodation.
19. The Tribunal accepted that Miss Johnston wishes to remove from the Property but cannot do so until she has secured alternative accommodation. The Tribunal, from its own professional knowledge had regard to the statutory position that, if Miss Johnston is evicted and made homeless, she would have protection in terms of Part II of the Housing (Scotland) Act 1987 and so would be able to access advice and assistance on homelessness.
20. Accordingly, the Tribunal took the view that continuing the tenancy was not tenable or in the interests of either Party, and so, was satisfied that it is reasonable to issue an eviction order. In the particular circumstances, the Tribunal stayed the Order until 14 October 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.

Karen Moore

Legal Member/Chair

\_\_\_\_\_

14 August 2025

Date