



**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 (“the 2016 Act”)**

**Chamber Ref: FTS/HPC/EV/25/4158**

**Re: Property at 30 Campview, Bonnyrigg, EH19 3EZ (“the Property”)**

**Parties:**

**Mr Andrew Wesley, Mrs Elizabeth Wesley, 27 Union Park, Bonnyrigg, EH19 3DF (“the Applicants”)**

**Mrs Jean Fraser, 30 Campview, Bonnyrigg, EH19 3EZ (“the Respondent”)**

**Tribunal Members:**

**Sarah O’Neill (Legal Member) and Elizabeth Williams (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery of possession should be granted in favour of the Applicants against the Respondent. The Tribunal delayed execution of the order until 13 July 2026.**

**Background**

1. An application was received from the Applicants on 30 September 2025 under rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules’) seeking recovery of the property under Ground 1 (landlord intends to sell) as set out in Schedule 3 of the 2016 Act.
2. Attached to the application form were:
  - (i) Copy Notice to Leave addressed to the Respondent dated 9 June 2025 citing ground 1, and stating the date before which proceedings could not be raised to be 5 September 2025.

- (ii) Copy notice under section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Midlothian Council, together with covering email dated 30 September 2025.
- 3. Further to a request from the Tribunal administration, a letter from Avenue Road estate agents dated 28 October 2025, confirming that the Applicants had instructed them to market the property, was received from the Applicants on 28 October 2025.
- 4. The application was accepted on 20 November 2025.
- 5. Notice of the case management discussion (CMD) scheduled for 12 May 2026, together with the application papers and guidance notes, was served on the Respondent by sheriff officer on behalf of the Tribunal on 27 March 2026. The Respondent was invited to submit written representations by 16 April 2026.
- 6. Further to a request from the Tribunal, a copy of a private residential tenancy agreement between the parties was received from the Applicants on 14 April 2026.
- 7. Written representations were received from the Respondent on 14 and 15 April 2026.

### **The case management discussion**

- 8. A CMD was held on 12 May 2026. The first Applicant, Mr Andrew Wesley, was present on the call and represented the Applicants. He was accompanied by his daughter, Miss Jenna Wesley, as a supporter. The Respondent was present on the teleconference call and represented herself. She was accompanied by her daughter, Miss Kelly Fraser, as a supporter.

### **Preliminary issues**

- 9. The Tribunal dealt with three preliminary issues. Firstly, it was noted that, while the property was jointly owned by the Applicants, who were also the registered landlords, the tenancy agreement between the parties named only Mr Wesley as the landlord. Mr Wesley said that this had been a clerical error, and that both he and Mrs Wesley should have been named as landlords.
- 10. The Tribunal also noted that the private residential tenancy agreement which had been provided by the Applicants commenced on 12 August 2019, but that the Respondent had stated in her written submissions that she had been a tenant for more than 14 years.

11. The Respondent explained that she had first moved into the property in 2011. She had later been decanted into another of the Applicants' rental properties while work was being done at the property. She had then moved back into the property in 2019, when her current tenancy agreement began.
12. The Respondent also confirmed that she had received the Notice to Leave which was sent to her daughter's email address (as specified in the tenancy agreement) on 10 June 2025.

### **Submissions on behalf of the Applicants**

13. Mr Wesley asked the Tribunal to grant an eviction order in favour of the Applicants. He said that he is 66 years old and had recently retired. He confirmed that the Applicants intended to sell the property for market value, or at least put it up for sale, within 3 months of the Respondent ceasing to occupy it, were an eviction order to be granted. They planned to sell it as soon as possible in order to fund their retirement. That had always been their intention and the Respondent had always been aware that was the case. He was shocked that the Respondent had not been given a council house before this, as she had been on the list for a long time.
14. The Applicants had sold three other rental properties over the past two years with Avenue Road estate agents. They still owned five other rental properties, but planned to sell these within the next 2-3 years. The reason why they were selling this property before those other properties was that it was the least economically viable. The property is a three bedroomed house and the rent stated in the tenancy agreement is £800 per month. The Respondent receives only £750 per month towards her housing costs, and the Applicants had always accepted this.
15. They had sent her a rent increase notice around two years ago, increasing the rent to £900 per month, but had continued to accept £750 a month due to their friendship with the Respondent. The Respondent was therefore in rent arrears, but they had not pursued her for these.

### **Submissions by the Respondent**

16. The Respondent said that she did not accept that the Applicants intended to sell the property. She said that they had six other properties in Bonnyrigg that they could sell, at least one of which was closer to their family home. She said that the Applicants had added an extension to the property and had sub-let this separately. The tenant in the sub-let property had caused trouble and she had reported this to the council, which had then issued an enforcement order to the Applicants. She had been very good friends with Mrs Wesley, the second Applicant, until last year when the eviction notice was served on her, following her complaint about the

tenant living in the extension. She believed that this was why the Applicants had chosen to sell this property instead of one of the others.

17. When asked by the Tribunal what she thought the Applicants' intentions were regarding the property, she said she thought they would wait for a while until things settled down and would then re-let it to someone else. She accepted that this was difficult to prove, however.
18. The Respondent denied having ever received a rent increase notice and said she had never been in rent arrears. She told the Tribunal that she lives alone in the property. She is 66 years old and is retired, and in receipt of the state pension. She suffers from asthma and COPD, and is deaf in one ear. The property is a two-storey house, and the bedrooms and bathrooms are upstairs. She does not find it difficult at the moment to get upstairs.
19. She would like to stay in the area. She has lived in Bonnyrigg for a long time, and the property is close to her doctor and other local services which she uses. Her brother also lives in Bonnyrigg and provides her with support when needed. She has two adult daughters, one of whom lives nearby in Mayfield.
20. She has made an application to Midlothian Council for housing. She had an appointment with them the following day. The Council had told her that they were unable to help her with alternative housing until the eviction process was over.
21. She told the Tribunal that while she would have liked to remain in the property, she now wished to move, given her health issues and the wider circumstances.

#### **Further submissions by the parties**

22. Mr Wesley said that he had initially planned to build an extension to the property, but having spoken to the planning department, he had instead built an annexe. This had been legally rented out as a separate dwelling with its own entrance, and the council was aware of. There had been an argument between the Respondent and the tenant in the annexe, following which the other tenant had moved out. This had nothing to do with the reasons for selling, which were primarily financial, as already stated.
23. Regarding the Applicants' intention to sell the property, he also confirmed that they were aware of the legal provisions relating to wrongful termination of a private residential tenancy.
24. He said that the Respondent and her partner owned a static caravan. Her partner also had a three bedroomed council house in Bonnyrigg, and he believed that the Respondent intended to move in with her partner.

25. The Respondent denied that she had a partner. The person whom Mr Wesley was referring to was a male friend. He owns the caravan. She said that she had no intention of moving in with anyone else.

### **Findings in fact**

26. The Tribunal made the following findings in fact:

- The Applicants are the joint owners of the property. They are therefore entitled to sell the property.
- The Applicants are the registered landlords for the property.
- There is a private residential tenancy agreement in place between Mr Wesley and the Respondent, which commenced on 12 August 2019.
- The Respondent was previously a tenant of the Applicants both at the same property and at another property, since 2011.
- The Notice to Leave was validly served on the Respondent by email on 10 June 2025.
- The Applicant sent a valid notice to Midlothian Council under section 11 of the Homelessness etc. (Scotland) Act 2003 on 30 September 2025.
- The Applicants own five other rental properties.
- The Applicants intend to sell the property or put it up for sale within 3 months of the Respondent ceasing to occupy it.
- The Respondent lives in the property alone.
- The property is a three bedroom two-storey house.
- The Respondent is retired and has asthma and COPD.

### **Reasons for decision**

27. The Tribunal considered that in the circumstances, it was able to make a decision at the CMD without a hearing as: 1) having regard to such facts as were not disputed by the parties, it was able to make sufficient findings to determine the case and 2) to do so would not be contrary to the interests of the parties.

28. The Tribunal considered whether the legal requirements of Ground 1, as set out in Schedule 3 of the 2016 Act (as amended), had been met. Ground 1 states:

#### ***Landlord intends to sell***

*1(1) It is an eviction ground that the landlord intends to sell the let property.*

*(2) The First-tier Tribunal may find that the ground named by subparagraph (1) applies if the landlord—*

*(a) is entitled to sell the let property, and*

*(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 Tribunal determined that as the joint owners of the property, the Applicants are entitled to sell the property.
30. The Tribunal then considered whether the Applicants intend to sell the property for market value, or at least put it up for sale, within 3 months of the Respondent ceasing to occupy it.
31. The Respondent disputed that the Applicants intended to sell the property. She alleged that they intended to wait for a time and then re-let it. She had not produced any evidence to substantiate this, however.
32. The Tribunal had regard to the letter from Avenue Road estate agents confirming that the Applicants had instructed them to market the property. The Tribunal was satisfied that this is evidence tending to show that the Applicant has the intention set out in sub-paragraph 2(b) of Ground 1.
33. The Tribunal also had regard to the submissions by Mr Wesley. It found his evidence credible with regard to the Applicants' intention to sell the property. It was also satisfied that he was aware of the provisions under the 2016 Act relating to wrongful termination by eviction order.
34. Having considered all of this, the Tribunal determined that the Applicants intend to sell the property for market value, or at least put it up for sale, within 3 months of the Respondent ceasing to occupy it.

### **Reasonableness**

35. The Tribunal then considered whether it was reasonable to make an order for recovery of possession. In doing so, it took into account all of the circumstances of the case.

36. The Tribunal considered the Applicants' circumstances. They wished to sell the property to fund their retirement, although they clearly owned a number of other rental properties. They had already sold several of these and intended to sell the remainder in the next few years. As the owner of the property, the Applicants have the legal right to use and dispose of it as they see fit, within the confines of the law.
37. The Tribunal noted that the Respondent had been living in the property under her current tenancy for almost seven years and had been a tenant of the Applicants for around 15 years in total. She was facing the loss of her home through no fault of her own. While Mr Wesley alleged during the CMD that she was in rent arrears, she disputed this and no documentary evidence had been submitted regarding this.
38. The Respondent has lived in the local area for a long time. She has family and social ties in the area and wishes to stay there. She has some physical health issues. She lives alone, however, and the property is larger than she requires. This is reflected in the level of her housing costs which is currently being paid by universal credit and does not cover her full rent. Regardless of whether she is currently in rent arrears or whether her rent has been increased, the tenancy is unlikely to be sustainable for her in the longer term, given the likely market rents in the area.
39. The Respondent appeared to have been aware for some time that the Applicants wished to recover the property, certainly for at least 11 months since the Notice to Leave was served and perhaps longer.
40. It was clear from what she had said that the Respondent wished to leave the property and find council accommodation. She was concerned about her health issues. The parties had previously had a good relationship, but this seemed to have broken down. It was also clear that an eviction order would assist her in seeking alternative council accommodation.
41. Having carefully considered all of the evidence and all of the circumstances of the case as set out above, the Tribunal considered that on balance it was reasonable to grant an eviction order.
42. In reaching its decision, the Tribunal gave particular weight to the Respondent's lack of opposition to the application, and to her desire to secure social rented accommodation. It also gave weight to the Applicants' right to dispose of their own property and the apparent deterioration in the relationship between the parties.

43. The Tribunal therefore determined that an order for recovery of possession should be granted in favour of the Applicants.
44. Before making a decision on whether to grant the order, the Tribunal sought the views of both parties on the possibility of delaying execution of any eviction order in terms of rule 16A of the 2017 rules. The Respondent said that it would make things easier if she could be given an extension of a month or two, to give her time to get things organised and find alternative accommodation.
45. Mr Wesley was opposed to this. He said that the ongoing eviction process was having a negative impact on the health of both Applicants. He also took the view that extending the eviction period would only extend the time taken by the council to find the Respondent alternative accommodation.
46. Having taken into account the parties' views, the Tribunal considered that it would be reasonable in all the circumstances to delay execution of the order for a month until 13 July 2026.

### **Decision**

The Tribunal grants an order in favour of the Applicants against the Respondent for recovery of possession of the property. The Tribunal delayed execution of the order until 13 July 2026.

### **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.**

Sarah O'Neill

12 May 2026

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**Legal Member/Chair**

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**Date**