



**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/21/0905**

**Re: Property at 3D Mungle Street, West Calder, West Lothian, EH55 8BX (“the Property”)**

**Parties:**

**Mr Iain McNicol, Mrs Elizabeth McNicol, C/O Mavor and Company, 16 Union Square, West Calder, West Lothian, EH55 8EY (“the Applicant”)**

**Mr Jak Stout, Mr Robert Stout, 3D Mungle Street, West Calder, West Lothian, EH55 8BX; 3D Mungle Street, West Calder, West Lothian, EH55 8BX (“the Respondent”)**

**Tribunal Members:**

**Richard Mill (Legal Member) and Mary Lyden (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Eviction be granted against the Respondents**

**Introduction**

1. This is an eviction application under Rule 109 and Section 51 of the Private Housing (Scotland) Act 2016.
2. Service of the application and intimation of the Case Management Discussion (CMD) was effected by Sheriff Officers on both respondents on 6 May 2021. Written representations required to be lodged with the Tribunal by 26 May 2021, but none were received.
3. The CMD took place by teleconference at 2.00 pm on 3 June 2021. The applicants were represented by Mr Callum McQueenie of Mavor & Company, Letting Agents. The respondents both joined the hearing personally and represented their own interests.

4. The respondents offered no opposition to the application.

### Findings and Reasons

5. The property is 3D Mungle Street, West Calder, West Lothian EH55 8BX.
6. The applicants are Mr Iain McNicol and Mrs Elizabeth McNicol. They are the heritable proprietors of the property and the landlords. The respondents are Mr Robert Stout and Mr Jak Stout. They are father and son respectively.
7. The parties entered into a private residential tenancy in respect of the property which commenced on 27 March 2018. No copy tenancy agreement has been produced as the lease contract was entered into verbally. The respondents have occupied the property in terms of the verbal lease agreement between the parties and paid £500 per month in rent.
8. The applicants wish to recover possession of the property on the ground that they intend to sell it. Their verbal intention to do so was intimated to the respondents in early 2020. By way of Notice to Leave dated 18 September 2021 the respondents were advised of the applicants' intention to recover the property on this ground. The ground relied upon is Ground 1, contained within Part 1, Schedule 3 to the 2016 Act.
9. Since the coming into force of the Coronavirus (Scotland) Act 2020, all eviction grounds are discretionary. Ground 1 was previously a mandatory ground but is now discretionary. The notice periods have also been extended by virtue of the 2020 Act. The relevant notice period under Ground 1 was previously one of 84 days but is now one of 6 months.
10. The Notice to Leave is dated 18 September 2020. There is a Sheriff Officer's execution which discloses that it was served on that same day.
11. In terms of Section 62(5) it is to be assumed that the tenant will receive a Notice to Leave 48 hours after it is sent. It is to be assumed under the Act therefore that the Notice to Leave was not received until 20 September 2020. The Tribunal however relied upon the Upper Tribunal decision of Sheriff Fleming in UTS/AP/20/0029 [2021] UT 20. The assumption under the 2016 Act regarding deemed service 48 hours after posting can be rebutted. The Sheriff Officers' executions are explicit. Service upon both respondents took place on 18 September 2020 and accordingly the Notice to Leave is valid. The 6 month notice period commenced on 18 September 2020 and ended on 18 March 2021. The Notice correctly applied an extra day under section 62(4) of the Act and correctly specified that the first day on which the tribunal could consider an application for eviction was on 19 March 2021. The Notice to Leave can be relied upon.

12. Evidence that the applicant landlords have the intention of selling the property must be produced. The evidence of the proposed sale consists of a signed letter of engagement with letting agents to sell the property, dated 14 September 2020. The tribunal attached weight to this unchallenged credible and reliable documentary evidence. The tribunal was also provided with background information regarding the applicants' intention to sell. The tribunal found Ground 1 to be established on a balance of probabilities.
13. The tribunal proceeded to consider the reasonableness of making the eviction order. The applicants are both retired. Mr Robert Stout is 55 years of age and in full time permanent employment. His son Mr Jak Stout is 19 years of age and a student. They have no dependants. Both respondents accept the applicants' intentions to sell. They have no opposition to the application. The applicants' agent has offered alternate private tenancy options to the respondent which have been declined as they wish to secure local authority housing. Upon producing the Eviction Order made by the tribunal it is most likely that alternate accommodation will be offered by the local authority.

### **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.**

# R Mill

3 June 2021

Legal Member/Chair

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Date