

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 58 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/PR/24/3583

Re: Property at 53 Priestfield Crescent, Edinburgh, EH16 5JH (“the Property”)

Parties:

**Miss Nicola Hughes, Mr Kieran Walton and Miss Amanda Whitelaw, all 9
Duntreath Place, Edinburgh, EH16 4ZA (“the Applicants”)**

Mr Kevin Reilly, whose present whereabouts are unknown (“the Respondent”)

**Tribunal Member:
George Clark (Legal Member)**

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the application should be refused.**

Background

1. By application, dated 28 July 2024, the Applicants sought a Wrongful-termination Order against the Respondent under Section 58 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). They stated that they had vacated the Property on 10 April 2024, following receipt from the Respondent of a Notice to Leave on the ground that he intended to carry out refurbishment of the Property. The letting agents had told them that the work might take up to two months to complete. The Property had then been advertised by a different letting agency on 15 July 2024 with the rent increased from the £1,030 that they had been paying, to £1,600 per month and a neighbour had told them that the work had only taken two weeks.
2. The Applicants provided with the application copies of a Private Residential Tenancy Agreement between the Parties commencing on 10 February 2021 at a rent of £950 per month, and a Notice to Leave served by the Respondent’s letting agents, dated 18 January 2024, advising the Applicants that an application for an Eviction Order would not be made to the Tribunal before 14 April 2024. The Notice to Leave stated as the Ground for Eviction

that the landlord intended to carry out remedial electrical refurbishment on the Property when it became vacant. They also provided copies of emails in which the Applicants indicated that they could find alternative temporary accommodation during the period of the proposed works, and a screenshot of an advertisement, stated to be dated 15 July 2024, by Rettie, Edinburgh, offering the Property for let at £1,600 per month. The view of the Applicants, who vacated the Property on 9 April 2024, was that they had been wrongly evicted in order for the Respondent to receive a higher monthly rental income. They were now having to pay £1,500 by way of monthly rent, as opposed to £1,030 for the Property. They had also paid rent until 13 April 2024, but had moved out on 9 April.

3. On 16 March 2025, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 5 April 2025. As the whereabouts of the Respondent were unknown, service was effected by advertisement on the Tribunal's website from 16 March 2024 until 28 May 2025.
4. The Respondent did not make any written representations, but on 27 May 2025, the day before the Case Management Discussion, DJ Alexander, letting agents, Edinburgh, contacted the Tribunal to say that they had just been instructed to represent the Respondent. They wished to continue with the Case Management Discussion but would be asking that the case be continued.

First Case Management Discussion

5. A Case Management Discussion was held on the morning of 28 May 2025. The Applicants were not present or represented. The Respondent was represented by Mr Martin Urquhart of DJ Alexander, Edinburgh.
6. Mr Urquhart told the Tribunal that his firm had been contacted the previous day by the Respondent, who had just found out about the proceedings from the Tribunal's website. They advised the Tribunal that he had a substantive defence to the application and sought a continuation in order that they might take instructions and lodge written representations on the Respondent's behalf.
7. The Tribunal decided that the interests of justice required that the Respondent be given an opportunity to make representations and thereafter to be present or represented at a Case Management Discussion. Accordingly, the Tribunal continued the case to a further Case Management Discussion.
8. On 24 June 2025, the Respondent's letting agents, D J Alexander, Edinburgh, made written representations on his behalf. They stated that, at the time the Notice to Leave was served, the Respondent had obtained contractor advice that highlighted the need for significant and intrusive electrical works to bring the Property in line with current safety standards. The letting agents had clearly communicated to the Applicants that the works would materially affect their continued occupancy and that the landlord regrettably had no alternative

accommodation to offer during the refurbishment period. The Respondent disputed the allegation that the works were completed within two weeks. In addition to substantial electrical remedial works, he undertook significant improvements, including recarpeting throughout, internal and external redecoration and other maintenance upgrades. The cost of the work exceeded £10,000. Following completion of the refurbishment, the Respondent assessed his future options, which included selling the Property, letting it, or a family member moving in. He decided to re-let it and submitted that re-letting after a refurbishment does not indicate that the Ground used was inappropriate. The Respondent acted in good faith throughout and, whilst he was sympathetic for any inconvenience caused to the Applicants, the decision to terminate the tenancy under Ground 3 was reasonable.

9. The Respondents' letting agents provided the Tribunal with copies of Invoices from Certifi Electrical Contractors Ltd (23 April 2024) for a new consumer unit and rewiring of all sockets and lighting circuits (£4,600), from Floor Coverings (5 June 2024) for carpeting the stairs, landing and two bedrooms (£1,309) and from J Burt Decor Ltd for complete internal redecoration (£3,348), dated 26 May 2024 and external painting (£1,896), dated 10 June 2024.

Second Case Management Discussion

10. A second Case Management Discussion took place by means of a telephone conference call on the morning of 10 September 2024. The Applicants Miss Hughes and Mr Walton were present. As the whereabouts of the Respondent are unknown, service was effected by advertisement on the Tribunal's website from 30 July 2025 until 10 September 2025. He did not attend the Case Management Discussion but was again represented by Mr Martin Urquhart of D J Alexander, Edinburgh.
11. The Applicants confirmed that they had told the Respondent that they could find their own accommodation during the works. The Tribunal noted that the Invoice for the rewiring was dated 23 June 2024, only two weeks after the Applicants vacated the Property and put this to the Respondent's representative. Mr Urquhart responded that, at the time of service of the Notice to Leave, a professional report highlighted intrusive works, and it would not have been safe or practicable for the Applicants to remain in the Property. It would not have been possible to determine with accuracy the length of time that the works might take. It would depend on the availability of contractors and materials. In the event, the rewiring was completed in two weeks of the Applicants vacating the Property, but this could not have been predicted in advance, and, in any event, the electrical work had to be followed by plastering and redecoration. The Respondent had anticipated that it would take longer than it did.

Reasons for Decision

12. 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 Parties indicated at the Case Management Discussion that they did not regard it as necessary to proceed to an evidential Hearing and the Tribunal was satisfied that, having written and oral representations from or on behalf of both Parties, it was in a position to decide the application without a Hearing.

13. The Notice to Leave stated that the Ground on which the landlord was relying was Ground 3 of Schedule 3 to the 2016 Act, namely that the landlord intended to refurbish the Property. The covering email from the letting agents, however, did not mention refurbishment. It stated that the landlord had chosen to sell the Property. The view of the Tribunal was that, where there was such an inconsistency, the formal Notice must be regarded as definitive of the reason for the Respondent seeking to evict the Applicants.
14. In an email of 17 January 2024, the letting agents stated that there would be significant decoration required once the re-wire was completed and it was estimated that beginning to end the process could take up to two months. The Applicants responded on the following day and asked whether, if they were able to secure alternative accommodation whilst the works were carried out, they could remain as tenants. The letting agents replied that they knew the Respondent was considering several options going forward, including the possibility of selling the Property or taking occupation himself, but they agreed to raise the question with him. In the event, the Respondent did not agree to the Applicants' suggestion.
15. Ground 3 of Schedule 3 to the 2016 Act it is an eviction ground that the landlord intends to carry out significantly disruptive works to the let property and that the Tribunal may find that Ground 3 applies if the landlord intends to refurbish the property and it would be impracticable for the tenant to continue to occupy the property given the nature of the refurbishment intended by the landlord
16. Section 58 of the 2016 Act applies where, as in the present case, a Private Residential Tenancy Agreement has been brought to an end by Notice to Leave and the tenant leaving. It states that an application for a wrongful-termination order may be made to the Tribunal and that the Tribunal may make an order if it finds that the former tenant was misled by the landlord into ceasing to occupy the let property.
17. The Tribunal had considerable sympathy for the situation in which the Applicants had found themselves, through no fault of their own but, having considered carefully all the evidence before it, the Tribunal was unable to make a finding that they had been misled into ceasing to occupy the Property. The works which the Respondent intended to carry out were significantly disruptive and it would have been impracticable for the Applicants to continue to occupy the Property given the nature of the refurbishment. It was regrettable that the Respondent had not taken up the offer by the Applicants to move out temporarily, but he was not obliged to accept it. The Invoices provided by the Respondent showed that, whilst the rewiring was completed within two weeks of the end of the tenancy on 9 April 2024, the refurbishment works continued

until the middle of June. The Tribunal accepted that it would not have been possible to accurately anticipate the timeframe for completion of the works.

18. For the reasons given above, the Tribunal decided that it would refuse the application, but observed that, although the Applicants had left on 9 April 2024, the Respondent had charged them rent until 13 April. Had they stayed until that date, it is likely that the start date of the rewiring would have been delayed and, whilst the Tribunal is unable to make any Order in this regard, it would ask the Respondent to reflect and to consider making a refund of £135.45.

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.

George Clark

Legal Member/Chair

10 September 2025
Date