



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 58 of the Private Housing
(Tenancies)(Scotland) Act 2016**

Chamber Ref: FTS/HPC/CV/24/3311

Re: Property at 373 Charleston Drive, Dundee, DD2 4HQ (“the Property”)

Parties:

**Mrs Sian Samson, Mr Dale Samson, 10 Strathcarron Place, Dundee, DD2 4BB
 (“the Applicant”)**

**Mrs Adedduni Shittu, Mr Akinola Shittu, 8 Eyebrook Close, Hamilton, Leicester,
LE5 1QU (“the Respondent”)**

Tribunal Members:

Alison Kelly (Legal Member) and Eileen Shand (Ordinary Member)

Decision

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

Background

1. On 18th July 2024 the Applicant lodged an application under Rule 110 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) seeking payment of a compensation in relation to an alleged wrongful termination of their tenancy.
2. Lodged with the Application were:
 - a. Copy Private Residential Tenancy with a commencement date of 9th October 2020 and showing a rent of £650 per month;
 - b. Notice to Leave dated 3rd January 2024 and showing the Ground as Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the Act”);
 - c. Copy of an entry on the landlord database;
 - d. Email correspondence between the Applicants and the letting agent.

3. The Application was served on the Respondent by Sheriff Officer on 19th February 2025.
4. On 7th March 2025 the Respondent's solicitor sent a lengthy document to the Tribunal including Answers, an Inventory of Productions with Productions, a List of Authorities and the Authorities.
5. On 26th March 2025 the Applicants lodged a further Written Submission and documents.

Case Management Discussion

6. The Case Management Discussion ("CMD") took place on 3rd April 2025 by teleconference. The Applicants represented themselves. The Respondents were present on the call, and were represented by Mr Gordon of Thorntons, Solicitors.
7. The Tribunal confirmed the purposes of a CMD in terms of Rule 17 of the Rules.
8. The Tribunal ascertained that the Applicants were seeking a wrongful termination without eviction order under section 58 of Private Housing (Tenancies)(Scotland) Act 2016, in that they consider that they were misled into ceasing to occupy the let property, as Ground 1 of schedule 3 of the Act had been used in the Notice to Leave and the property had not been sold and had been re-let.
9. The Tribunal ascertained that the Respondents' position was that they had not misled the Applicants and had genuinely intended to sell the property, but other factors had intervened.
10. Given there were matters in dispute the Tribunal decided that a hearing needed to be fixed.
11. The Tribunal confirmed with the parties that the following facts were agreed:
 - The tenancy commenced on 9th October 2020
 - A Notice to Leave was served on 3rd January 2024
 - Ground 1 of Schedule 3 of the Act was the ground used in the Notice to Leave
 - The Applicants vacated the property on 7th May 2024
 - The Applicants paid a deposit of £750, which was retained by the Respondents after adjudication by the tenancy deposit scheme it had been placed in
 - To date the property has not been sold
 - The property has been let and is still occupied by those tenants.
12. The Tribunal also thought the amount of rent at the end of the tenancy and the date on which the property was re-let were matters capable of agreement, but

the Respondents did not have the information to hand. The Tribunal made it clear that it will expect the Respondents to provide evidence in relation to both those matters.

13. The main point in dispute is whether or not the Respondents did have genuine intention to sell at the time the Notice to Leave was served or whether they had misled the Applicants. The Tribunal confirmed with the parties that it is for each side to lead whatever evidence they consider is relevant to and supports their own position. The Tribunal explained how the hearing would be conducted, in that each side would lead evidence from their witnesses, and could give evidence themselves, and they would then be cross examined by the other side. The Tribunal would make a decision based on all the evidence heard.
14. Neither side was sure exactly what witnesses they were likely to call.

Procedure Subsequent to Case Management Discussion

15. The Tribunal issued a Direction to the parties.
16. The Direction required the Applicants to lodge all their productions, including all those already lodged, in a bundle with an Inventory, evidence of the amount of monthly rent at the end of the tenancy and a List of Witnesses. The Applicants complied with the Direction.
17. The Direction required the Respondents to lodge any documents they have to show the amount of rent being paid per month at the end of the tenancy, a copy of any tenancy agreement issued to the current tenants, evidence to show when the current tenants took occupancy, and a List of Witnesses they intend to call at the hearing. The Respondents did not comply with the Direction.
18. The Tribunal received an email from the Respondents confirming that they were no longer instructing a solicitor and would be representing themselves at the Hearing.
19. The Respondents lodged a submission, including a Statement laying out their position, and some documents, including a letter from the Redeemed Christian Church of God dated 17th June 2024, documents showing the repairs which had been carried out during the tenancy and the cost of those repairs, emails from estate agents with valuations of the property, and invoices from their solicitors for work carried out in relation to advice in relation to Tribunal proceedings and conducting the CMD.

20. The Applicants lodged their bundle of Productions, and included copy of the rent increase notice which raised the rent to £660 on 9th August 2022.

Hearing

21. The Hearing took place by videoconference on 25th July 2025. The Applicants were on the same screen and represented themselves. The Respondents were on the same screen and represented themselves.
22. The Chairperson introduced everyone and laid out the procedure which would be followed. She confirmed that although no one is put on oath the Tribunal do expect everything that is said will be the truth. She then outlined the law that the Tribunal were being asked to consider, and went over the CMD Note to confirm the facts already agreed.
23. The Chairperson established that neither side was calling any witnesses. She asked the Respondents to tell the Tribunal why they had not complied with the Direction. The First Named Respondent, who had confirmed that she would be the person who presented the case, did not seem to know what she was being asked and eventually said that she must not have seen the Direction.
24. Given the Applicant had lodged a copy of the rent increase notice, the parties were able to agree that at the end of the tenancy the rent was £660 per month.
25. The First Named Applicant give evidence. She said that she believed that they had been unlawfully evicted. They vacated on 7th May 2024 after having received the Notice to Leave, which was based on Ground 1. They subsequently discovered that the property had not been sold, and had instead been re-let. She said that she felt that this was dishonest.
26. The First Named Applicant said that during their tenancy they made complaints about disrepair and damage. The laminate floor had to be replaced because it was dangerous. The bath, which she considered had been badly fitted, caused flooding. They contacted Dundee City Council, who inspected the property and said the rent should be abated by 80 per cent if repairs were not carried out. There were mice in the property each winter. She thought that they were getting in through a hole which had been caused by water damage. The Applicants were expected to deal with the mice themselves. Eventually a pest controller attended. It was shortly after this that the Applicants received the Notice to Leave.

27. The First Named Applicant said that relocation at that time was not practical for the family. Both she and the Second Named Applicant were studying for masters degrees. They have three children. They were saving towards a deposit to allow them to buy a property. They had to spend their savings, £12,000, on the move to the property they are now in. It is a local authority property and they had to carpet and furnish it. If they had not been evicted they would still be in the property.
28. The First Named Applicant said that the Second Named Applicant has heart failure and with that has mobility issues. Their fourteen year old child was affected as she was just beginning to have the confidence to go out and travel by herself, but the change of accommodation set her back. Their ten year old child has Autism and ADHD. That child has been affected as the move was very quick and there was no time to prepare mentally for it. Their four year old child is also upset and misses the old house. If the family had been able to plan they would have been better able to prepare the children.
29. The First Named Respondent was given the opportunity to cross examine. She did not ask the First Named Applicant any questions, instead she made her own statements. She said that the Respondents had always carried out all the repairs they had been asked to. When they began renting out the property it was through Northwood, who provided a guaranteed rent scheme. They changed their managing agent to Premier Property. The quotes received for the repairs after that were too much. They found their own quote. She did say that the Respondents wanted to provide a nice home.
30. The First Named Respondent gave evidence. She referred to the Statement she had lodged. She said that the Applicants had breached the tenancy agreement by changing the bathroom fittings, installing ceiling lights, painting, and changing the toilet seat. She said that tenants need authorisation to make changes. The Second Named Respondent interjected to say that if they did not like the house the way it was why did they not just leave.
31. The First Named Respondent said that the frequency of requests for repairs was too high, and higher than it was with previous tenants. It was very stressful and caused anxiety.
32. The First Named Respondent said that they had incurred significant costs with having to make an application to the Tribunal for eviction because the Applicants did not leave at the end of the notice period. After they left the Respondents called in estate agents. They did all the repairs the estate agent suggested. The valuation given was too low. She said that the Respondents had lived in Dundee between 2007 and 2012. They had attended the church there. They attended that church when they came to visit Dundee. The person

who carried out the repairs to the flat is a member. The Church knew that the property was empty. They said that the pastor needed accommodation quickly and asked if he could occupy the property until he found somewhere suitable and the market was more favourable.

33. At this point the Second Named Respondent became quite agitated. He said that the Respondents were not being fairly treated by the Applicants. He said that he did not know any of the previous tenants as it was dealt with by Northwood. He said that the Applicants' rate of requests for repairs was too much. The rental was only £650 per month. It was not viable. In fairness they had given the tenants plenty of notice. They had spent over £2000 on the legal process. They did not chase the Applicants for the cost of repairs after they vacated. The Second Named Respondent broke down and the Tribunal adjourned for 10 minutes for him to calm down.

34. The Tribunal reconvened. The First Named Respondent laid out five points as to why she considered the Applicants' claim to be baseless. These were:

- They had breached the tenancy agreement
- The repairs requested were too much
- The Respondents had spent a lot of money on the eviction process
- The Respondents' decision to re-let was motivated by charitable consideration, not profit
- The Respondents will sell the property in due course when the market becomes more favourable

35. The Tribunal sought to clarify with the First Named Respondent what exactly led them to decide to seek the eviction of the Applicants so that they could sell. The First Named Respondent said that from 2022 the requests for repairs became too frequent and that led to the decision to sell.

36. The Tribunal asked the First Named Respondent whether or not the Respondents had sold their property at 8 Eyebrook Close. The First Named Respondent was surprised by the question and said that they were not selling that property, it was their family home. The Tribunal made reference to the affidavit the First Named Respondent had signed in connection with the application to the Tribunal for eviction, in which the First Named Respondent stated "We would like to sell the Subjects and our dwellinghouse at 8 Eyebrook Close, Hamilton, Leicester, LE5 1QU as soon as possible. We require to purchase a more suitable dwellinghouse that will meet our family's needs and to release capital for our children's school and university fees". The First Named Respondent denied that she had ever said that. The affidavit had been lodged in this case by the solicitor previously instructed by the Respondents. It took some time for everyone to identify the document. The

Tribunal was satisfied that the First Named Respondent had the affidavit in front of her. She confirmed that the signature on each page of the document was hers and that she had signed it during a video call with her solicitor. She accepted that an affidavit was a document sworn on oath. She said that the document she had in front of her did not say that the Respondents wished to sell their property in Leicester. She denied that the document said that. The First Named Respondent said that they have two children. The 21 year old is at university and relied on student loans. The 14 year old goes to private school. They have taken out loans to pay for that. She also confirmed that there is no mortgage on the property in Dundee.

37. The Tribunal asked the First Named Respondent what she meant when she said that the valuation was “too low”. She said that they bought the property for £119,000. They had spent a lot of money on it. The estate agent valued it at £125,000. The Respondents weren’t expecting the value to be that low. They had not had a valuation carried out before they served the Notice to Leave as they wanted repairs to be carried out before having a valuation done.
38. The First Named Respondent said that they are getting a rental of £900 per month from the Church. The market value is £1200. She said that the Respondents do have the intention to sell. They keep looking at the market. They want to sell, but not at a loss.
39. The First Named Applicant was given the opportunity to cross examine the First Named Respondent. In response to her question the First Named Respondent said that the current tenant had requested some repairs, particularly in relation to the basin in the bathroom.
40. The First Named Applicant asked the First Named Respondent why the Respondents had not agreed to sell to the Applicants. The First Named Respondent said that they wanted to put the property on the open market for sale.
41. The Tribunal asked the First Named Respondent if they would market the property for sale as soon as the pastor vacates. She said that she would. She was further asked what they would do if they considered that the market was still too low and she said that they would find another tenant.
42. The evidence was complete and the Tribunal adjourned to consider a decision.

Findings In Fact

- i. The tenancy commenced on 9th October 2020;
- ii. A Notice to Leave was served on 3rd January 2024;
- iii. Ground 1 of Schedule 3 of the Act was the ground used in the Notice to Leave;
- iv. The Applicants vacated the property on 7th May 2024;
- v. The Applicants paid a deposit of £750, which was retained by the Respondents after adjudication by the tenancy deposit scheme it had been placed in;
- vi. The rent at the end of the tenancy was £660 per month;
- vii. The Respondents did not sell the property for market value, or put it up for sale, within 3 months of the Applicants ceasing to occupy it;
- viii. The Applicants made complaints about damage and requested repairs during their tenancy;
- ix. The Applicants contacted Dundee City Council, who inspected the property and said the rent should be abated by 80 per cent if repairs were not carried out;
- x. The Applicants did not want to leave the property;
- xi. The Applicants wanted to buy the property;
- xii. The Respondents told them that they wanted to put it on the open market;
- xiii. Leaving the property caused distress and financial loss to the Applicants and their three children;
- xiv. The Respondents considered the frequency of the requests for repairs by the Applicants to be too high;
- xv. On the expiry of the Notice to Leave the Respondents instructed solicitors to begin proceedings to seek an eviction order;
- xvi. The First Named Respondent swore and signed an affidavit dated 4th April 2024 before Calvin Andrew Manson Gordon, Solicitor, Thorntons Law LLP;
- xvii. In the affidavit the First Named Respondent said “We would like to sell the Subjects and our dwellinghouse at 8 Eyebrook Close, Hamilton, Leicester, LE5 1QU as soon as possible. We require to purchase a more suitable dwellinghouse that will meet out family’s needs and to release capital for our children’s school and university fees”;
- xviii. The Respondents first contacted estate agents requesting that they value the property after the Applicants had vacated;
- xix. The Respondents considered the valuations they had been given to be too low;
- xx. The Respondents attended the Redeemed Christian Church of God in Dundee;

- xxi. The Church sent a letter dated 17th June 2024 asking if they would let the property to the pastor;
- xxii. In or around June 2024 the Respondents entered in to a tenancy agreement with the new pastor;
- xxiii. At today's date the pastor still tenants the property;
- xxiv. The Respondents do not wish to sell for what they perceive to be a loss;
- xxv. If the value of the property is still too low when the pastor vacates the Respondents will re-let the property.

Reasons For Decision

43. Section 58 of the Act is as follows:

Wrongful termination without eviction order

(1) This section applies where a private residential tenancy has been brought to an end in accordance with section 50.

(2) An application for a wrongful-termination order may be made to the First-tier Tribunal by a person who was immediately before the tenancy ended either the tenant or a joint tenant under the tenancy ("the former tenant").

(3) The Tribunal may make a wrongful-termination order if it finds that the former tenant was misled into ceasing to occupy the let property by the person who was the landlord under the tenancy immediately before it was brought to an end.

(4) In a case where two or more persons jointly were the landlord under the tenancy immediately before it ended, the reference to the landlord in subsection (3) is to any one of those persons.

44. Ground 1 of Schedule 3 of the Act is as follows:

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 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.

45. The tenancy in this case came to an end without the need for an order from the First-tier Tribunal. The Respondents served a Notice to Leave dated 3rd January 2024 on the Respondents citing Ground 1 of Schedule 3 to the Act, and the Applicants vacated the property on 7th May 2024. This application therefore falls under section 58 of the Act.

46. The recent decision of the Upper Tribunal in the case of Reynolds –v- Henry, reported in Scots Law Times (2024 S.L.T. (Tr) 185) laid out a four stage test in relation to whether or not there had been a wrongful termination. Those stages are:

Firstly, the landlord must have made some sort of representation to the tenant that he intends to bring the tenancy to an end,

Secondly, the representation must have been effectively misleading,

Thirdly, the tenants must have been misled by the landlord's representation,

Fourthly, the representation must actually have misled the tenant into ceasing to occupy the property.

47. In this case the representation was made by service of the Notice to Leave, dated 3rd January 2024 on the Respondents. The Respondents accepted the Notice and vacated the property. There is no evidence to suggest that they thought they were being misled, and the Tribunal is satisfied that they vacated the property in good faith. The question for the Tribunal is whether or not the representation, i.e. the Notice to Leave using ground 1, was effectively misleading.

48. In relation to Ground 1 there is no dispute that the Respondents own the property and are therefore legally entitled to sell it, and as the Applicants vacated on the strength of the Notice to Leave the question of reasonableness was not required to be determined by the Tribunal for the purpose of granting an eviction order, the live issue in this case, for wrongful eviction, is whether at the time the Notice to Leave was served, the Respondents intended to sell the property for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it.
49. The Tribunal did not find either of the Respondents to be credible witnesses. They were both very aggrieved that Tribunal proceedings had been raised against them. The Second Named Respondent was agitated and angry throughout the Hearing. He said that they were not being fairly treated by the Applicants. He said that he did not see why they could not do what they liked with their own property. The First Named Respondent was evasive when asked direct questions. She completely denied that an affidavit sworn by her, lodged by her former solicitor, and which she had in front of her contained a paragraph which it quite clearly did contain, and of which both parties and the Tribunal had a copy. The affidavit clearly contained a lie.
50. It was clear from the evidence given by the Respondents, and from their Written Submissions that they were aggrieved about the number and cost of repairs requested by the Applicants. The Tribunal considers that this was the reason that they wished to bring the tenancy to an end. The Respondents gave evidence to the effect that they had not had any valuations of the property carried out prior to serving the Notice to Leave. They said that when valuations were carried out they considered them to be too low. The Tribunal considers therefore that the Respondents did not intend to sell the property for "market value" as they were not prepared to accept what the market value of the property was. The fact that they went on to let the property again very quickly, for what they said was a reduced market rent, although no evidence of either the rent being paid or the current market rent was produced, and the fact that the First Named Respondent said that when the pastor vacates they will re-let if the market value of the property is still too low, bears out that the Respondents did not use a valid ground in the Notice to Leave. On that basis the Tribunal is satisfied that the Applicants were misled into ceasing to occupy the property and that an order in terms of section 58 of the Act can be made.
51. Section 59 (1) of the Act provides the remedy as follows:

In this section and in sections 57, 58 and 60, “a wrongful-termination order” means an order requiring the person who was the landlord under the tenancy immediately before it ended to pay the person who made the application for the wrongful-termination order an amount not exceeding six months’ rent.

The Act does not give any guidance as to relevant considerations as to how the payment should be calculated. It is therefore at the discretion of the Tribunal.

52. The Tribunal considered two aspects when coming to a decision on the amount of the payment. Firstly, the Applicants, through no fault of their own, and for having asked for repairs to which they were legally entitled, have experienced loss and inconvenience. They had to leave the property which had been their home for four years. Their three children had to endure the upheaval of moving home without having much time to prepare for such a move. The Applicants have had to spend a chunk of their savings on decorating, carpeting and furnishing their new home. Secondly, the Respondents have shown no empathy to the Applicants’ position, having refused to consider any offer from them to buy the property and having gone on to rent it out again for what they say is below market rent. They have had no regard to their responsibilities as landlords under Scots Law.
53. The Tribunal considers that a payment of four times the rent - £2840 – is appropriate.

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.

Alison J Kelly

28th August 2025

Legal Member/Chair

Date

