Housing and Property Chamber
First-tier Tribunal for Scotland

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 ("The Act")

Chamber Ref: FTS/HPC/PR/23/3077, FTS/HPC/CV/24/2314 and FTS/HPC/CV/24/2315

Re: Property at 89 WARRENDER PARK ROAD, EDINBURGH, EH9 1EW ("the Property")

Parties:

MR CHRISTOPHER BOWLER, JULIE ANN WHIGFIELD 10 MERCHISTON PLACE, EDINBURGH, EH10 4NR ("the Applicants/ Respondents")

MRS JANE MCGREGOR, 14/1 LAUDER ROAD, EDINBURGH, EH9 2EL ("the Applicant/Respondent")

Tribunal Members:

Andrew McLaughlin (Legal Member) and Eileen Shand (Ordinary Member)

Background

[1] In Application with reference FTS/HPC/CV/24/2314, Ms Jane McGregor seeks a Payment Order against Mr Christopher Bowler and Ms Julie Ann Whigfield for the costs of making good damage said to have been caused by them to the Property during the tenancy between the parties. In Application with reference FTS/HPC/CV/24/2315, Ms Jane McGregor seeks a Payment Order against Mr Christopher Bowler and Ms Julie Ann Whigfield in respect of rent arrears said to have been accrued by them under the tenancy between the parties. In Application with reference FTS/HPC/PR/23/3077, Mr Christopher Bowler and Ms Julie Ann Wigfield seek a wrongful termination order against Ms Jane McGregor on the basis that they allege that they were misled into ending their tenancy. All three Applications together comprised bundles of approaching 1,000 pages of content, albeit there was substantial repetition within the papers.

[2] After Case Management Discussions which regulated procedure regarding the production of evidence, the Tribunal fixed a Hearing for evidence and submissions to be heard. A previous hearing scheduled for 9 September 2025 was postponed at the request of the Landlord.

The Hearing

[3] The Hearing took place at 10am on 9 December 2025 in George House, Edinburgh. The Tribunal began by ensuring that all parties understood the purpose of the Hearing and how it would be conducted. The Tribunal made sure that everyone was familiar with the documentation submitted, had nothing further to add and were content to start the Hearing. The Tribunal therefore proceeded to hear evidence from each party in turn. After each party gave evidence, the other had the right to cross-examine. At the conclusion of evidence each party also had the opportunity to make closing submissions.

[4] The Tribunal decided that it would hear from Mr Bowler and Ms Whigfield first about the wrongful termination application, allow cross examination, then hear Ms McGregor's evidence about that and allow cross examination. Then Ms McGregor gave evidence about her claims for rent arrears and restoration costs and the Tribunal repeated the process. For simplicity the Tribunal will refer to the parties, where appropriate, as either the "*Landlord*" or the "*Tenants*"

Comment on the evidence heard

[5] The Tribunal comments on the evidence heard as follows.

Christopher Bowler re wrongful termination order

[6] The Tribunal heard first from Mr Christopher Bowler. He lived at the Property with Ms Whigfield from 10 October 2020. The date when they vacated the Property requires some consideration. Mr Bowler said in his Application very clearly that the Tenants moved out on 30 June 2023. Those were his words. He said that explicitly in the Application and then referred to it again. Part of the Landlord's case was that the Tenants left without paying rent for May and June 2023 so the date the Tenants left was relevant. There was no dispute from the Tenants that as a matter of fact they did not pay rent in May or June 2023. In fact, the Tenants accepted that they certainly should have paid rent for May 2023 but that they did not. The fact that the Tenants said in the Application that they had left the Property on 30 June 2023 was therefore unhelpful for their case as Mr Bowler appeared to backtrack on that date in his evidence right from the start. The relevant Notice to Leave was served on 7 March 2023. It explained that no Application would be made to the Tribunal before 1 June 2023.

[7] Mr Bowler said that they received a Notice to Leave the Property on or around 6 or 7 March 2023. The Notice to Leave was on the basis that the Landlord wanted to move back into the Property. Mr Bowler said that the Tenants entered into a new tenancy for a new home on 30 May 2023 and that they "*maybe stayed until 1 June*". Mr Bowler explained that around two months later, Ms Whigfield brought to his attention that the Property was again being marketed for rent for £2,350.00 per month. The rent the Tenants had been paying was initially £1,695.00 per month. This had however increased to £1,735.00 with effect from 12 March 2022.

[8] The Tenants were aggrieved because ultimately the Landlord did not move into it and instead re-let it for a higher rent.

[9] Mr Bowler's evidence about when the Tenants left the Property was unconvincing. He seemed unsure about what to say and appeared nervous about saying something unhelpful to his case. The Tribunal had to stop the Tenants from conferring with each other before answering questions. It all seemed most far removed from what appeared to be the spontaneous and natural disclosure that they moved out on 30 June 2023 as set out in the Application.

Julie Ann Whigfield re wrongful termination order

[10] Ms Whigfield's evidence on this matter was largely again confined to pointing out that the Landlord had based her Notice to Leave on her wanting to move back into the Property but then failed to do so and re-let the Property at a higher rent. The Tenants were aggrieved at having to vacate the Property where they were well established.

Jane McGregor re wrongful termination order

[11] Ms McGregor explained that she had been living abroad with her husband and two youngest children. Her husband was in the French military, and she was living with him in France. Her oldest child and her mother had been living in the Respondent's current home on Lauder Road, Edinburgh. The Landlord's husband's posting was due to end and the family intended to move back to Lauder Road. However, there were problems with the roof in Lauder Road and significant renovations were going to be required. Accordingly, the Landlord and her children intended to move into the Property. The renovations on Lauder Road were anticipated to take 8 months and then the family would move out of the Property and back into Lauder Road. The Respondent's own evidence was therefore that even if things had gone as she had intended, she would only have resided in the Property for around eight months.

[12] But this plan did not happen. The Landlord explained that in July of 2023, her husband was diagnosed with a brain tumour. He then moved to Belgium briefly and Ms McGregor took the children to Corsica. They then decided not to undertake the renovations and instead move straight into Lauder Road. This was done to try and

minimise any disruption to the children. The Tenants had certainly moved out at this point. Ms McGregor explained that at the time she issued the Notice to Leave and indeed until even after the Tenants had moved out of the Property, she had genuinely intended to move back into the Property. The plan however changed because of her husband's diagnosis. Ms McGregor denied misleading the Tenants. It was apparent that some may have found Ms McGregor's family's circumstances rather unusual- she spoke of foreign travel and relocations in a manner that may have appeared somewhat alien to some. However, there was nothing to doubt the truthfulness of the Respondent's account of her husband's diagnosis, or that it legitimately caused the Respondent to alter her plans. Medical evidence had been produced in respect of the diagnosis. The Tribunal naturally proceeded on the basis that receiving such a diagnosis may very well cause a family to alter their plans, radically even. Against that, the Tenants could say very little other than to point out that the Property was marketed for re-let, which was not denied. The Tribunal did however not forget that the Landlord would only ever have planned to stay in the Property for around 8 months before moving out anyway back to Lauder Road and re-letting the Property. However, there is no minimum period stated in the legislation for how long a landlord requires to reside in the relevant property. 8 months is certainly a meaningful period. There was therefore little reason to conclude that the Landlord misled the Tenants into leaving the Property.

Christopher Bowler on the claim for rent arrears

[13] The issue in dispute was whether a Payment Order should be granted for unpaid rent in May and June 2023. Mr Bowler appeared to readily accept that the sum for May was lawfully due but had not been paid. He effectively said that this sum had not been paid to use as leverage over the Landlord regarding the wider issues in dispute. His case for June not being paid appeared premised on the fact that he now claimed not to have lived in the Property for June. He seemed very unsure about what to say and the Tribunal regularly had to stop him from conferring with Ms Whigfield before answering questions. He seemed to have either forgotten or been ignorant of the fact that in his own Application form he had very clearly written that he had moved out on 30 June 2023. He could provide no reason as to why he would have written that if it was not correct. He also appeared to accept that there was a body of emails sent by the Landlord to the Tenants which re-stated that the end of the tenancy would be on 30 June 2023. The Tenants could produce no email to the contrary which suggested that the tenancy would end at the end of May 2023. There were even emails between the Landlord and Ms Whigfield which appeared to agree to allow the Tenants more time to move out after service of the Notice to Leave and that 30 June 2023 would be the end date. Mr Bowler also said in his evidence that he had certainly planned to be in the Property on 10 June 2023 "*for painting*". There was also an email in which he said that. That certainly did not sit well either with the position now taken that the Tenants vacated the Property at the end of May.

Ms Whigfield's evidence regarding rent arrears.

[14] Ms Whigfield's evidence about the missing rent payments was like that of Mr Bowler's evidence. Neither of the Tenant's evidence about why they should not be liable for the rent in June was convincing. Their position was vague and at odds with their own written Application.

Ms McGregor's evidence regarding the rent arrears.

[15] In contrast to the evidence of the Tenants, the Landlord's evidence about the rent for May and June was crystal clear. She had emails between the parties discussing deferring the last day of the tenancy to 30 June 2023. The Tribunal preferred the evidence of the Landlord about this issue**.**

Landlord and Tenants' evidence regarding restoration costs.

[16] The Tribunal considers it expedient to comment on the competing evidence in respect of each head of claim on these issues one after the other

[17] The Landlord claimed damages of £9,788.50 for the costs of restoring the Property to the condition it was in at the start of the tenancy. Her case was hampered by the lack of a check-in and check-out report. Typically, these are considered as valuable and indeed necessary evidence for a landlord who wants to demonstrate that a tenant has damaged the Property during a tenancy beyond fair wear and tear. The Landlord had instead submitted what she described as "*pictures of before and after tenancy*". The Landlord also stated in her Application that she attached a "*word document detailing issues*".

[18] This document was a rather sprawling document that had photos and emails copied and pasted into it and it was hard to follow. It had a section headed "*issues*" which began by raising an issue of anti-social behaviour which appeared entirely irrelevant. The photographs were not dated or presented in a convincing manner.

[19] However the Tenants did make certain concessions in their own evidence which the Tribunal required to take into account.

Replacement door

[20] The Landlord claims costs of £2,550.00 for a new door as she points out that the Tenants put a cat flap into the front door without permission. The Landlord provided a quote for a composite front door for this cost. She accepted that she has not in fact incurred this cost or replaced the door. She also could not say much to counter the evidence given by the Tenants this would be a significant upgrade. The Tenants accepted that they had installed a cat flap but pointed out that the door in question was certainly not a composite door of the quality of the door in the quote but was rather a plain wooden door. They

reported having seen an exact replica door for sale for sale for £200.00. The Landlord's word document also appears to suggest that she has been told she will need planning permission for this new door. There is nothing said in the papers or said in evidence that suggests that this has been done. The Tribunal therefore finds that it is not appropriate to award anything for the costs of installing a door that has not been installed and, if it is to be installed, would require planning permission which has not been applied for yet never mind granted. In that regard this head of claim is premature at best.

Wooden Floor

[21] The Landlord claims the sum of £2,720.00 for replacing the "*wooden floor*" throughout the Property. The Landlord stated that this was "*badly marked with their son's use of his wheeled toys inside.*" There was very little credible evidence of this. The Tribunal considered a reliable check-in and check-out report would have been required to substantiate this claim. The Landlord had produced three rather low-quality images which were undated. She produced an invoice from "*Past and Present"* for sanding and buffering the floors. The evidence to suggest that the Tenants might be liable for these costs was distinctly lacking. The Tenants pointed out that when they moved into the Property, the floor was worn and creaky and was no worse when the moved out. They explained that they had rugs throughout and did not allow their son to use his bicycle indoors and did not wear shoes in the Property.

Hall painting

[22] The Landlord sought the sum of £2,900.00 for painting. The paper apart to the Application stated that "*The hall was only painted with one coat and the area behind the mirror was not painted at all*." The entire hall had to be stripped of the wallpaper they put on and repainted. The evidence in favour of this was similarly lacking in the form of a check-in report and check-out report. However, the Tenants, principally, Ms Whigfield did accept that she had effectively redecorated the hall in wallpaper of her choosing and that she did so without the permission of the Landlord.

[23] The Tribunal therefore found itself in the position of having to balance this admission against the fact that the Landlord's evidence was rather lacking.

[24] However the Landlord's paper apart to her own Application made matters even less clear. The Landlord appeared to have included a photograph which had a picture of a white wall with a section of wallpaper visible in one part. The paper apart then said

"Behind the mirror not painted and only one coat (one can still see the wallpaper behind)."

[25] The Tribunal found it very hard to make findings about what the situation was at the start of the tenancy and at the end of the tenancy. The invoice produced which referred to

painting throughout was no substitute for a check-in and check-out report. The Tribunal took the view that ultimately it could not make an award in favour of the Landlord and even if it did, it would be complete guess work as to how much might be appropriate. The Landlord had not discharged the onus of proof upon her to prove either liability or the value of this head of claim.

Living room blinds and curtains were missing

[26] The Applicant said the living room blinds and curtains were left missing and claimed £500.00. The Tenants said that they had left the blinds and curtain on a table. They said that they had preferred to use their own curtains and had '*run out of time'* to re-hang them before they left. They denied liability for the costs. They also pointed out there was no vouching of the £500.00 sum claimed.

[27] The Tribunal concluded that the Landlord had not discharged the onus of proof upon her to prove either liability or the value of this head of claim.

Set of keys

[28] The Landlord says only one set of keys was returned, rather than two and that the sum of £85.00 should be awarded as damages for the missing set. The Tenants say that when they left, they posted a set through the letter box and left a set on the mantel piece. The Tenants described leaving the Property with a cleaner who posted the set through the letter box. The Tribunal again determines that the Landlord had not discharged the onus of proof upon her to prove this head of claim. Again, the absence of credible, check-in and check-out reports leaves the Tribunal to conclude that there is unsatisfactory evidence in support of the claim.

Rubbish in un-authorised places

[29] The Landlord explained that the Tenants *"Threw their child's toys into the communal garden area when they left. These had to be subsequently removed*." The Landlord had supplied some accompanying images.

[30] The Tenants had provided emails which appeared to demonstrate that they had agreed with other families in the building to leave the toys in the garden for other children. This did appear to the Tribunal to represent a change in the status of ownership of the belongings to the other families and their presence thereafter became an issue to be raised with those other families. The Tribunal therefore also concluded that the Landlord had not discharged the onus of proof upon her to prove either liability or the value of this head of claim.

Smoke Alarms

[31] In her evidence the Landlord also alleged that the Tenants had removed smoke detectors, and she should be reimbursed £50.00 for the costs of replacing these. She wrote in her paper apart that "*All the alarms were removed and had to be reinstated*".

[32] Mr Bowler stated in his evidence that there was one smoke alarm that was perhaps faulty or more likely simply required a new battery. He said that it had started beeping constantly and he simply removed the battery to try and stop the constant din.
He said there was nothing wrong with this or any of the other smoke alarms and that they certainly didn't damage them. The Tribunal decided that due to a lack of a credible check-in and check-out report, the Landlord had not discharged the onus of proof upon her to prove that the Tenants had damaged the smoke alarms.

Cleaning costs

[33] The Landlord also claimed the sum of £533.50 for cleaning costs said to have been occasioned by the failure of the Tenants to keep the oven, bathroom, shower, cupboards and storage cupboards clean. It was said that these failings cost the Landlord the sum of £533.50.

[34] The Landlord had supplied some photos but again these were undated and once again there was no check-in or check-out report. In support of the claim was also what looked like an online shopping basket for a potential order for cleaning in the sum of £533.50. Interestingly again this was not an invoice and the screenshot produced did not have the payment card details entered. There was nothing to prove that this sum had been paid. The Landlord also did not focus on this supposed cleaning cost again in her parole evidence. The Tribunal was left again wondering whether this was a "*hypothetical*" cost. In any event once again the Tribunal decided that due to a lack of a credible check-in and check-out report, the Landlord had not discharged the onus of proof upon her to prove that the Tenants had damaged the smoke alarms and not left the Property clean on leaving.

[35] Having heard from the parties, the Tribunal made the following findings in fact.

Findings in fact

1. *Jane McGregor ("The landlord") let the Property known as 89 Warrender Park Road, Edinburgh EH9 1EW ("the Property") to Christopher Bowler and Julie Ann Whigfield ("The Tenants") by virtue of a Private Residential tenancy Agreement that commenced on 10 October 2020.*
2. *On 7 March 2023, the Tenants received a Notice to Leave from the Landlord on the basis that she intended to reside in the Property.*

3. *At that time the Landlord was residing with her husband, who is in the French Military in France, with two of her children. Her oldest child resided with the Landlord's mother at a Property in Lauder Road, Edinburgh which the Landlord owns.*
4. *The Landlord's husband's military posting was coming to an end and the family hoped to move back to Edinburgh. Their plan was to live in the Property while repairs were carried out on the property at Lauder Road. They planned to live in the Property for 8 months which was the estimated time of the repairs. After that point they planned to move back into the property at Lauder Road.*
5. *The Landlord duly served the Notice to Leave and the plan was in motion.*
6. *The Landlord's husband was diagnosed with a brain tumour in the Summer of 2023. The family were shocked by the diagnosis. They decided that they could not face the disruption of managing major home rennovations.*
7. *They decided instead to move into the Lauder Road property and cancel their rennovation plans.*
8. *The Tenants moved out of the Property on 30 June 2023. They had agreed to this in writing. It is the date they themselves describe as being the end date of their tenancy in their Application to the Tribunal.*
9. *The Landlord did not attempt to mislead the Tenants either when she served the Notice to Leave or before the Tenants moved out of the Property.*
10. *The Landlord marketed the Property for rent after she had heard the news about her husband's brain tumour and after her family had decided to change her plans by moving directly back into the Lauder Road property.*
11. *The Tenants did not play rent for the months of May and June 2023. The sum claimed of £3,470.00 is resting owed as arrears of rent to the Landlord by the Tenants but remains unpaid.*
12. *The Landlord failed adequately to document the condition of the Property at the commencement and the termination of the tenancy by virtue of a reliable check-in and check out report.*
13. *There is accordingly scant evidence to support the claims that the Tenants have caused deterioration in the condition of the Property beyond fair wear and tear or contrary to the terms of the tenancy agreement between the parties.*
14. *The Landlord had previously claimed the sum of £1,695.00 from the deposit sum held with Safe Deposits Scotland. The deposit had however been returned to the Tenants in full as they considered that the Landlord's failure to provide a suitable check-in and check-out report to support her claim.*

Decision

[36] Having made the above findings in fact, The Tribunal refuses Application with reference FTS/HPC/PR/23/3077 and declines to make a wrongful Termination Order.

[37] The Tribunal grants Application with reference FTS/HPC/CV/24/2315 and makes a Payment Order in favour of Ms McGregor against Mr Bowler and Ms Whigfield in the sum of £3,470.00.

[38] The Tribunal refuses FTS/HPC/CV/24/2314 and makes no payment order.

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.

Legal Member **Date 10 February 2026**