



**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/PR/23/1170

Re: Property at 32 Spylaw Road, Edinburgh, EH10 5BL (“the Property”)

Parties:

Ms Miriam Reynolds, 15 Napier Road, Edinburgh, EH10 5AZ (“the Applicant”)

Mr Gordon Henry and Mrs Jane Patricia Henry, 6 Cluny Gardens, Edinburgh, EH10 6BJ (“the Respondents”)

Tribunal Members:

Gillian Buchanan (Legal Member) and Angus Lamont (Ordinary Member)

Decision

- 1.1 At the Hearing, which took place by telephone conference on 18 June and 26 August 2025, the Applicant was in attendance. The Respondents were also in attendance and were represented by their son, Mr David Henry.
- 1.2 Prior to the Hearing and by emails dated 5 and 6 June 2025 the Applicant made written representations and lodged additional documents.
- 1.3 Prior to the Hearing and by email dated 3 June 2025 the Respondents’ representative made written representations and lodged additional documents.

Background

- 2.1 A Case Management Discussion (“CMD”) had previously taken place on 8 January 2025. The resultant CMD Notes fully describe the procedural history of this application. That CMD was adjourned to the Hearing to allow disputed issues identified between the parties to be determined by the Tribunal.
- 2.2 The Notes of the CMD record that the issues to be resolved between the parties at the Hearing to be:-
 - i. What representations were made by the Respondents to the Applicant that they intended to sell the Property under and in terms of Ground 1 of Schedule 3 of the 2016 Act?
 - ii. In that the Respondents placed the Property on the market for sale in May 2022, did they genuinely intend to sell the Property or were the sale arrangements motivated by an ulterior purpose and therefore a sham?

- iii. For what reason or reasons did the Respondents move into the Property following the departure of the Applicant on 2 March 2022?
- iv. Why did the Respondents not accept any of the offers to purchase the Property submitted by third parties at the closing date for the sale on 10 June 2022?
- v. If the Respondents intended to sell the Property what caused their change of heart and when?
- vi. Why did the Respondents advertise the Property for let from 30 June 2022?
- vii. Were the representations made by the Respondents that they intended to sell the Property under and in terms of Ground 1 of Schedule 3 of the 2016 Act objectively misleading?
- viii. Was the Applicant actually misled by the Respondents' representations that they intended to sell the Property under and in terms of Ground 1 of Schedule 3 of the 2016 Act?
- ix. Did any misleading representations made by the Respondents actually result in the Applicant ceasing to occupy the Property?
- x. Did the Applicant remove from the Property for reasons other than service of the Notice to Leave by the Respondents on 20 August 2021?
- xi. Should the Tribunal make a wrongful termination order and, if so, what amount is reasonably payable by the Respondents to the Applicant in terms thereof?

The Hearing

Preliminary Matter

3.0 At the outset of the Hearing Mr David Henry raised a preliminary matter namely that notwithstanding the terms of the CMD Notes, the PRT ended on 3 May 2022, not 2 March 2022. The Applicant stated that she left the Property on 2 March 2022 at around 7pm and put the keys thereto through the letterbox. She said she emailed the Respondents' Letting Agent the next day advising.

Evidence

3.1 At the Hearing the Tribunal heard evidence from:-

- i. The Applicant's witness, Mrs Julie Tinton;
- ii. The Applicant; and
- iii. The Respondents who gave evidence together sharing a phone line.

Evidence of Ms Julie Tinton

3.2 By email dated 6 June 2025 the Applicant lodged a Statement of Ms Tinton to which she was referred by the Applicant. She gave additional oral evidence as follows in response to questions from the Applicant:-

- i. In around May/June 2022 Mrs Tinton contacted the agent selling the Property to arrange a viewing. The agent did not get back to her and Mrs Tinton had to chase up.
- ii. She eventually got through to someone who said the agent was on holiday which she thought odd.
- iii. An appointment to view the Property was made for around 5.30pm. She recalled it was raining and on arrival the owner asked her to put on shoe coverings.
- iv. The Property was sparsely furnished.
- v. Ms Tinton noticed a strange smell. The Respondents were cooking dinner which she thought odd when viewers were attending. She said it was like the owners couldn't be bothered.
- vi. She looked around the Property. The viewing was "short and sweet".

- vii. There are doors to the garden from the dining room. Mrs Henry seemed reluctant to let Ms Tinton look outside but she did so.
- 3.3 The Tribunal asked Ms Tinton whether she was interested in buying the Property. Ms Tinton said she was looking for a property with two bathrooms as she only had one. She had another friend who was also interested in the Property. Ms Tinton did not submit any offer for the Property. She said she knew the Applicant from Facebook and had met her occasionally.
- 3.4 Under cross examination from Mr David Henry Mrs Tinton stated:-
- i. She was looking for a property with two bathrooms as she only had one. She had another friend – Morag Arbuthnot - who was also looking for a property in the area. Ms Tinton said she would look at the Property for Morag and if she liked it might she be interested for herself. Morag Arbuthnot also did a viewing.
 - ii. Mr Henry asked if the Applicant had asked Ms Tinton to view the Property. She said she did not remember that. The main reason for attending was for her friend, Morag.
 - iii. Mrs Tinton agreed with Mr Henry’s statement that she attended on 16 May 2022 at 6pm. He referred to production G2 lodged on 11 December 2024 which disclosed Morag Arbuthnot attending the same day at 17:00 and another viewer at 19:15.
 - iv. Mr Henry asked why, if she had been to the Property a number of times before, she needed to go again? She said that if she was considering buying the Property she would want to view it.
 - v. Asked if she bought another property, Ms Tinton said she decided to stay where she was. The Property didn’t suit her. She also questioned why she would spend £25K on moving costs. She said again she was looking at the Property for her friend and because of the confusion about appointments she ended up attending around the same time as Morag Arbuthnot.
 - vi. Asked what made Ms Tinton think Mrs Henry was not trying to sell the Property, Mrs Tinton said she thought it odd to cook dinner when selling a property and that if she was in that situation she would eat before or after the viewings.
 - vii. With regard to the carpet stain referred to in her Statement, Ms Tinton said she couldn’t remember the stain or whether Mrs Henry said she would clean or replace the carpet.
 - viii. Asked about the size of the garden, Ms Tinton said she did go out to see the garden but it was very overgrown with lots of trees and bushes.
 - ix. Mr Henry suggested the garden was about one third of a tennis court. Ms Tinton said she really didn’t know. It looked a lot smaller with the trees. She said she had a dog and felt that Mrs Henry did not want her to go outside but didn’t say she couldn’t do so.
 - x. Mr Henry asked if Ms Tinton would be surprised to know an offer for the Property was made less than 48 hours after her viewing and Mrs Tinton said she was not surprised.
- 3.5 Under further questioning by the Tribunal Ms Tinton stated:-
- i. She had to chase the selling agent. It took the agent 4 or 5 days to revert to her. She thought the delay odd when the Property was newly on the market for sale.
 - ii. She could not remember how quickly she was able to view the Property thereafter. She thought she might have heard from the agent and also viewed

on a Monday or perhaps heard from the agent on the Friday and viewed on the Monday after.

3.6 There was no re-examination by the Applicant.

Evidence of Applicant

3.7 The Applicant made the following oral submissions supplementing her written "Submission Paper" dated 5 June 2025 and by reference to the paragraph numbering therein:-

- i. 1.1 – The rent increase to £1600 was effective from 27 October 2021.
- ii. 1.2 - The Notice to Leave issued to her had the box to sell the Property ticked.
- iii. 1.3 - The covering email reiterated the Respondents' wish to sell the Property.
- iv. 1.4 - The Applicant emphasised the language used in the email of 13 September 2021 from the Respondents' agent, Rettie. She said that the inference drawn was that as long as the Property was listed for sale then there was no risk of a wrongful eviction.
- v. 2 – With regard to "genuine intention" the Applicant said a Notice to Leave was issued in 2018 and the Respondents had been planning before that with a deliberate timeline of over 12 months to get her out so that the Respondents could move in to allow them to deal with building works in their own house. She said the Respondents induced her to vacate the Property as part of an elaborate plan. There was never any genuine intention to sell, rather a mechanism to avoid falling foul of the legislation and to meet their own objectives.
- vi. 2.1 - The Applicant referred to the Respondents' renovation project at their home at Cluny Gardens and referred to production S3 lodged by the Respondents on 9 October 2023 (being a spreadsheet showing the valuation etc of works done). She said the Property is less than 5 minutes from Cluny Gardens and at the CMD Mr Henry stated it was more convenient for the Respondents to stay at the Property than Cluny Gardens. The Tribunal suggested "convenient" could mean a number of things, the Applicant stated that the reference was associated with the scale of the works not distance.
- vii. 2.2 - The Applicant said this paragraph reflects the Respondents' elaborate plan for a 12 month deception. There is no dispute that a Notice to Leave was served on 20 August 2021 and she said this paragraph drew the Tribunal's attention to various productions lodged by the Respondents on 9 October 2023 the sum total of which support her position. She said the Respondents' building contract (Respondents' production S1) is dated 4 March 2022, the day after she emailed Rettie that she had vacated the Property. In the contract she said the "Base Date" is 12 November 2021, the "Works commencement date" is 21 March 2022 and the "Date for Completion" is 29 April 2022. The Applicant referred to the "Erdal Architects" document forming page 25 of the building contract which she said reflected various work descriptions being complete by 1 November 2021.
- viii. 2.3 - The Applicant referred to the Respondents' production S2 lodged on 9 October 2023 being an order dated 28 March 2022 from Kitchens International entered into quickly after the building contract had been signed showing an extensive list of items.

- ix. 2.4 - Within the Respondents' production S3 the Applicant referred to the entry for "BUILDERWORK" relative to the removal of an internal wall at Cluny Gardens. She said that if a solid wall was being removed and an extensive kitchen order had been placed then one could deduce that there were no cooking facilities, washing machine or dining room available at Cluny Gardens during the works.
- x. 2.5 - The Applicant said it was not in dispute at the previous CMD that the clothes in sales photographs of the hall and the kitchen of the Property all belonged to the Respondents.
- xi. 2.6 - The Applicant stated that 10 days after she left the Property the Respondents placed an order for a new fridge freezer. If the Respondents were genuinely selling the Property in a matter of weeks why would they expend funds on white goods?
- xii. 2.7 - The Applicant said the position is similar relative to the Respondents purchasing an ironing board on 26 March 2022.
- xiii. 2.8 - The Applicant said the Respondents purchased other items too to prepare the Property for re-let. She said they lacked a genuine intent to sell the Property but were also fixing it up with the intention of re-letting when they moved back to Cluny Gardens after the contract completion date of 29 April 2022.
- xiv. 2.9 - The Applicant said the Property was listed for sale on 10 May 2022. She referred to a quotation of John Lewis a week before that for replacement carpets and questioned why such a quote would be obtained if the Property was being placed on the market for sale.
- xv. 2.10 - This paragraph, the Applicant said, referred to the evidence of Julie Tinton.
- xvi. 2.11 - The nature of the photos used to advertise the Property for sale showing clothes and food on the counter top showed a lack of a genuine intention to sell. The photos were appalling and did not reflect a premium listing service. The Respondents were not genuinely seeking the best possible price as is being suggested.
- xvii. 2.12 - The Property was bought by the Respondents in 2022 for £218,000. How could they turn down three excellent offers made on 10 June 2022? The Applicant said it was highly improbable that the Respondents would elect not to bank an uplift of almost £300K.
- xviii. 3 - The Applicant said service of the Notice to Leave was the only reason she vacated the Property.
- xix. 3.1 - The chapter of emails between the Applicant and Rettie from 13 September 2021 all point to the fact that the Applicant was getting ready to leave the Property in response to service of the Notice to Leave.
- xx. 3.2 - This paragraph, the Applicant said, illustrated the "other side of the same coin", giving examples of how from an objective point of view there were specific instances when the Applicant could have left but didn't do so.
- xxi. 3.4 - The Applicant had been a tenant in two other properties and her position was that when served with a Notice to Leave she required to leave.
- xxii. 4 - The Respondents' position is that they had a genuine intention to sell when the Property was on the market and on reviewing the offers on 10 June 2022. However they advertised the Property for let on 30 June 2022. The next paragraphs respond to the Respondents change of heart in between.
- xxiii. 4.1 - With regard to the Respondents' concerns around Capital Gains Tax then the change of position by the Government, the Applicant said they had

produced nothing to back that up. She said the Respondents were actually worse off by not selling in June 2022 and were worse off relative to CGT when the Property was finally sold in 2024.

- xxiv. 4.2 - The Applicant referred to the Respondents' stated initial intention to fund the renovations at Cluny Gardens from the sale of the Property but they were said to be pleasantly surprised that the sums received from their respective Mum's executries were sufficient. She said that to obtain Confirmation the value of their estates must have been known. There is no evidence of a payout on 4 March 2022. The Property was not listed until 10 May 2022. If the executry account was empty and the First Respondent had sufficient funds to carry out the works then it is not true that they changed their minds later.
- xxv. 4.3 - The Applicant had nothing to add to her written submissions.
- xxvi. 4.5 - On 31 May 2023 the Respondents withdrew their Tribunal claim against the Applicant.
- xxvii. 4.7 - The real reason the carpets required replaced was due to a significant mice infestation and the carpets had been chewed to bits in various locations. The Respondents response to the infestation had previously been "a patch up job".
- xxviii. 4.8 - For completeness the Applicant stated she treated the Property as her own, being the home of her and her children. Rettie's reference to "some cosmetic" work being done to the Property by the Respondents after her departure is quite different to what was actually done.
- xxix. In summary the Respondents conceived an elaborate plan of deception over a 12 month period which induced the Applicant to leave. The Respondents never intended to sell the Property.

3.8 Under cross examination by Mr Henry:-

- i. With regard to the Pinstripe Report commissioned by the Respondents' agent, the Applicant said she could not comment on the accuracy of the condition of the Property as at 8 March 2022 as she was advised she would get a copy of that report but didn't receive one. She said she felt the report was exaggerated and a bit harsh. Professional cleaners had been paid to attend.
- ii. With regard to the Ingoing Report the Applicant said there were some points with which she did not agree and corresponded with Rettie about those such as the light fittings and mantelpiece - minor issues. The Applicant agreed she was largely comfortable with that report.
- iii. Asked about her tax qualifications the Applicant referred to the CMD Notes referencing her practise in the late 1990s and early 2000s.

3.9 Under questioning from the Tribunal:-

- i. The Tribunal asked at what point the Applicant came to the view that she had been misled by the Respondents. The Applicant said she could not point to a particular date. She said she had significant challenges during the tenancy regarding the Respondents' interpretation about their rights of access and Rettie had tried to explain to them her rights as a result of which agreement was reached on a timetable for access. The Applicant gave an example of issues arising relative to an arrangement for access by the Respondents to attend to a common area.
- ii. The Applicant said she was therefore on alert when the Notice to Leave was served and concluded she would have to move.

- iii. She was struggling to find somewhere else to stay and floated around for a couple of weeks until she found accommodation around the corner from the Property.
- iv. The Applicant said she had doubts that the Respondents would sell the Property. She could see a car outside the Property and kept an eye on it for a "For sale" sign going up and down and then a "For let" sign went up which made her wonder what was going on.
- v. The Applicant went to the Tribunal about the mouse issue. She said the Respondents were angry with her and were spiteful in putting up the rent. Then they served the Notice to Leave.
- vi. The Applicant did not know what the Respondents' position might be then they put in their evidence which comprised more lies. The Applicant felt stronger about her position after the Respondents' 9 October 2023 submissions.
- vii. The Applicant said she didn't know she could go to the Tribunal to oppose being evicted and simply looked at the headline of the Notice to Leave being the date for removal and therefore looked for other places to stay.
- viii. The Applicant said that at that point her relationship with the Respondents and their agents was poor. She said she thought the Respondents' agents could have done more.
- ix. Asked whether she felt any relief when she moved out the Property, the Applicant stated that she was stressed beyond measure. She spoke of a reference given by the Respondents after which an offer to let was withdrawn.
- x. The Applicant referred to her husband staying only two or three minutes away allowing the children to readily walk between them.
- xi. The Applicant agreed that her first indication of the Respondents' intention to sell the Property was on service of the Notice to Leave.

Evidence of Respondents

3.10 Mr David Henry took evidence from the Respondents (principally the First Respondent) to supplement their previous written submissions. He did so by reference to the numbering of the "Issues to be Resolved".

Issue i.

On 20 August 2021 a Notice to Leave was served by email for the Applicant to remove by 23 February 2022 on the basis the Respondents intended to sell the Property. The Notice referred to evidence being available on request but the Applicant made no such request.

Issue ii.

- a. When the Notice to Leave was issued the Respondents genuinely intended to sell the Property. There were widespread rumours about Capital Gains Tax rates being equalised with income tax rates which would have meant a rise from 28% to 41%.
- b. The Respondents are in their mid-70s and wished to give up letting for an easier lifestyle. Reference was made to their productions A1 and A2 lodged on 11 December 2024.
- c. They also planned work to their own house and intended to use the sale proceeds of the Property for that.
- d. The market was buoyant at the time with properties fetching 15 to 20% above the Home Report Value.
- e. Reference was made to the Property providing security for a floating rate bank loan and to production S2 lodged on 3rd June 2025 showing the Title Sheet for

the Property as at 3 October 2023 and that in February 2017 a Standard Security was registered over the Property in favour of the Bank of Scotland.

- f. It was also anticipated that interest rates would rise as the UK economy recovered from COVID and reference was made to production B lodged on 11 December 2024 taken from the Bank of England website.
- g. The Respondents therefore reached the decision to sell the Property and engaged Sneddon Morrison to market the property for sale on 10 May 2022 - productions E1 and F1 refer. Asked by the Tribunal when contact with Sneddon Morrison was first made the First Respondent stated that Sneddon Morrison had been engaged on several occasions relative to property purchase and sales matters for themselves and their sons too. They had historic knowledge of the Property and offered a premium listing on Right Move which cost more. The Agency Agreement and Fee Invoice are at productions E1 and F1. The fees payable were £1664 including the Home Report cost. The First Respondent said he first reached out to Sneddon Morrison at least as early as 6 May 2022 and agreed fees with them that day. They must also have spoken with "Stacey" of Sneddon Morrison a day or two before.
- h. The Respondents also carried out external works to prepare the Property for sale and there were ultimately 19 viewings with notes of each viewer being produced at production G2.
- i. In fact the Property has since been sold, production A3, which reinforces the Respondents' intention to sell.
- j. Asked by the Tribunal about the photographs on the sales particulars the First Respondent stated that they are not professional staggers of properties for sale. Their agents did not suggest any changes but with hindsight the photographs could have been different. At that point of the Respondents were living in the Property having moved in on 20 or 21 March 2022 and moved out on 10 June 2022 when it was clear that offers to purchase had been received.
- k. Asked by the Tribunal who prepared production G2 the First Respondent stated it was prepared by themselves. Interested parties would call Sneddon Morrison who would either e-mail or call the Respondents and they made themselves available for viewers to attend when they liked.
- l. The Tribunal asked whether the Respondents asked the subsequent tenants to remove in order to sell the Property in July 2024. The First Respondent stated that the tenants were South Korean lecturers and were only to be in the Property for a finite time, being one year.

Issue iii.

- a. Despite the Applicant saying professional cleaners had been used, the Respondents said they were horrified at the state of the Property with considerable damage having been done. Remedial works were required quickly to put the Property on the market for sale within three months.
- b. The Respondents referred to a comparison between the ingoing and outgoing Pinstripe Reports.
- c. There were various parties to meet at the Property including loss adjusters and tradespeople who do not always turn up when they are supposed to. It was therefore more convenient to be living in the Property and given the Respondents were conducting viewings it was easier to facilitate those too.
- d. Reference was made to evidence of the works needed by way of invoices and receipts at Additional Production S4 lodged on 3 June 2025 and production Additional Production S1 being an estimate of Property Revival Solutions dated 15 March 2022 in a sum of £4920, a cost the insurers would not cover. The

First Respondent said he decided he would be better to do the work himself which involved extensive redecoration with 49 picture hooks needing removed and with there being blue tac and other holes. There was also a hole in a wall caused by a roller blind.

- e. They made three insurance claims made with an excess of £100 in respect of each claim and insurers dealt with the worktops and carpets.
- f. At that time work was also ongoing at the Respondents' own home which was completed in late August 2022. The First Respondent said that works to the Respondents' own home had been delayed due to COVID.
- g. The structural engineer surveyed on 7 August 2020, the architect's proposals were received on 16 October 2020 and the works began in March 2022. A lot of planning had been done beforehand and the works carried on after the Respondents moved out the Property on 10 June 2022.
- h. The works at the Respondents' own home included knocking through from the kitchen to an adjacent morning room to form a bigger kitchen. The property had previously been two separate flats. However there continued to be a stand-alone utility room and there was also a bedroom that was formerly a kitchen as well as a stand-alone dining room. The Respondents had an electric hob, sink, microwave, rice cooker and air fryer. It was therefore not a problem for the works to continue when they moved back in. The works could be isolated. The door was sealed by the builders and the rest of the property was unaffected.
- i. Asked by the Tribunal whether the Respondents moved out of their own home in part to facilitate the works being carried out there. The Respondents said no. The Property was sparsely furnished and largely remained such. The Respondents would not choose to live there.

Issue iv.

- a. Three offers to purchase the Property were received on 10 June 2022. They were all conditional in some shape or form. The highest offer was conditional on the purchaser selling his own home which was not then on the market.
- b. The Respondents took 2 to 3 days to think about the position and to chat to their sons, and decided it was not the right thing to sell at that time.
- c. They re-visited their reasons for selling.
- d. The Capital Gains Tax position had not changed after all. Reference was made to production J lodged on 11 December 2024.
- e. The Respondents had also received bequests from their late mothers' estates which were more than expected.
- f. The Second Respondent's mother had always been secretive.
- g. The First Respondent knew the extent of his mother's estate but his brother had lived with her for over 30 years. As time went on she became less able and developed dementia and he became her carer. The First Respondent's brother developed sepsis and their mother went into care for 5 years before she died. Whilst the First Respondent's brother made a partial recovery he was not able to return to work and was still living in their late mother's house. Their mother appointed the Bank as her executor but as the estate was simple – being the house, bank accounts and some investments – the First Respondent and his brother took on the role. The estate was split 50/50 between them and the house was the largest asset. The First Respondent's brother was not keen to move. Their mother had set up a small trust for him and he took cash from that with the First Respondent reducing the value of his half share to allow his brother to buy him out of the house. Distributions were made on 4 and 17

March 2022 with the second tranche being bigger. The executry account was set up by the bank. The sale of the house would not show in the executry account.

- h. The Edinburgh market was likely to be buoyant and increasing in value. Accordingly there was no harm in holding on to the Property and considering options longer term.
- i. Whilst interest rates had risen to 1% the Bank of England's view was that interest rates were transitory and the difference would be offset if they secured a short term let as happened.
- j. When the Notice to Leave was served and thereafter when the decision to sell changed there was no change in the CGT position. There was a subsequent change to CGT in 2024 prior to the Property eventually being sold so the Respondents were then worse off. The Respondents initial concerns were therefore justified.

Issue v.

- a. The position is as stated above. The Respondents had a change of heart in 3 or 4 days after the offers to purchase the Property were received.
- b. On 13 June 2022 a response was sent to Sneddon Morrison intimating the Respondents' decision not to accept any of the offers. No reason was given. The First Respondent phoned Sneddon Morrison then emailed.

Issue vi.

- a. Having made the decision to delay selling the Property the Respondents decided to re-let.
- b. The cash the Respondents inherited was more than the value of the Property, a situation that would not happen again, and the Respondents wanted to take more time and not rush into selling. They were in a situation that was never to be repeated.
- c. The Respondents decided to let the Property on a short-term basis and take stock.

Issue vii.

- a. The Respondents representations that they intended to sell the Property were not misleading. When the Notice to Leave was served until 10 June 2022 and in the two or three days thereafter the Respondents intended to sell.
- b. The First Respondent said that if the sale was a sham why did they not go for the standard Right Move listing as opposed to their premium listing?
- c. 19 viewings of the Property took place.

Issue viii.

- a. The Applicant was not misled.
- b. The Applicant had doubts in her mind as to whether the Respondents intended to sell. Mr Henry referred to the Applicant's emails with Rettie on 10 and 13 September 2021. He said that with regard to the language used by Rettie they are not legal professionals.
- c. Mr Henry referred to the Applicant's email to Rettie of 22 October 2021 in which she made an offer of £380,750 for the Property including the contents as a cash purchase with entry in the second half of January. He said that elsewhere in her submissions the Applicant said she did not have cash to purchase the Property and questioned whether this offer was a test.
- d. He said it was not correct that the Applicant only had doubts when the "For Sale" sign came down.

Issue ix.

- a. There were no misleading representations.

- b. If the Tribunal takes a different view the Applicant did not leave on that basis.
- c. The Applicant was fed up with the Respondents.
- d. She wanted a fresh start.
- e. The Respondents accepted there to be no written evidence to support this position.

Issue x.

The position is as above.

Issue xi.

- a. No wrongful termination order should be made.
- b. If a wrongful termination order is made there are mitigations.
- c. The Property was sold on 4 July 2024.
- d. Mr Henry made reference to rent arrears due by the Applicant to which the Tribunal took objection due to there having been no prior reference to such arrears.
- e. There was significant damage to the Property by the Applicant. The damage was covered in part by insurance payments. The Tribunal reminded the Respondents that there is no counterclaim in these proceedings.
- f. Mr Henry summarised damages incurred by the Respondents and not covered by insurance payments as follows:-
 - £593 – Carpet cleaning being £245 to Aqua Force (page 18 of production S4) and £348 to Velvet Services. The cleaning did not remove the stains.
 - £1881.99 – Replacing two carpets being Gillies’ invoice (page 1 of production S4).
 - £380 – Replacing the Fridge Freezer (page 3 of production S4).
 - £100.99 – Repairing two sliding wardrobe doors being £44.95 for parts (page 6 of production S4) and £60 for fitting (page 7 of production S4).
 - £436.47 – Redecoration (page 2 of production S4) with the Respondents using their own labour.
 - For missing items - £10 for a mattress protector (page 11 of production S4) and £13 for an ironing board (page 19 of production S4).
- g. The Respondents allowed their Landlord Registration to lapse on 14 January 2024.
- h. The Property sold on 4 July 2024 for £460,000. The market had softened and the Property took the best part of a year to sell.

3.11 Under cross examination by the Applicant –

- i. The Respondents confirmed they are retired.
- ii. On being asked about his previous occupation the First Respondent said he was a bank manager.
- iii. The First Respondent confirmed the Property was listed in May 2022 at offers over £420,000 and that 3 conditional offers to purchase were received.
- iv. The Applicant asked what a good sale price for the Property would have been. The First Respondent said the price was not the reason for not selling. Their circumstances changed. They had no specific figure in mind. Properties were regularly selling at 15-20% above Home Report value and the highest offer received was within that range.
- v. The Applicant questioned the sale of the Property two years later at offers over £477,500 but yet the Respondents accepted an offer of £460,000 which was lower than the lowest offer price in June 2022. The First Respondent said the

- market had softened and demand decreased. The price accepted was what the market was prepared to pay.
- vi. The Applicant questioned the Respondents motivations in incurring the expense of a mattress protector, ironing board and a fridge freezer and in getting quotes for replacement carpets if they had an intention to sell. She suggested incurring those costs reflected an intention to and readying the Property for re-let. The First Respondent said it was obvious that work to the Property was required given the state in which the Applicant left the Property. The Respondents decided to move in to carry out works and have others attend to do works, and to allow loss adjusters to attend. The carpet stains were prominent and commented upon by viewers such as Mrs Julie Tinton per her Statement. The affected carpets had to be replaced. As the Property had a fridge freezer at the outset of the tenancy the Respondents options were to replace it or leave a hole in the kitchen. The First Respondent said extensive redecoration was required and there was no point putting carpets down before decorating. The loss adjuster said the Respondents had to try and clean the carpets first too.
 - vii. With regard to the works to the Respondents' own residence at Cluny Gardens the Applicant questioned when the Respondents had planned those works. The First Respondent said the engineer visited on 7 August 2020. He was instructed on 31 July 2020. The Respondents then contacted the architect on 16 October 2020 and took time thereafter to decide which proposal was right for them. The architect was appointed on 10 June 2021. The Building Warrant application was submitted on 31 August 2021 and approved on 20 September 2021. COVID was still around at that time and the architect recommended delaying. In November 2021 the tender documents went to three contractors and on 17 December 2021 the architect advised of a likely start date in February or March 2022.
 - viii. The Applicant challenged the Respondents that their plans were not conceived pre-COVID. The First Respondent said they had been thinking about the position pre-COVID and for a number of months before contacting any professionals.
 - ix. The Applicant challenged the Respondents on the timing of the Notice to Leave being issued in August 2021 in order to facilitate the wall being taken down and the extensive works in Cluny Gardens. The First Respondent said that he had already explained why they moved the Property which was due to the state it was left in by the Applicant. He said they could easily have stayed at Cluny Gardens as they were not short of facilities there.
 - x. The Applicant asked why they were cooking when Mrs Tinton viewed the Property. The First Respondent answered that they were living there. It was easier to be there to facilitate viewings at any time viewers wanted to attend which could be at short notice. They were going out that evening, there were also 3 viewings and they needed to eat.
 - xi. The Applicant asked why the Respondents were making representations about the carpets when at the CMD and in June 2025 their evidence was that the insurers had settled the Respondents' claims. The First Respondent stated that the insurers would cover only one claim at a time. The insurers asked if the damage was accidental and said they would agree four claims and would deduct a £100 excess from each claim. When the insurance policy renewed the Respondents' premium had increased. There were two claims in respect of the Gilles quotation and an excess of £100 to be paid for each claim with the

balance being reimbursed by the insurers. The third claim was in respect of the kitchen cupboard doors which the insurers agreed to replace less the excess of £100, and the fourth claim was in respect of the worktops which the insurers also agreed to replace subject to an excess of £100. The third carpet was not replaced and the furniture was rearranged to hide the stain.

- xii. Reading from the Respondents' written submissions and with reference to the bequests the Respondents received from their mothers the Applicant asked what was meant by them having "recently passed away". Mr Henry stated that one of the Respondents' mothers had died aged 101 years and the other aged 96 years and "recent" was relative to their lives. Also the value of the First Respondent's mother's house had been discounted due to his brother living there and it was only after the Applicant moved from the Property that there was clarity about what might be realised from the First Respondent's late mother's estate. In relation to the estate of the Second Respondent's mother, the Second Respondent has two sisters one of whom was dominant and was in effect the sole trustee of the estate with the Second Respondent not kept advised. Again, the distribution to her only became known after the Applicant moved out the Property.
- xiii. The Applicant asked if the First Respondent was an executor of his late mother's estate and he confirmed he was along with his brother, and that Confirmation had been obtained in April 2021.
- xiv. The Applicant said the First Respondent would have known the value of his late mother's estate to obtain Confirmation. He said that was right but because his brother had lived in his late mother's house for 30 years, the First Respondent's share could not be realised. The First Respondent expected his half share of the house to be locked up for as long as his brother continued to live in the house. He is a younger brother and still lives there. In the event a Deed of Arrangement was subsequently entered into with his brother to release the First Respondent's half share and a balancing payment of £33,781.10 was paid. Payments were made on 4 and 17 March 2022, both being after the Applicant had vacated the Property. The Respondents change of heart about selling the Property took place later.
- xv. The Applicant asked why the Respondents were "pleasantly surprised" as the knew about and had received these payments. The First Respondent said they were surprised at the amounts when they were received. They had money they hadn't expected fall into their lap. They wanted to take their time to work out what to do. The Applicant put it to the Respondents that they were not "pleasantly surprised".
- xvi. The Applicant asked if the amounts paid in the bequests were more than the value of the Property. The First Respondent confirmed they were more than the offer over 2022 price for the Property.
- xvii. With regard to the marketing photos of the Property the Applicant asked what the Respondents would now do differently. The First Respondent said the photos attracted 19 viewers and he had no issue with the photos.

The Respondent's evidence concluded and the parties were invited to make any closing submissions.

Closing Submissions For Applicant

3.12 The Applicant made the following closing remarks:-

- i. She thanked the Tribunal for its diligence and patience.

- ii. The Applicant referred to her written Submissions and the cross references to evidence.
- iii. She said the dishonest behaviour of the Respondents during the tenancy showed a propensity to do as they pleased when they pleased.
- iv. She said her removing from the Property was in response to the Notice to Leave served. She said a review of her correspondence with Rettie supports that position and her overall personal priority was to stay close to her former husband to allow their children to come and go. She said she could have handed in her own Notice to Leave given what she endured.
- v. She said she had rented three properties in the vicinity all of which ended when she received a Notice to Leave.
- vi. The Applicant said she had persisted in her claim against the Respondents to put a search light on their dishonest, sneaky and greedy actions and seek justice, and to ensure that no other tenant goes through what she went through so that such sharp practices and shameful behaviours become a thing of the past.
- vii. She invited the Tribunal to make a wrongful termination order and, given the Respondent's brazen insistence on claims that are false, to make an award commensurate with 6 months rent.

Closing Submissions for Respondents

3.13 Mr David Henry made the following closing remarks on behalf of the Respondents:-

- i. Mr Henry thanked the Tribunal for its time.
- ii. He said the Respondents disagreed with any suggestion of dishonesty. They were model landlords.
- iii. The Property was not left by the Applicant as found by her.
- iv. The Respondents changed their mind about selling the Property. He referred to the number of viewers and that whilst Ms Tintin thought the viewing odd there was nothing to suggest that there was not a genuine attempt to sell. The Respondents' circumstances had simply changed.
- v. Mr Henry said that if the Tribunal did not accept there was an intention to sell and that the Respondents attempted to mislead, was the Applicant actually misled? She made an offer to purchase the Property. She asked at least 3 friends to view the Property. All of that would suggest that if the intention to sell was not genuine the Applicant knew that and could not therefore have been misled.
- vi. At the outset of the claim the Applicant did not know what she was claiming for or why, therefore the claim is opportunistic and no award should be made.

3.14 The Tribunal adjourned and indicated that it would issue its Decision in writing in due course.

Findings in Fact

4.0 The Tribunal made the following findings in fact:-

- i. The Respondents are the heritable proprietors of the Property.
- ii. The Property is situated within the near vicinity of the Respondents' home at 6 Cluny Gardens, Edinburgh, EH10 6BJ.
- iii. The parties entered into the PRT relative to the Property that commenced on 27 July 2018.
- iv. The rent agreed to be payable under the PRT was initially £1,400 per calendar month payable in advance on the 27th day of each month.

- v. On 20 August 2021, the Respondents' agent served on the Applicant by email a Notice to Leave requiring the Applicant remove from the Property by 23 February 2022 on the basis that the Respondents intended to sell the Property under Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act").
- vi. When the Notice to Leave was issued in August 2021 the Respondents genuinely intended to sell the Property for the following reasons –
 - a. There were widespread rumours about Capital Gains Tax rates being equalised with income tax rates which would have meant a rise from 28% to 41%.
 - b. The Respondents are in their mid-70s and wished to give up letting for an easier lifestyle.
 - c. They had planned renovations to their own home and intended to use the sale proceeds of the Property for those works.
 - d. The market was buoyant at the time with properties fetching 15 to 20% above the Home Report Value.
 - e. They also anticipated that interest rates would rise as the UK economy recovered from COVID affecting the sums payable relative to the bank loan secured over the Property in favour of Bank of Scotland.
- vii. The Respondents' representations that they intended to sell the Property were not misleading.
- viii. The Respondents served a Rent Increase Notice effective from 27 October 2021 increasing the rent to £1600 per month.
- ix. The Applicant vacated the Property and returned the keys to the Respondents on 2 March 2022.
- x. The Applicant's sole reason for removing from the Property was service of the Notice to Leave in August 2021.
- xi. The Respondents moved into the Property on 21 March 2022.
- xii. Following the Applicant removing from the Property the Respondents purchased a fridge freezer, mattress protector and an ironing board for the Property to replace equivalent items removed or damaged by the Applicant during the PRT.
- xiii. Following the Applicant removing from the Property stained carpets were cleaned then replaced by the Respondents.
- xiv. The Respondents moved into the Property to carry out and facilitate remedial works required thereto prior to placing the Property on the market for sale, to meet with loss adjusters relative to insurance claims made relative to carpets and fittings in the Property, and to show potential purchasers around the Property after being placed on the market for sale.
- xv. With regard to the renovations at 6 Cluny Gardens an engineer carried out a survey on 7 August 2020 and was instructed on 31 July 2020. The Respondents contacted their architect on 16 October 2020 and took time thereafter to decide which proposal was right for them. The architect was appointed on 10 June 2021. The Building Warrant application was submitted on 31 August 2021 and approved on 20 September 2021. In November 2021 the tender documents were issued to potential contractors and on 17 December 2021 the architect advised of a likely start date for the works in February or March 2022.
- xvi. The Respondents entered into a building contract relative to 6 Cluny Gardens on 4 March 2022. In the contract the "Base Date" is 12 November 2021, the

“Works commencement date” is 21 March 2022 and the “Date for Completion” is 29 April 2022.

- xvii. The works at the Respondents’ own home included knocking through from the kitchen to an adjacent morning room to form a bigger kitchen. The property had previously been two separate flats. During the works there continued to be a stand-alone utility room and a bedroom that was formerly a kitchen as well as a dining room. The Respondents had an electric hob, sink, microwave, rice cooker and air fryer. The works could be isolated. The door was sealed by the builders and the rest of the property was unaffected. The works there continued when the Respondents moved back in on 10 June 2022.
- xviii. Renovations at the Respondents’ own home were completed late in August 2022.
- xix. The Respondents engaged Sneddon Morrison, Solicitors, Edinburgh in early May 2022 to market the Property for sale with a premium listing on Right Move.
- xx. Sneddon Morrison prepared the marketing materials for the Property including the photographs contained therein.
- xxi. Sneddon Morrison, placed the Property on the market for sale on 10 May 2022 at offers over £420,000.
- xxii. There was 19 viewings of the Property by potential purchasers.
- xxiii. On 16 May 2022 Mrs Julie Tinton viewed the Property for her own interest and on behalf of another friend, Morag Arbuthnot. The Respondents were cooking dinner during the viewing.
- xxiv. Mrs Tinton did not view the Property at the request of the Applicant.
- xxv. At a closing date on 10 June 2022, Sneddon Morrison received three conditional offers in respect of the Property in the sums of £463,000, £491,643 and £497,558 respectively. The highest offer was conditional upon the purchaser selling their own home.
- xxvi. None of these offers were accepted by the Respondents as they had a genuine change of heart at that time about selling the Property.
- xxvii. The Respondents’ change of heart came about for the following reasons –
 - a. The Respondents had received bequests from their late mothers’ estates which were more than expected and, in total, were in excess of the value of the Property as at 2022.
 - b. The Respondents expected the Edinburgh market was likely to continue to be buoyant and increasing in value.
 - c. There had been no actual change in the Capital Gains Tax position as at 10 June 2022 despite earlier reservations.
 - d. The Respondents wanted to take more time and not rush into selling the Property. They were in a financial situation that was never to be repeated.
- xxviii. The Respondents vacated the Property on 10 June 2022.
- xxix. On 13 June 2022 a response was sent to Sneddon Morrison intimating the Respondents’ decision not to accept any of the offers.
- xxx. On 30 June 2022 the Respondents’ agents, DJ Alexander, advertised the Property for let at £1,890 per calendar month.
- xxxi. On 18 August 2022 the Respondents entered into a Private Residential Tenancy with third parties at a monthly rent of £1,695 per calendar month starting on 19 August 2022. The tenants were of South Korean origin and staying in Edinburgh on a one year contract.

xxxii. The Respondents placed the Property back on the market for sale on 1 August 2023 at offers over £477,500. The Property was sold on 4 July 2024 at a price of £460,000.

Reasons for Decision

5.0 The Applicant seeks a wrongful termination order against the Respondents under Section 58 of the Private Housing (Tenancies)(Scotland) 2016 Act to include an award of damages.

Applicable Legislation

5.1 Section 58 states:-

"58 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."*

5.2 The Notice to Leave dated 20 August 2021 proceeded upon Ground 1 of Schedule 3 of the 2016 Act which states:-

"(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 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."*

Standard of Proof

5.4 The Tribunal considered carefully the evidence of the witnesses, both written and oral, together with substantial documentary evidence referred to, all having regard to the standard of proof to be applied in these proceedings, namely the balance of probabilities. For a wrongful termination order to be made the Tribunal required to be

satisfied that it is more likely than not that the Applicant was misled into ceasing to occupy the Property by the Respondents immediately before the PRT was brought to an end. In other words, in balancing the parties' positions, the Applicant required to tip the scales in her favour – 51% or more is sufficient.

The Evidence

- 5.5 The Tribunal considered the evidence of the Applicant to be mostly credible. Her position was largely predicated upon apparent historic tensions between the parties, her interpretation of an exchange of emails with the Respondents' agent, Rettie, following service of the Notice to Leave, her observations on the ground following her removal from the Property to other accommodation in the general vicinity and, to a large extent, her retrospective analysis of substantial evidence lodged by the Respondents in response to her application. The Tribunal did not doubt that the Applicant genuinely considers her application to be well-founded.
- 5.6 Ms Tinton's evidence was brief and straightforward. She was credible and reliable. Whilst in her written submissions of 6 January 2025 the Applicant said that she had asked Ms Tinton (and others) if she would view the Property so that the Applicant "could assess what was going on". Ms Tinton had no recollection of that and instead said she viewed the Property for her friend Morag Arbuthnot and for her own purposes too. The Tribunal preferred the evidence of Ms Tinton on that matter.
- 5.7 The evidence of the Respondents was substantially given by the First Respondent prompted and assisted by the Second Respondent from time to time. The Tribunal found the Respondents to be credible and reliable. As stated above they had lodged substantial documentary evidence to vouch and support their position.

The Disputed Issues

- 5.8 The Tribunal considered each of the disputed issues in turn:-
- i. *What representations were made by the Respondents to the Applicant that they intended to sell the Property under and in terms of Ground 1 of Schedule 3 of the 2016 Act?*
The representations made by the Respondents to the Applicant were limited to the service of a Notice to Leave on 20 August 2021 together with the covering email from Michael Logan of Rettie, the Respondents' agent, of the same date. Subsequent to the issuing of the latter Notice to Leave there were further email exchanges between the Applicant and Rettie, dated 10 and 13 September 2021.
 - ii. *In that the Respondents placed the Property on the market for sale in May 2022, did they genuinely intend to sell the Property or were the sale arrangements motivated by an ulterior purpose and therefore a sham?*
The Tribunal was satisfied on the balance of probabilities that the Respondents genuinely intended to sell the Property on serving the Notices to Leave and on placing the Property on the market for sale. Whilst the Applicant sought to persuade the Tribunal that the Respondents had pursued, as she described it, "an elaborate plan of deception" the Tribunal did not accept that to be the case. The actions of the Respondents about which she complained, neither individually nor collectively, were sufficient to convince the Tribunal that it was more likely than not that the steps taken to sell the Property were a sham. The Respondents' evidence about their motivations for selling the Property was credible and reliable and the Tribunal preferred their evidence to the Applicant's proposition that the

conduct of the Respondents from the inception of the PRT ultimately motivated them to secure the Applicant's removal and to re-let the Property rather than sell. In particular as at August 2020 –

- a. There were indeed widespread rumours about Capital Gains Tax rates being equalised with income tax rates which would have meant a rise from 28% to 41%. Evidence of such rumours had been lodged by the Respondents including an extract from "Property Industry Eye" dated 3 March 2021 which referred to the forthcoming budget and stated "...it having been rumoured for quite some time that CGT rates would increase as part of wider changes to taxation. The government's tax adviser recently recommended that CGT be overhauled with proposals that could see the number of people hit by the duty increase sharply." Details of the possible increases were subsequently outlined.
- b. The Respondents are in their mid-70s and the Tribunal accepted they wished to give up letting for an easier lifestyle.
- c. They had planned renovations to their own home from before August 2020.
- d. The property market in Edinburgh was buoyant at the time with properties fetching 15 to 20% above the Home Report Value. Indeed the lowest offer at the closing date in June 2022 was in excess of 10% above the Home Report Value and the highest offer was 18% above.
- e. The Respondents also anticipated that interest rates would rise (as has happened) as the UK economy recovered from COVID which would negatively affect the sums payable relative to the bank loan secured over the Property in favour of Bank of Scotland.

The Respondents' representations that they intended to sell the Property were therefore not misleading and the sale arrangements were not motivated by an ulterior purpose.

iii. For what reason or reasons did the Respondents move into the Property following the departure of the Applicant on 2 March 2022?

On the balance of probabilities the Tribunal was satisfied that the purpose of the Respondents moving into the Property was to carry out and facilitate remedial works required thereto prior to placing the Property on the market for sale, to meet with loss adjusters relative to insurance claims made relative to carpets and fittings in the Property, and to show potential purchasers around the Property after being placed on the market for sale. It seems likely that that the living arrangements in both the Property and the Respondents' own home were probably fairly unsatisfactory at that time but the Tribunal accepted the Respondents' evidence that their interests were better served living in the Property preparing it for sale as happened.

iv. Why did the Respondents not accept any of the offers to purchase the Property submitted by third parties at the closing date for the sale on 10 June 2022?

The Tribunal accepted, on the balance of probabilities, that the Respondents had a change of heart about the sale of the Property on or at least in the days after 10 June 2022. Their evidence was credible and reliable and their reasons for deciding not to sell were reasonable and understandable. In particular –

- a. All the offers were conditional, with the highest offer being conditional on the offeror selling their own property first which diminishes

significantly the attractiveness of that offer given the uncertainty around the timing of any sale.

- b. The Respondents expected the Edinburgh market to continue to be buoyant and increasing in value such that the Property would not lose value. Accordingly the Respondents considered there to be no harm in holding on to the Property and considering options longer term.
- c. There had been no reforms to the Capital Gains Tax position as at 10 June 2022 despite earlier reservations. The Respondents did not claim to be CGT experts but were influenced by published information. In fact there was a subsequent change to CGT in 2024 prior to the Property eventually being sold as a result of which the Respondents were then worse off than would otherwise have been the case due to that fact - and due to the lower price achieved in any event.
- d. The Respondents had received bequests totalling a very substantial sum from their late mothers' estates which, in total, were in excess of the value of the Property as at 2022. The First Respondent knew the extent of his mother's estate but his brother had lived with her for over 30 years. As time went on she became less able and developed dementia and he became her carer. The First Respondent's brother developed sepsis and their mother went into care for 5 years before she died. Whilst the First Respondent's brother made a partial recovery he was not able to return to work and was still living in their late mother's house. The estate was split 50/50 between them and the house was the largest asset. The First Respondent's brother was not keen to move and the First Respondent expected his share of that asset to be locked up and not capable of being released until some point in the future. Instead the First Respondent's brother took cash from a small trust set up for him by their late mother and by the First Respondent discounting the value of his half share of the house his brother was able to buy him out. This was unexpected giving the First Respondent a windfall that he had not anticipated. In relation to the estate of the Second Respondent's mother, the distribution to her only became known after the Applicant moved out the Property.
- e. The Respondents wanted to take more time and not rush into selling the Property. They were in a financial situation that was never to be repeated.

The offers for the Property, whilst attractive in financial terms alone, had to be considered by reference to the conditions upon which they were premised. An offer to purchase that is conditional on the proposed purchaser's property being sold when that property might not even then be on the market at all is of questionable value and would rightly cause the Respondents to evaluate the attractiveness of those offers. Indeed, having been bequeathed and received significant sums from their late mothers' estates in the period following service of the Notice to Leave in August 2021 their financial position was healthier than they expected and the Tribunal accepted their decision to take stock and reflect on a sale of the Property against that backdrop. In the event the Respondents were significantly worse off when they subsequently sold the Property in July 2024, a commercial risk they took by proceeding as they did. The Tribunal did not accept the Applicant's suggestion that the Respondent's actions were indicative of sham from the outset.

- v. *If the Respondents intended to sell the Property what caused their change of heart and when?*
Covered in the paragraph above.
- vi. *Why did the Respondents advertise the Property for let from 30 June 2022?*
On the balance of probabilities, the Tribunal accepted the Respondents' evidence that, having had a genuine change of heart about the sale of the Property following the closing date on 10 June 2022, they decided to re-let the Property on a short-term basis whilst they considered their position relative to the Property. The Tribunal accepted that the Respondents selected tenants who would remove within a finite period as happened allowing the Property to be placed back on the market for sale in August 2023. The Tribunal formed the view that had the Respondents truly intended to re-let rather than sell the Property it is highly unlikely it would have been placed back on the market for sale in August 2023 and sold in circumstances that were significantly less attractive than in June 2022.
- vii. *Were the representations made by the Respondents that they intended to sell the Property under and in terms of Ground 1 of Schedule 3 of the 2016 Act objectively misleading?*
No. The Tribunal accepted that, on the balance of probabilities, the Respondents' representations that they intended to sell the Property were genuine throughout and it was only after the closing date on 10 June 2022 that the Respondents had a genuine change of heart about a sale at that time for the reasons already discussed.
- viii. *Was the Applicant actually misled by the Respondents' representations that they intended to sell the Property under and in terms of Ground 1 of Schedule 3 of the 2016 Act?*
On the balance of probabilities the Tribunal did not accept there to be any misleading representations by the Respondents. Therefore the Applicant was not misled into ceasing to occupy the Property.
- ix. *Did any misleading representations made by the Respondents actually result in the Applicant ceasing to occupy the Property?*
On the balance of probabilities the Tribunal did not accept there to be any misleading representations by the Respondents therefore there were no misrepresentations by the Respondents which caused the Applicant to remove from the Property.
- x. *Did the Applicant remove from the Property for reasons other than service of the Notice to Leave by the Respondents on 20 August 2021?*
No, the Tribunal accepted the evidence of the Applicant that her sole reason for leaving the Property in early March 2022 was in response to service of the Notice to Leave by the Respondents on 20 August 2021.

At the time the Applicant, by her own admission, was unaware that she could have challenged the Notice to Leave and the basis therefore, including the reasonableness of the Respondents' desire to recover possession of the Property. She could have refused to remove and opposed any eviction order sought by the

Respondents before the Tribunal. Instead she sought to comply with the Notice to Leave and searched for alternative accommodation. She had no other reason to remove.

xi. Should the Tribunal make a wrongful termination order and, if so, what amount is reasonably payable by the Respondents to the Applicant in terms thereof?

The Tribunal determined that, on the balance of probabilities, there is no basis for making a wrongful termination order and therefore refused the application.

Other Issues

- 5.9 The Tribunal did not consider there to be any significance in the Rent Increase Notice being served a few weeks prior to the Respondents serving the Notice to Leave in August 2021. As a matter of law landlords are entitled to intimate an increase in rent from time to time provided the correct legal process is properly followed. Notices to Leave do not always result in a tenant removing and eviction proceedings before the Tribunal are often pursued. All of that takes time, generally many months, and landlords may and are entitled to seek to recover increased rent whilst that process plays out. The Tribunal did not accept the Rent Increase Notice to have been served as part of an "elaborate plan of deception" as described by the Applicant nor did the Tribunal accept the Applicant's description of the Respondents as "dishonest, sneaky and greedy".
- 5.10 With regard to the Applicant's email exchanges with Rettie following service of the Notice to Leave and, in particular, the terms of Rettie's email of 13 September 2021 the Tribunal did not accept the Applicant's interpretation of the wording of that email which she said tended to establish that the Respondents only planned to market the Property for sale without truly intending to sell. Use of the wording "listing" does not of itself imply that no sale was genuinely intended. The Applicant's position also tended to suggest that Rettie was part of the purported deception by the Respondents. There was no evidence whatsoever that this was the case.
- 5.11 The Applicant sought to rely upon alleged historic events that she said illustrated the First Respondent's "*preference for sharp practice, lies, and misrepresentations during the tenancy*". For example, in her oral evidence she sought to rely upon an issue relative to the upkeep of the garden that dated back to her signature of the PRT in 2018. She had also lodged substantial documentation which she said supported her position. That documentation covers a very wide range of historic issues between the parties including garden maintenance, electrical issues, mice, a bin permit, noise, rent arrears/withholding and so on, the Respondents generally being represented in that dialogue by Rettie. The Tribunal did not accept these instances as anything other than the sort of issues that might arise between a landlord and tenant in any tenancy and did not therefore consider them as pertinent to the application and the assessment of whether or not the Respondents' genuinely intended to sell the Property when the Notice to Leave was served in August 2021 and thereafter.
- 5.12 There is no dispute that following the Applicant removing from the Property in early March 2022 the Respondents moved into the Property for a period of time. The Tribunal accepted the Respondents' evidence that they did so to facilitate meetings at the Property with loss adjusters and tradespeople, to carry out or arrange remedial works and for the convenience of conducting viewings with potential purchasers of the Property. Whilst the Respondents denied that they moved into the Property to avoid

or better allow renovations in their own home then under way, even if they had done so it simply does not follow that the Respondents therefore had no genuine intention to sell the Property. The Respondents produced substantial documentary evidence and were entirely transparent about the planning and timing of the contractual arrangements and the renovations at their own home. The Tribunal was not persuaded that the Applicant's analysis of that documentation provided evidence that the Respondents did not truly intend to sell the Property when the Notice to Leave was served or subsequently. For example, the Applicant suggested that if a solid wall was being removed and an extensive kitchen order had been placed relative to 6 Cluny Gardens then one could deduce that there were no cooking facilities, washing machine or dining room available at Cluny Gardens during the works and therefore that provided evidence of the Respondents' true intent to live in the Property whilst those works were being effected rather than sell the Property. The First Respondent answered that allegation in a straightforward manner and the Tribunal preferred and accepted the evidence of the First Respondent which was entirely credible and reliable. The Applicant's position was pure speculation.

- 5.13 The Tribunal was not persuaded that any conclusions could be drawn about a lack of authenticity relative to the Respondents' intention to sell the Property from the Applicant's criticisms of the marketing photographs in the sale particulars of the Property as prepared by their legal agents, Sneddon Morrison. The sales particulars were professionally prepared and were used to advertise the Property for sale. 19 viewings were generated and 3 offers to purchase were received at a closing date all above the asking price and all within 1 month of the Property going on the market for sale. The sales particulars did their job effectively whatever the Applicant may have thought about the photographs and the content of them.
- 5.14 The Tribunal was similarly not persuaded that the fact the Respondents chose to cook food whilst Ms Tinton viewed the Property in any way established or contributed to the Applicant's suggestion that they did not genuinely intend to sell the Property.
- 5.15 In her evidence relative to the moveable items replaced by the Respondents (being the kettle, fridge freezer, mattress protector, bin and ironing board) the Applicant avoided answering Mr Henry's question about the outgoing Pinstripe Report commissioned by the Respondents' agent as at 8 March 2022. She said she could not comment on the accuracy of the condition of the Property as outlined therein as she was advised she would get a copy of that report but didn't receive one. This was evasive and not a credible position given the Report had been lodged with the Tribunal by the Respondents under cover of an email of 20 June 2023 so had been within her possession for at least two years. She then went on to say (somewhat inconsistently) that she felt the report was exaggerated and a bit harsh.
- 5.16 The Tribunal was not persuaded that the Respondents' replacement of certain moveable items further evidenced their true intention to re-let rather than sell the Property. The simple fact is that if items owned by the Respondents within the Property were considered by the Respondents to have been removed or damaged by the Applicant during the tenancy they are entitled to replace them and seek to pursue appropriate damages from the Applicant for the value of such items or insurance claims. The Respondents may have been misguided about the quantification of the value of their claims for these items and indeed the Applicant did not concede liability under every head. That is neither here nor there. None of this persuades the Tribunal

that the Respondents did not genuinely intend to sell the Property. It is perfectly logical that the Respondents would wish to sell the Property with an undamaged fridge freezer in place rather than a damaged item or leaving a gap. The Applicant's suggestion that it is "highly improbable" that one who genuinely intended to sell a property would expend funds on white goods is not accepted. On the contrary, in attempting to sell a property one would expect a kitchen to be complete and in good condition with white goods present and in proper working order. The evidence of the Respondents is preferred.

- 5.17 The Tribunal formed the same view with regard to the cleaning and replacement of carpets within the Property as for the fridge freezer. The Respondents gave a clear and credible account as to the issues with the carpets and the Tribunal was not persuaded that their actions were those of landlords who did not genuinely intend to sell the Property.
- 5.18 The Tribunal did not accept the Respondent's interest in another property held in the name of Kinord Property Limited to be in any way relevant to the issues to be resolved.
- 5.19 The Applicant sought to rely upon a negative reference that the Respondents gave during the Applicant's search for alternative accommodation and referred to them as being vindictive. The Tribunal does not consider this point relevant to the application. The Respondents' evidence reflected considerable concerns about the state in which the Property had been left and relied upon an independent outgoing report in that regard. The Tribunal has already commented on that issue above. The reference is not produced. The Applicant did not ask them about it under cross-examination. The Tribunal cannot form a view on a document that is unseen and the content of which is entirely unknown.

In her written submissions of 6 January 2025 the Applicant refers to the conduct and the previous decision of a differently constituted Tribunal of 17 November 2023 and the findings therein. As the Tribunal discussed robustly with the Applicant at the CMD on 8 January 2025, she appealed that decision and the decision was quashed by the Upper Tribunal which remitted that application back to a differently constituted tribunal for a full re-hearing. That conduct of the previous hearing, the decision and the findings therein are therefore of no relevance at all to this Tribunal which must and has reached its own determination on the application based on the evidence seen and heard.

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") refuses the application.

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.

Gillian Buchanan

Legal Member/Chair

Date:- 12th February 2026