

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 57 and 59 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) Rule 110 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)

Chamber Ref: FTS/HPC/PR/24/4873

Re: Property at 2 Dundonald Crescent, Newton Mearns, Glasgow, G77 5TJ (“the Property”)

Parties:

Mr Mark Shields, 49A Bonnyton Drive, Eaglesham, Glasgow, G76 0LS (“the Applicant”)

Mr Ian Latter, Mrs Elizabeth Latter, 11 Gleneagles Drive, Newton Mearns, G77 5AU; 11 Gleneagles Drive, Newton Mearns, Glasgow, G77 5AU (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Mary Lyden (Ordinary Member)

Decision

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

Background

1. The application submitted by the Applicant on 22 October 2024 sought a payment order against the Respondent in respect of an alleged wrongful termination of tenancy, namely ‘wrongful termination by eviction order’ in terms of Section 57 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”). The Applicant sought an order for the maximum sanction which the Tribunal can impose, namely six times the amount of the rent. The rent payable at the end of the tenancy was £1,395 per calendar month, and accordingly the maximum sanction payable would be £8,370.

2. Supporting documentation was submitted with the application including a copy of the tenancy agreement and Notice to Leave. The Tribunal Administration obtained a copy of the title deeds and Landlord Registration details in respect of the Property on 23 October 2024. It was noted that the Landlord Registration was in the name of Ian Latter and the Land Certificate (REN 51981) showed ownership to be registered in the name of Doctor Michelle Latter on 2 September 2024, date of entry 30 August 2024, consideration £185,000 and no entry in the charges/standard securities section.
3. Following initial procedures, the application was accepted by a Legal Member on 19 December 2024. A Case Management Discussion (CMD) was subsequently scheduled and the application was notified to the Respondent (then Mr Ian Latter only) by way of Sheriff Officer service on 5 March 2025.
4. On 20 March 2025, detailed written representations, together with a List of Authorities was lodged on behalf of the Respondent, who deny the claim. Their position is that they obtained the eviction order on the basis of their genuine intention to sell the Property (Ground 1 of Schedule 3 to the 2016 Act) and they thereafter had sold the Property, albeit to one of their daughters and not for 'market value'. It was explained that the valuation of the Property was around £370,000, whereas it was sold to their daughter for half that amount. It had been explained to the Tribunal which had granted the eviction order that the intention was to sell on the open market and that the proceeds would be divided between the Applicant's two daughters for purposes of buying their own properties. However, due to changing family circumstances and events occurring after the order was granted, the Respondent had decided instead to sell the Property to their daughter. The chronology of events detailed in the Respondent's representations was that Notice to Leave was served in November 2022; their Tribunal eviction application had been lodged in March 2023; the eviction order was granted by the Tribunal on 24 January 2024 at a CMD at which Mr Shields had not been in attendance; that the execution of the eviction order was delayed by the tenant protections in place at that time which expired on 31 April 2024; that the eviction was executed on 26 April 2024; and that the Property was sold to their daughter in August 2024.
5. On 27 March 2025, the Applicant lodged detailed written representations in response, maintaining his position that there had been a wrongful termination. This was on the basis that the Respondent had not ultimately done what they had stated they intended to do and that it had been on the basis of their stated intention that the Tribunal had decided to grant the eviction order at the CMD.
6. On 5 May 2025, the Respondent lodged further representations, attaching a First Inventory of Productions. In response, also on 5 May 2025, the Applicant lodged further representations and objected to some of the documentation in the Inventory being lodged by the Respondent without his consent and also being irrelevant to the current application.

Case Management Discussion

7. The CMD took place by telephone conference call on 13 May 2025 and was attended by the Applicant, Mr Shields, both Mr and Mrs Latter, and by Mr Gallacher, solicitor for the Respondent. There was discussion regarding the fact that the Applicant had brought this application against only Mr Latter, although both Mr and Mrs Latter had been the landlords of the Applicant and the eviction application had been brought in the name of both Mr and Mrs Latter, as Applicant. Mr Shields had no objection to Mrs Latter being added as a Respondent in respect of this application and the Legal Member confirmed that this administrative change would be made on the Case Management System.
8. The Legal Member made introductory comments and explained the purpose of the CMD. Reference was made to all the representations lodged by both parties in advance of the CMD and it was confirmed that both parties were maintaining their stated positions. The Legal Member indicated that her preliminary view was that the application would require to be adjourned to an Evidential Hearing and explained the reasons for this view.
9. Mr Gallacher reiterated what had been stated in the written representations on behalf of the Respondent; that both Mr and Mrs Latter were in attendance today to provide any further information required by the Tribunal and he requested the opportunity to address the Tribunal in detail today, with a view to the application being decided today, rather than further delayed. Mr Gallacher stated that he does not consider the facts of the matter to be in dispute nor that further evidence would be of any benefit and that Mr Shields has the wrong interpretation of the legal test to be applied in respect of wrongful eviction. The Respondent's position was that the application should be rejected at the CMD.
10. Mr Latter stated that, in their view, the matter was 'cut and dried'. They had stated the intention to sell the Property and they had sold the Property following Mr Shield's vacating it. At no point did they change their minds. They do not consider that Mr Shields' application has any legal basis to it. He stated that Mr Shields had not even attended the CMD in the eviction application in the end. Mr Latter also confirmed that his daughter was residing in the Property as her home and that it was not being let out.
11. Mr Shields reiterated what he had stated in his written representations. The Tribunal in the eviction application had granted the eviction order at the CMD on the basis of what they had been told the landlord's intention was. In his view, they have not complied with the terms of the eviction ground as the property was not subsequently sold for market value and nor was it sold within 3 months of him vacating. He stated that if his landlord had intended to have his daughter live in the Property, then a different eviction ground should have been used and that this could have affected the outcome of the eviction application, as different considerations would have been applied by the Tribunal. He considers that the circumstances need to be looked into in more detail and agrees with the Legal Member that an Evidential Hearing should be fixed for this purpose.

12. The Legal Member explained that there are a number of legal authorities, including previous Tribunal decisions, concerning wrongful eviction claims, including the case produced by the Respondent of *Reynolds v Henry*, although it was noted that this case was not directly in point as it concerned a Section 58 application where the tenancy has been ended without an eviction order being granted and the Tribunal has to determine if the former tenant was misled by the landlord into vacating the property. This application is under Section 57 where the tenancy has been ended by an eviction order and the Tribunal has to determine whether the original Tribunal was misled into issuing the eviction order by the landlord. It was explained that if it is a different Tribunal that is assessing the wrongful eviction application, then, at the very least, the Tribunal needs to have sight of the Tribunal's decision in the eviction application. It was noted that neither party had produced the previous Decision so the Legal Member is unaware of the detail of that Decision. The Legal Member explained that she considered that an Evidential Hearing was required so that:-

- (i) the application could be fully considered by a full Tribunal;
- (ii) the Tribunal could have sight of the previous Tribunal's Decision in the eviction application;
- (iii) the Tribunal could hear evidence from parties and any witnesses to assist the Tribunal's determination as to whether the landlords in this case had the genuine intention to sell the Property at the time the eviction order was granted or whether the Tribunal had been misled; and whether the Tribunal was satisfied as to the landlords reasons for subsequently altering what they had stated they had intended to do; and
- (iv) the Tribunal could thereafter hear legal submissions, with reference to the statutory provisions and any relevant caselaw or other authorities.

13. Mr Shields was asked if he had sought legal advice in the matter and he stated that he had previously had advice from CAB and Shelter. The Legal Member urged Mr Shields to take legal advice on the specific detail of his application, in light of the stated position of the Respondent and the relevant legal authorities as he would be expected to address the Tribunal on this in detail at the Evidential Hearing. It was also explained to Mr Shields that the Respondent's solicitor had raised the issue of expenses and that, although expenses are generally not awarded in Tribunal proceedings, there is an exception to this in terms of the Procedure Regulations [Rule 40] where the Tribunal considers that a party *'through unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense'*. The Legal Member stated that it would accordingly be in Mr Shields' interests to fully consider his position and any legal advice obtained well in advance of the Evidential Hearing.

14. There was some further discussion regarding the method by which the Tribunal would hold the Evidential Hearing, either in-person, by way of video-conference or by telephone-conference and regarding any dates to avoid. It was agreed that parties would provide their comments on these matters to the Tribunal by email in early course and that an Evidential Hearing would subsequently be scheduled. The Legal Member confirmed that a Note of the discussions at the

CMD and a Direction would be issued to parties following the CMD. Parties were thanked for their attendance.

15. Following the CMD, emails were received from the Respondent's solicitor on 13 May 2025, from the Applicant on 14 May 2025, from the Respondent's solicitor in response on 16 May 2025 and from the Applicant in further response, also on 16 May 2025. Both parties provided a list of dates to avoid. The Applicant's preference was for the Evidential Hearing to take place by telephone-conference call or video-call, whereas the Respondent's preference was for an in-person hearing at Glasgow Tribunals Centre. The Legal Member considered the comments made by both parties in this regard and decided that this case would be more suitably heard in-person. Glasgow Tribunal Centre is local to all parties and there will be sufficient advance notification of the proposed date to allow a request for an alternative date, should the date scheduled not be suitable to any party. A request would also be made to Scheduling to avoid Tuesdays, as per the Applicant's request.

16. A CMD Note in the above terms and a Direction were issued to parties dated 13 May 2025. The terms of the Direction were as follows:-

"The Applicant and Respondent are required to lodge:-

- 1. Written submissions in respect of their respective positions as to this application for a wrongful termination order, referring to any supporting legislative provisions, case law or other legal authorities; together with copies of said authorities;*
- 2. An inventory or list of any documentation/further documentation upon which the parties wish to rely at the Evidential Hearing in support of their respective positions, together with numbered copies of said documentation; and*
- 3. A list of any witnesses that the parties wish to call to give evidence at the Evidential Hearing, and to make arrangements for the attendance at the Hearing of any such witnesses.*

The documentation referred to in paragraphs 1, 2 and 3 above should be lodged with the Tribunal Administration no later than 21 days prior to the Evidential Hearing to be fixed in respect of this application."

Further Procedure

17. An Evidential Hearing was subsequently scheduled to take place on 29 October 2025 at Glasgow Tribunals Centre. On 7 October 2025, the Applicant requested a postponement, due to work commitments and provided supporting evidence in respect of same.

18. On 7 October 2026, a response to the Direction was submitted on behalf of the Respondent, comprising Written Submissions, a List of Witnesses for the

Respondent (both Respondents) and a Second Inventory of Productions for the Respondent, including a Bundle of Authorities referred to in the Written Submissions. A further email was received from the Respondent's representative on 20 October 2025, commenting on the Applicant's postponement request, again raising issues regarding the Applicant's conduct of the case and requesting that this is taken into account in due course in respect of their intended claim for expenses.

19. The Tribunal notified the parties on 22 October 2025 of its decision to postpone the Evidential Hearing, at the Applicant's request, and explained its reasons therefor. However, in view of the fact that the Respondent had lodged a full response to the Tribunal's Direction, but the Applicant had not, the Tribunal decided to issue a further Direction to the Applicant dated 20 October 2025, in the following terms:-

"The Applicant is required to lodge:-

- 1. Written submissions in respect of his position as to this application for a wrongful termination order, responding to the submissions recently lodged on behalf of the Respondent in response to the previous Direction dated 13 May 2025 and referring to any supporting legislative provisions, case law or other legal authorities; together with copies of said authorities;*
- 2. An inventory or list of any documentation/further documentation upon which the Applicant wishes to rely at the Evidential Hearing in support of his position, together with numbered copies of said documentation; and*
- 3. A list of any witnesses that the Applicant wishes to call to give evidence at the Evidential Hearing, and to make arrangements for the attendance at the Hearing of any such witnesses.*

The documentation referred to in paragraphs 1, 2 and 3 above should be lodged with the Tribunal Administration no later than 21 days from the date of this Direction."

20. Further dates to avoid were provided on behalf of the Respondent on 29 October 2025 and by the Applicant on 12 November 2025. Also on 12 November 2025, the Applicant submitted a response to the Direction, being a reiteration of his previous submissions to the Tribunal made in advance of the CMD, further representations in response to further comments made on behalf of the Respondent by his representative in May 2025 and October 2025 and in response to comments that the Respondent's previous representative had made in the Tribunal eviction proceedings. The Applicant also made some submissions on the legal tests applied by the Tribunal in respect of eviction proceedings and how he considered the Respondent had failed to meet these tests. He lodged by way of legal authorities a copy of the Tribunal decision in the eviction proceedings, a copy of Schedule 3 (eviction grounds) of the 2016 Act and a copy of Rule 40 of the Regulations (expenses). He indicated that he intended to have one witness at the Evidential Hearing, the Respondent, Mr Latter.

21. A further Evidential Hearing was subsequently scheduled to take place at Glasgow Tribunals Centre on 16 March 2026 and parties notified accordingly.

Evidential Hearing

22. An in-person Evidential Hearing took place at Glasgow Tribunals Centre on 16 March 2026, commencing at 10am. Both parties were in attendance and gave evidence. The Respondent was represented by their solicitor, Mr Dean Gallacher of Kee solicitors. Evidence was given by the Applicant and both Respondents, firstly Mr Latter and secondly Mrs Latter. Mrs Latter was not present during Mr Latter's evidence. Mr Gallacher cross-examined the Applicant and the Applicant cross-examined both of the Respondents. The Tribunal Members also asked a number of questions throughout. The Applicant made the Tribunal aware, towards the end of the evidence, that he was not available for the whole day and would require to leave in the afternoon for childcare reasons. He had not anticipated that the hearing would extend into the afternoon. The Respondents were not happy regarding this and wished to conclude the hearing that day. In the circumstances, the Tribunal decided to sit on, into lunchtime, in order to conclude the evidence and decided to adjourn thereafter and request written submissions. Evidence was concluded.

Evidence of Applicant – Mr Mark Shields

23. Mr Shields gave detailed evidence regarding the background to matters and his own position in respect of this application and why he considered the test for wrongful eviction had been met. His position was quite simple. Following his eviction from the Property in April 2024, he had monitored the situation and noted that the Property was not marketed for sale within the 3-month window stipulated in the legislation (Ground 1). He does not dispute that the Property was sold, but this had been to a family member, the Respondents' daughter. The Property was transferred to her, not at market value, and not within the 3-month window. The Respondents had not, therefore, done what they had told the original Tribunal that they intended to do. They had been granted an eviction order on the basis of that stated intention and what they ended up doing was different and did not comply with Ground 1. They could have used a different ground which more accurately suited these circumstances [Ground 5 – family member intends to live in the property], in which case the tests applied by the original Tribunal would have been different as other eviction grounds have different requirements to be met. The outcome of the eviction application may therefore have been different. The position of Mr Shields was that the original Tribunal was misled into granting an eviction order and this is the basis of his claim for wrongful eviction. As to the caselaw, Mr Shields stated that it shows that what the landlord needs to establish is not that just that they intended to sell, but that they had followed through on that intention. When asked by the Tribunal if Mr Shields considered that the Respondents had had another motivation for evicting him, he stated that this was irrelevant. Their actions following the eviction show that they did not do what they had stated they were

going to do and Mr Shields considered that this was enough to establish wrongful termination of tenancy.

24. Mr Shields considered that, if the Tribunal decided in his favour, the maximum sanction should be imposed of 6 months' rent. He stated that the eviction process had occurred during the Coronavirus pandemic, when the Cost of Living protections were in place for tenants. Turnover of properties was low. He was not in a great place mentally and the process caused stress and upset to he and his family, including his two children aged six and eight. There was concern over school catchment areas. There were removal costs incurred, such as the hiring of a van. He was in employment at the time but his wife was not. His workload had dropped and his salary was reduced. This had contributed to the rent arrears of around £4,000 (which had now been paid). They eventually managed to secure a flat in Eaglesham which had a substantially cheaper rent but had two bedrooms as opposed to three, but was in the same school catchment. He still lives there with his wife and two children. Mr Shields explained the reason he had not attended the original Tribunal hearings was because he could not handle it at the time. He did not appeal the decision as he took advice from Shelter and they said that it had been an 'open and shut' case at the CMD due to the evidence given by the landlord of their intention to sell.
25. Mr Gallacher cross-examined Mr Shields, initially regarding the matter of intention. The discussion became quite theoretical. Mr Shields stated that he did not know whether the Respondents' intention up to the point the order was granted was to sell on the open market or not. He maintained this did not matter as the physical actuality after that did not bear this intention out. There was no genuine follow-through by the Respondents as no steps were taken by them to sell on the open market. He accepted that the Property had changed hands but does not know details of that transaction or whether the Property can be said to have actually been "sold" to their daughter. Mr Shields conceded that the Respondents may not have misled the Tribunal at the time the order was granted but had, in effect, retroactively misled the Tribunal. They had changed their minds about what they were intending to do. They should not have enforced the eviction order in these circumstances and there should be repercussions for them as a consequence of having done so. Mr Shields was then asked about the comments he had made in his email of 16 May 2025 regarding the Tribunal holding an in-person hearing and that he did not consider credibility had anything to do with this application. Mr Shields stated that he was not saying that the Respondents had lied to the original Tribunal and is not questioning their credibility. He maintained that the facts are what they are. He confirmed that he had sought legal advice from Shelter about the prospects of appeal and that they had mentioned to him regarding the alternative eviction Ground 5 being the appropriate one in such circumstances. He stated that Shelter were helpful but he could not afford to instruct them to act for him in this matter. Mr Gallacher made the point that Ground 5 could only have been used if the Respondents had known, at that time, that their daughter wished to live in the Property. Mr Gallacher also asked Mr Shields questions regarding some of his submissions to the Tribunal dated 12 November 2025. He maintained that

he considered the Respondents' intentions to have changed between the date of the order being granted and the eviction taking place. He maintained that they had not sold the Property for market value as it was worth more than £320,000 and the deeds were "transferred" to their daughter for £185,000. He agreed that it was a matter for the Tribunal to assess whether the landlord had had the stated intention to sell in the first place. He accepted that there can be valid reasons for a landlord not following through on their original intentions but that it is up to the landlord to prove their intention with regard to their actions afterwards. He confirmed that the Respondents had not demonstrated this here. Mr Shields maintained that he had read the caselaw and that this is his interpretation of same. He also confirmed having had sight of the legal submissions made on behalf of the Respondents in advance of the CMD but disagrees with the Respondents' interpretation of the law.

Evidence of Respondent – Mr Ian Latter

26. Mr Latter confirmed that he was a self-employed joiner and that he had owned the Property. It had been purchased around November 2019, as business was good, as an investment property for the benefit of their two daughters who were both in the early stages of their medical careers at that time and would both want to buy their own properties at some point. That point came and they instructed solicitors to issue a Notice to Leave in November 2022. The Applicant was given the required 84 days' notice but did not move out, so their solicitors were instructed to raise eviction proceedings in March 2023. The ground specified was that they intended to sell the Property, the reason being to raise funds and then split the funds between their two daughters, Jasmine and Michelle, as had always been the intention. The proceedings took a while but the Respondents' intentions remained the same and nothing had changed prior to the eviction order being granted on 24 January 2024. At that stage, Michelle was a junior doctor. She was working at Ayr Hospital, thirty minutes drive away from their home. She had applied for jobs elsewhere and had been offered a job in Glasgow which she initially accepted. She hoped ultimately to buy a property in the West End of Glasgow and move there to be close to work. However, she was in the second year of a three year programme and subsequently decided to complete that programme before applying for her next job. There was no point buying a property at that stage. Mr Latter explained that there is a national recruitment programme for doctors and they can potentially end up working anywhere in the UK. The recruitment process takes six months. Michelle applied for her dream job, as a clinical oncologist in Glasgow, in February 2024, after the eviction order had been granted. She was successful and she started her new job six months later, in August 2024. Mr Latter was unsure when she was offered the job, other than it was before August 2024. He confirmed that when the Applicant was evicted, their intention was still to sell the Property and split the proceeds between their two daughters. Michelle still intended to buy a property in the West End of Glasgow, if she was successful in her job application. However, Mr Latter stated that there was then a change in the family circumstances, in that his mother-in-law became unwell with abdominal pain. He thinks this was in May 2024. She became seriously ill and was admitted to hospital in August 2024, diagnosed with cancer, and died on 9

October 2024. Michelle was particularly close to her gran, who was aged 80 and lived in Castlemilk, nine minutes drive from their home in Newton Mearns. Their own home is also situated very close to the Property. Michelle wanted to spend as much time as possible with her gran after she became ill and would go and visit her every second day after she finished work. Around May 2024, when her gran first became ill, Michelle started to talk about perhaps wanting to stay closer to home. Mr Latter explained that, although she was career driven, she was also very family orientated and had always been very involved in family life. She took her gran's illness very hard. It was at this point that Michelle first expressed an interest in the Property. Mr Latter explained that, when the Property was recovered from the Applicant, it had been found to be in poor condition, such that a lot of remedial work was required before the Property could be placed on the market. They wanted to achieve the best sale price they could, so Mr Latter had undertaken the remedial works and stated that the renovations took around 5 or 6 weeks to complete, as he was doing these alongside his own work. A painter and decorator also worked over three weekends on the Property. When Michelle had visited the Property to see the works that had been carried out, she had then informed the Respondents that she would like to buy the Property and live there. They discussed the matter as a family and decided that this would be done. As it had always been the intention to sell and split the proceeds between their two daughters, an arrangement was agreed whereby Michelle would pay them the sum of £185,000, approximately half the value of the Property. Mr Latter explained that they could not afford to simply gift the Property to Michelle for free. They had already given their other daughter, Jasmine, £100,000 and they would be giving her the remaining £85,000 this year. Their other daughter lives in Aberdeen and is currently on a good fixed-rate mortgage deal. It would have made no sense for her to sell her current property as there would be an early redemption fee to pay. She may, however, do so when the mortgage deal expires and buy something bigger, with the help of the money from the Respondents. Mr Latter confirmed that Jasmine was aware of the arrangements with Michelle concerning the Property and had no issue with this. He stated also that they had had to pay legal fees of around £5,000 in respect of the eviction proceedings which had dragged on, due to the conduct of the Applicant, as well as legal fees in respect of the sale to Michelle, fees to the estate agents originally instructed, the Sheriff Officers in respect of the eviction and costs in bringing the Property back up to a decent condition. Mr Latter admitted that he had been extremely frustrated at the conduct of the Applicant throughout the eviction proceedings and the poor condition in which he had left the Property. He confirmed that he had refused to extend the time period for the Applicant to vacate in April 2024 as he had had enough of the situation by then. The Applicant had already had the benefit of the tenant protections in place against eviction which had meant that the order was not enforceable until after 31 March 2024. He also admitted to being very annoyed at the condition in which the Property was left. However, he denied that their deteriorating relationship with the Applicant was the true motivation behind the decision to proceed with the eviction. They had fully intended to sell on the open market. They did not attend the CMD at which the order was granted but had provided their solicitor with full instructions. Mr Gallacher took Mr Latter through the Inventories of

Productions lodged on behalf of the Respondents during his evidence, including the Tribunal decision in the eviction. He confirmed that his solicitor's statements to the Tribunal at the CMD reflected the Respondent's reasons for the intended sale of the Property. He considered it had been reasonable for the order to be granted by the Tribunal. Mr Latter confirmed that, when the order was granted, Michelle was working but still living at home, saving for a property. This was how she afforded to pay £185,000 for the Property, without needing to take out a mortgage. Mr Latter confirmed that Michelle is still working in Glasgow and still living at the Property.

27. Mr Shields then cross-examined Mr Latter. Mr Latter confirmed that he had not sought legal advice before arranging to sell the Property to his daughter as there had been no need for that. He accepted that the Property was not marketed or sold within the three-month period following the Applicant's eviction but stated that the deal was made with his daughter within the three-month period. He referred to the timing of the missives between the conveyancing solicitors involved. He confirmed that his conveyancing solicitor was not aware of the background of the eviction as it was not of relevance to them. Mr Latter confirmed that they did not sell the Property immediately following the eviction because it needed work done to it and wanted to achieve the best value they could. This delayed things for several weeks and then they decided to sell the Property to their daughter. Mr Latter did not accept that their intentions with regard to the Property had changed when they instructed the eviction to proceed on 26 April 2024. The decision to sell to their daughter was not in contemplation before that. Mr Latter estimated that their decision to sell to their daughter was made around the beginning of June 2024.

Evidence of Respondent – Mrs Elizabeth Latter

28. Mrs Latter confirmed that she was not employed and that it was her husband who had taken primary responsibility for matters to do with the Property, although they had made decisions jointly and he kept her informed throughout about what was happening. Mrs Latter's evidence accorded with that of Mr Latter in terms of their reason for purchasing the Property in the first place and their intention to sell once the capital in the Property had grown sufficiently to help their daughters with purchasing their own properties. She added that her husband was very hard-working, that they had been frugal and that they had always had long-term goals that they worked towards. She confirmed the circumstances of her daughters' careers and that Michelle had been wanting to move out of their home and buy somewhere once her employment situation was settled. Mrs Latter confirmed that Notice to Leave had been served in November 2022 stating their wish to sell the Property but that they started to have some difficulties with the Applicant who then said that he was not intending to move out. Her husband attended the meetings with the solicitors as he is more articulate and 'hands-on' than her but she was aware of the eviction order subsequently being granted in January 2024. She confirmed that the Property was damaged and was not in a condition to sell when they recovered it from the Applicant. She said that they had to spend around £6,000

- £7,000 on the Property and that they wanted to make it as good as possible to sell, as it was all about maximising their investment. Mrs Latter's evidence accorded with Mr Latter's in terms of the changes to Michelle's career plans. Michelle had always wanted to move to where her eventual job was going to be. She did not apply for her current job in Glasgow until February 2024 and was offered the job around April 2024. Everything then changed when Mrs Latter's mother became ill. She knows that this was in May 2024 as it was close to Michelle's birthday. Michelle was very close to her gran and Michelle wanted to stay close by so she could see her often. She knew her gran was very ill, being a doctor, and her gran lived near the family home and the Property. Michelle then asked them if she could possibly buy the Property which was now empty and had been done up for sale. Mrs Latter stated that there was no change in their decision to sell the Property until that point but that it suited them to do so, given the circumstances. Mrs Latter said that she was also delighted at the prospect of Michelle remaining close by when she moved out of the family home. They agreed to sell the Property to her for £185,000. The reason for that figure was that it had always been the plan to split everything 50/50 between Michelle and Jasmine and £185,000 was about half of what the Property was worth. Jasmine had already been given £100,000 when she got married and will get the remaining £85,000 when her own fixed-rate mortgage comes to an end soon. Michelle did not need a mortgage to pay them the £185,000 as she had always worked hard and saved, whilst she was living at home. Mrs Latter explained that neither she nor her husband have a pension, so this and their own property was really all they had. The arrangement with Michelle worked out very well as she was able to see a lot of her gran during her gran's illness and continues to live close to the Respondents. Family has always been very important to Michelle and she seemed to realise this even more when her gran became ill.

29. Mr Shields did not cross-examine Mrs Latter.

30. Evidence was concluded.

31. The Tribunal thereafter adjourned the application to allow the lodging of any updated written submissions on behalf of the Respondent within 7 days, and thereafter by the Applicant, also within a period of 7 days, from the date he received the Respondent's submissions. It was explained that the purpose of any such further submissions was simply to further the respective legal arguments of each party, with reference to the evidence heard at the Evidential Hearing. Previous written submissions should not simply be repeated and no new evidence nor new legal arguments should be introduced. Parties were advised that they may also wish to include any further updated submissions regarding the Respondent's request for the Tribunal to award expenses against the Applicant, in terms of Rule 40 of the Regulations. The Tribunal then proposed to determine the application on the basis of the evidence heard from both parties at the Evidential Hearing, the supporting documentation lodged prior to the Evidential Hearing and all written submissions lodged (without convening a further hearing).

32. Following the Evidential Hearing, a Hearing Note was issued regarding the procedural aspects of the hearing and the further proposed procedure as above, together with a further Direction (reflecting the verbal Direction given to parties at the Evidential Hearing) which was dated 16 March 2026 (but was not issued to parties until 28 March 2026):-

“1. The Respondent is required to lodge with the Tribunal Administration, and intimate to the Applicant at the same time, any updated written submissions that they wish to within a period of 7 days from the date this Direction is intimated to them.

2. The Applicant is thereafter required to lodge with the Tribunal Administration, and intimate to the Respondent at the same time, any updated written submissions that he wishes to within a period of 7 days from the date the Respondent's written submissions are intimated to him.”

Further Procedure

33. On 20 March 2026, the Respondent's representative lodged detailed written submissions on the evidence heard at the Evidential Hearing and on expenses.

34. On 25 March 2026, the Applicant emailed the Tribunal advising that he had not yet received the Tribunal's Direction and that he noted that the Respondent's response had been lodged without the Direction.

35. On 30 March 2026, the Applicant (in response to the issuing of the Direction on 28 March 2026) queried the procedural aspects of this and the timing of the response lodged on behalf of the Respondent. The Tribunal responded on the same date, clarifying the position.

36. On 1 April 2026, the Respondent's representative emailed the Tribunal to advise that he had still not received the Applicant's response to the Direction, despite having copied the Applicant in on the Respondent's response dated 20 March 2026.

37. On 2 April 2026, the Applicant lodged his response to the Direction, being his further written submissions and response to the Respondent's submissions on the evidence heard at the Evidential Hearing and in respect of expenses. The Applicant also lodged three previous Tribunal Decisions as authorities.

38. On 16 April 2026, on the instructions of the Legal Member, the Tribunal Administration issued an email to parties referring to the Evidential Hearing and the submissions received from parties thereafter but advising that, due to bereavements, the Legal member had unexpectedly required to take time off and that there would therefore be a delay in the issuing of the Tribunal's decision, for which she apologised.

39. On 30 June 2026, the Tribunal Administration issued a further email to parties, updating them on the likely timescale for the decision paperwork being issued.

Findings-in-Fact

1. The Respondent was the former owner and landlord of the Property.
2. The Applicant was the former tenant of the Property by virtue of a Private Residential Tenancy which commenced on 11 August 2020.
3. The Respondent served a Notice to Leave on the Applicant dated 15 November 2022 on the basis of Ground 1 (landlord's intention to sell).
4. The Applicant continued to occupy the Property following expiry of the notice period and Tribunal eviction proceedings were subsequently initiated.
5. The Tribunal (different Tribunal Members to the present Members) granted an eviction order under Ground 1 in favour of the Respondent (in the absence of the Applicant) at a CMD on 17 August 2023 in application FTS/HPC/EV/23/0454.
6. The Applicant applied for Recall of the above Decision on 31 August 2023, which the Tribunal granted on 14 September 2023.
7. A further CMD took place on 24 January 2024 when the same Tribunal (different Tribunal Members to the present Members) granted an eviction order under Ground 1 in favour of the Respondent (in the absence of the Applicant).
8. The Applicant continued to occupy the Property, was served with the eviction order and subsequently vacated the Property on or around 26 April 2024.
9. The current application claiming wrongful termination by eviction order was lodged with the Tribunal by the Applicant on 22 October 2024.
10. On receipt of the application, the Tribunal Administration obtained a copy of the title deeds to the Property, being Land Certificate REN 51981 showing ownership to be registered in the name of Doctor Michelle Latter on 2 September 2024 (date of entry specified as 30 August 2024) and the consideration specified as £185,000.
11. On receipt of the application, the Tribunal Administration obtained the Landlord Registration details in respect of the Property showing the Respondent, Ian Latter, as the registered landlord.
12. Doctor Michelle Latter referred to in the Land Certificate is one of two adult daughters of the Respondent.
13. The Respondent's stated basis to the original Tribunal for their intention to sell the Property, which was purchased as an investment for this purpose, was to

use the sale proceeds to assist their two daughters with purchase of their own properties in Edinburgh and Aberdeen respectively, where they had each undertaken employment.

14. The Respondent did not sell the Property for market value or put it up for sale within 3 months of the date the Applicant vacated the Property.
15. Initially when the Respondent recovered possession of the Property, they undertook repair and refurbishment works to it to bring it up to saleable condition, with the aim of maximising the sale price they would achieve.
16. Said works took several weeks to complete.
17. Around April 2024, the Respondent's said daughter secured a job in Glasgow which commenced around August 2024.
18. Around May 2024, the second-named Respondent's mother became unwell with a serious condition, was admitted to hospital around August 2024 and died in October 2024.
19. Due to the above changes in family circumstances, occurring after the Applicant was evicted, the Respondent subsequently decided to sell the Property to their said daughter for £185,000, approximately half of its value.
20. Said daughter has benefited in the sum of around £185,000, as she now owns a property worth around £370,000, having paid £185,000 for it.
21. The Respondent has already paid the sum of £100,000 to their other daughter and intend to pay her the further sum of £85,000 during 2026, to represent her half-share of the value of the Property.

Reasons for Decision

1. The relevant provisions in the legislation are Sections 57 and 59 of the Private Housing (Tenancies) (Scotland) Act 2016, which are as follows:-

"57 Wrongful termination by eviction order

(1) This section applies where a private residential tenancy has been brought to an end by an eviction order.

(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.

(3) The Tribunal may make a wrongful-termination order if it finds that it was misled into issuing the eviction order by the person who was, immediately before the tenancy ended, the landlord under the tenancy.

(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."

59 Wrongful-termination order

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

(2) Subsection (3) applies where—

(a) the First-tier Tribunal intends to make a wrongful-termination order under section 57 or 58, and

(b) two or more persons jointly were the landlord under the tenancy in question immediately before it was brought to an end.

(3) The Tribunal may make a wrongful-termination order—

(a) against all, some, or only one of the former joint landlords,

(b) stating that each person against whom the order is made is liable to pay a specified amount, but the cumulative total of each of the specified amounts must not exceed six months' rent,

(c) stating that each person against whom the order is made is jointly and severally liable for the whole amount to be paid.

(4) In subsections (1) and (3)(b), "rent" means—

(a) the amount that was payable in rent under the tenancy immediately before it ended, or

(b) in a case where two or more persons jointly were the tenant under the tenancy immediately before it ended, the amount mentioned in paragraph (a) divided by the number of persons who were at that time joint tenants under the tenancy."

2. The Tribunal carefully considered all the documentation, representations and written submissions before it, together with the oral evidence given by the parties at the Evidential Hearing and the legal authorities lodged by parties in support of their respective positions.
3. The Tribunal was satisfied that Sections 57(1), (2) and (4) were met in respect of this application. The crux of the matter was for the Tribunal to determine if it was satisfied, from the evidence presented, that the test in Section 57(3) was met, namely that the original Tribunal *"was misled into issuing the eviction order by the....landlord"*.
4. There was no dispute between the parties about many of the pertinent background facts and much of the chronology of events in respect of this application. The Applicant did not accuse the Respondent of having lied to the original Tribunal or of having a different motivation for evicting him, although it was clear that relations between the parties had deteriorated significantly during the eviction process. The Applicant conceded that he did not know if the Respondent had had the genuine intention to sell the Property when Notice to Leave was served in November 2022 or when the eviction order was sought

and granted at the CMD on 24 January 2024. He also conceded that there could be situations where a landlord could legitimately change their mind and where this would not amount to a wrongful termination. His claim here hinged on facts occurring after the eviction had taken place on 26 April 2024 which he considered demonstrated that the original Tribunal had been misled. The Applicant focused on the wording of eviction Ground 1 which is as follows:-

“Landlord intends to sell

1(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.”

The Applicant pointed to the fact that the Respondent had not sold the Property for market value or put it up for sale within 3 months of the Applicant being evicted. He argued that the only way the Respondent could demonstrate that they had not misled the Tribunal was to have ‘followed through’ on their stated intention to sell the Property, either by marketing it or selling it for market value within 3 months. Instead, the Respondent had never placed the Property on the market and had transferred the Property to their daughter for less than the market value, with the transfer having taken place just over 4 months from the date they had recovered possession of the Property from the Applicant.

5. There is no statutory definition of “misled” in the 2016 Act although the Explanatory Notes to the Act state, at paragraph 90:-

Section 57 provides that where a tenancy has been ended by eviction order and the tenant is not satisfied that the landlord was genuinely entitled to recover possession of the property under one of the specified eviction grounds, meaning that the tribunal was misled into issuing an eviction order, the tenant

can apply to the Tribunal for a wrongful-termination order. In such cases – and in the case of section 58 wrongful termination applications – the test will be whether the landlord genuinely intended to use the property in the way that the eviction ground required (even if, for some reason, that intention has not come to fruition)."

The Tribunal should therefore assess whether or not it considers that the landlord had the genuine intention to sell or had "misled" the Tribunal into granting the eviction order. As intention is entirely subjective, the Tribunal must look at the surrounding circumstances to try and ascertain whether, objectively, the facts point to one conclusion or the other.

6. The Tribunal also had regard to case authorities, several of which were produced by the parties in support of their respective submissions. The Applicant had produced three previous Tribunal decisions from 2020, 2022 and 2023. The two earlier decisions found that there had been wrongful termination by the landlord. The 2023 case, which had found in favour of the landlord was subsequently appealed to the Upper Tribunal and the UT's decision from 2024 (*Reynolds v Henry SLT (Tr) 185 (2024)*) had been produced by the Respondent. Accordingly, the Tribunal disregarded the 2023 decision. In addition to the UT decision, the Respondent had lodged five previous Tribunal decisions, all of which had been found in favour of the landlord and which post-dated the UT decision, being decided later in 2024 or in 2025. All decisions produced (other than the 2020 decision produced by the Applicant) concerned Section 58 applications (wrongful termination without an eviction order) where the legal test is different and requires the Tribunal to consider whether the tenant had been misled into vacating the tenancy property on the basis of a Notice to Leave served by the landlord. The previous FTT decisions are not binding on the Tribunal, but are useful in demonstrating how the Tribunal assesses wrongful termination applications and the types of factors considered significant. All such cases are determined on their own facts and each Tribunal's assessment of the evidence before them. The *Reynolds v Henry* decision, being a decision of the Upper Tribunal, is of more significant weight but, although the appeal by the tenant who had been refused a wrongful termination order by the FTT was successful, this appears to have been on the basis that the FTT had not adequately explained the reasons for its decision, rather than on the merits of the case. Nonetheless, the Tribunal had regard to the useful analysis provided by the UT in this case. At paragraph 16, it was stated that whether a landlord has a ground for eviction depends on his intention *"to either sell the property for market value, or at least put it up for sale. But on either limb of this subparagraph, the intention to sell must be genuine."* There followed discussion of circumstances where it could be inferred that the marketing of the property for sale is a "sham" where, for example, the landlord does market the property to rid himself of an unwanted tenant but then refuses all offers received. At paragraph 18, the UT states *"there may of course be situations where the landlord does genuinely intend to sell the let property at market value, or puts it up for sale with this intention, but later changes his mind"* and made reference to paragraph 90 of the Explanatory Notes produced above.
7. In this case, the Tribunal weighed the evidence of the parties and determined that the evidence overall supported the Respondent's position. The Tribunal

found the evidence of both Respondents to be credible and to corroborate the evidence of the other. The Tribunal was satisfied that the Respondent had had the genuine intention of selling the Property both when Notice to Leave was served and when the original Tribunal granted the eviction order. The Tribunal was also satisfied with the Respondents' evidence as to the chain of events which had resulted in them changing their minds about what they were going to do with the Property and the timing of these events occurring after the Applicant had been evicted, albeit quite soon after. The Tribunal also considered that the Respondents' explanation of the arrangement reached with their daughter, and the figures involved in their sale to her, made sense and achieved a similar outcome to the intended division of the Property sale proceeds equally between their two daughters, as had been stated to the original Tribunal. The Tribunal considered this to have been a 'genuine' change of mind situation and found no evidence of the type of 'sham' scenario mentioned in the case authorities. The Tribunal accordingly concluded that the original Tribunal had not been misled into granting the eviction order. The Tribunal considered that the Respondent had been entitled to enforce the eviction order they had been granted and disagreed with the Applicant's suggestion that the order had been invalidated or 'unfulfilled' by events occurring after the order was granted or that the Respondent should have pursued eviction under Ground 5 instead. The Tribunal accepted the Respondent's evidence that their daughter residing in the Property was not something that was in contemplation until around May/June 2024 and had come about through changing family circumstances at that time. The Tribunal also noted and accepted the Respondent's evidence that their daughter was still residing in the Property as at the date of the hearing in March 2026, having purchased it from the Respondent in August 2024.

8. The Tribunal also, however, considered the Applicant's evidence to be credible and did not consider that he had been motivated in this application simply by a wish to retaliate against the Respondent for evicting him. The Tribunal believed that the Applicant genuinely felt that he had been 'wronged' by the Respondent and that they should not have enforced the eviction order against him. However, the Tribunal's view was that he had misinterpreted the legal position in that he seemed to consider that the Respondent required to show that they had taken positive steps to market the Property or to sell it for market value on the open market and that, without this, they had somehow negated any original intention to sell and had therefore misled the original Tribunal into granting the eviction order. The burden of proof in a wrongful termination application is on the Applicant to establish his case on the balance of probabilities. The Tribunal did not consider that the Applicant had discharged this burden so determined that his claim of wrongful termination of tenancy must fail. There was accordingly no requirement for the Tribunal to go on and consider Section 49.
9. The Tribunal finally required to consider the request on behalf of the Respondent to award the expenses of this application against the Applicant in terms of Rule 40 of the Regulations which states as follows:-

"Expenses

40.—(1) The First-tier Tribunal may award expenses as taxed by the Auditor of the Court of Session against a party but only where that party through

unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense.

(2) Where expenses are awarded under paragraph (1) the amount of the expenses awarded under that paragraph must be the amount of expenses required to cover any unnecessary or unreasonable expense incurred by the party in whose favour the order for expenses is made.”

The Tribunal had regard to all the submissions made by the parties in respect of expenses. The Respondent's representative had first raised the issue of expenses in advance of the CMD, there was some discussion on the matter at the CMD and the matter was raised subsequently throughout the proceedings on behalf of the Respondent. It was the Respondent's position that the Applicant's conduct throughout the previous Tribunal proceedings had been unreasonable and had put them to unnecessary and unreasonable expense and that this conduct and consequent expense for the Applicant had continued into the present proceedings. The Tribunal understood the Respondent's frustration, given the length of time since Notice to Leave was served in 2022 and the parties had been involved in the applications before the Tribunal. The Respondent had given evidence of the substantial legal and other costs they had already incurred. However, the Tribunal could only consider the claim for expenses with regard to the conduct of the Applicant in the present application. On balance, the Tribunal agreed with the Applicant's submissions in respect of expenses. The Tribunal did not consider his application to have been frivolous or vexatious. The Tribunal had assessed and accepted his application at the outset and considered at the CMD that it merited an Evidential Hearing. The Tribunal considered it required the production of additional documentation, written representations and legal submissions and to hear oral evidence on behalf of the Respondent in order to establish if it considered there to have been a wrongful termination of tenancy. Both parties complied fully in this regard and the Tribunal did not consider there was anything unreasonable in the manner in which the Applicant had conducted these proceedings. It was noted that the Applicant had requested a postponement of the first date scheduled for an Evidential Hearing, thereby causing a delay in the proceedings, but that he had submitted supporting documentation in respect of his request and that the Tribunal had considered it appropriate to grant the request. It was also noted that the Applicant did not respond to the Tribunal's first Direction, made following the CMD, requiring the Tribunal to re-issue a Direction to him (which was complied with). However, the Tribunal considered that the non-response to the first Direction had likely been linked to his postponement request (as the timescale for compliance with the Direction was tied to the date of the Evidential Hearing. The Tribunal had considered that the Applicant may benefit from seeking legal advice in respect of this application, due to the complexities of the legal test to be satisfied by the Applicant in such an application, and had conveyed this to him. However, the Tribunal has no power to compel a party to do so and the Applicant was at liberty to decide not to do so, as he had submitted. The Tribunal accordingly determined that it would exercise its discretion in the matter and not award expenses against the Applicant.

10. The Tribunal's decision was unanimous.

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.

Legal Member

28 July 2026
Date