



**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/24/3534**

**Re: Property at 45 Stewart Crescent, Lochgelly, KY5 9PG (“the Property”)**

**Parties:**

**Miss Alina Finlay, 2 Adamson Road, Lochgelly, Fife, KY5 9PL (“the Applicant”)**

**Mrs Susan Mitchell, 46 North Street, Lochgelly, KY5 9NH (“the Respondents”)**

**Tribunal Members:**

**Nicola Irvine (Legal Member) and Ahsan Khan (Ordinary Member)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determines that the Applicant is entitled to a wrongful termination order under Section 58(3) of the Private Housing (Tenancies)(Scotland) Act 2016 (“the Act”) in that the Applicant was misled into ceasing to occupy the Property by the Respondents. Having made that the determination, the Tribunal, therefore, makes a payment order requiring the Respondents to pay to the Applicant the sum of £1,800.**

**Background**

1. The Applicant submitted an application under Rule 110 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The Applicant sought an order under Section 58 of the Act for a Wrongful Termination Order. The Applicant alleged that she was misled by the Respondents into ending a tenancy and leaving the Property. The Respondents had served a Notice to Leave on the Applicant on the basis that the Respondents intended to sell the let Property in terms of ground 1 of schedule 3 of the Act. The Respondents did not market the Property for sale within 3 months of obtaining vacant possession and they still own the Property. The Applicant accordingly claims that the notice to leave gave false or misleading information and that she was misled into ceasing to occupy the let Property. The Applicant seeks payment of an amount not exceeding six months’ rent in accordance with section 59 of the Act.

2. Case Management Discussions (“CMDs”) took place on 19 November 2024 and 13 February 2025 by tele-conference. The Tribunal issued notes summarising those discussions. The Respondents denied the wrongful termination of the tenancy between the parties. The Tribunal assigned 26 August 2025 as the date for an evidential hearing.
3. On 7 January 2025, the Tribunal received written representations from the Applicant.
4. On 1 November and 9 December 2024, the Tribunal received written representations from the Respondents.
5. One of the documents lodged by the Applicant is the Notice to Leave (“NTL”) from the Respondents to the Applicant dated 2 April 2024.

### **The Hearing – 26 August 2025**

6. The hearing proceeded by conference call. Both parties participated in the hearing and represented themselves. The Tribunal explained the purpose of the hearing. This case called alongside a related case which proceeds under chamber reference FTS/HPC/CV/24/1929. The Applicant gave evidence herself. The Respondents gave evidence. The evidence given by the parties and the Applicant’s witness is summarised below. The summary is not a verbatim account of what was said at the hearing but rather an outline of the matters relevant to the Tribunal’s consideration of this application. The Tribunal has recorded the evidence regarding the related application in a separate decision. At the conclusion of the evidence, the Tribunal adjourned the hearing to enable the members to consider the evidence given. The parties were advised that a written decision with a statement of reasons would be issued to them.

### **Summary of evidence**

#### **The Applicant – Miss Alina Finlay**

7. There were several repairing issues reported by her to the Respondents throughout the tenancy. On 2 April 2024, she received a NTL from the Respondents. A copy of it has been submitted to the Tribunal. The NTL stated that the Respondents intended to sell the let Property. It stated that the Respondents had “reached the age (64 and 61) and want to retire and will need the funds from the sale of this property to do so”. It also stated that a “letter from Delmore Estate Agent verifying the intended sale of the property” would be produced. The NTL stated that an application for an eviction order would not be submitted before 28 June 2024.
8. She told the Respondents that she had started to look for alternative accommodation. The Respondents were hassling her to give notice. She started looking for alternative accommodation and found alternative accommodation quickly. She gave the Respondents notice on 13 May 2024

that she would be out of the Property on 14 May 2024. The move was a stressful situation for the Applicant who had to move with her two children. She moved to another private property and is paying rent of £500 per month.

9. In response to questions from the Tribunal members, she confirmed that she had put her name on the local authority housing list before she received the NTL. She asked the Respondents on 23 January 2024 if there was anything they could do to assist her housing application. She was hoping that they would write a letter of support because she wanted to move to local authority housing. The Respondents did not respond to her request.

Mrs Susan Mitchell

10. The Applicant was not going to be evicted by the Respondents. Their intention was only to have the Property valued. They instructed Delmore Estate Agents to carry out a valuation. The Respondents were aware that the Applicant wanted to move to a local authority property and after learning of that intention, they arranged a valuation. The Applicant asked them for a NTL. The Respondents took advice from the Scottish Association of Landlords and were advised to use ground 1 on the NTL. At that point, they had not decided to sell the Property and they were not going to end the tenancy. Eventually the Applicant gave them notice that she intended to leave the Property and the tenancy ended on 14 May 2024.
11. After the Applicant vacated the Property, friends of her daughter were looking for a place to live and on 12 June 2024, asked if they could rent the Property. The Respondents agreed to the terms of a new tenancy and those tenants remain in occupation.
12. In response to questions from the Tribunal members, she confirmed that the Respondents own 7 properties in total. They have experience of serving a NTL in the past on the grounds of unpaid rent and damage caused to the property.

Mr Anthony Mitchell

13. The only reason the Respondents issued a NTL was to help the Applicant. She had asked for help from them because she wanted to move to a local authority property. The Respondents arranged a valuation of the Property.

### **Findings in Fact**

14. The Respondents are the heritable proprietors of the Property at 45 Stewart Crescent, Lochgelly, KY5 9PG.
15. The parties entered into a private residential tenancy which commenced 27 January 2023 and ended on 14 May 2024.

16. The contractual monthly rent was £575, payable in advance.
17. On or around 2 April 2024, the Respondents served a NTL on the Applicant, relying on an intention to sell the let Property, in terms of ground 1 of the Private Housing (Tenancies) (Scotland) Act 2016.
18. The Respondents did not intend to sell the Property, did not market the Property for sale at all and remain the heritable proprietors.
19. The Respondents entered into a new tenancy in or around June 2024.
20. The Notice to leave served by the Respondents upon the Applicant was misleading as it stated that the Respondents intended to sell the Property, when in fact they had no intention of doing so.
21. The Applicant was misled by the Respondents' misrepresentation in the Notice to Leave that Ground 1 was an eviction ground upon which the Respondents relied.
22. The Notice to Leave was the material cause of the Applicant's decision to leave the Property at the time that she did. The Applicant moved from the Property on or around 14 May 2024. The reason for the Applicant moving out of the Property was as a direct result of the Notice to Leave being served on her. The Applicant would not have moved out of the Property at that time had it not been for the service of the said Notice to Leave.
23. The Applicant 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.
24. The tenancy between the parties was wrongfully terminated by the Respondents without an eviction order.

### **Reasons for Decision**

25. In considering their decision the Tribunal had regard to the terms of Section 58(3) of the Act which states:

*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.*

26. The Upper Tribunal gave consideration to the terms of Section 58(3) of the Act in the decision of Reynolds v Henry and Henry UTS/AP/24/0014. In that decision Sheriff Collins' analysis records at paragraph 13 that

*"Section 58(3) of the 2016 provides that a wrongful-termination order may be made if "the former tenant was misled into ceasing to occupy the let property*

*by the person who was the landlord". This applies in the situation where the tenant has chosen to remove in the face of a notice to leave rather than to try and contest an application to the FTS for an eviction order. In effect, section 58(3) requires the FTS to decide whether the Applicant has established four principal issues:*

- (i) First, the landlord must have made some form of representation to the tenant (which might be by concealment of relevant and material facts). The landlord will necessarily have represented to the tenant that he has a ground for eviction in a notice to leave under the 2017 Regulations, since such a notice must have been served in order to terminate the tenancy under section 50 - a necessary precursor to an application under section 58. But conceivably other forms of written or oral representations may have been made to the tenant by the landlord, and if so might also be founded upon.*
- (ii) Second, the representation must have been objectively misleading. Where it consists of a notice to leave, a representation will - in particular - be misleading if it states that the landlord has a ground for eviction under schedule 3 of the 2016 Act when in fact he does not.*
- (iii) Third, the tenant must have actually been misled by the landlord's representation. If the tenant knew, for whatever reason, that the landlord's representation was false - for example because he knew that the landlord did not in fact have the ground for eviction stated in a notice to leave - then he will not have been misled by it and the application cannot succeed.*
- (iv) Fourth, the representation must actually have misled the tenant into ceasing to occupy the property, that is, it must have been at least a significant or material cause of him doing so. So if the tenant's decision to leave the property was for reasons other than the landlord's representation, then again, his application cannot succeed.*

*Importantly, these are all issues of fact, on which the FTS should make clear findings in reaching its decision."*

27. In this case the Respondents made a representation to the Applicant in the form of a NTL. That notice represented to the Applicant that the Respondents had a ground to seek an eviction order, in terms of Ground 1 of Schedule 3 of the Act, as the Respondents intended to sell the let Property.

28. The Tribunal was persuaded from the evidence presented at the hearing that, on a balance of probabilities, the Applicant was misled by the Respondents' misrepresentation that they intended to rely on Ground 1. The Tribunal was satisfied that the evidence provided by the Applicant was credible and reliable.

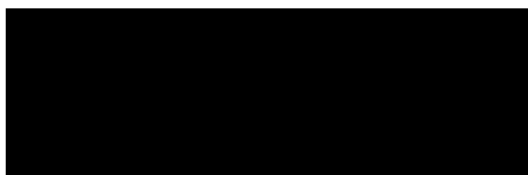
29. The Respondents' position was that they did not intend for the Applicant to leave the Property, only intended to have it valued. The Tribunal did not find this position to be credible. They have experience of being landlords and have previously had occasion to serve a NTL; they sought advice from the Scottish

Association of Landlords, they provided detailed information in the NTL which seems incongruous with the position advanced by them.

30. The Tribunal was satisfied that the misleading NTL was the material cause for the Applicant's decision to leave the Property at the time she did. Although she had indicated that she wished to leave the Property, this was on the basis that she wanted to move to local authority housing. She had registered her name on the local authority housing list. She did not have an offer of alternative accommodation and only moved after she had received the NTL. In her evidence the Applicant said that it was a stressful situation moving her and her children out of the Property.
31. For these reasons the Tribunal was satisfied that the Applicant had established the four principal issues identified by Sheriff Collins in *Reynolds*. The Tribunal was satisfied that the Applicant, as former tenant of the Property, had been misled into ceasing to occupy the Property as a direct result of the Notice to Leave issued by the Respondents, in terms of section 58(3) of the 2016 Act.
32. Having made a determination under Section 58 of the 2016 Act, the Tribunal then determined to make a wrongful termination order under section 59 of the Act. The Tribunal noted that the rent due throughout the period of the tenancy between the parties was £575 per month. The maximum payment the Tribunal can order to be paid by the Respondents to the Applicant under Section 58 of the Act is amount not exceeding six months' rent. That maximum award in this case is therefore £3,450. The Respondents are experienced landlords with a portfolio of properties. The Applicant suffered inconvenience as a consequence of moving from the Property. After moving from the Property the Applicant rented another property where the rent was £500 per month. There was no evidence of removal costs. Having taken into account all the facts and circumstances of the case presented to it, the Tribunal decided that an Order requiring the Respondents to pay to the Applicant the sum of £1,800 was proportionate, reasonable and fair.

### **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/Chair**

**6 October 2025**

**Date**

