



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

Chamber Ref: FTS/HPC/PR/24/4394

Re: Property at 256 Queens Road, Aberdeen, AB15 8DR (“the Property”)

Parties:

Mrs Stefanie Innes, 19 Roslin Terrace, Aberdeen, AB24 5LJ (“the Applicant”)

Mr Geoffrey Stocker, Ms Susan Stocker nee Crawford, 55 Albury Place, Aberdeen, AB11 6TQ (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Melanie Booth (Ordinary Member)

Decision (in absence of the Applicant)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was not misled into ceasing to occupy the let property by the Respondents.

The Tribunal therefore refused to make a wrongful termination order under section 58(3) of the 2016 Act.

Background

- 1 This is an application for a wrongful termination order under section 58 of the Private Housing (Tenancies) (Scotland) Act 2016 and rule 110 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”). The Applicant sought a wrongful termination order against the Respondents, requesting payment in an amount not exceeding six months rent.
- 2 The application was referred to a case management discussion (“CMD”) to take place by teleconference on 4 July 2025. The Tribunal gave notice to the parties in accordance with Rule 17(2) of the First-tier Tribunal for Scotland (Housing

and Property Chamber) Rules of Procedure 2017. Both parties were invited to make written representations.

- 3 By emails dated 7 May 2025 and 27 May 2025 the Tribunal received written representations from the Respondents with supporting documents.

The CMD

- 4 The CMD took place by teleconference on 4 July 2025. All parties joined the call. The Tribunal discussed the purpose of the CMD and heard submissions from the parties on their respective positions on the application.
- 5 The Tribunal noted that it was not in dispute that the parties entered into a private residential tenancy agreement in respect of the property, that the Applicant had been given a notice to leave on 1 March 2024 which included ground 4 of schedule 3 of the 2016 Act, that the Applicant vacated the property on 23 June 2024 and that the property was sold by the Respondents on 27 September 2024.
- 6 There were however several disputed matters that the Tribunal considered could not be resolved at the CMD. The Applicant denied receiving an email from the Respondents on 11 May 2024 in which they indicated their ultimate intention to sell the property. She disputed that the Respondents intended to live in the property for at least three months. She had been to the property after the tenancy terminated and did not believe it was occupied by the Respondents. She believed she had been misled into leaving the property. The Tribunal therefore determined to fix a hearing in the application.
- 7 A Direction was issued to the parties on 11 July 2025 requiring them to submit any documentary evidence, details of witnesses, and legal authorities no later than fourteen days prior to the hearing.
- 8 On 15 December 2025 the Tribunal received a response to the Direction from the Respondents which included various supporting documents. The Applicant did not submit a response to the Direction.
- 9 The hearing was scheduled to take place on 9 January 2026 at Aberdeen Sheriff Court. The Tribunal gave notice of the hearing to the parties under Rule 24(1) of the Rules. On 8 January 2026 the Tribunal received a request for postponement of the hearing from the Applicant. The Applicant did not wish the reasons for her request to be disclosed to the Respondents. The Tribunal advised that the postponement request would be considered at the hearing due to the lateness of the request. The Tribunal advised the Applicant that she would have to submit evidence in support of her request. The Applicant intimated that she would not be attending the hearing. She submitted an email from her employer as supporting evidence for a postponement.

The hearing

- 10 The hearing took place at Aberdeen Sheriff Court on 9 January 2026. The Applicant did not attend. The Respondents were represented by Mrs Stocker.
- 11 As a preliminary issue the Tribunal noted the Applicant's request for postponement of the hearing. In general terms, her reasons were largely medical grounds. The Applicant had stated however that her GP could not provide her with a letter as they were legally not allowed to do so. Instead, the Applicant had provided an email from her manager.
- 12 The Tribunal carefully considered the postponement request. The Tribunal considered the fact that the hearing had been scheduled in July 2025. The Applicant had submitted no response to the Tribunal's Direction. She had provided no further evidence to support the position she had advanced at the CMD. Whilst she had cited medical grounds as the basis for the postponement, she had provided no medical evidence. The Tribunal found it difficult to believe that she would be unable to obtain this from her GP. The Tribunal also had regard to the fact that the request for postponement had been made only the day prior to the hearing.
- 13 The Tribunal had to balance the competing interests of both parties in this case. The Respondents were prepared and ready to proceed with the hearing. Mrs Stocker had travelled from abroad to attend the venue. She had submitted a full response to the Direction with documentary evidence. The Tribunal considered that there would be significant prejudice to the Respondents should the hearing be postponed.
- 14 The Tribunal therefore concluded that the Applicant had failed to show good reason for the hearing to be postponed and determined to proceed in her absence under Rule 29 of the Rules.
- 15 The Tribunal proceeded to hear oral evidence from Mrs Stocker who spoke to the documents submitted by the Respondents. In summary, the Tribunal heard that she and her husband resided in Malaysia but that she had to return to the UK in September 2023 for medical treatment. Her husband had ultimately joined her in February 2024. They had been staying with friends but wanted to return to their home whilst she was receiving treatment. It had always been their intention to sell the property thereafter. The property had previously been on the market but there had been no interest. The Respondents had been surprised that it had sold so quickly. The Respondents had moved into the property following the Applicant's departure on 24 June 2024. This was confirmed in an affidavit produced from the friend they were residing with at the time. The Respondents had lived in the property until it sold on 27 September 2024. The Respondents did not expect the property to sell so quickly, given their previous experience.
- 16 Mrs Stocker explained that there had never been any intention to hide their plans for the property from the Applicant. The Applicant had been made aware

of their ultimate intention to sell. Mrs Stocker noted that the Applicant had alleged the Respondents were not living in the property after she left. Mrs Stocker explained that they had spent some time visiting friends which may have given the impression that the property was unoccupied. However, they were occupying the property as their only or principal home. She referred to various supporting documents which confirmed this, including correspondence from utility companies, the hospital, and council tax.

Findings in fact

- 17 The Applicants were the owner and landlords, and the Respondent was the tenant, of the property in terms of a private residential tenancy agreement which commenced on 27 January 2023.
- 18 On or around 1 March 2024 the Respondents' letting agent sent the Applicant a notice to leave. The notice to leave included ground 4 of schedule 3 of the 2016 Act.
- 19 The Respondents intended on occupying the property as their only or principal home for a period of at least three months.
- 20 On 11 May 2024 the Respondents emailed the Applicant stating that they wanted to *"carry out various works to initiate the house being sold"*. On 13 May 2024 the Applicant advised the Respondents that the email had gone into her junk box after the Respondents attended the property to carry out works.
- 21 On 14 May 2024 the Respondents' letting agent sent an email to the Applicant stating *"the Landlord has very generous to agreed to an extension to the lease of one month but I believe it was on the understand that there would be work going on, as you are aware the landlord is waiting to receive cancer treatment from ARI and that is the only reason she has come home to Aberdeen and wishes her house back. Her plan was to move in when you left the house do some repairs and put the house up for sale"*.
- 22 The Respondents reside in Malaysia. The second Respondent returned to Aberdeen in September 2023 for medical treatment. The first Respondent joined her in February 2024.
- 23 Between February 2024 and June 2024 the Respondents resided with friends in Aberdeen.
- 24 The Applicant vacated the property on 23 June 2024. The Applicant would not have vacated the property had it not been for the notice to leave.
- 25 The Respondents took up occupation of the property on 24 June 2024. The Respondents arranged a valuation of the property on 1 July 2024 prior to marketing the property for sale.

- 26 The property was sold on 27 September 2024. The Respondents did not expect the property to sell quickly. The Respondents had previously put the property on the market but had received no interest.
- 27 The second Respondent completed her treatment on 15 October 2024. The Respondents have since returned to Malaysia.
- 28 The Applicant was aware of the Respondents' intentions regarding the property, namely to reside there whilst the second Respondent received treatment and subsequently sell the property.
- 29 The Applicant was not misled into ceasing to occupy the let property by the Respondents immediately before the tenancy between the parties was brought to an end.

Reasons for decision

- 30 The Tribunal considered all submissions and documents from the parties and the oral evidence from Mrs Stocker at the hearing in reaching its decision.
- 31 Section 58 of the 2016 Act applies where a private residential tenancy has been brought to an end in accordance with section 50 of the 2016 Act, namely in circumstances where the tenant has been given a notice to leave and has ceased to occupy the let property.
- 32 Section 58(2) states that *"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")*. Section 58(3) provides that *"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"*.
- 33 In this case the Applicant was given a notice to leave by the Respondents that includes ground 4 of schedule 3 of the 2016 Act. Ground 4 is in the following terms:-

"(1) It is an eviction ground that the landlord intends to live in the let property.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months, and

(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.

(3) References to the landlord in this paragraph—

(a) in a case where two or more persons jointly are the landlord under a tenancy, are to be read as referring to any one of them,

(b) in a case where the landlord holds the landlord's interest as a trustee under a trust, are to be read as referring to a person who is a beneficiary under the trust.

(4) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the landlord has that intention.”

- 34 The Tribunal considered whether the notice to leave was objectively misleading in stating the Respondents' intention to reside in the property as their only or principal home for at least three months. The Tribunal found the evidence from Mrs Stocker particularly compelling on this point. She was clear and consistent on the reasons for including ground 4 in the notice to leave, and the Tribunal found her evidence to be wholly credible and consistent with the documents produced by the Respondents. The Tribunal therefore accepted that the Respondents had a genuine intention to live in the property as their only or principal home for at least three months whilst Mrs Stocker completed her medical treatment. The Tribunal accepted that they then lived in the property between 24 June 2024 and 27 September 2024. Whilst the Applicant had questioned this, she had provided no credible evidence to support her position on this point. The Respondents were therefore entitled to rely upon ground 4 of schedule 3 of the 2016 Act as reflected in the notice to leave.
- 35 It should be said that even if the Respondents had sold the property prior to the expiry of the three month period, the Tribunal would have still taken the view that they had a genuine intention to reside there for at least three months as they did not believe the property would sell within that time. The Tribunal could understand why they would have held this view given their previous experience and the market conditions in Aberdeen.
- 36 The Tribunal did not therefore accept that the Applicant was actually misled by the notice to leave. She was made aware of the Respondents intention to move into the property whilst Mrs Stocker was receiving treatment with a view to ultimately selling the property. There was no attempt on the part of the Respondents to conceal this in any way. The Tribunal again preferred the evidence from the Respondents on this point which was supported by correspondence between the parties.
- 37 The Tribunal therefore concluded, on the balance of probabilities and based on the evidence before it, that the Applicant had not been misled into ceasing to occupy the property and refused to make a wrongful termination order.
- 38 The decision of the Tribunal 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.

Ruth O'Hare

21 January 2026

Legal Member/Chair

Date