



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”) and Rule 27 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”)

Chamber Ref: FTS/HPC/PR/25/2985

Re: Property at 1/1 368 Perth Road, Dundee, DD2 1EN (“the Property”)

Parties:

Mr Robert Gibb, Mr Fraser Moffat, 8 Kinbrae Court, Newport-On-Tay, Fife, DD6 8HF; 3 Mansfield Road, Balmullo, KY16 0DQ (“the Applicant”)

Mr Ian Bertram, REDACT, REDACT (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be dismissed under Rule 27 of the Rules.

Background

- 1 This is an application for a wrongful termination order under section 58 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 110 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”).
- 2 The application was accepted and referred to a case management discussion (“CMD”) to take place by teleconference on 3 March 2026. The Tribunal gave notice of the CMD to the parties in accordance with Rule 17(2) of the Rules.
- 3 On 7 February 2026 the Tribunal received written representations from the Respondent in response to the application which were intimated to the Applicants.

The CMD

- 4 The CMD took place on 3 March 2026 by teleconference. The Applicants were represented by Mr Gibb. The Respondent, Mr Bertram, also joined the call.
- 5 The Tribunal explained the purpose of the CMD and the legal test to be considered under section 58 of the 2016 Act.

“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.”

- 6 The Tribunal proceeded to discuss the application with the parties. The following is a summary of the key elements of the discussion and not a verbatim account.
- 7 The Applicants seek a wrongful termination order on the basis that they were given a notice to leave based on ground 1, the landlord’s intention to sell the property. The property was not sold by Mr Bertram and had since been re-let.
- 8 Mr Bertram’s response can be summarised as he did have a genuine intention to sell when the notice to leave was sent to the Applicants as can be evidenced by the documents he has produced. He subsequently discovered that significant roof repairs were due to be carried out to the property and he was unable to proceed with the sale at that time.
- 9 Mr Gibb acknowledged receipt of Mr Bertram’s response. He believes the timeline stated by Mr Bertram is incorrect. He is of the view that Mr Bertram was aware of the repairs to the roof before the tenancy terminated. Mr Gibb believes that Mr Bertram wanted to get the Applicants out of the property before he paid for the roof repairs.
- 10 Mr Bertram explained that the timeline was correct. The last extensive repairs to the roof had been carried out in the mid-80s. Mr Bertram has owned the flat since 2012. There are annual ongoing repairs to the roof which Mr Gibb may be

referring to. Mr Bertram referred to the estate agency contract he had signed in March as evidence of his genuine intention to sell the property. It was the one-off roof repairs that had then prevented the sale. It was a huge piece of work. The tender had been issued in April, and he became aware of the repairs in May. He had discussed the issue with Slater Hogg and Howison (SHH) and had submitted emails as evidence of this. Mr Bertram felt the Applicants had been given ample opportunity to clarify their queries with SHH, rather than applying to the Tribunal. The Applicants had contacted SHH on 4 June and had been advised of Mr Bertram's position regarding the sale.

- 11 Mr Gibb advised that this was the first he had heard about the one-off roof repairs. There had been no mention of it from anyone else. The Applicants' position is that Mr Bertram was aware he could not sell the property with the roof damage when he sent the notice to leave. They believe he was aware of the issue.
- 12 The Legal Member explained that the Tribunal had to consider whether Mr Bertram had a genuine intention to sell the property when the notice to leave was sent, not whether the property was ultimately sold. The Legal Member noted that Mr Bertram had submitted documentary evidence in support of his position. The Legal Member asked what evidence the Applicants would have to counter the evidence submitted by the Respondent, which included the signed estate agency contract. Mr Gibb advised he had spoken with a neighbour who had told him about the roof repairs.
- 13 The Legal Member asked Mr Gibb for his comments on the signed estate agency contract submitted by Mr Bertram. Mr Gibb explained that he had not yet gone through all of Mr Bertram's evidence. He wished the opportunity to do so and consider the Applicants' position regarding the application. Mr Bertram opposed this.
- 14 The Legal Member advised that she would allow Mr Gibb the opportunity to review his position, since he was not legally represented and would therefore require time to do so. If the parties were still in dispute the application would have to proceed to an evidential hearing.
- 15 The CMD was adjourned and the Tribunal issued a Direction requiring the Applicants to confirm no later than 31 March 2026 whether they wished to proceed with the application, or whether the application was withdrawn.
- 16 The Tribunal received no response to the Direction from the Applicants.

Reasons for decision

- 17 Rule 27(2)(b) of the Rules states that "*The First-tier Tribunal may dismiss the whole or part of the proceedings if the applicant has failed to – (b) co-operate with the First-tier Tribunal to such an extent that the First-tier Tribunal cannot deal with the proceedings justly and fairly*".

- 18 The Tribunal issued a Direction in this case seeking clarity from the Applicants as to their position on the application following the comments made by Mr Gibb at the CMD. The Applicants were asked to confirm in writing whether the application should proceed or be withdrawn. The Applicants have failed to respond to the Direction. The Legal Member therefore considers it can be reasonably assumed that they no longer wish to proceed with the application. The Legal Member has determined that their lack of response constitutes a failure to cooperate with the Tribunal to such an extent that it cannot deal with the proceedings justly or fairly as their position on the application cannot be ascertained at this time.
- 19 The application is therefore dismissed.

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

5 May 2026

Legal Member/Chair

Date