



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

**Chamber Ref: FTS/HPC/PR/24/0598**

**Re: Property at Flat 2/1, 310 Crow Road, Glasgow, G11 7HS (“the Property”)**

**Parties:**

**Sebastian Heron and Cara Heron, Flat 3/2, 310 Crow Road, Glasgow, G11 7HS (“the Applicants”)**

**Nitin Gambhir and Swapna Gambhir, 495 Anniesland Road, Jordanhill, Glasgow, G13 1YD; (“the Respondents”)**

**Tribunal Members:**

**Shirley Evans (Legal Member) and Elaine Munroe (Ordinary Member)**

**Decision**

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

**Background**

1. This is an application for a wrongful termination order under Rule 110 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
2. Two previous Case Management Discussions had taken place on 8 November 2024 and on 10 February 2025. It was clear that there was a dispute as to whether the Respondents had ever had any real intention at the time the Notice to Leave was served to move their daughter into the Property. The Applicants’ position is that was just one of a number of options that the Respondents had considered and that there was no definite plan or intention to move her into the Property in terms of Ground 5 of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016, being the ground of repossession on the Notice to Leave. The Tribunal decided to hear evidence on the matter to determine whether there was a real intention on the part of the Respondents to move their daughter into the Property,

whether the Applicants had been misled by the Respondents into giving up the tenancy by the Respondents and in the event that they had been so misled, the amount of any wrongful termination order.

## Hearing

3. After a number of postponements, the Tribunal proceeded to an in-person Hearing on 6 May 2026 at the Glasgow Tribunal Centre. The Applicants were both in attendance. The Respondents were also both was also in attendance.
4. The Tribunal had before it the Private Residential Tenancy Agreement signed and dated 29 March 2019, a rent increase Notice and email from Rettie and Co dated 21 April 2023, a Notice to Leave dated 28 April 2023, emails between the parties dated 13 and 14 March 2024, screenshot of the Applicants' Lifetime ISA savings, a tenancy agreement between the Applicants and a third party relating to property at Flat 3/2 310 Crow Road, Glasgow commencing 17 July 2023, a receipt from Howdens Kitchens dated 1 August 2023, an invoice from Nextgeneration Building Ltd dated 19 August 2023, a signed statement from Brian Murphy dated 2 December 2024, two signed statements from Ms Gambhir, the Respondents' daughter dated 29 November 2024 and 10 March 2025, a letter from Steven Halliday, Nextgeneration Building Ltd dated 27 December 2024, a signed statement from Brian Murphy dated 2 December 2025, a letter from Karen Crocket, Rettie and Co dated 20 June 2024 and a sworn affidavit by the Respondents dated 16 June 2025. The Tribunal considered these documents.
5. The Tribunal ascertained that neither party had any witnesses, but would each give evidence on their own behalf. The Tribunal explained the procedure to be followed emphasising that there would be flexibility in the proceedings bearing in mind that both parties were unrepresented.
6. A large body of evidence was undisputed and parties were in agreement regarding the tenancy agreement including the fact the rent had increased to £895 in November 2022, a rent increase notice that had been served on 21 April 2023 which was subsequently withdrawn, a Notice to Leave that had been served on 28 April 2023 on the basis that a family member was moving in, that the Applicants had moved out of the Property on 24 July 2023 into a top floor flat in the same block at a rent of £205 per month more that they had paid the Respondents, that renovation works had taken place in the Property in August 2023, that the Respondents' daughter had not moved into the Property, that the Respondents' daughter had suffered from ill health, and that a new tenant had moved into the Property in November 2023.
7. Mrs Heron stated that the Applicants did not dispute that the Respondents' daughter had had a tough time at Edinburgh University. She explained the Applicants had read the statements lodged by the Respondents, but stated that it appeared that her moving into the Property was just an option and not

an actual plan. She referenced the fact that there would have had to have been some very intense discussions between 21 April 2023 when the rent increase notice was served before the Notice to Leave was served on 28 April 2023 but there was no evidence that that decision has been made. If the Respondents' daughter was planning to move to Glasgow and change course and university and move out of Halls of Residence the Applicants would have expected to see something in writing to show that that was happening. However, they had not seen anything.

8. Mrs Heron re-iterated it appeared everything was up in the air and that not firm decision had been made regarding the Respondents' daughter. With reference to Ms Gambhir's statements, Mrs Heron acknowledged that would have been difficult for her to write but there was no dates in the statements. They had hoped there would have been evidence to show what steps had been taken to facilitate the move for the Respondents' daughter. The move was one option but there was no firm intention. The Applicants felt that was lacking which is why they had doubts that the Respondents had any firm intention to move their daughter into the Property when they served the Notice to Leave.
9. The Tribunal gave the Respondents an opportunity to question Mrs Heron , but neither had any questions for her.
10. Mr Gambhir stated he appreciated how the Applicants have perceived the situation. However the Respondents had always valued long term and stable tenants such as the Applicants and it made no sense for the Respondents to evict the Applicants if they had no intention of moving their daughter into the Property, by letting it lie empty for three months, spending money on replacing the kitchen and bathroom when they could have relet the Property without those renovations.
11. He went on to explain that his daughter had started to study medicine at Edinburgh University in September 2022. She faced a number of challenges including adjustment to her new life and in her relationships. She felt isolated and was not enjoying her course. She had begun to wonder if the course was for her. By January 2023 she had opened up to the Respondents that she was not enjoying the course. Over the next few months things were evolving. She asked the Respondents whether she could move into the Property.
12. Mrs Gambhir added that there was a certain amount of peer pressure and their daughter did not want to move back home with them. She wanted to retain her independence, hence the request to move to the Property
13. Mr Gambhir stated if they had not planned for her to move into the Property it would not work for either the Applicants or for them. The Property would have been empty in the hope that she would move in. However as things were there was a very clear intention that she would move in when they served the

Notice to Leave. During the summer after the Applicants had moved out their daughter had become involved with the renovations when the bathroom and the kitchen were done up.

14. On being questioned by the Tribunal Mrs Gambhir explained their daughter sat her exams in May 2023 and afterwards had moved home, but in the full belief she would move into the Property after the works. She was still enrolled in the course in Edinburgh. She had discussions with friends about what she would do with regards to her course. Mr Gambhir explained there was no evidence from the University as the choice was a stark one for their daughter as she could not transfer the course from Edinburgh to Glasgow University. She did not need to decide whether she would continue with the course in Edinburgh at that time. She could have advised Edinburgh University at the start of the term in September 2023 that she was not continuing her course or was taking a year off. She did not have to advise Edinburgh of anything. However, if she wanted to study in Glasgow she would have needed to apply for the following year as applications for September 2023 had closed in January 2023. As it was Edinburgh University were not aware of any of this. Those were decisions for their daughter to make but she had asked them if she could move into the Property and they did what any parent who was concerned about the wellbeing of their child would do to support her. Everything the Respondents did was with the clear intention their daughter would move into the Property as she had indicated she wanted to do. However after discussing matters with her friends, their daughter decided to continue with her course in Edinburgh in September 2023. At that stage, the Respondents did not want to rush things. They did not advertise the Property straight away as they wanted to make sure their daughter settled in Edinburgh. In October 2023 after their daughter confirmed her intention to stay in Edinburgh the Respondents asked Rettie and Co to advertise the Property for let. A new tenant moved in in November 2023.
15. The Tribunal gave the Applicants an opportunity to question the Respondents. Mrs Heron queried how their daughter was able to get accommodation in Edinburgh straight away, assuming the course started in September 2023. Mrs Gambhir advised that after she had told them she wanted to give Edinburgh another chance, it was all a bit rushed. Their daughter had to take what she could and found a flat where one person had dropped out to move into. She did not know the other tenants, hence their decision not to advertise for new tenants until their daughter was settled.
16. Mr Heron queried about the rent increase notice. Mr Gambhir explained that Rettie and Co had served another notice in April decreasing the rent as they were under the impression the Property was a one bedroomed flat and not a two bedroomed flat. The notice was withdrawn when they realised their mistake. The rent had been increased in November 2022 after the rent increase notice in August 2022.

17. Mr Heron also queried the situation regarding university fees. Mrs Gambhir explained there were no fees and that their daughter dealt with the fee applications. They helped their daughter with her rent but had nothing to do with their daughter's fees.
18. The Tribunal referred the Applicants to the sum sought in the application being £4920. Mr Heron explained they had taken the extra amount of rent they were paying in their new property of £205 per month and assumed that they would be there for at least two years. Mrs Heron also explained that she had been made redundant round about the same time and the extra rent was an increasing financial burden.
19. The Tribunal asked the Respondents about their daughter's decision. Mrs Gambhir explained their daughter had been distressed and upset. She had made it clear she wanted to move to the Property. As far as the Respondents were concerned, she had made that choice. They had no motive or desire to disrupt the Applicants. They would not have invested the time or the finances if they had no intention of moving their daughter to the Property.
20. By way of response Mrs Heron stated that there seemed to be no firm or settled decision when the Notice to Leave was served.

### **Findings in Fact**

21. The Applicants and the Respondents entered into a Private Residential Tenancy Agreement on 29 March 2019 in relation to the Property at a monthly rent of £795.
22. The rent increased to £895 from November 2022 following upon a rent increase notice served on 5 August 2022.
23. The Respondents' daughter left home in or around September 2022 to go to Edinburgh University. She found that challenging. She was distressed and upset. She opened up to her parents round about January 2023 about her doubts regarding continuing her course.
24. The Respondents' daughter asked that she be allowed to move into the Property to be nearer her parents but retaining her independence. The Respondents supported their daughter as much as they could over the following months as the situation evolved.
25. A rent increase notice was inadvertently served on the Applicants by the Respondents' letting agent on 21 April 2023 decreasing the rent to £818. This was withdrawn.
26. On 28 April 2023, the Respondents' letting agent served a Notice to Leave on the Applicants in terms of Section 50 of the 2016 Act which stated the

reason for the Notice was that the Respondents intended to have a family member move into Property by reliance on Schedule 3, paragraph 5 of the 2016 Act. The Notice required the Applicant to leave the Property by 24 July 2023.

27. The Respondents' daughter sat her exams in Edinburgh and moved back with the Respondents in or about May 2023.
28. The Applicants left the Property on 24 July 2023. They moved to a top floor flat in the same block as the Property at a rent of £205 more per month. This placed the Applicants under added financial pressure. The reason for the Applicants moving was as a direct result of the Notice to Leave being served on them. The Applicants would not have moved out of the Property at that time had it not been for the service of the said Notice to Leave. The tenancy terminated on 24 July 2023.
29. The Respondents' tradesmen installed a new kitchen and a new bathroom in the Property as soon as the Applicants moved out at the cost of thousands of pounds. The Respondents' daughter was involved in getting the Property ready for her to move into and in the choices for the kitchen and bathroom.
30. In or about September 2023 the Respondents' daughter decided to return to continue her studies in Edinburgh. She did not move into the Property.
31. The Respondents continued to support their daughter. They did not advertise the Property for let until they were satisfied, she had settled in Edinburgh.
32. On or about October 2023 the Respondents instructed Rettie and Co to advertise the Property for rent. A new tenant moved into the Property in or about November 2023.

### **Findings in Fact and Law**

33. The Respondents intended that a family member move into the Property when they served the Notice to Leave in terms of Section 50 of the 2016 Act by reliance on paragraph 5 of Schedule 3 of the 2016 Act.
34. The Respondents did not mislead the Applicants into ceasing to occupy the Property in terms of Section 58(3) of the 2016 Act.

### **Reasons for Decision**

35. Section 58 of the Private Housing (Tenancies) (Scotland) Act 2016 (the 2016 Act) provides:-  
*(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.

36. Section 59 (1) of the 2016 Act provides: –

(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.”

Section 59 (4) of the 2016 Act provides: –

“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”

37. In *Reynolds v Henry* (2024 S.L.T. (Tr) 185) Sheriff Collins in the Upper Tribunal gave consideration to Section 58(3) of the 2016 Act and laid out a four stage test in relation to whether or not there has been a wrongful termination as follows:-

“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."*

38. The Tribunal considered the Application together with all documents lodged and the evidence from both parties. It appeared to the Tribunal that the Respondents had every intention of moving their daughter into the Property when they served the Notice to Leave on the Applicants. Their daughter had asked that she be allowed to move there following on the challenges she faced. The Tribunal had no reason not to accept their evidence in that regard.

39. All parties appeared to the Tribunal to be honest and credible. The Tribunal accepted that the reasons given by the Respondents leading up to the service of the Notice to Leave had seen the Respondents coping with a very difficult situation when faced with their distressed and upset daughter who wanted to move back to Glasgow to be near her family whilst retaining a degree of independence, hence her request to move into the Property. Their intention was clearly to have their daughter move into the Property. In considering the question and meaning of "intends" the Tribunal considered the decision of Lord Justice Asquith in *Cunliffe v Goodman*[1950] 2K.B.237 at page 253:  
*"An "intention" to my mind connotes a state of affairs which the party "intending" - I will call him X - does more than merely contemplate: it connotes a state of affairs which, on the contrary, he decides, so far as in him lies, to bring about, and which, in point of possibility, he has a reasonable prospect of being able to bring about, by his own act of volition. X cannot, with any due regard to the English language, be said to "intend" a result which is wholly beyond the control of his will. He cannot "intend" that it shall be a fine day tomorrow: at most he can hope or desire or pray that it will. Nor, short of this, can X be said to "intend" a particular result if its occurrence, though it may be not wholly uninfluenced by X's will, is dependent on so many other influences, accidents and cross-currents of circumstance that, not merely is it quite likely not to be achieved at all, but, if it is achieved, X.'s volition will have been no more than a minor agency collaborating with, or not thwarted by, the factors which predominately determine its occurrence."*

40. The Tribunal considered that the Respondents had done more than contemplate moving their daughter into the Property. The Tribunal accepted that the Respondents had valued the Applicants as good and stable tenants and that they would have not gone to the time and trouble of serving the Applicants with the Notice to Leave had they not had the very real intention of allowing their daughter to move in as she had indicated she wanted to do. The Tribunal accepted that events took a very different turn when their daughter decided to return to Edinburgh. That was a decision which was out with their control. However it was clear that they were still concerned for her and did not advertise the Property for let until after they were satisfied she had settled.
41. The Tribunal also accepted that from the Applicant's point of view it appeared as though there was no real intention to move her in. However the Tribunal preferred the evidence of the Respondents that they had a very real intention to move her into the Property. That position is supported by the statements lodged from the tradesmen involved in the renovations and from Rettie and Co which indicated that the Respondents had stated that the intention to allow her to move in. It appeared to the Tribunal that the Respondents would not have contrived a scenario involving their daughter and involving their letting agent and other third parties stating her desire to move to the Property just to have the Applicants move out when they were perfectly content with the Applicants as long term tenants. It was clear to the Tribunal that this was a very stressful time for the Respondents and their family and that after discussions their daughter decided she would not move into the Property but would give her course in Edinburgh another chance. That decision and change of mind were unexpected. All of these events were out with the Respondents' control. They were trying to cope with a very difficult set of circumstances and support their daughter through this time.
42. It appeared to the Tribunal that both parties deeply regretted the unfortunate string events leading up to this action. The Applicants naturally on seeing the Property being advertised for rent and meeting the new tenant, felt aggrieved. They cannot be criticised for bringing this action. However, as the Tribunal accepted the Respondents had the genuine intention to have their daughter move into the Property, the Applicants were not misled by the Respondents and so their action must fail.

### **Decision**

33. The Tribunal refused the Application. 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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

  
\_\_\_\_\_  
Legal Member

7 May 2026

\_\_\_\_\_  
Date