Housing and Property Chamber
First-tier Tribunal for Scotland

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/26/0315

Re: Property at 35H Newton Street, Greenock, PA16 8SB ("the Property")

Parties:

Ms Cornelia Zaagman, 2/1 115 Weelington Street, Greenock, PA15 4DX ("the Applicant")

Ms Carmelita Bugauisan, 1 Library Mews, Cantilupe Road, Ross-on-Wye, Herefordshire, HR9 7FN ("the Respondent")

Tribunal Members:

Gabrielle Miller (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Applicant was not misled to leaving the Property. No award was made.

Background

1. An application was received by the Housing and Property Chamber dated 9th January 2026. The application was submitted under Rule 110 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Regulations"). The application was based on the Applicant being misled to leaving the Property by the Respondent.

2. Both parties lodged submissions prior to the hearing.

The Case Management Discussion

3. A CMD was held 13th August 2026 by teleconferencing. Both parties were present. Matters were in dispute so a hearing was fixed.

The hearing

4. A hearing was held on 14th October 2026 at 10am by teleconferencing. The Applicant was present and represented herself. The Respondent was present and represented herself. Mrs Lyn McArthur, McArthur Scott was a witness and joined to give evidence at the end of the hearing.

5. The Tribunal noted that section 58(3) of the Private Housing (Tenancies) (Scotland) Act 2016 states 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."* The Tribunal noted that the central issue was whether the Applicant had been misled into leaving the Property. The Tribunal has the power to make an award for up to six times the value of the rent charge.

The evidence of the Applicant

6. The Applicant said the Notice to Leave was based upon ground 4 but the Respondent did not live in the Property but sold it instead.

7. The Applicant said that she had lived in the area for 9 years prior to moving into this property. She works in the area and her new property is also in this area. She had lived at their previous property for 4 years. She moved from that property as there was a building site opposite it and the noise from that was affecting her ability to work from home.

8. The Applicant said that that she had some issues with the Property when she first moved in. She raised the issues with the letting agent. New appliances were bought. She went without a fridge for several weeks. What she received in return was not a like for like fridge but a lot smaller. She sent an e-mail to the agent to ask that it be considered that a chest freezer was bought for her. The Notice to Leave was sent to her directly after that.

9. The Tribunal asked her view on the Notice to Leave. The Applicant said that she took it in good faith. She believed that the landlord was looking to move back into the area and had changed her mind since the Property was initially let. She said that she was completely blindsided by the Notice to Leave and did feel that may have been because she asked for further white goods.

10. In terms of the potential purchase of the Property the Applicant said that she had taken the appropriate financial advice to whether she was able to afford to buy the Property. She instructed a solicitor to act for her in terms of the sale. She had not seen him in person but had done this by phone and e-mail she did not take advice from her solicitor in terms of the Notice to Leave. The Tribunal asked why she did not do that. The Applicant said that she believed that the Respondent was to move back into the Property and would do so if the sale of the Property was not to her.

11. The Tribunal asked if she was aware of the legal process namely that she did not have to vacate the Property until such time as the case had been taken to a Tribunal. This may have been some months later. The Applicant said that she

was not aware of that. She did not want to be evicted. She did contact a housing association in Greenock. They said they were not able to help her. They had also told her that she could be evicted if she did not leave the Property. The Applicant was frightened by the prospect of being evicted. She had decided that she would need to find new accommodation if she was not able to purchase the Property.

12. The Tribunal asked if she had considered purchasing the Property when it went formally for sale. The Applicant said that she could see what needed to be done to the Property and that she did not wish to buy at that point. She is now in a property of a similar rental value but it is smaller. It's still in the same area.

13. The Tribunal asked what outgoings she had in connection to the move. She said that she had hired a moving company to move her which cost £150. There was an issue with her broadband having a shortened contract. The broadband company saw this not as moving from one property to another but as a cancellation of the contract early. There was a £200 penalty for this. Further to that she had to buy a freezer and sofa. She bought these second hand for £220. She had her own previously but had sold them as she had not needed them for the property that she left which was owned by the Respondent.

14. In terms of being misled the Tribunal asked why she had considered that she had been misled. The Applicant said that she had acted on the understanding and belief that the Property was needed for the Respondent to return to live in it. There was no communication about the change in circumstances and that the response which meant the Respondent wanted to sell the Property. She believes that this has led to her being misled.

15. The Tribunal asked what was the difference if she was being asked to leave under the Notice to Leave for ground 4 or ground 1. The Applicant said that she thought the Respondent was reluctant to sell. If the Respondent was not going to sell to her she thought that the Respondent would take the Property back for her own use. She believed the Respondent to be acting to her own timeline and that she would be moving back in.

16. The Tribunal asked the Applicant when she moved in was there any particular issues and when did she first report it. The Applicant said that she found out on the day that she moved in and contacted the letting agent about the issue she had. An agreement had been made to remove the appliance and it was taken away. The fridge freezer took a longer time. It was replaced but it was replaced by a small refrigerator. The Applicant said that the letting agent took £50 off of the first month rent for the inconvenience to the Applicant.

17. The Applicant wanted to stress that she that she gave up the Property based on the fact that the Respondent was returning to live in the Property. She said she was looking for the Tribunal to make a fair decision.

The evidence of the Respondent

18. The Respondent said that she only owned this property for renting out. She had rented it out on and off for a number of years. She had a job in Bath in 2012 and let the Property out then. She would use it to stay in when she visited the area. She said that there had not been a tenant in it for some time before the Property was let to the Applicant. In June 2025 the Respondent was in Herefordshire. She had a number of issues at her work around her being bullied which required the human resources team at her work to be involved to try to resolve the issue. This had put her under a great deal of personal stress. At the point the Notice to Leave was served on the Applicant, the Respondent wanted to move away from her job. She did not consider that she would be able to find employment close to her in Herefordshire but may be able to do so near this property. She thought she might have had a job at Inverclyde Hospital. She also thought that being in Greenock she could commute to Glasgow. It is not as easy to commute locally where she lives.

19. In October 2025, the Respondent had some significant health conditions which had an impact on her well-being. She required to have tests to make a determination as to her physical health. She had by that point started to struggle financially due to her health issues. The Tribunal asked the Respondent why she had not revoked the Notice to Leave if she had decided at that point that she was no longer going to return to live in the Property. She said that she had not been well and had realised that she would definitely to sell the Property until at that point. She had taken advice from her letting agent. She said that her mind had been changed to selling the Property when the Applicant has started to negotiate with her about buying the Property from her. She left negotiations to her solicitor and her letting agent. She was focusing on the issues she had at work and her own health.

20. The Respondent said the Property was on the market from the 12th of November 2025 and was sold on the 28th of August 2026. Her own personal circumstance is that she rents a room in her cousin's property. She has done since 2019. The Property did have a mortgage on it but it was paid off five years ago. She has used the funds from the sale of the Property to help pay for medical treatment for her family.

The evidence of the Respondent’s witness

21. Mrs MacArthur said that this matter had been primarily dealt with by another member of staff. However, she was fully aware of the case. The Notice to Leave was based on ground 4 because that is what the Respondent had said she intended to do which was moved back to the Property. However, after the Notice to Leave was issued in July 2025 the Respondent decided that she would prefer to sell the Property. Mrs MacArthur said she did not consider that she needed to issue a new Notice to Leave as she had already given a three month notice to the Applicant that the Respondent wished for the return of her property. The Respondent had changed her mind within the first 4 weeks of the Notice to Leave being served. In the circumstances in the Applicant had plenty of time to move from the Property regardless of which ground it was under. It

was ultimately still the decision of the Respondent. The Respondent did not have the intention to recover the Property and rent it out to another tenant.

22. Negotiations had been undertaken with the Applicant in terms of whether she wanted to buy the Property. This had gone on for a few weeks. When that had not transpired as an option the Respondent had said that she was going to leave. She had asked for an extension of time to leave and this was granted. The Tribunal noted that the Notice to Leave would have been 28 days given the fact that the tenancy was under six months old but also noted that 84 days was given to the Applicant. It was the view of the letting agent that this was the correct notice period. Mrs MacArthur said that she considered that the Respondent had not misled the Applicant. It was very clear the Respondent did not let out the Property again. The Applicant had been very aware early on that the Respondent was open to the Property being purchased as she was in negotiations about it and she had a solicitor dealing with matters. Mrs MacArthur said that there had been numerous people that had viewed the Property prior to the Applicant being given the tenancy. The Respondent had been aware at that point and although she may have been considering her position she wanted to proceed with letting out the Property. Matters had preceded after the tenancy had started and that was the point that the Respondent decided that she would no longer be able to continue being a landlord. Mrs MacArthur is clear that she does not believe that the Applicant was misled into leaving the Property.

23. Both parties confirmed that they had provided all the information that they required to the Tribunal. The Tribunal thanked everyone for their evidence.

Findings and reason for decision

24. The Respondent is the owner of the Property. It was the only rental property which she owned.

25. The Applicant was the tenant in the Property.

26. The Property was advertised for rent from March 2025. The Respondent was not involved with the process and left her letting agent to undertake all matters concerning it.

27. A Private Rented Tenancy Agreement commenced 27th June 2025. The rent charge was £475 per month.

28. A Notice to Leave was served upon the Applicant on 15th July 205 based upon ground 4 namely that the Respondent intended to move back into the Property.

29. The management of the Property was undertaken by McArthur Scott. The Respondent did not have any direct dealings with the Applicant.

30. On 26th September 2025, the Applicant emailed the Respondent's letting agent to enquire if the Respondent would consider selling the Property. The Applicant instructed a solicitor who asked for a Home Report but was told by the Respondent's letting agent that the Respondent was reluctant to pay for a

Home Report and that the Applicant should first give an estimate of her offer. The Respondent was seeking an offer for £95,000. This was not acceptable to the Applicant.

31. The Applicant did not consider that this was the correct option for her and her solicitor emailed the Respondent's letting agent on 17th October 2025 intimating that she would not be making an offer.

32. The Applicant moved out of the Property on 27th October 2025.

33. The Applicant moved out of the Property due to the Notice to Leave being served upon her.

34. The Applicant did not seek legal advice in terms of the Notice to Leave.

35. On 12th November 2026 the Property was advertised for sale by the Respondent.

36. The Property was sold on 28th August 2026.

37. The Applicant was the last tenant in the Property.

38. When the Respondent issued the Notice to Leave she did not have an offer of employment in the locality of the Property. She was living then in Herefordshire. She continues to live there and is in the same employment.

39. Section 58 of the Private Housing (Tenancies)(Scotland) Act 2016 states at subsection (3) 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 then tenancy immediately before it was brought to an end."*

It is clear from this that the Tribunal is focused on the word 'misled' and whether the tenant was misled into leaving the Property.

40. The explanatory notes to the 2016 Act at paragraph 90 state :

> "*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 meaning of "intends" has been examined by the English Courts when looking at the application of the statutory test in section 30(1)(f) of the Landlord and Tenant Act 1954 which relates to the renewal of business tenancies in England and Wales. In English cases regarding the 1954 Act it has been established that the landlord has to prove (1) that it has an intention which is both 'genuine' and 'firm and settled' to carry out qualifying works and (2) that it would be able to carry out those works.

41. Considering the matter as a whole the Tribunal were satisfied, on balance, that the Respondent had not misled the Applicant when she said that she was to move back into the Property then sold it as it was the proposal to buy the Property by the Applicant which instigated her to sell it thereafter. The

Respondent was having issues at work which was causing her stress and when she had the Notice to Leave issued the Tribunal found that it was her intention to return to the Property to allow further employment opportunities. The meaning of "intention" was considered by the Supreme Court in the case of *S Franses Ltd v. Cavendish Hotel (London) Ltd (2019 AC 249)*. The Court applied the test outline in the speech of Lord Justice Asquith in *Cunliffe v. Goodman (1950 2 KB)* which states that the question is "if the plaintiff did no more than entertain the idea …if she got no further than contemplative it as a (perhaps attractive) possibility then one would have to say…either that there was no evidence of a positive "intention" or that the word intention was incapable as a matter of construction of applying to anything so tentative and so indefinite" The party must "do more than contemplate" but must have decided to proceed on that basis and must have a "reasonable prospect' of so doing. In subsequent cases, it has also been established that a landlord must show that the intention is not only "genuine" but also "firm and settled".

42. 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:
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> (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.
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> (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.
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> (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."

43. The Tribunal considered the Application together with all documents lodged and the oral submissions from both parties. It appeared to the Tribunal that the Respondent had the intention of moving into the Property when she served the Notice to Leave on the Applicant but that she changed her mind to sell the Property when the Applicant had approached her to buy the Property. All parties appeared to the Tribunal to be honest and credible.

44. The Tribunal accepted that the reasons given by the Respondent leading up to the service of the Notice to Leave that she had intended to move back to the Property to try to resolve her stressful employment situation. She at no point intended to have the Applicant to move out to allow her to rent the Property to someone else. 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.*

Decision

45. The Tribunal considered whether the Applicant had been misled into leaving the Property as contemplated by Rule 110 and the associated provisions relating to wrongful termination of a tenancy. Having carefully considered the evidence before it, the Tribunal was not satisfied that the Applicant had been induced to leave the Property on the basis of a misleading representation made by the Respondent. The evidence demonstrated that the Respondent no longer wished to continue in her position as a landlord and intended to bring her letting activities to an end. The Tribunal accepted that this intention was genuine and was held at the time the Notice to Leave was served.

46. The Tribunal recognised that the Respondent's intentions evolved following service of the Notice to Leave. While the Notice to Leave had relied upon Ground 4, the Respondent ultimately decided that selling the property was the preferred course of action. However, a change in the precise manner in which a landlord intends to dispose of or deal with a property does not, of itself, establish that a tenant was misled. The critical question for the Tribunal was whether the Respondent acted dishonestly or gave a false impression regarding her intentions in order to secure possession of the property by misleading the tenant. On the evidence presented, the Tribunal was not satisfied that this was the case.

47. Particular weight was placed upon the fact that, following the Applicant's departure, the Property was not re-let. There was no evidence that the Respondent sought to place the Property back on the rental market or to obtain a higher rental income from a new tenant. The Tribunal considered that the mischief which the wrongful termination provisions are intended to address is the situation where a landlord relies upon a statutory eviction ground to recover possession and then acts inconsistently with that stated intention, particularly by re-letting the property for financial advantage. The absence of any re-letting was therefore a significant factor weighing against the Applicant's position.

48. The Tribunal further considered that it would be a sensible interpretation of the legislation that its purpose is to protect tenants from being deprived of their tenancy through misuse of an eviction ground, particularly where a landlord's true intention is simply to replace an existing tenant with another tenant on more favourable financial terms. The statutory provisions are designed to discourage the abuse of eviction procedures and to provide a remedy where tenants have been deliberately misled. The evidence in this case did not demonstrate such conduct on the part of the Respondent.

49. The Tribunal also noted that the Applicant was fully aware of the Respondent's intention to sell the property. Indeed, the evidence showed that the Applicant entered into negotiations with the Respondent's letting agents regarding the possibility of purchasing the property herself. These discussions would not have taken place had the Respondent's intention to sell not been known to the Applicant. The existence of those negotiations supported the conclusion that the Applicant understood the Respondent's plans and was not operating under any misconception as to the future of the property.

50. Taking all of the circumstances into account, the Tribunal concluded that the Applicant had failed to establish that she was misled into giving up possession of the property. Although the Respondent's intentions developed from reliance upon Ground 4 to a decision to pursue a sale of the property, the Tribunal was satisfied that the Respondent genuinely intended to cease being a landlord and that the property was not re-let after the tenancy ended. The Applicant was aware of the proposed sale and had personally explored the possibility of purchasing the Property. Accordingly, the Tribunal was not satisfied that a wrongful termination order should be made and the application under Rule 110 was therefore refused.

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.

Gabrielle Miller

14th October 2026

Legal Member/Chair **Date**