



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 58 & 59 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)**

**Chamber Ref: FTS/HPC/PR/24/4496**

**Re: Property at 62 Abergeldie Road, Aberdeen, AB10 6EH (“the Property”)**

**Parties:**

**Mrs Lucy Berry, Mr Simon Berry, 15 Flinders Close, St Albans, AL1 5SZ (“the Applicants”)**

**Mr Philip Ligertwood, Mrs Jennifer Ligertwood, Unknown, Unknown, Australia (“the Respondents”)**

**Tribunal Members:**

**Evan Crainie (Legal Member)**

**Decision (in absence of the Respondents)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a Wrongful Termination Order should be granted against the Respondents.**

**Background**

1. An application dated 26 September 2024 was submitted to the Tribunal under Rule 110 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“**the Rules**”), seeking a Wrongful Termination Order against the Respondents on the basis that the Applicants were misled into ceasing to occupy the Property by the Respondents by virtue of service of a Notice to Leave.
2. The application was accompanied by various documents including copies of the written tenancy agreement between the parties, a copy of the notice to leave issued to the Applicants and correspondence between the Applicants and the Respondents’ agents pertaining to ancillary issues.

**First Case Management Discussion (“CMD”)**

3. A CMD took place on 5 January 2026 by tele-conference (“**the First CMD**”). The note of the First CMD (which is referred to herein and incorporated brevity causa) indicates that the Applicants appeared personally. The Respondents were neither present nor represented. The Tribunal noted that the application had been served by advertisement due to the lack of an up-to-date address for them.
4. The application was insisted upon and the Applicants wished to proceed in the Respondents’ absence. Given service had been effected by advertisement, the Tribunal considered it appropriate to proceed in the Respondents’ absence, as permitted by Rule 29 of the Rules.
5. Upon proceeding, the Tribunal identified a legal issue in respect of the competency of the application (“**the Competency Issue**”). The relevant parts of the note of the First CMD are set out below:

*“4. The Tribunal first sought to clarify the background against which the application had been made. The Applicants received notice to leave the property on March 2024. The ground specified was that in paragraph 1 of schedule 3 of the 2016 Act, namely, the Respondents wished to sell the property. As per the copy notice to leave accompanying the application, the Respondents would have been entitled, in terms of the notice to leave, to make an application to the Tribunal for an eviction order from 1 June 2026. The Applicants sourced alternative accommodation and gave notice to terminate the tenancy on or around 17 April 2024. The tenancy terminated on 16 May 2024, with 28 days notice being required by them in terms of the written agreement. The property was not marketed for sale until 26 October 2024 and, to their knowledge, had not been sold since. Mackinnons solicitors were instructed by the Respondents in respect of the marketing of the property.*

*5. Following this confirmation, the Tribunal identified a legal issue in respect of the application. The application was brought under section 58 of the 2016 Act. Section 58(1) states the following:-*

***58 Wrongful termination without eviction order***

*This section applies where a private residential tenancy has been brought to an end in accordance with section 50.*

*Section 50 is as follows:-*

***50 Termination by notice to leave and tenant leaving***

*(1) A tenancy which is a private residential tenancy comes to an end if—*

*(a) the tenant has received a notice to leave from the landlord, and*

*(b) the tenant has ceased to occupy the let property.*

*(2) A tenancy comes to an end under subsection (1) on the later of—*

*(a) the day specified in the notice to leave in accordance with section 62(1)(b), or*

*(b) the day on which the tenant ceases to occupy the let property.*

*(3) For the avoidance of doubt, a tenancy which is to come to an end under subsection (1) may be brought to an end earlier in accordance with section 48.*

*Section 50 sets out when a tenancy is ended by way of service of notice to leave and the tenant thereafter leaving. Section 50(3), however, also provides for a tenancy being brought to an end in accordance with section 48 of the 2016 Act. Section 48 governs a tenant's ability to serve notice to end the tenancy, with the tenancy ending on the date specified in the notice.*

*6. In the present application the Applicants had given notice to terminate the tenancy on a date earlier than it would have otherwise ended. Termination therefore appeared to have occurred in accordance with section 48 as opposed to section 50 of the 2016 Act. The issue for the Tribunal, at this stage, was, if this was correct, did it preclude an application for a wrongful termination order under section 58?"*

6. At this stage, the Tribunal indicated that it was prepared to adjourn the First CMD to allow the Applicants to consider the issue and take further advice, should they so wish. The first named Applicant confirmed that they did. The Tribunal therefore adjourned the application to a further CMD.

## **Second CMD**

7. A second CMD took place on 10 April 2026 by tele-conference. The Applicants appeared personally. The Respondents were neither present nor represented.
8. The Tribunal noted that following the First CMD, a direction had been issued requiring the Applicants to contact the firm of solicitors instructed by the Respondents in respect of the sale of the Property to notify them of the present application and requesting confirmation as to whether they were instructed by the Respondents in respect of these Tribunal proceedings. The Applicants adhered to this direction (although late but this was not material) and received confirmation on 23 January 2026 that the firm of solicitors instructed by the Respondents in respect of the sale of the Property was not instructed in these Tribunal proceedings.
9. The application was insisted upon and the Applicants wished to proceed in the Respondents absence. Given service had been effected by advertisement (as confirmed by the Certificate of Service by Advertisement before the Tribunal) and attempts had been made to check if the firm of solicitors instructed by the Respondents in respect of the sale of the Property were also instructed in these Tribunal proceedings, the Tribunal considered it appropriate to proceed in the Respondents' absence, as permitted by Rule 29 of the Rules.
10. Prior to the second CMD the Applicants provided written submissions regarding the Competency Issue.

11. The Applicants relied on these submissions at the CMD and expanded on them orally. Further questions were asked of the Applicants by the Tribunal, with the most pertinent being:

Question 1

- i. When did the Applicants get the first indication of the Respondents' intention to sell the Property?

Answer 1

- ii. The first official notification had been when they had received the Notice to Leave. A person had come round in February of 2024, and they were told this was to value the Property for tax purposes which they were a bit suspicious of but the first official notification of the Respondent's intention to sell the Property was when they received the Notice to Leave in March 2024. Upon receipt of the Notice to Leave, they had no reason to believe that the Property wouldn't be sold or at least go up for sale within 3 months of them ceasing to occupy it. They expected the Property to be on the market by around July 2024.

Question 2

- iii. In what way did the Applicants feel they had been misled by the Respondent?

Answer 2

- iv. The Applicants felt that they were misled by the Respondents. The Ground used by the Respondents in the Notice to Leave was Ground 1, namely that the Landlord intends to sell the Property. The Property was neither sold nor put up for sale within 3 months of the Applicants ceasing to occupy it, it was instead put up for sale within roughly 5 months of the Applicants ceasing to occupy it. The Applicants therefore felt they had been misled by the Respondents as the Respondents did not comply with the timescales associated with Ground 1 (i.e. the Property should have been sold or put up for sale within 3 months of the Applicants ceasing to occupy it). It was the Applicants' position that they could have remained within the Property for an additional 2 months and that the Respondents had been premature and misleading in serving the Notice to Leave when they did. The Applicants believed that part of the reason for the Respondents serving them with the Notice to Leave was the number of repairs that the Applicants had been making the Respondents and their Letting Agent aware of.

Question 3

- v. At what point in time did the Applicants come to the view that they had been misled by the Respondents?

Answer 3

- vi. The Applicants believed this would have been around July/August 2024 when they did not see a "For Sale" sign at the Property or any sign of the Property being put on the market for sale. They had been keeping an eye on the market as they were curious to find out what price the Property would be marketed for.

Question 4

- vii. The Applicants were seeking the maximum amount available under a Wrongful Termination Order i.e. six months' rent. How had they come to this figure?

Answer 4

- viii. The Applicants were seeking the maximum amount as service of the Notice to Leave had caused them considerable stress and aggravation. They had 2 young children, and the first-named Applicant was on maternity leave at the time the Notice to Leave was served, having to take on sole responsibility for finding alternative accommodation given the second-named Applicant was working full-time on a busy project. This meant the 2 young children had to be taken to viewings. They had to rush to find a new property, eventually having to move into a smaller property which was more expensive in terms of rent. They also had to pay moving costs.

Question 5

- ix. Did the Applicants seek to discuss the Notice to Leave with the Respondents before serving their own notice using the procedure set out in section 48 of the 2016 Act? Why did they not seek to challenge the eviction at the First-tier Tribunal?

Answer 5

- x. The Applicants didn't try to discuss the Notice to Leave with the Respondents. They were more concerned about finding an alternative property to live in. They have since learned that you can seek to ask the Landlord or Letting Agent to discuss these things, as well as being able to challenge an eviction order at the First-tier Tribunal. However, at the time they weren't aware of this and felt compelled by the Notice to Leave to find somewhere new to live. The Applicants are both working professionals and did not want to be issued with an eviction order; they felt it would have been too great a risk to try and challenge the eviction order in case the proceedings had went against them. The knock-on effect an eviction order could have had on them included the potential to affect job opportunities as well as any further property rentals.

Question 6

- xi. Were there any other reasons for the Applicants serving notice under the procedure set out in section 48 of the 2016 following receipt of the Notice to Leave from the Respondents?

Answer 6

- xii. The Applicants left the Property solely as a result of service of the Notice to Leave. Had they not been served with the Notice to Leave then they would likely still be living in the Property. The repairs mentioned in the Form G and orally at the second CMD were not causing issues with their enjoyment of the Property. As responsible tenants they felt compelled to make the Respondents and their letting agent aware of the repairs being required rather than not saying anything. However, the repairs were not a reason to vacate the Property.

12. Following the Applicants' making their submissions and answering the Tribunal's questions, the CMD was brought to an end, with the Tribunal reserving its decision.
13. Rule 17 of the Rules provides that the Tribunal may do anything at a CMD which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation to decide the application without a Hearing.

### **Findings in Fact**

14. The Respondents are heritable proprietors of the property at 62 Abergeldie Road, Aberdeen, AB10 6EH.
15. The Respondents leased the Property to the Applicants under a Private Residential Tenancy Agreement with a commencement date of 8 July 2022 and an agreed monthly rent of £1650. The monthly rent amount was increased in or around September 2023 to £1699.50.
16. On 6 March 2024, the Respondents (via their letting agent) served a Notice to Leave on the Applicants which required them to remove from the Property on 31 May 2024. Said Notice to Leave relied upon Ground 1 of Schedule 3 to the 2016 Act. The representations made in the Notice to Leave by the Respondents were objectively misleading as the Property was neither sold nor put up for sale within 3 months of the Applicants ceasing to occupy it. Therefore Ground 1 of Schedule 3 to the Act was not established.
17. Upon receipt of the Notice to Leave, the Applicants had no reason to believe that the Property wouldn't be sold or at least go up for sale within 3 months of them ceasing to occupy it. They expected the Property to be on the market by around July 2024.
18. Service of the Notice to Leave caused the Applicants considerable stress and aggravation. The Applicants had 2 young children at the time of service of the Notice to Leave and the first-named Applicant was on maternity leave at the time the Notice to Leave was served, having to take on sole responsibility for finding alternative accommodation given the second-named Applicant was working full-time on a busy project. This meant the 2 young children had to be taken to viewings. The Applicants had to rush to find a new property, eventually having to move into a smaller property which was more expensive in terms of rent. The Applicants also had to pay moving costs.
19. The Respondents neither sold nor marketed the Property for sale within 3 months of the Applicants ceasing to occupy it. The Property was not marketed for sale until 26 October 2024 (around 5 months after the Applicants ceasing to occupy it). The Property remains on the market as at the date of this decision.

20. The Applicants ceased to occupy the Property on 16 May 2024, having brought the tenancy to an end earlier in accordance with the procedure set out in section 48 of the 2016 Act (per section 50(3) of the 2016 Act).
21. The reason for the Applicants moving out of the Property was a direct result of the Notice to Leave being served on them, and which relied upon Ground 1 of the 2016 Act, as aforesaid. The Applicants would not have moved out of the Property at that time had it not been for the service of the Notice to Leave.

### **The Competency Issue**

22. Having considered the Applicants' oral and written submissions regarding the Competency Issue, the Tribunal finds that the Applicants are not precluded from seeking a Wrongful Termination Order under section 58 of the 2016 Act.
23. In their written and oral submissions, the Applicants relied on section 50(3) of the 2016 Act to propose that, whilst they had served notice under the procedure set out in section 48 following receipt of the Notice to Leave from the Respondents, the tenancy had still been brought to an end in accordance with section 50. Therefore section 58(1) was applicable to the facts of this case.
24. In the Tribunal's judgment, section 50(3) applies where, following service of a notice to leave, a tenant brings the tenancy to an end before the date specified in the notice to leave. In such circumstances, although the tenancy is brought to an end by the tenant in exercise of the right conferred by section 48, section 50(3) provides that the tenancy is nevertheless to be treated as coming to an end in accordance with section 50, notwithstanding the tenant's use of section 48. The effect of section 50(3) is therefore not merely to preserve the relevance of the notice to leave, but to attribute legal significance to it in the characterisation of how the tenancy has been brought to an end.
25. Having found that the tenancy was brought to an end in accordance with section 50 of the 2016 Act, the Tribunal must now decide whether the remainder of the requirements of section 58 are met in this case.

### **Reasons for Decision**

26. Following questioning from the Tribunal at the second CMD, the Tribunal was satisfied that the Applicants moved out of the Property as a direct result of the Notice to Leave being served on them.
27. Section 58 of the 2016 Act states:

***“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.”*

28. Section 59 of the 2016 Act states:

**“Wrongful-termination order**

(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.*

(2) *Subsection (3) applies where—*

*(a) the First-tier Tribunal intends to make a wrongful-termination order under section 57 or 58, and*

*(b) two or more persons jointly were the landlord under the tenancy in question immediately before it was brought to an end.*

(3) *The Tribunal may make a wrongful-termination order—*

*(a) against all, some, or only one of the former joint landlords,*

*(b) stating that each person against whom the order is made is liable to pay a specified amount, but the cumulative total of each of the specified amounts must not exceed six months’ rent,*

*(c) stating that each person against whom the order is made is jointly and severally liable for the whole amount to be paid.*

(4) *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.”*

29. Applying the four-stage test set out by Sheriff Collins KC at paragraph 13 of [Reynolds v Henry 2024UT45](#), the Tribunal was satisfied that the Applicants 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.

30. As confirmed by the findings in fact, the four-stage test is met in this case but for the avoidance of doubt the Tribunal addresses the individual stages of the test:

- i. The Landlord made a representation to the tenant in the form of the Notice to Leave issued on 6 March 2024;
- ii. The representation made in the Notice to Leave was objectively misleading as the Property was neither sold nor put up for sale within 3 months of the Applicants ceasing to occupy it, therefore Ground 1 of Schedule 3 to the Act was not and could not be established;
- iii. The Applicants were actually misled by the Respondents' representation. Upon receipt of the Notice to Leave, they had no reason to believe that the Property wouldn't be sold or at least go up for sale within 3 months of them ceasing to occupy it. They expected the Property to be on the market by around July 2024; and
- iv. The reason for the Applicants moving out of the Property was 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 Notice to Leave.

31. The Tribunal concludes that the Respondents did not have a genuine intention to sell the Property, or at least put it up for sale, within 3 months of the tenant ceasing to occupy the Property. The Tribunal, however, was not satisfied that this was an intentional misleading on the part of the Respondents.

32. It is difficult to determine the Respondents' intention in this matter given the lack of participation on their part. However, the Tribunal notes the comments of Sherrif di Emidio at paragraph 19 of [\*Affleck v Bronsdon\*, \[2020\] UT 44](#), "*Leases, like all contracts, are interpreted according to what people have said and done, not according to their innermost thoughts.*" With this in mind, whilst the Respondents neither sold nor marketed the Property for sale within 3 months of the Applicants ceasing to occupy it and therefore misled the Applicants such that Ground 1 (which the Notice to Leave relied upon) could not be established, they did market the Property within roughly 5 months of the Applicants ceasing to occupy it. It cannot be said that the time between the Applicants ceasing to occupy the Property and it being marketed for sale was grossly excessive.

33. The Tribunal notes that the legal test in respect of the 3 months' timescale for Ground 1 is an ex-ante test i.e. the Tribunal is to take into account the Landlord's intention at the time the Notice to Leave is served, rather than how long the Landlord took in reality to sell or put up for sale the Property following the tenant ceasing to occupy it. As discussed, the Respondents' intention is difficult to determine in this case, but the Tribunal could not conclude that the Respondents intended to sell the let Property, or at least put it up for sale, within 3 months of the tenant ceasing to occupy the Property. There may have been valid explanation as to why it took 5 months rather than 3 to market the Property, such as the Respondents (so far as the Tribunal is aware) living in Australia such that they had to rely on third parties in Scotland to deal with

getting the Property ready to market along with matters ancillary to this but there was no evidence of this before the Tribunal.

34. Therefore, the Tribunal was satisfied that a Wrongful Termination Order should be issued but was not satisfied that the financial penalty should be at the upper end of the scale.
35. The maximum penalty which can be imposed is six times the monthly rental. The monthly rental for this property was initially £1650 but increased to £1699.50 in or around September 2023.
36. The Tribunal proceeded on the basis that the determination of the award required the Tribunal to exercise its judicial discretion to consider what would be fair, just and proportionate. In forming its approach to where this breach sat on the scale of sanctions open to the Tribunal, the Tribunal considered whether there were certain factors that weighed towards leniency and severity. The Tribunal was not satisfied that there had been any malice or wilful intent on the part of the Respondents and therefore considered that a Wrongful Termination Order awarding the sum of £4,248.75 to the Applicants, was appropriate, this equates to 2.5 times the monthly rental amount.

## **Decision**

37. Under sections 58 & 59 of the 2016 Act, the First-tier Tribunal for Scotland (Housing and Property Chamber) makes a Wrongful Termination Order against the Respondents and orders that the Respondents pay the Applicants the sum of FOUR THOUSAND TWO HUNDRED AND FORTY-EIGHT POUNDS STERLING AND SEVENTY-FIVE PENCE (£4,248.75) within 14 days of service of this Order.

## **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.**

# E. Crainie

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Legal Member/Chair

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20.4.26  
Date

