

Housing and Property Chamber
First-tier Tribunal for Scotland



Decisions with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 51 and 71 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/23/3038 and FTS/HPC/CV/23/3039

Re: Property at 19b Diamond Lane, Aberdeen, AB10 1WB (“the Property”)

Parties:

Mr Angus MacDonald and Mrs Isobel MacDonald, both residing at 65 Glenpatrick Road, Elderslie, Paisley, PA5 9AG (“the Applicants”) and

Trinity Factoring Services Ltd, 1 South Mount Street, Aberdeen, AB25 2TN 1HR (“the Applicants’ Representative”) and

Miss Fiza Ali, residing at 19b Diamond Lane, Aberdeen, AB10 1WB (“the Respondent”)

Tribunal Members:

**G McWilliams- Legal Member
A Khan - Ordinary Member**

Decisions in absence of the Respondent

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determines as follows:

- 1) To grant an eviction order; and**
- 2) To grant an order for payment by the Respondent to the Applicants of the sum of £2,155.00.**

Background

1. These are Applications for an eviction order in terms of Rule 109 (Application for an eviction order) and for a payment order in terms of Rule 111 (Application for civil proceedings in relation to a private residential tenancy) of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the 2017 Rules”).

Case Management Discussion 11th January 2024

2. A Case Management Discussion (“CMD”) proceeded by remote teleconference call at 2.00pm on 11th January 2024. The Applicants’ Representative’s Mrs R MacDonell attended. The Respondent Miss Ali did not attend and was not represented. Sheriff Officers had served copies of the Applications by depositing them in the letterbox at the Property on 16th November 2023.
3. Mrs MacDonell referred to the updated rent statement which she had submitted to the Tribunal’s Office on 22nd December 2023 and stated that the rent arrears owing are £2,155.00. She submitted that after the parties’ tenancy agreement had commenced on 21st October 2021, Miss Ali had been in arrears of rent in 2022 but had cleared these. Mrs MacDonell said that Miss Ali has consistently been in arrears of rent since February 2023. She stated that she understood that Miss Ali was a student. She said that Miss Ali previously proposed to settle arrears of rent in September 2023, after receiving Student SAS funding, but had not done so. Mrs MacDonell said that her last contact with Miss Ali was on 1st December 2023 when the latter had enquired about a payment plan and help that may be available to her in connection with outstanding rent. Mrs MacDonell referred to copy e-mails which she had submitted with the Applications and said that she had again sent written information to Miss Ali, in early December 2023, setting out options available. Mrs MacDonell said that she has not heard from Miss Ali in reply. Mrs MacDonell submitted that the Applicants, Mr and Mrs MacDonald, are not able to sustain their continuing loss of rent and sought orders for payment of the rent arrears owing as well as for recovery of possession of the Property.

Findings in Fact and Law and Reasons for Decisions

4. In terms of Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) the Tribunal is to issue an eviction order under a private residential tenancy (“PRT”) if, on application by a landlord, it finds that one of the eviction grounds named in Schedule 3 applies.
5. Schedule 3 (12) (1) of the 2016 Act provides that it is an eviction ground that the tenant has been in rent arrears for 3 or more consecutive months.
6. Section 71 of the 2016 Act provides as follows:
 - (1) In relation to civil proceedings arising from a private residential tenancy-
 - (a) the First-tier Tribunal has whatever competence and jurisdiction a sheriff would have but for paragraph (b),

(b) a sheriff does not have competence or jurisdiction.

(2) For the purposes of subsection (1), civil proceedings are any proceedings other than-

(a) the prosecution of a criminal offence,

(b) any proceedings related to such a prosecution.

7. Accordingly, the Tribunal has jurisdiction in relation to claims by landlords (such as the Applicants) for an eviction order and order for payment of unpaid rent against a tenant (such as the Respondent) in respect of a tenancy such as the tenancy agreement of the parties.

8. Miss Ali has not lodged representations with the Tribunal regarding the Applications and, in particular, the reasonableness of the grant of an eviction order. She did not attend the CMD to provide any evidence and/or make any submission to oppose and contradict the basis for the orders sought.

9. Having considered all of the available evidence and the submission of Mrs MacDonell, the Tribunal finds in fact that Miss Ali has been in rent arrears for 3 or more consecutive months and currently owes the amount of £2,155.00 to the Applicants. The Tribunal finds in law that the ground in Schedule 3 (12) (1) of the 2016 Act is met and determines that it is reasonable that an eviction order be granted.

10. Given the provisions of the Cost of Living (Protection for Tenants) (Scotland) Act 2022 the Eviction Order cannot be enforced for a period of six months from today's date unless the provisions in that Act are suspended before then. The provisions may be suspended on 31st March 2024. The Tribunal suggests that Miss Ali obtains advice from a specialist housing law organisation regarding these provisions.

Decisions

11. Accordingly, the Tribunal makes an order for eviction of the Respondent, Miss Ali, from the Property and, also, an order for payment by Miss Ali to the Applicants, Mr MacDonald and Mrs MacDonald, of the sum of £2,155.00.

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.

11th January 2024

Legal Member

Date