

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/24/5169 and FTS/HPC/CV/24/5170

Re: Property at 120 Queen Street, Peterhead, Aberdeenshire, AB42 1TY (“the Property”)

Parties:

Miss Ghail Smith, 122 Queen Street, Peterhead, Aberdeenshire, AB42 1TY (“the Applicant”)

and

Mr Atholl Scott, 120 Queen Street, Peterhead, Aberdeenshire, AB42 1TY (“the Respondent”)

Tribunal Members:

**G McWilliams- Legal Member
A Moore - 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 to the Applicant, Miss Ghail Smith, by the Respondent, Mr Atholl Scott, of the sum of £4,840.00.**

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 on 20th May 2025

2. A Case Management Discussion (“CMD”) proceeded by remote teleconference call at 10.00am on 20th May 2025.
3. The Applicant, Miss Smith, and her husband Mr J. Cook, attended. The Respondent, Mr Scott, did not attend and there was no explanation for his absence. The Tribunal had noted that Sheriff Officers had served the Applications’ papers on Mr Scott on 27th March 2025 by posting them through the letterbox of the Property.
4. Miss Smith referred to the Applications and subsequent e-mails which she had sent to the Tribunal’s office. She said that Mr Scott last paid monies towards his rent account, of £250.00, on 2nd December 2024. She said that his arrears of rent now amount to £7,050.00. Miss Smith stated that she and her husband had a property inspection at the Property last night, 19th May 2025, which Mr Scott attended. She said that the Property had been cleared, with the exception of a bed, and Mr Scott’s belongings were packed in boxes. Miss Smith stated that Mr Scott told her and her husband that he had now applied to Aberdeen City Council for a tenancy, having previously informed them that he had applied to Aberdeenshire Council. Miss Smith stated that Mr Scott was aged 45 and had lived alone at the Property since the tenancy began in August 2023. She said that he had intermittently gone to stay with his parents in Aberdeen and also in a nearby village in Hatton. She said that his girlfriend had, at times, stayed with him in the Property. Miss Smith stated that she was not aware of Mr Scott having any health conditions. She said that he has children from previous relationships but she had not seen them visiting him for over a year. Miss Smith clarified that the home that she and her husband share is downstairs from the Property. Miss Smith acknowledged that she and her husband had not sent a rent statement to the Tribunal’s office. She and her husband stated that they may lodge a further Application with the Tribunal’s office seeking an order for payment of the current rent arrears due, which is in a greater amount than the sum notified to Mr Scott in the Application papers served on him by Sheriff Officers on 27th March 2025. Miss Smith acknowledged that Mr Scott had paid a deposit to her, of £1,800.00, at the commencement of the tenancy and that she would take account of this in any future proceedings. Miss Smith also referred to a receipt from Cruickshanks Joinery Ltd, dated 13th March 2024, within the Application papers, for replacement of the front door at the Property at a total cost of £2,280.00. She said that the front door had been “kicked in” in March 2024 and that she seeks, she considers fairly, that Mr Scott repays her one half of the replacement cost, being £1,140.00. Miss Smith stated that Mr Scott, in her direct discussions with him on 24th April 2025, had stated that he would repay to her the arrears of rent owing and also the said amount of £1,140.00 as a contribution towards the replacement door cost. She asked that the Tribunal grant the orders sought in both Applications.

Findings in Fact and Law and Reasons for Decisions

5. 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.

6. Schedule 3 (12) (1) to the 2016 Act provides that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.
7. 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.
8. Accordingly, the Tribunal has jurisdiction in relation to claims by landlords (such as the Applicant) for an eviction order and order for payment of unpaid rent and other costs against a tenant (such as the Respondent) in respect of a tenancy such as the tenancy agreement of the parties.
9. Having considered all of the Applications papers and the submission of Miss Smith and her husband Mr Cook, the Tribunal finds in fact that the Applicant Miss Smith has provided the Tribunal, in her Application for an eviction order, with copies of the parties' PRT, the Notice to Leave ("NTL") served on Mr Scott and the Section 11 (Homelessness Etc. (Scotland) Act 2003) Notice subsequently intimated to Aberdeenshire Council. All of these documents and forms had been correctly and validly prepared in terms of the provisions of the relevant legislation, and the procedures set out in the legislation had been correctly followed and applied. The NTL, and the Application for an eviction order, proceed in terms of Schedule 3 (1) in the 2016 Act. The Tribunal further finds in fact that when the NTL was served on him, on 8th October 2024, Mr Scott had been in rent arrears for three consecutive months, and that when both Applications were lodged with the Tribunal's office, in November 2024, Mr Scott was in rent arrears of £3,700.00. He has not paid any rent to the Applicant since December 2024 and is currently in rent arrears in the sum of £7,050.00. The Tribunal also finds in fact that the front door of the Property had been damaged beyond repair in March 2024, the cost of the supply and fit of a replacement door was £2280 and Mr Scott has agreed with Miss Smith that he will make payment to her in respect of one half of that cost.
10. In making its findings in fact the Tribunal relied on the documentation within the Applications and, in particular, on the oral submissions of Miss Smith and her husband Mr J. Cook, the terms of which were consistent with the terms of the relevant documentation.
11. The Tribunal, in making their findings in fact, also placed reliance on the absence of any contradictory information or submissions from the Respondent Mr Scott. The papers in respect of both Applications had been served effectively on him on 27th

March 2025. He is aware of the important nature of the Applications but has not lodged any representations regarding their merits and the reasonableness of the grant of the orders sought. The Tribunal's office has not received any communications from Mr Scott or any representatives or advisers acting on his behalf.

12. Accordingly, the Tribunal find in law that the ground in Schedule 3 (12) (1) of the 2016 Act is met as the Respondent Mr Scott has been in rent arrears for three or more consecutive months and that it is reasonable that an eviction order be granted. The Tribunal also find in law that the Respondent is obliged to pay rent to Miss Smith, in terms of the parties PRT, and, having not done so consistently, was in rent arrears in the sum of £3,700.00 when the Application for an order for payment was submitted and is due to pay that sum to her. The Tribunal further find in law that Mr Scott agreed to pay Miss Smith the sum of £1140.00, in respect of half of the front door replacement cost, he has not done so and therefore it is fair and reasonable that Miss Smith's claim for Mr Scott to be ordered to pay her that sum, of £1,140.00, succeeds. The Tribunal therefore find that the Applicant, Miss Smith, is entitled to an order for the Respondent Mr Scott's payment to her of the aggregate sum of £4,840.00. Miss Smith may submit a fresh Application to the Tribunal for a further payment order in respect of other rent arrears owing.

Decisions

13. Therefore, the Tribunal makes an order for eviction of the Respondent, Mr Atholl Scott, from the Property at 120 Queen Street, Peterhead, Aberdeenshire, AB42 1TY and, also, an order for payment to the Applicant, Miss Ghail Smith, by the Respondent, Mr Atholl Scott, of the sum of £4,840.00.

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.

Gerald McWilliams

20th May 2025