

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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**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 Refs: FTS/HPC/EV/24/5618 and FTS/HPC/CV/24/5621**

**Re: Property at Flat 5, 2 Ponton Street, Edinburgh, EH3 9QQ (“the Property”)**

**Parties:**

**Dr Joan Bricall, 66 Lumsdaine Drive, Dalgety Bay, Fife, KY11 9YU (“the Applicant”) and**

**Mr Mark McKie, Flat 5, 2 Ponton Street, Edinburgh, EH3 9QQ (“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, Dr Joan Bricall, by the Respondent, Mr Mark McKie, of the sum of £3,380.00.**

### **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 19<sup>th</sup> June 2025**

2. A Case Management Discussion (“CMD”) proceeded by remote teleconference call at 10.00am on 19<sup>th</sup> June 2025.
3. The Applicant, Dr. Bricall, attended. The Respondent, Mr McKie, 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 McKie on 8<sup>th</sup> April 2025 by posting them through the letterbox of the Property.
4. Dr. Bricall referred to the Applications and subsequent e-mails which he had sent to the Tribunal’s office. He stated that Mr McKie had not made any rent payments in May and June 2025 and that his arrears of rent are now in the sum of £5,480.00. Dr. Bricall said that Mr McKie had told him that he wishes to move out of the Property as soon as possible. Dr Bricall said that he was not sure that Mr McKie would do so, in particular given his history of poor communication. Dr Bricall said that Mr McKie works full time as a receptionist in a bank in Edinburgh and, he believes, is aged around 25 or so. Dr Bricall stated that he was not aware of Mr McKie having any health problems and does not believe that he has any dependants. Dr Bricall stated that he understood that Mr McKie had lived in the Property, which has one bedroom, alone since the tenancy started in May 2024. Dr Bricall stated that he pays a mortgage for the Property and that he also rents out another four properties, some of which have mortgages. Dr Bricall also stated that he is receiving counselling in respect of anxiety caused by his difficulties with Mr McKie’s tenancy of the Property, and, in particular, the increasing rent arrears. Dr Bricall asked the Tribunal to grant an eviction order and also an order for Mr McKie’s payment to him of the outstanding rent arrears of £3,380.00 which amount was intimated to Mr McKie, by letter from the Tribunal’s office, on 12<sup>th</sup> May 2025.

## **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 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 Dr Bricall, the Tribunal finds in fact that Dr Bricall has provided the Tribunal, in his Application for an eviction order, with copies of the parties' PRT, the Notice to Leave ("NTL") served on Mr McKie and the Section 11 (Homelessness Etc. (Scotland) Act 2003) Notice which was intimated to City of Edinburgh 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 (12) (1) in the 2016 Act. The Tribunal further finds in fact that when the NTL was served on Mr McKie, on 29<sup>th</sup> October 2024, Mr McKie had been in rent arrears for three consecutive months, and that when both Applications were lodged with the Tribunal's office, in December 2024, Mr McKie was in rent arrears of £1,280.00. Mr McKie has not paid rent to Dr Bricall since Dr Bricall notified the Tribunal's office that the arrears of rent were in the sum of £3,380.00, on 23<sup>rd</sup> April 2025, and Mr McKie is currently in rent arrears in the sum of £5,480.00.
10. In making its findings in fact the Tribunal relied on the documentation within the Applications and, in particular, on the oral submission of Dr Bricall, 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 McKie. The papers in respect of both Applications had been served effectively on him on 8<sup>th</sup> April 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 McKie 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 McKie 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 Dr Bricall, in terms of the parties PRT, and, having not done so consistently, was in rent arrears in the sum of £3,380.00 on 23<sup>rd</sup> April 2025 and is due to pay that sum to Dr Bricall. The Tribunal therefore find that the Applicant, Dr Bricall, is entitled to an order for the Respondent Mr McKie's payment to him of the sum of £3,380.00. Dr Bricall 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 Mark McKie, from the Property at Flat 5, 2 Ponton Street, Edinburgh, EH3 9QQ and, also, an order for payment to the Applicant, Dr Joan Bricall, by the Respondent, Mr Mark McKie, of the sum of £3,380.00.

## **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.**

**G McWilliams**

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**19<sup>th</sup> June 2025**

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