

# **Housing and Property Chamber**

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

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**Decisions with Statements 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 Reference Nos: FTS/HPC/EV/25/1080 and FTS/HPC/CV/25/1082**

**Property: 3B Walker Place, Arbroath, DD11 1HQ (“the Property”)**

**Mr Gerald McGuinness, Berryards Cottage, Lynedoch Street, Greenock, PA15 4BG (“the Applicant”) and**

**Kee Solicitors Ltd, 146 West Regent Street, Glasgow, G2 2RQ (“the Applicant’s Representative”) and**

**Miss Rachel Storey, 3B Walker Place, Arbroath, DD11 1HQ (“the Respondent”)**

**Tribunal Members:**

**G McWilliams- Legal Member**

**D Fotheringham- Ordinary Member**

**Decisions**

**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, Mr Gerald McGuinness, by the Respondent, Miss Rachel Storey, of the sum of £13,000.00, with interest thereon at the rate of 4.25% per annum from 16<sup>th</sup> September 2025 until payment.**

**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 25<sup>th</sup> August 2025**

2. A Case Management Discussion ("CMD") proceeded by remote teleconference call on 25<sup>th</sup> August 2025. Reference is made to the Notes on that CMD.

### **Case Management Discussion on 16<sup>th</sup> September 2025**

3. A further CMD proceeded by remote teleconference call at 10.00am on 16<sup>th</sup> September 2025. The Applicant, Mr McGuinness, and his Representative's Mr D Gallacher attended. The Respondent, Miss Storey, also attended.
4. Mr Gallacher referred to the Applications and discussions at the previous CMD. He said that the monthly rent due on 1<sup>st</sup> September 2025, of £500.00, had not been paid and that the outstanding arrears of rent are now in the sum of £13,000.00. Mr Gallacher stated that neither he nor Mr McGuinness has received any contact from Miss Storey, or anyone acting on her behalf, since the previous CMD. Mr Gallacher said that he and Mr McGuinness sympathise with Miss Storey's difficult circumstances in recent years. He said, however, that Mr McGuinness wishes to recover the Property as soon as possible as Mr McGuinness is not confident that he will receive any payment in respect of arrears of rent or ongoing rent, given that Miss Storey has not paid any rent since her tenancy started on 1<sup>st</sup> August 2023 Mr Gallacher re-iterated that Mr McGuinness had planned to sell the Property before being asked, by a family member, to let it to Miss Storey in August 2023. He said that Mr McGuinness now wishes to sell the Property as originally planned. Mr Gallacher and Mr McGuinness each said that they would have no objection to an enforcement date for any eviction order granted being deferred for a short period to allow Miss Storey sufficient time to vacate the Property and move to other accommodation.
5. Miss Storey stated that she accepts that she has never paid rent since the tenancy agreement started. She said that she has now applied to DWP for a backdated payment, and ongoing payments, in respect of her housing costs. She stated that she has not been told by DWP the likely outcome of her application for backdated rent costs and, if favourable, the amount of payment which would be made. Miss Storey said that she does not have any documentation from DWP regarding her applications to them. Miss Storey stated that she has spoken with Angus Council's Welfare Rights Team as well as the Citizen's Advice Bureau. She said that those agencies could not give her specific advice in relation to these Applications. Miss Storey also reiterated that she is not in employment. She said that she had intended to begin a college course two weeks ago but had not managed to do this. She asked the Tribunal to consider adjourning the CMD to allow her time to obtain further information about her applications to DWP.

### **Findings in Fact and Law and Reasons for Decisions**

6. 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.

7. 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.
8. 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.
9. 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 tenants (such as the Respondent) in respect of a tenancy such as the tenancy agreement of the parties.
10. Having considered all of the Applications papers and the oral submissions of Mr Gallacher, Mr McGuinness and Miss Storey, the Tribunal finds in fact, on a balance of probabilities, that Mr McGuinness, through his Representative, has provided the Tribunal, in his Application for an eviction order, with copies of the parties' PRT, the Notice to Leave ("NTL") served on Miss Storey and the Section 11 (Homelessness Etc. (Scotland) Act 2003) Notice which was intimated to Angus 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) in the 2016 Act. The Tribunal further finds in fact that when the NTL was served on Miss Storey, she had been in rent arrears for three consecutive months, and that when both Applications were lodged with the Tribunal's office, there were further rent arrears. Miss Storey has not paid any rent to Mr McGuinness in terms of the tenancy agreement and she is currently in arrears in the sum of £13,000.00.
11. In making its findings in fact the Tribunal relied on the documentation within the Applications and the oral submission of Mr Gallacher, the terms of which were consistent with the terms of the relevant documentation, as well as the oral submissions of Mr McGuinness and Miss Storey.
12. Accordingly, the Tribunal find in law that the ground in Schedule 3 (12)) of the 2016 Act is met as the Respondent Miss Storey has been in rent arrears for three or more consecutive months. The Tribunal also find that it is reasonable that an eviction order be granted as this will allow Mr McGuinness to bring the PRT to an end to limit the accrual of further rent arrears. The grant of the order should also assist Miss Storey in an application for alternative housing to her local authority or a housing association. The Tribunal further find that it is reasonable that the

enforcement date in respect of the eviction order be deferred until 14<sup>th</sup> November 2025 to allow sufficient time for Miss Storey to progress an application for alternative housing.

13. The Tribunal do not find it reasonable to adjourn the CMD. The Tribunal adjourned the previous CMD, which took place on 25<sup>th</sup> August 2025, to provide Miss Storey with an opportunity to consider what proposals, if any she was able to make to Mr McGuinness in respect of repayment of the significant arrears of rent owing and ongoing rent due. Miss Storey has not made any payment of rent arrears or ongoing rent since the last CMD and has not made any proposals for payment. In the circumstances the Tribunal find that it is fair and reasonable to grant the eviction order sought. In making their decision the Tribunal have weighed all relevant factors and find the balance of fairness rests with Mr McGuinness given that he has never received any payment of rent in respect of the parties' tenancy agreement and the arrears owing are currently in the significant amount of £13,000.00.
14. The Tribunal also find in law that as Miss Storey is obliged to pay rent to Mr McGuinness, in terms of the parties PRT, and, has not done so, she is due to pay the current rent arrears amount of £13,000.00 to him. The Tribunal therefore find that Mr McGuinness is entitled to an order for Miss Storey's payment to him of the sum of £13,000.00. The Tribunal further find that it is reasonable for interest to apply in respect of any unpaid payment, at the rate sought by Mr Gallacher on behalf of Mr McGuinness, of 4.25% per annum, given the history of the parties' PRT when no payments of rent have been made.

### **Decisions**

15. Therefore, the Tribunal makes an order for eviction of the Respondent, Miss Rachel Storey, from the Property at 3B Walker Place, Arbroath, DD11 1 HQ and also an order for payment to the Applicant, Mr Gerald McGuinness, by the Respondent, Miss Rachel Storey, of the sum of £13,000.00 with interest thereon at the rate of 4.25% per annum from 16<sup>th</sup> September 2025 until payment

### **Note**

16. As the Tribunal stated to Mr McGuinness, Mr Gallacher and Miss Storey when delivering their decision orally at today's CMD, they are not unsympathetic to Miss Storey's difficult personal circumstances which she outlined at both CMDs. As the Tribunal also stated, however, they have to weigh all relevant factors when reaching decisions in respect of Applications, such as those which Mr McGuinness has made, and they have found that it is, on balance, fair and just that the orders sought in the Applications be granted, for the reasons stated above. The Tribunal wish Miss Storey success in obtaining other accommodation for herself and her daughter and in moving forward. After today's CMD had concluded the Tribunal arranged for the Tribunal's office to ask Police Scotland to check on Miss Storey's wellbeing, in particular given the serious nature of the Applications' proceedings, the decisions made today and Miss Storey's recent, difficult personal circumstances. The Tribunal have noted that Police Scotland have reported that they are already assisting Miss Storey given her recent difficult personal circumstances and they have said that they will continue to do so.

## **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**

**16<sup>th</sup> September 2025**