

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/EV/19/3271**

**Re: Property at 18 Bankside Court, Denny, FK6 6HA (“the Property”)**

**Parties:**

**Mr Mohammad Issa, Mrs Safia Issa, 29 Hillcrest Place, Head of Muir, Denny, FK6 5PN (“the Applicants”)**

**Ms Lindsay McDonald, 18 Bankside Court, Denny, FK6 6HA (“the Respondent”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**Background**

This is an application for an eviction order dated 6<sup>th</sup> October 2019 and brought in terms of Rule 109 (Application for an eviction order) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicants seek an eviction order in relation to the Property against the Respondent, and provided with their application copies of the private residential tenancy agreement, notice to leave, section 11 notice and relevant executions of service.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 20<sup>th</sup> November 2019, and the Tribunal was provided with the execution of service.

## **Case Management Discussion**

A Case Management Discussion was held on 18<sup>th</sup> December 2019 at Wallace House, Maxwell Place, Stirling. The Applicants appeared, and were not represented. The Respondent did not appear, nor was she represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

The Tribunal had written to the Applicants in advance of the Case Management Discussion noting that the notice to leave provided by them referred to documents which were attached to the notice to provide details and evidence of the ground for eviction required in Part 3 of the notice. Those had not been provided to the Tribunal.

The Applicants produced the documents which were attached to the notice to leave as requested by the Tribunal. These turned out to be text conversations between the parties in which the Applicants made various requests for rent arrears to be paid without specifying those in any great detail.

The Applicants did not specify a numbered ground in their application to the Tribunal, but stated that they sought an order on the basis of rent arrears of £1,350.00

The Tribunal noted that the notice to leave relied on ground 11 (breach of tenancy agreement), but the Applicants clarified that this was an error, and that they sought an order solely upon ground 12 (rent arrears).

In response to an enquiry by the Tribunal, the Applicants confirmed that they had not produced a rent arrears statement, but that the Respondent had rent arrears comprising 20 weeks (rental being £150.00 per week in terms of the agreement) which totalled £3,000.00 to date.

The Applicants confirmed that rent arrears commenced from 2<sup>nd</sup> August 2019, and that accordingly by the date of the notice to leave, being 29<sup>th</sup> August 2019, the Respondent had been in arrears for a period of nearly four weeks. By the date of the application, the Respondent was in arrears for a period of about nine weeks.

The Tribunal explained that in terms of the *Private Housing (Tenancies) (Scotland) Act 2016* ("the Act"), the Tribunal can only issue an eviction order if it finds that one of the eviction grounds named in schedule 3 applies.

Ground 12 (rent arrears) may only be relied upon if the tenant has been in arrears of rent for three or more months as at the date of the notice to leave.

## **Statement of Reasons**

In terms of Section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* ("the Act"), the Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

Ground 12 of Schedule 3 to the Act provides that it is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

The Applicants accepted that as at the date of the notice to leave the Respondent had not been in rent arrears for three months, nor indeed had she been by the date of their application.

That being so, there are no valid grounds for eviction which the Tribunal is allowed to consider in this application, and accordingly the Tribunal may not issue an eviction order.

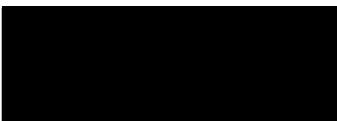
For the above reasons, the Tribunal cannot grant an eviction order as sought in this application, upon the basis that the application is brought prematurely.

### **Decision**

In these circumstances, and for these reasons, the Tribunal refused the application.

### **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.**



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**Legal Member/Chair**

18/12/19

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**Date**