



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)**

**Chamber Ref: FTS/HPC/EV/22/2753**

**Re: Property at 7A Hill Street, Wishaw, ML2 7AT (“the Property”)**

**Parties:**

**Greywalls Property Limited, 16 Truss Hill Road, Ascot, SL5 9AL (“the Applicant”)**

**Mrs Catherine Williams, 7A Hill Street, Wishaw, ML2 7AT (“the Respondent”)**

**Tribunal Members:**

**Alastair Houston (Legal Member) and Sandra Brydon (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order be made in terms of paragraph 13 of schedule 3 of the 2016 Act.**

**1. Background**

1.1 This is an application under rule 109 of the Chamber Rules whereby the Applicant was seeking an eviction order due to rent arrears outstanding by the Respondent. The application was accompanied by copies of the written tenancy agreement between the parties, the requisite notice to leave, letters sent by the Applicant to the Respondent and a rent statement.

1.2 No representations had been received from the Respondent in advance of the Case Management Discussion.

**2. The Case Management Discussion**

2.1 The Case Management Discussion took place on 21 November 2022 by teleconference. Mr Richard Driver of the Applicant was personally present. The Respondent was neither present nor represented.

- 2.2 Mr Driver confirmed that the application was insisted upon and that the Tribunal ought to proceed in the absence of the Respondent. The Tribunal noted that service of the application and notice of the Case Management Discussion had been given to the Respondent by Sheriff Officer on 12 October 2022. Accordingly, the Tribunal considered it appropriate to proceed in the Respondent's absence as permitted by Rule 29 of the Chamber Rules.
- 2.3 Mr Driver confirmed that the rent arrears currently stood at £5915.00. The last payment made by the Respondent was on 1 October 2022 for £1000.00. The monthly rent was £895.00. This was the only payment made in the last six months with no payment following in November. The pre-action letters sent to the Respondent had been sent on 7, 14 and 30 June 2022. A telephone call had been scheduled with the Respondent's husband two weeks ago to discuss the arrears but Mr Driver had been unable to reach him.
- 2.4 With regards to the personal circumstances of the Respondent, Mr Driver understood that she was married. He was unsure if she was currently in employment however her husband was self-employed as a roofer. He believed that they resided at the property with three children, one of whom was a baby. He did not have their precise ages. He did not have any information with regards to household income but none of the payments received to the rent account came via the Department for Work & Pensions. There had been efforts to discuss the rent arrears with the Respondent but the arrears continued to increase and the Respondent has failed to engage with the Applicant.

### **3. Reasons For Decision**

- 3.1 The Tribunal considered the application and accompanying documentation, together with the submissions made by the Applicant's representative. Given the material before it, the Tribunal considered it could determine the application without the need for a hearing, as permitted by Rule 19 of the Chamber Rules.
- 3.2 The Tribunal was mindful that it now required consideration as to whether it was reasonable to issue an eviction order on the basis of paragraph 12 of schedule 3 of the 2016 Act. The live issue in the present application was therefore restricted to one of reasonableness.
- 3.3 The legislation did not specify any particular factors to which the Tribunal was to have regard beyond the factual matters which constituted the ground for an eviction order relied upon. Accordingly, the Tribunal approached the issue of reasonableness in accordance with the case of *Barclay v Hannah* 1947 SC 245 whereby the Tribunal was under a duty to consider the whole facts and circumstances in which the application was made.

3.4 The Tribunal considered that the arrears were significant and continuing to increase. The Tribunal considered the letters sent by the Applicant to constitute compliance with the pre-action requirements. In the absence of any representations by the Respondent as to why such a significant sum of rent had gone unpaid, the Tribunal determined that it was reasonable to grant an eviction order. Given the proximity to the festive period and that there appeared to be dependent children residing at the property, the Tribunal considered it appropriate to order a delay in execution of the order in terms of rule 16A of the Chamber Rules until 9 January 2023.

### **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.**

A Houston

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**Legal Member/Chair**

**21 November 2022**  
**Date**