

# 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 Section 16 of the Housing (Scotland) Act 2014 and Section 18 of the Housing (Scotland) Act 1988.**

**Chamber Ref: FTS/HPC/EV/23/4088**

**Re: Property at 6 Brannock Avenue, Newarthill, Motherwell, ML1 5DS (“the Property”)**

**Parties:**

**Mr John Wilson, residing at 1711 Vz County Road 4605, Ben Wheeler, TX75754, Texas, United States (“the Applicant”) and**

**JLC Property Lettings, Suite 2.24, Innovation Centre, 1 Ainsley Road, Glasgow, G52 4RU (“the Applicant’s Representative”); and**

**Mr Darren Hoyle and Miss Stephanie Wilson or Hoyle, both residing at 6 Brannock Avenue, Newarthill, Motherwell, ML1 5DS (“the Respondents”)**

**Tribunal Members:**

**G. McWilliams (Legal Member)**

**G. Darroch (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determines to grant the Application.**

### **Background and Case Management Discussion on 12<sup>th</sup> March 2024**

1. This Application has been brought in terms of Rule 65 (Application for an order for possession in relation to assured tenancies) of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the 2017 Rules”).

2. The parties entered into a short-assured tenancy agreement with a commencement date of 1<sup>st</sup> August 2016. The tenancy agreement's monthly rental payment amount is £495.00. The Applicant, Mr Wilson, through his Representative, served a Notice to Quit the Property, no later than 2<sup>nd</sup> November 2023, upon the Respondents Mr and Mrs Hoyle on 25<sup>th</sup> August 2023. Mr Wilson, also through his Representative, issued a Notice of Intention to raise Proceedings for Possession of the Property, also on 25<sup>th</sup> August 2023. The latter Notice stated that proceedings were to be raised on the basis of Grounds 8A, 11 and 12 in Schedule 5 to the Housing (Scotland) Act 1988 ("the 1988 Act"), principally that the Mr and Mrs Hoyle had incurred substantial rent arrears of £13,380.00 at the time that Notices were served and issued. Mr Wilson's Representative subsequently lodged this Application with the Tribunal on his behalf. Copies of the Notices and Rent Statements were lodged with the Application.
3. A Case Management Discussion ("CMD") proceeded remotely by telephone conference call, at 2pm on 12<sup>th</sup> March 2024. The Representative's Mr J Carswell attended as did the Respondent Mrs Hoyle.
4. Mr Carswell submitted that the rent arrears now outstanding are £16,880.00. He stated that an earlier Application to the Tribunal for an eviction order was lodged in 2022 but withdrawn after an agreement for settlement was reached. He said that Mr and Mrs Hoyle made three monthly payments in respect of rent and arrears, in terms of the agreement, but had not made any further payments in respect of rent and arrears since October 2022. Mr Carswell stated that Mr Wilson could not sustain his continuing losses in respect of the Property and hopes to sell it and other rental properties.
5. Mrs Hoyle stated that she agreed with what had been said by Mr Carswell. She said that she and Mr Hoyle had applied for local authority housing for them and their four children. Mrs Hoyle stated that her local authority had informed her that if she and Mr Hoyle make three monthly rent payments, in terms of the parties' tenancy agreement, they will process the housing application. She said that her family just needed some time to move to a new tenancy. She stated they have not been able to afford to pay rent from Mr Hoyle's monthly salary of £2000.00 due to their family commitments. She said that they intend to pay the arrears of rent due to Mr Wilson.
6. Mr Carswell and Mrs Hoyle discussed matters candidly with the Tribunal and agreed that it would be appropriate and reasonable for the Tribunal to grant an eviction order with an enforcement date no earlier than 3<sup>rd</sup> June 2024, to take account of the school exam diet and allow adequate time for the local authority to identify suitable alternative accommodation for the family.

### **Findings in Fact and Law**

7. The parties have a tenancy agreement which began on 1<sup>st</sup> August 2016.
8. Mr and Mrs Hoyle were in substantial arrears of rent, of £13,380.00 on 25<sup>th</sup> August 2023 when relevant Notices were served and issued to them regarding their

occupation of the Property and these proceedings. That amount of rent arrears exceeds the equivalent of 6 months' rent due in terms of the parties' tenancy agreement. The rent arrears are currently in the amount of £16,880.00. Mr and Mrs Hoyle have not made payment of rent to Mr Wilson since October 2022.

9. Mr and Mrs Hoyle have applied for a local authority tenancy. They are agreeable to the grant of an eviction order with an enforcement date no earlier than 3<sup>rd</sup> June 2024.
10. The Ground upon which the Application proceeds, namely Ground 8A in Schedule 5 to the 1988 Act, is satisfied. It is reasonable that an order for possession is granted. Accordingly, the Application is granted.

### **Reasons for Decision**

11. Section 16 of the Housing (Scotland) Act 2014 provides as follows:

“16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

- (a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),
- (b) a Part VII contract (within the meaning of section 63 of that Act),
- (c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

12. Accordingly, the Tribunal now has jurisdiction in relation to claims by landlords, such as Mr Wilson, against tenants, such as Mr and Mrs Hoyle, for possession relating to a tenancy agreement, such as the parties' tenancy agreement.

13. In terms of Section 18 of the 1988 Act the Tribunal shall not make an order for possession of the house let on the tenancy except on one or more of the grounds set out in Schedule 5 to the 1988 Act.

14. Ground 8A in Schedule 5 to the 1988 Act provides that it is an eviction ground that the tenant has accrued arrears of rent and the cumulative amount of those arrears equates to, or exceeds, the equivalent of 6 months' rent when Notice of Intention to raise Proceedings is served or, if dispensed with, when proceedings are raised for an order for possession on this ground.

15. The Tribunal considered all of the written and oral submissions.

16. Having considered and weighed the available evidence, and taken account of Mr Carswell and Mrs Hoyle's submissions, the Tribunal found, on a balance of probabilities, that there were substantial arrears of rent owing, in the sum of £13,380.00, which represents outstanding rent owing in a cumulative amount exceeding the equivalent of 6 months' rent, when relevant Notices were served

on and issued to Mr and Mrs Hoyle. The Tribunal further found, on a balance of probabilities, that Mr Wilson, through his Representative, and Mr and Mrs Hoyle, are agreed that it is reasonable for an eviction order to be granted with an enforcement date no earlier than 3<sup>rd</sup> June 2024. In making their findings the Tribunal relied, in particular, on the candid submissions of Mrs Hoyle at the CMD.

17. Rule 17(4) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the 2017 Rules”) provides that the Tribunal may do anything at a CMD which it may do at a Hearing, including making a decision. Having considered and weighed the available evidence and submissions, the Tribunal was satisfied that Ground 8A in Schedule 5 to the 1988 Act was met and that it was reasonable that Mr and Mrs Hoyle’s continuing occupation of the Property, without payment of rent to Mr Wilson be brought to an end. This will stop the accrual of further rent arrears and Mr and Mrs Hoyle can proceed with their application for social housing.

## **Decision**

18. The Tribunal grants 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.**

# **G McWilliams**

**G McWilliams**

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**Tribunal Legal Member**

**12<sup>th</sup> March 2024**

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**Date**