



**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/23/3329**

**Re: Property at 14 Maxwood Place, Girdle Toll, Irvine, KA11 1QG (“the Property”)**

**Parties:**

**Map Property Investing Ltd, 1 Beauchamp Court, 10 Victors Way, Barnet, Hertfordshire, EN5 5TZ (“the Applicant”)**

**Mr Christopher Underwood, Ms Suzanne Ahara, 14 Maxwood Place, Girdle Toll, Irvine, KA11 1QG (“the Respondents”)**

**Tribunal Members:**

**Alastair Houston (Legal Member) and Ahsan Khan (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for eviction be made in favour of the Applicant on the basis of paragraph 12 of schedule 3 of the 2016 Act**

**1. Background**

- 1.1 This is an application under Rule 109 of the Chamber Rules. The Applicant seeks an order for eviction of the Respondents due to non-payment of rent.
- 1.2 The application was accompanied by, amongst other things copies of the written tenancy agreement between the parties, the notice to leave given to the Respondents, correspondence sent to them and a rent statement. The application was conjoined with an application for a payment order, reference FTS/HPC/CV/23/3203. No representations had been received from the Respondents.

## **2. The Case Management Discussion**

- 2.1 The Case Management Discussion took place on 23 January 2024 by teleconference. The Applicant was represented by Mr Norman Fraser, solicitor. The Respondents were neither present nor represented.
- 2.2 Mr Fraser confirmed that this, and the conjoined application, were insisted upon. The Tribunal noted that intimation of the application and Case Management Discussion had been given to the Respondents by Sheriff Officers and considered it appropriate to proceed in their absence, as permitted by Rule 29 of the Chamber Rules.
- 2.3 Mr Fraser confirmed that the rent arrears owed by the Respondents had increased to £8475.00, albeit no application to amend the sum sought had been made. No payments had been received from the Respondents since September 2022. The letting agents responsible for managing the property had been unable to make contact with the Respondents, despite written and email correspondence and attempted home visits. The only indication that the property remained occupied by them was the sound of a dog barking when those visits had been attempted. At the time of commencement of the tenancy, the Respondents were both believed to have been in employment. They were not believed to reside with any dependent children.

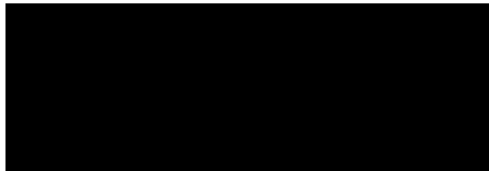
## **3. Reasons For Decision**

- 3.1 The Applicant had served the requisite notice to leave upon the Respondents. A rent statement provided details of the rent outstanding. In the absence of any representations to the contrary, the Tribunal considered that £5150.00 of rent had gone unpaid by the Respondents at the date of service of the notice to leave. This had risen to £8475.00 and, accordingly, ground 12A was established. The only issue the Tribunal required to consider was whether it was reasonable to grant an order for recovery of possession.
- 3.2 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. The Tribunal also had reference to the factors specified in paragraph 12A(3) of schedule 3 of the 2016 Act. There was no evidence that the failure to pay rent was in any way connected to the Respondents' benefit entitlement. Furthermore, the efforts to contact the Respondents to discuss the arrears broadly constituted compliance with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).
- 3.3 The Respondents were occupying the property with no dependent children. The rent arrears were significant and the Applicant had a reasonable

apprehension that they would continue to accrue. No proposals had been made for their payment or explanation given as to why rent had not been unpaid. In all of the circumstances it was reasonable to grant the order sought.

### **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**

**23 January 2024**

**Date**