

# **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 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/21/1927**

**Re: Property at 31 Sydney Gardens, Lockerbie, DG11 2GZ (“the Property”)**

**Parties:**

**Ms Maureen Smith, 27 Mossbank Avenue, Georgetown, Dumfries, DG1 4PA (“the Applicant”) and**

**Pollock and McLean Solicitors, 41 Castle Street, Dumfries, DG1 1DU (“the Applicant’s Representative”) and**

**Ms Emma Johnstone, 31 Sydney Gardens, Lockerbie, DG11 2GZ (“the Respondent”)**

**Tribunal Members:**

**G McWilliams- Legal Member**

**E Munroe- Ordinary Member**

**Decision in absence of the Respondent**

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

### **Background**

1. This is an Application for a payment order, contained within papers lodged with the Tribunal between 10<sup>th</sup> August 2021 and 2<sup>nd</sup> September 2021, 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 (“the 2017 Rules”).

2. In the Application, the Applicant sought payment of arrears in rental payments of £2300.00 in relation to the Property, from the Respondent, and provided copies of the parties' Private Residential Tenancy Agreement ("PRT") and a Rent Statement.
3. The Respondent had been validly served by Sheriff Officers with the Notification, Application papers and Guidance Notes from the Tribunal on 30<sup>th</sup> September 2021, and the Tribunal was provided with the Certificate of Intimation.

### **Case Management Discussion on 2<sup>nd</sup> November 2021**

4. A Case Management Discussion ("CMD") proceeded remotely by telephone conference call at 10am today, 2<sup>nd</sup> November 2021. The Applicant's Representative's Mr A Pryce attended. The Respondent did not attend and was not represented. Mr Pryce referred to the terms of, and basis for, the Application. He stated that the Respondent had informed the Applicant that she moved out of the Property in early October 2021, following an altercation with her partner which resulted in damage to the Property, an insurance claim and the involvement of police who boarded up the Property. Mr Pryce said that the Applicant was told by the Respondent that the latter had been given accommodation by Women's Aid, she would not be returning to the Property and would not take part in these Tribunal proceedings. Mr Pryce submitted that as the Respondent had been effectively served with all papers in respect of the Application for a payment order, and had not lodged any representations with the Tribunal, nor attended at the CMD, the payment order sought in the Application, in the sum of £2300.00, should be granted. Mr Pryce stated that he understood that there had been no rent paid since the Application was lodged and that additional rent arrears had accrued, which he would have to calculate after liaison with the Applicant. He said that a further Application for another payment order, in respect of additional rent arrears owing, may, accordingly, be lodged in due course.

### **Statement of Reasons for Decision**

5. Section 71 of The Private Housing (Tenancies) Act 2016 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.

6. Accordingly, the Tribunal has jurisdiction in relation to claims by landlords (such as the Applicant) for payment of unpaid rent against a tenant (such as the Respondent) in respect of a tenancy such as this.
7. The Respondent had been validly served with all of the Application papers, and notified of the CMD, but had not lodged representations with the Tribunal, or attended the CMD to provide evidence, and/or make any submission, opposing the order sought. The Tribunal considered the terms of the Application, the documentation provided with it, including the parties' PRT and Rent Statement, as well as Mr Pryce's submission and was satisfied that there was an outstanding balance of rent arrears due of £2300.00, at the date of lodging of the Application, and that it was reasonable to grant an order for payment by the Respondent to the Applicant in that amount.

### **Decision**

8. Accordingly, the Tribunal made an order for payment by the Respondent to the Applicant of the sum of £2300.00.

### **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.**

**Legal Member: G McWilliams**

**Date: 2<sup>nd</sup> November 2021**

**Gerald McWilliams**