

**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 Sections 51 and 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)**

**Chamber Ref: FTS/HPC/EV/24/1820 and FTS/HPC/CV/1822**

**Re: Property at 8/1, 112 Lancefield Quay, Glasgow, G3 8HR (“the Property”)**

**Parties:**

**Louise McMahon, Craig McMahon, 11 Blacket Place, Edinburgh, EH9 1RN (“the Applicant”)**

**Mr Gordon Cameron Bell, 8/1, 112 Lancefield Quay, Glasgow, G3 8HR (“the Respondent”)**

**Tribunal Members:**

**Sarah O'Neill (Legal Member) and Mary Lyden (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that both applications should be dismissed as the Tribunal does not have jurisdiction in relation to the proceedings.**

**Background**

1. An eviction application (reference no: FTS/HPC/EV/24/1820) was received from the Applicants’ representative on 22 April 2024 under rule 109 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (‘the 2017 rules’) seeking recovery of the property under Ground 8A (sic) as set out in Schedule 3 of the 2016 Act.
2. Attached to the application form in respect of the application were:
  - (i) Copy notice to leave citing ground 12, dated 22 March 2024, and stating the date before which proceedings could not be raised to be 20 April 2024
  - (ii) Copy certificate of execution of service of the notice to leave on the Respondent by Sheriff Officers dated 21 March 2024

- (iii) Copy notice under section 11 of the Homelessness etc (Scotland) Act 2003 to Glasgow City Council, together with proof of sending on 22 April 2024
  - (iv) Copy pre-action requirements letters sent by the Applicants' representative to the Respondent dated 19 and 23 February and 4 March 2024.
  - (v) Copy email correspondence between the Applicants' representative and the Respondent dated between 15 December 2023 and 8 February 2024.
3. An accompanying civil proceedings application (reference no: FTS/HPC/CV/1822) was received from the Applicants' representative on the same date seeking a payment order brought in terms of rule 111 (Application for civil proceedings in relation to a private residential tenancy) of Schedule 1 to the 2017 rules. The Applicants sought an order for payment of £16500 in respect of rent arrears which were alleged to be due by the Respondent to the Applicants.
  4. Further information was requested from the Applicants by the Tribunal administration on 17 May, 4 June and 2, 16 and 17 July 2024. In response to these, further information was submitted by the Applicants' representative on 17, 20 and 22 May and 5, 12, 16 and 19 July 2024. This included an amended application form citing ground 12, a 'statement of account' in relation to the rent and confirmation that there was no written tenancy agreement between the parties.
  5. The civil proceedings application was accepted on 30 June 2024 and the eviction application was accepted on 14 August 2024.
  6. Notice of the case management discussion (CMD) scheduled for 5 February 2025 in respect of both applications, together with the application papers and guidance notes, was served on the Respondent by sheriff officers on behalf of the tribunal on 13 December 2024. The Respondent was invited to submit written representations by 1 January 2025.
  7. The tribunal issued a direction to the Applicants on 19 December 2024, requiring them to provide the following information by 28 January 2025:
    - 1) A copy of the commercial lease relating to the property.
    - 2) Confirmation of the date on which that lease ended.
    - 3) Written evidence of the termination of that lease.
    - 4) Written submissions as to the reasons why the Applicants considered that a private residential tenancy was in place between them and the

Respondent, including confirmation of the date on which they believe that tenancy commenced.

- 5) Confirmation of the sum they were seeking from the Respondent in respect of the application for a payment order, and from which date they considered that rent arrears began to be accrued by the Respondent under any private residential tenancy.
- 6) Any further information which they may wish to submit regarding the existence or otherwise of a private residential tenancy between the parties.
8. A response to the direction was received from the Appellant's representative by email on 22 January 2025.
9. No written representations were received from the Respondent prior to the CMD.
10. An email was received from a Mr Johnathan Clark of X92 Group Ltd on 4 February 2025, requesting a postponement of the CMD which was scheduled for the following day, due to a family emergency. Mr Clark was advised by the Tribunal administration that should the Respondent wish to appoint him as a representative, he would need to provide written authorisation from the Respondent. An email was received from the Respondent later that day stating that he wished Mr Clark to represent him in the proceedings.
11. The Tribunal decided to proceed with the CMD given the short notice given, and the length of time which had already elapsed since the application was first submitted. Mr Clark was informed of this and replied at 4.30 pm on 4 February 2025, stating that he had been asked to represent the Respondent the previous day and that neither he nor the Respondent would be able to attend the CMD.

### **The case management discussion**

12. A CMD was held by teleconference call on 5 February 2025. The Applicants were represented by Mr Scott Weir, CEO of Homesure t/a Pillow Partners. The Respondent was not present or represented on the teleconference call. The tribunal delayed the start of the CMD by 10 minutes, but neither the Respondent nor his representative attended the teleconference call.
13. The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date and time of a CMD had been duly complied with. It was clear from the emails received on 4 February 2025 that the Respondent was aware that the CMD was due to take place. The Tribunal therefore proceeded with the CMD in the absence of the Respondent.

### **Preliminary issue**

14. The Tribunal chairperson explained to Mr Weir that on the basis of the information before it, it was unclear whether there was in fact a private residential tenancy (PRT) in place between the parties. She noted that there was no written tenancy agreement in place between the parties. The correspondence and the rent statements provided appeared to suggest that any rental agreement that was in place between the parties was of a commercial nature, between the Applicants and a company named X92 Group Ltd, of which the Respondent was a Director.
15. The Tribunal was unable to consider the applications until it was clear whether there was in fact a PRT in place between the parties. If there was not, the Tribunal would not be able to consider the applications further.

### **The Applicant's submissions**

16. Mr Weir told the Tribunal that the Respondent's company, X92 Group Ltd, had initially agreed to a short term corporate let of the property on a month to month basis starting in March 2018. The Respondent had been insistent that he wanted the arrangement to be a business let rather than a PRT. The Respondent's company owned two nightclubs in Newcastle and Marbella, and was at that time in the process of establishing another nightclub in Glasgow.
17. Mr Weir said that he understood that the Respondent was not resident within the UK at the time when the let started. He did not believe that the property was the Respondent's main residence and was unsure as to whether he was currently living there at all. He did not know whether anyone else was currently living in the property, as Pillow Partners had found it difficult to obtain access to the property for some years.
18. The rent had not been paid since October 2023, and the outstanding rent arrears as at 31 December 2024 totalled £41250. That figure included bills, which were still being paid by the Applicants in respect of the property.
19. Mr Weir confirmed that the business let arrangement had never been put in writing and that there had never been any written tenancy agreement between the parties. Pillow Partners had assumed that the arrangements between the Applicant and X92 Group Ltd constituted a corporate lease, but they had been advised by the Scottish Association of Landlords (SAL) that the lease may revert to a PRT for the purposes of eviction. Pillow Partners had therefore made an application to the Tribunal as they did not wish to give inaccurate advice to the Applicants. When asked, Mr Weir was unable to say from what date any PRT, if in place, may have commenced.

20. The Applicants had taken legal advice from various sources and had not received a definitive answer as to whether the agreement between the parties was a PRT.
21. Mr Weir did not seek to argue before the Tribunal that the agreement relating to the property was a PRT agreement. He said that this had not been the intention of the Applicant. Neither was the market within Pillow Partners operated. Its primary business involved short-term business lets for clients such as insurance companies and television companies. The Respondent had refused to sign a PRT. He had been offered a number of alternative, more affordable properties, but he had refused these.
22. Mr Weir said that he believed the property had been let to X92 Group Ltd on a commercial basis. He also pointed out that the representative appointed by the Respondent, Mr Clark, was described as a 'Consultant' to X92 Group Ltd, which suggested that it was a business arrangement.
23. Mr Weir said that he sought clarity as to whether there was a PRT in place, or whether the Applicants required to pursue the matter in the sheriff court.

### **Findings in fact**

24. The tribunal made the following findings in fact:
- The property is a two bedroom penthouse flat within a modern development.
  - The Applicants are the owners of the property and are the registered landlords for the property.
  - The Respondent is the sole director of a company named X92 Group Ltd, which was incorporated on 3 May 2018.
  - The registered address for X92 Group Ltd is the property address.
  - The current rental arrangement between the Applicant and X92 Group Ltd have let the property since 13 March 2018.
  - There is no signed rental agreement between the Applicants and either the Respondent as an individual or X92 Group Ltd.
  - The rent statements attached to the notice to leave state in the description "X92 Group Ltd Office".
  - Some more recent rent statements received from the Applicant's representative had the Respondent's name on them but also included the word 'office'.
  - The rent payable under the rental agreement is £2750 per month. This amount is inclusive of gas, electricity, wi-fi and council tax.
  - The Applicants' representative served a Notice to Leave which cited ground 12 on the Respondent by sheriff officer on 21 March 2024.
  - The Notice to Leave was, however, dated 22 March 2024.

- No rent has been paid to the Applicants since October 2023 in respect of the property. The outstanding rent arrears as at 31/12/24 totalled £41250.

### **Reasons for decision**

25. The Tribunal determined that it was able to make a decision without a hearing as having regard to such facts as are not disputed by the parties, it was able to make sufficient findings to determine that case, and to do so would not be contrary to the interests of the parties.

26. The Tribunal was aware that a PRT does not necessarily require to be in writing to be lawfully constituted in terms of section 3 of the 2016 Act. It considered the terms of section 1 of the 2016 Act, which defines a PRT as follows:

**1. *Meaning of private residential tenancy***

*(1) A tenancy is a private residential tenancy where—*

*(a) the tenancy is one under which a property is let to an individual (“the tenant”) as a separate dwelling,*

*(b) the tenant occupies the property (or any part of it) as the tenant's only or principal home, and*

*(c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.*

*(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.*

27. On the basis of the evidence before it, the Tribunal concludes that the property is not let to an individual, as required by section 1 (1) (a). The property was let to a company, X92 Group Ltd, rather than to the Respondent, who is a Director of that company. A limited company cannot be a sole tenant under a PRT.

28. Moreover, the rent statements suggest that the property was used as an office, and it did not appear that the Respondent was occupying it as his only or principal home. A limited company cannot in any case be a tenant which occupies the property (or any part of it) as its only or principal home, in terms of section 1(1) (b).

29. Mr Weir did not seek to argue on behalf of the applicants that the rental agreement relating to the property was a PRT. No written representations had been received from the Respondent regarding whether or not there was a PRT in place between the parties.

29. It did not appear to the Tribunal that either the Applicants or the Respondent had intended the letting arrangement to be a PRT. No clear evidence was submitted which would suggest that the commercial arrangement in place was

terminated at some point and that a PRT was then put in place between the Applicants and the Respondent as an individual. While Mr Weir said that there had been advice from SAL that the agreement may have 'reverted' to a PRT, he was unable to say exactly when this may have happened.

29. The Tribunal noted that there was email correspondence on the case file from Pillow Partners suggesting that the "corporate lease" would come to an end on 31 March 2024, and from the Respondent saying that he intended to leave on that date. While it may have been possible for the Appellants to argue that a PRT between the parties commenced on 1 April 2024, they did not seek to do so. Even if that had been the case, however, the notice to leave was served on 21 March 2024, which was prior to that date and would therefore have been premature. The eviction application would therefore have been refused on those grounds in any case. The notice to leave was also dated 22 March 2024, the day before it was served.
30. Having considered all of the evidence before it, the Tribunal determines on the balance of probabilities that there is no PRT in place between the parties. The rental agreement that is in place appears to be between the Applicants and X92 Group Ltd and to be commercial in nature. The Tribunal does not therefore have jurisdiction in relation to either the eviction or civil proceedings applications.

## **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.**

**Sarah O'Neill**

**5 February 2025**

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**Legal Member/Chair**

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**Date**