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

Chamber Ref: FTS/HPC/EV/26/0454

Re: Property at 2/M 130 Alexander Street, Dundee, DD3 7DE ("the Property")

Parties:

Hillcrest Enterprises Limited, 1 Explorer Road, Dundee, DD2 1EG ("the Applicant")

Mr Ryian Steven Massie, 2/M 130 Alexander Street, Dundee, DD3 7DE ("the Respondent")

Tribunal Members:

Shirley Evans (Legal Member) and Ann Moore (Ordinary Member)

<u>Decision (in absence of the Respondent)</u>

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order against the Respondent for possession of the Property at 2/M 130 Alexander Street, Dundee, DD3 7DE under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings furth and from the Property and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

<u>Background</u>

1. By application dated 27 January 2026, the Applicant's solicitor applied to the First- tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") for an order for repossession under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure)

Regulations 2017 ("the Regulations") based on the Respondent's rent arrears.

2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the parties dated 4 July 2023, letters to the Respondent dated 26 June 2025, 21 August 2025, 29 September 2025, 7 October 2025 and 6 November 2025, a Notice to Leave with email dated 24 November 2025, a rent statement and an email dated 26 January 2026 addressed to Dundee City Council with a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003.

3. On 18 February 2026, the Tribunal accepted the application under Rule 9 of the Regulations.

4. On 25 June 2026 the Tribunal enclosed a copy of the application and invited the Respondent to make written representations to the application by 16 July 2026. The Tribunal advised parties that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 31 July 2026. This paperwork was served on the Respondent by William Wywalec, Sheriff Officer, Kirkcaldy on 29 June 2026 and the Execution of Service was received by the Tribunal administration.

5. On 29 June 2026 the Respondent emailed the Tribunal seeking an extension of time to lodge his written submissions. He explained that he had gained full time employment and was gathering evidence including details of the repayments he had been making towards the arrears and evidence of his engagement with debt advice services. He explained he wanted to ensure that the Tribunal had a complete and accurate picture of the steps he had taken to address the issues that led to the arrears. In the circumstances the Tribunal granted an extension for him to lodge his written submissions by 24 July 2026.

6. The Respondent did not lodge any further written submissions or evidence by 24 July 2026.

7. On 30 July 2026 the Applicant's solicitor lodged an up-to-date rent statement showing arrears had decreased to £1762.48.

8. On 30 July 2026 the Respondent emailed the Tribunal to advise that he could not attend the CMD as he was working and that rent would be paid as he had started employment.

<u>Case Management Discussion</u>

9. The Tribunal proceeded with a CMD on 31 July 2026 by way of teleconference. Ms Callaghan from TC Young solicitors appeared for the

Applicant. There was no appearance by or on behalf of the Respondent despite the CMD starting 5 minutes late to allow him plenty of time to join the call. The Tribunal was satisfied the Respondent had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in his absence. The action was heard together with an action for payment of rent arrears under reference FTS/HPC/CV/26/0455.

10. The Tribunal had before it the Private Residential Tenancy Agreement between the parties dated 4 July 2023, the letters to the Respondent dated 26 June 2025, 21 August 2025, 29 September 2025, 7 October 2025 and 6 November 2025, the Notice to Leave with email dated 24 November 2025, the up-to-date rent statement the email dated 26 January 2026 addressed to Dundee City Council with a Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 and the Respondent's emails of 29 June 2026 and 30 July 2026. The Tribunal considered these documents.

11. Ms Callaghan submitted that the Private Residential tenancy with the Respondent had commenced on 4 July 2023 and that in terms of Clause 8 the Respondent had agreed to pay rent of £374.92 per month. She submitted there had been two rent increases since then and that the current rent had increased to £423.78 from 1 August 2025. At the time of serving the Notice to Leave arrears were £2278.08. The arrears were now £1762.48. The Respondent had been in arrears of rent for three or more consecutive months in terms of Ground 12 of Schedule 3 to the 2016 Act. She further submitted that the Respondent had sought financial assistance. She submitted the Applicant had complied with the pre action requirements with refence to the letters lodged with the application. Since then, the Applicant had sent further letters to the Respondent regarding the arrears.

12. In relation to reasonableness, she submitted the Respondent had been sequestrated in December 2025 as a result of which arrears of £2701.86 had been written off on 8 January 2026. Since then, she submitted, the Respondent had continued to accrue rent arrears. The Tribunal noted there were several failed Direct Debit payments and that current arrears stood at £1762.48. Ms Callaghan submitted it appeared the Property was not affordable for the Respondent. The Applicant had continued to write to the Respondent reminding him of his obligation to make his rent payments and signposting him to various agencies. He had not made payments in March, April or May 2026. From June 2026, Universal Credit of £375 was being paid. However, this did not cover the whole rent. She submitted that on 23 April 2026 the Respondent had advised he had lost his job but was starting a new job in May 2026. On 11 June 2026 he had advised he had lost that job but was starting another new job. She understood he was now in employment. He had not made up the shortfall in rent. The Applicant was constantly having to remind the Respondent about his rental obligations. The Applicant rented mid-market properties which were affordable and linked to the Local Housing Allowance. The Applicant was a subsidiary company of Hillcrest Homes and owned over 1000 properties. The nonpayment of rent had a significant impact on the Applicant's ability to provide services, build new properties and re-

invest rental income to retro fit properties. It also directly impacted on other tenants by increasing rents. The Applicant could not always rely on Hillcrest Homes its parent company. Finally, she submitted that the Respondent was about 26 years of age. He was the sole occupant of the Property. She understood he was in employment which she understood to be a trade. In all the circumstances it was reasonable to evict.

Reasons for Decision

13. The Tribunal considered the issues set out in the application together with the documents lodged in support. The Tribunal also considered the following legislation in its determination -
    - Private Housing (Tenancies) (Scotland) Act 2016
    - The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.

14. Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application proceeds on Ground 12(rent arrears).

15. In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.

16. In terms of Section 54 of the 2016 Act a landlord may not make an application to the Tribunal for an eviction order against a tenant until the expiry of the relevant period in relation to that Notice. The relevant period begins on the day the tenant receives the Notice which in the case of Ground 12 of Schedule 3 is 28 days.

17. Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states that it proceeds on Ground 12 of schedule 3 of the 2016 Act and states the amount of arrears at Part 2 of the Notice. The Notice to Leave specifies the date the Applicant as landlord expects to become entitled to make an application for an eviction order namely 25 December 2025. In terms of Section 62(4) of the 2016 Act, the Notice to Leave must specify the day falling after the day on which the notice period defined in section 54(2) will expire. In this case the Notice to Leave was sent to the Respondent on 24 November 2025 and was deemed to be received by him on 26 November 2025. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice of 28 days. Accordingly, the Notice to Leave complies with Section 62.

18. The Tribunal was satisfied that the arrears had decreased to £1762.48. Despite there being a write off of £2761. 86 on 8 January 2026 the arrears had started to creep up again to their current level with no rent at all being

paid in March, April or May 2026. The Tribunal found that the Applicant had established a case under Ground 12. However, Ground 12 is discretionary ground of eviction. As well as being satisfied the facts have been established to support the ground, the Tribunal has to be satisfied that it is reasonable to evict.

19. The Tribunal noted the pre action requirement letters lodged with the application. The Tribunal noted that despite the Respondent being sequestrated in December 2025 the arrears had accrued again to a level where they were again over three months. Although Universal Credit of £375 had started to be paid in June 2026, the Respondent had not made up the shortfall to cover the full rent of £423.78. The Tribunal gave considerable weight to Ms Callaghan's submissions on how the arrears had accrued. The Tribunal also considered that the Respondent had advised on 29 June 2026 that he was in full time employment. However, no payment towards the arrears had been made by him since then as another Direct Debit payment had failed. It appeared to the Tribunal that unfortunately the Respondent was simply not in a position to make up even the slight shortfall in rent. The Tribunal considered it was hard to see how the arrears could ever be cleared or that the Respondent, despite his no doubt best intentions to pay rent, could actually meet his rental obligation. On balance therefore, reasonableness favoured the Applicant.

20. The Tribunal noted that notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Dundee City Council had been served. In the circumstances the Tribunal considered that in terms of Ground 12 of Schedule 3 the Respondent has been in rent arrears for over three consecutive months and that it is reasonable to grant an eviction order in terms of Section 51 of the 2016 Act.

Decision

21. The Tribunal granted an Order of eviction. The decision of the Tribunal was unanimous.

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.

[redacted]

31 July 2026

Legal Member | **Date**