

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 and Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (the 2016 Act) and Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (the 2017 Rules)

Chamber Ref: FTS/HPC/EV/25/4281

Re: Property at 20 Glebe Street, New Cumnock, KA18 4BE (“the Property”)

Parties:

Brownstone Assets Limited, Office 5912, 321-323 High Road, Chadwell Heath, Essex, RM6 6AX (the Applicant)

The McKinstry Company, Queen’s Court House, 39 Sandgate, Ayr, KA7 1BE (the Applicant’s Representative)

Mr Michael Reynolds, 20 Glebe Street, New Cumnock, KA18 4BE (the Respondent)

Tribunal Members:

Ms Susanne L. M. Tanner KC (Legal Member)

Mr Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (the tribunal):

**(1)(i) was satisfied that Ground 12(1) in Schedule 3, Part 3 to the 2016 Act was established by the Applicant, in that for three or more consecutive months the Respondent has been in arrears of rent; and (ii) was satisfied that it was reasonable on account of that fact to issue an eviction order; and
(2) made an order for eviction in terms of Section 51 of the 2016 Act.**

The decision of the tribunal was unanimous.

Statement of Reasons

Procedural Background

1. The Applicant's Representative made an application to the tribunal in terms of Section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 (the 2016 Act) and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (the 2017 Rules). The Applicant seeks the Respondent's eviction from the Property in terms of Section 51 of the 2016 Act under ground 12 of Schedule 3 to the 2016 Act, namely that the tenant has been in arrears or rent for three or more consecutive months (the Application).
2. The Applicant appointed a Representative. A Case Management Discussion (CMD) teleconference took place on 15 May 2026 in this and a related civil application CV/25/4449. The Applicant's Representative attended. The Respondent did not attend and it proceeded in his absence. Reference is made to the Notes of that CMD which were sent to both parties. The CMD was adjourned to allow the Applicant's Representative to lodge supporting evidence in relation to title and interest to make the Applications and for the Applicant's Representative to amend the sum claimed in the civil application in terms of Rule 14A of the 2017 Rules. The tribunal issued a Direction on the same date.
3. The Applicant's Representative lodged two further inventories of productions:
 - 3.1. Second inventory containing documents 1-3 on 29 May 2026; and
 - 3.2. Third inventory containing documents 4-6 on 4 September 2026.
4. The second CMD was fixed for 10 September 2026 at 1000h by teleconference. The tribunal sent letters of notification to all parties with the date, time and arrangements for joining the CMD in relation to the Application and the related civil application. The letter was sent by Royal Mail to the Respondent on 6 August 2026 and signed for on 10 August 2026.
5. The Respondent did not make any contact with the tribunal.

CMD: 20 September 2026, 1000h, Teleconference

6. Mr Duck attended from the Applicant's representative, with Mr Dembele and Ms Mtonga from the Applicant company.
7. The Respondent did not attend. The tribunal was satisfied that the requirements of Rule 24(1) regarding the giving of notice of a hearing have been duly complied with

and proceeded with the application upon the representations of the party present, in term of Rule 29 of the 2017 Rules.

Applicant's submissions

8. Mr Duck made submissions in relation to the Applicant's title and interest with reference to the documents in the second and third inventories of documents, the latter which the tribunal allowed to be lodged late as it contained two documents which were signed copies of documents already lodged in May 2026, plus a letter dated 4 September 2026 from Vithlington confirming their understanding of the arrangement with the Applicant. There was no opposition by the Respondent who has never engaged with the tribunal proceedings and no prejudice to the Respondent caused by the late lodging given the documents already lodged.
9. Mr Duck stated that Vithlington is the registered owner of the Property. He submitted that the documents lodged show that the Applicant has authority to enter into a private residential tenancy agreement with the Respondent and to collect rent; and has title and interest to raise proceedings for eviction and payment. The second inventory, number 2 is an Options Agreement between Vithlington the owner and the Applicant. The Applicant has an option to purchase the property at any time in a 10 year period. The Applicant took over the property on entering into the agreement and pays £250.00 per month rent. The rent is set out and the period is set. The Option agreement provides at clause 2.4 that Vithlington can sublet the property to a sub-tenant, subject to the owner consenting. Clause 2.5 says that the buyer would then exercise the Management Agreement. At Clause 9 it sets out about management of the property. Mr Duck submitted that the Options Agreement is poorly drafted with a number of contradictions and undefined terms. He further submitted that this is a lease and the Applicant is leasing the property. He referred to possession, defined duration, agreed rent and submitted that they are the terms of a lease and further submitted that if it is a lease it does not matter what the parties call the document, it is still a lease. He referred to the definitions at section 1, in which 'management' is defined as collection of all rental income from the property. He accepts that that could appear to be an arrangement with a letting agent but the defined term is not then used again in the rest of the document. In clause 2.2.1.3 it says that the Applicant will attend to management of the property as per schedule 3. 'Rent' is referred to but is not defined in this document. He submitted that it is confused because it looks like someone has taken a commercial lease and substituted the terms manager and owner. He submitted that the Applicant saw themselves as a lessee as opposed to a letting agent, albeit that they had not paid the purchase price. He stated that day to day management was carried out by the Applicant on the basis that they considered themselves the de facto landlord and that it has done the things that a landlord (or their letting agent)

would do. He stated that the Applicant's view was that they were de facto owner and in control. He referred to the letter from Vithlington dated 4 September 2026 (in the third inventory). He stated that Vithlington, as the owner did not procure the tenant as suggested in Clause 13. He submitted that there are only two clauses which suggest management. Everything else points towards a lease, for example, Clause 2.2.1.2 which is akin to a clause in a full FRI lease for a commercial property. The Applicant is a company which is renting it. Vithlington cannot give a PRT to Brownstone. The finding of the tenant was done by the Applicant. The Applicant paid £250 rental to Vithlington each month and Vithlington should collect £575 per month from the Respondent in terms of the PRT. The Applicant has been paying the £250 per month to Vithlington irrespective of rent arrears. There is complete separation between the two agreements. Mr Duck believes that it is the intention of the Applicant to purchase the property in due course.

10. The Applicant Ms Mtonga, stated that the Property was advertised through a local letting agent. It was a tenant find only arrangement. She provided the information which was needed including the landlord registration number and the documents the letting agent needed. The letting agent produced the tenancy agreement. They have not been involved in management. They collected the deposit. The deposit is still lodged with the deposit protection company.
11. Mr Duck invited the tribunal to make the eviction order today. He submitted that the PRT began in December 2024 with rent at £575 per month. As at the date of the Notice to Leave the rent arrears were £2300 (although after the four months' arrears are stated, it states £1725 as the total which is a calculation or typographical error). Prior to the previous CMD he rent schedule shows £6900 of arrears. The current rent arrears as at 10 September 2026 are £9775 including the payment due on 10 September 2026. At the previous CMD the rent arrears were stated to be £7475.00. Mr Duck sought leave to amend to £7475.00 and the tribunal allowed the amendment on the basis that it was intimated at the previous CMD and contained in the CMD Note, which is more than 14 days prior to this CMD.
12. Mr Duck submitted that it was reasonable to make an eviction order on account of the rent arrears. He stated that there was communication with the tenant pre-action. After raising the action, efforts were made to try to contact him about the arrears and there was no response to that. He has had the opportunity to take part in proceedings and has not. There are substantial rent arrears with no indication of the reason why. It is unreasonable for the landlord to continue sustaining this level of rent arrears and it amounts sufficient basis for an eviction order. There has been no further payment of rent. There has been no communication from the Respondent in 2026, despite the Applicant's Representative writing to him. The Applicant applied for assistance to get into the property for a boiler check towards

the end of 2025. There has been no suggestion that he has left, there has been no return of the keys. The last email the Applicant sent was on 27 January 2026 to let the Respondent know that the gas check was due. He did not respond. The Applicant had to apply for access to the property which was granted. The Applicant was not present during the gas inspection.

13. Mr Duck stated that the Respondent had previously been working as a chef but there is no information as to his current employment. He lives on his own in the property. He has no disabilities which have been made known to the Applicant and the Property is not adapted. It is a two bedroomed first floor flat with a garden. There has been no engagement from him about efforts to find another property. There has been no response from the Respondent this year. There is no indication that the Respondent is on any kind of benefits. There has been no communication to get benefits paid directly. There has been no contact from the council about a possible homeless situation and no reference form.

14. The tribunal adjourned to deliberate.

15. The tribunal makes the following findings-in-fact:

15.1. Vithlington Limited, a Company registered under The Companies Acts in England and Wales (Registered Number 12522717) having its registered office at 21 Highview Close, Leicester, LE4 9LJ (Vithlington) has been the registered proprietor of the Property since 1 February 2022.

15.2. Vithlington entered into an Options Agreement and Management agreement with the Applicant in terms of which the Applicant leases the Property from Vithlington with an option to purchase the Property, for which the Applicant pays Vithlington £250.00 per calendar month, and all powers to sub-let and manage the Property are vested in the Applicant.

15.3. The Applicant and Vithlington are registered as joint landlords for the Property.

15.4. The Applicant had authority in terms of the agreements with Vithlington to enter into a private residential tenancy of the Property with the Respondent.

15.5. The Applicant entered into a private residential tenancy agreement with the Respondent for the Property which began on 10 December 2024.

- 15.6. Rent is payable at the rate of £575.00 per calendar month in advance from the start of the tenancy on 10th of each month.
- 15.7. On 5 September 2025, a Notice to Leave containing grounds 11 and 12 of Schedule 3 to the 2016 Act was served on the Respondent.
- 15.8. The Applicant has given the Respondent at least 28 days' notice that he requires possession.
- 15.9. The Respondent has made no payments towards the rent arrears since the Notice to Leave was served.
- 15.10. The Applicant sent pre-action protocol correspondence to the Respondent.
- 15.11. As at 15 May 2026, the total rent arrears were £7475.00, which includes rent due on 10 May 2026.
- 15.12. As at 10 September 2026, the total rent arrears are £9775.00.
- 15.13. As at the date of service of the Notice to Leave and as at 10 September 2026 there have been rent arrears for more than three consecutive months.
- 15.14. The Respondent continues to reside in the Property.
- 15.15. The rent arrears are not a consequence of delay or failure in payment to the Respondents of relevant benefits.

Discussion

16. The order for eviction is sought in the Application in terms of Section 51 and paragraph 12(2) of Schedule 3 to the 2016 Act. The tribunal is satisfied that the facts required in paragraph 12(2) of Schedule 3 to the 2016 Act have been established.
17. In relation to reasonableness, reference is made to the tribunal's findings in fact. The Respondent has not opposed the application for eviction. He has not engaged in the proceedings. He has not produced any defence. He has had the opportunity to obtain legal, and/or housing advice. There is no evidence that he is on any relevant benefits or that there is any other reason why it would not be reasonable to evict him from the Property. The tribunal was satisfied that it was reasonable to evict the Respondent, in the circumstances of the case.

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.

Ms. Susanne L. M. Tanner K.C.
Legal Member/Chair

10 September 2026