

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 16 of the Housing (Scotland) Act 2014 (“the 2014 Act”) and Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/CV/25/4449

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) determined that the Respondents should pay the Applicant the sum of SEVEN THOUSAND FOUR HUNDRED AND SEVENTY FIVE POUNDS (£7475.00) STERLING; and made an Order for Payment in respect of the said sum.

Reasons

Procedural Background

1. The Applicant made an application to the tribunal in terms of Section 16 of the Housing (Scotland) Act 2014 (the 2014 Act) and Rule 111 of the First-tier Tribunal

for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (the 2017 Rules) (the Application).

2. The Applicant sought a payment order against the Respondents in respect of rent arrears of £3450.00 in respect of the tenancy of the Property.
3. The Applicant appointed a Representative. A Case Management Discussion (CMD) teleconference took place on 15 May 2026 in this and a related eviction application EV/25/2481. 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.
4. The Applicant's Representative lodged two further inventories of productions:
 - 4.1. Second inventory containing documents 1-3 on 29 May 2026; and
 - 4.2. Third inventory containing documents 4-6 on 4 September 2026.
5. 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 eviction application. The letter was sent by Royal Mail to the Respondent on 6 August 2026 and signed for on 10 August 2026.
6. The Respondent did not make any contact with the tribunal.

CMD: 20 September 2026, 1000h, Teleconference

7. Mr Duck attended from the Applicant's representative, with Mr Dembele and Ms Mtonga from the Applicant company.
8. 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 Representative's submissions

9. 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.

10. 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.

11. 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.
12. Mr Duck sought a payment order for £7475.00, being the rent due as at 10 May 2026 (for the period to 9 May 2026). This sum was intimated to the Respondent in the Notes of the CMD on 15 May 2026. He reserved the right on behalf of the Applicant to make a further Application for the rent arrears due to the end of the tenancy, after the deposit is dealt with.

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

- 13.1. 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.
- 13.2. 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.
- 13.3. The Applicant and Vithlington are registered as joint landlords for the Property.
- 13.4. The Applicant had authority in terms of the agreements with Vithlington to enter into a private residential tenancy of the Property with the Respondent.
- 13.5. The Applicant entered into a private residential tenancy agreement with the Respondent for the Property which began on 10 December 2024.
- 13.6. 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.

- 13.7. As at 9 June 2026, rent arrears were £7475.00, including rent payable on 10 May 2026 for the period to 9 June 2026.

Discussion

14. The tribunal determined on the basis of the Application, including supporting documents that the Applicant has proved that the Respondent owes the Applicant the sum of £7475.00 in rent arrears for the period from the start of the tenancy of the Property to 9 June 2026; and made an order for payment by the Respondent to the Applicant for the said sum in respect of the said period.
15. The Applicant has reserved the right to make a further application for arrears due for the period from 10 June 2026 to the end of the tenancy.

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

10 September 2026