



**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/22/1505**

**Re: Property at 1 Lynedoch Place, Basement Flat, Glasgow, G3 6AB (“the Property”)**

**Parties:**

**Mr Neil McKinnon, Glendale, Bankend Road, Bridge of Weir, PA11 3EU (“the Applicant”)**

**Gilson Gray LLP, 29 Rutland Square, Edinburgh, EH1 2BW (“the Applicant’s Representative”)**

**Mr Sandy Moreland, Basement Flat, 1 Lynedoch Place, Glasgow, G3 6AB (“the Respondent”)**

**Tribunal Members:**

**Ms. Susanne L. M. Tanner Q.C. (Legal Member)  
Ms. Elizabeth Currie (Ordinary Member)**

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

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

**(1) was satisfied that Ground 12(1) in Schedule 3, Part 3 to the 2016 Act was established by the Applicant, in that on the day the tribunal considered the application for an eviction on its merits the Respondent was in rent arrears greater than one month’s rent and had been in arrears of rent for a continuous period of more than three consecutive months up to and including that day; that rent arrears were not wholly or partly a consequence of a delay or failure in payment of a relevant benefit; that it was reasonable to make an order for**

**eviction in the circumstances of the case; and made an order for eviction in terms of Section 51 of the 2016 Act;**

**(2) The decision of the tribunal was unanimous.**

## **Statement of Reasons**

### **Procedural Background**

1. The Applicant made an application to the tribunal on 19 May 2022 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”).
2. The Applicant seeks the Respondent’s eviction from the Property under Section 51 of the 2016 Act on Ground 12 of Schedule 3 to the 2016 Act.
3. The Applicant provided the following documents in support of the Application:
  - 3.1. Private Residential Tenancy Agreement;
  - 3.2. Rental statement dated 13 May 2022;
  - 3.3. Notice to Leave
  - 3.4. Email service Notice to leave dated 7 April 2022;
  - 3.5. Pre-action correspondence; and
  - 3.6. Copy of Section 11 notice sent to the local authority.
4. The tribunal’s administration obtained a copy of the Title Sheet for the Property which showed the registered proprietor from 11 August 2021 as SMS Investments (Scotland) Limited, a company incorporated under the Companies Acts (Company number SC597109) and having its registered office at Titanium, 1 King’s Inch Place, Renfrew, PA4 8WF.
5. The tribunal requested further information from the Applicant’s Representative in relation to title and interest to make the application. On 21 June 2022, the Applicant’s Representative responded stating that the Applicant is a director of the limited company which is registered proprietor. A consent letter was produced from co-director of the limited company which is the registered proprietor of the Property, consenting to the Property being let in the sole name of the Applicant and of the Application being raised in his sole name as proprietor.
6. On 19 July 2022, the Application was accepted for determination by the tribunal. A Case Management Discussion (“CMD”) teleconference was fixed for 27 September 2022 at 1400h.

7. The tribunal sent letters of notification to all parties dated 9 August 2022 with the date, time and arrangements for joining the Case Management Discussion (“CMD”) in relation to the Application. The Respondent was invited to make written representations in response to the Application by 30 August 2022. Both parties were advised that they were required to attend the CMD. The parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application which may involve making or refusing an eviction order. The parties were also advised that if they do not attend the CMD this would not stop a decision or order being made if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair.
8. Service of the Application paperwork and notice of the CMD on the Respondent on 10 August 2022 at the Property by Sheriff Officers was successful.
9. The Respondent did not submit any representations in the specified time period.
10. On 7 September 2022, the Respondent submitted a postponement request for the CMD. He stated that he had received delivery of the tribunal documentation. He stated that he disputed the accuracy of the rent statement in the pack and that he required time to recover proof of payments and compile a full account of payments; to compile evidence relating to repairs issues at the Property; for medical evidence to be obtained and produced; and to obtain legal advice.
11. On 8 September 2022, the Applicant’s Representative stated that he did not oppose the postponement request but requested that the tribunal make an order for Directions requiring the Respondent to produce the full legal basis for his claim with submissions and evidence; and that an inspection be ordered in relation to any alleged issues in the submissions.
12. On 13 September 2022, Directions were issued to the Respondent, requiring him to produce
  - 12.1. Proof of medical appointment as inpatient or out patient in or about the date of the Case Management Discussion on 27 September 2022, which clearly shows the date of the procedure (the document should be redacted by the Respondent to remove any personal sensitive medical or other information. Please be aware that supporting evidence will be shared with the other party to the case by default.
  - 12.2. Proof that a solicitor or other housing adviser has been contacted for advice.
  - 12.3. Full contact details of any representative the Respondent wishes to act on his behalf in connection with the Application for eviction.

13. The Respondent failed to comply with the tribunal's Directions.
14. A civil application was made with the same parties and property (CV/22/3317) and a separate Case Management Discussion was fixed at a later date.
15. On 20 September 2022, the Respondent contacted the tribunal's administration by telephone. He stated that he had misunderstood the CMD notification and had missed the written representations deadline. He was advised that submissions could still be automatically accepted up to seven days before the CMD. The Respondent advised the caseworker that he had been "knocked back" for Legal Aid and was awaiting an appointment from the CAB.
16. On 22 September 2022, the tribunal issued further Directions. The Case Management Discussion in relation to this Application which was fixed for 27 September 2022 was postponed to a date to be fixed and notified to parties. The Tribunal directed, if possible, the Case Management Discussion in these proceedings will be joined with and fixed for the same date as the Case Management Discussion in the connected civil proceedings (CV/22/3317) (which may result in a postponement in the civil proceedings to a new date for both CMDs to be held together).
17. The Respondent was directed to provide the following no later than 7 days prior to the new Case Management Discussion:
  - 17.1. the Respondent must notify the tribunal of any representative he instructs to act on his behalf in connection with the eviction case (and the related civil proceedings);
  - 17.2. The Respondent or his legal representative should lodge a written defence to the Application for eviction which clearly outlines the factual and legal basis of any defence which he wishes to advance; with reference to legal authority relied upon (for example relevant statutory or case law supporting his legal argument);
  - 17.3. The Respondent should produce a bundle of supporting evidence upon which he wishes to rely, with each item clearly numbered, together with a List of Documents which lists all items in the bundle;
  - 17.4. The Respondent should provide evidence within the above bundle of any funds retained in respect of rent, with appropriate redactions to remove personal information such as bank account details and unrelated statement entries;
  - 17.5. If the Respondent (or his legal representative) makes a separate application to the tribunal in relation to whether the Property meets the private rented sector "repairing standard", the reference number for this case and the related civil application should be brought to the attention of the tribunal so that consideration can be given to further procedure in relation to all the cases. It

should be noted by the Applicant that prior to making any such application he would have to notify the Applicant (or his Representative) about the alleged defects and the alleged failures to meet the repairing standard;

17.6. No property inspection will be fixed in relation to the eviction proceedings in the meantime, but the matter may be discussed at the Case Management Discussion in the eviction case once the tribunal has received the Respondent's defence to the Application and supporting evidence; and established whether there is any related repairing standard application.

18. The Respondent failed to comply with the tribunal's Directions.

19. A new date for the CMD was fixed for 14 November 2022 at 1000h. Notification of the CMD was served on the Respondent by Sheriff Officers.

20. The Respondent did not make any contact with the tribunal after his telephone call on 20 September 2022.

21. On 8 November 2022, the Applicant's Representative sent the tribunal and the Respondent an updated rent statement, including payments due and made up to an including 1 November 2022.

#### **CMD: 14 September 2022, 1000h, Teleconference**

22. The Applicant was represented by Mr Gray, solicitor from Gilson Gray LLP, the Applicant's Representative.

23. 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.

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

24. Mr Gray stated that the Applicant is a Director of the proprietor company, who is acting in his personal capacity as agent for both of those companies. Mr Gray stated that the same applied to the related civil application (CV/22/3317).

25. Mr Gray stated that he is seeking an eviction order from the tribunal. He stated that he has had a number of phone calls with the Respondent since he was instructed, in which the Respondent has made promises about payment of arrears that have not come to anything. On 30 August, Mr Gray spoke to the Respondent to discuss

the original CMD on 27 September. The Respondent stated to Mr Gray that he believed that the arrears statement was inaccurate. The Respondent told Mr Gray that he was going to come back with figures as to what he believed to be due. Mr Gray stated that the Respondent has never done so. Mr Gray stated that in some of the Respondent's calls, the Respondent stated that he had health issues. These were raised in the postponement request but no further information has been produced. On 20 September 2022, the Respondent contacted Mr Gray to advise that he was going to start making payments towards the ongoing rent. Mr Gray stated that no payments have come in and that the arrears are now £24,700. The CMD was then postponed until 14 November 2022. Mr Gray stated that the Applicant cannot allow the position to continue, as he is of the opinion that the Respondent has funds and is simply choosing not to pay.

26. Mr Gray referred to the updated rent statement which had recently been produced. Following a discussion about the narrative in some of the entries, Mr Gray arranged for Mr Craig McCall from the Applicant's letting agent to join the CMD to provide the requested information.
27. Mr McCall joined the call and confirmed that he is a letting agent with Core Property which acts on behalf of the landlord Applicant in respect of the Respondent's tenancy of the Property. He stated that they took it on after the landlord had been experiencing problems with arrears with the Respondent. The Applicant asked them to try to resolve the issues with the Respondent. The Applicant had the Respondent as a joint tenant previously. At a later date, the Respondent asked to let the Property as the sole tenant.
28. Mr McCall confirmed that the rent statement, which is a spreadsheet, had been produced by the letting company. Mr McCall addressed the rent statement up to 1/11/22.
29. Mr McCall stated that the Respondent moved in during 2019, and the letting agent did the documentation but was not instructed to collect rent. They only got involved in obtaining rent from January 2020. The first relevant entry is 24 January 2020. The rent account was set up for the Respondent. The payment received was £550, which is not the rental amount. It was unallocated. They allocated towards the rent on 24 January 2020.
30. Mr McCall said that they had a consultation meeting with the Respondent in January 2020. He said that he would pay it in tranches, which never came in and there were a number of reasons or stories about why he was behind on payment, with promises to pay.

31. In relation to “unallocated” payments shown on the statement, Mr McCall explained that when rent comes in it gets allocated over to the account and then it gets deducted off any amounts are due. With the way that the auto statement is produced, any credit funds will automatically clear the oldest amount that is due first. Mr McCall explained that the Respondent paid sporadically and sometimes did not pay the full rent. If that happened, an amount appeared in the business account which would show as unallocated. They then have to allocate to the Respondent’s account. Each “unallocated” payment on the statement has a corresponding allocation to rent due, with the oldest arrears being met first.
32. Mr McCall stated that in relation to the cash payment on 1 March 2021, the Property is round the corner from the Applicant’s business. On this occasion the Respondent paid the Landlord in cash and it was allocated to the account. No cash came in to the letting agent.
33. Mr McCall stated that Mr Moreland has not raised any property issues or health issues recently. In the midst of the pandemic starting, the Respondent said he had business issues. In around September 2021, he the said that he was getting funding and sponsorship deals. He then said that he had been take into hospital with an ulcer and said that payment was due to ill health and the pub had remained open. The rent payments stopped coming in. The letting agent has not had any contact with him this year about the health issues and have not had any further correspondence from him since March 2022. Since then he believes that the Applicant had discussions with the Respondent that he cannot continually go without payments, then there was a severe disagreement, after which the solicitor was instructed. He stated that the Applicant has had a lot of stress as a result of having to deal with this. There are very large rent arrears. The Applicant wants this resolved so that he can move on with regards to the next stage of whatever he does with the property. The civil action for the outstanding rent has also been made.
34. Mr McCall stated that as far as he is aware the Respondent is still occupying the property. Mr McCall stated that he has not received any repair requests from the Respondent at all and that there has been no contact from him with the letting agent since March 2022.
35. Mr Gray confirmed that he had no other factual points which required to be covered by Mr McCall, so Mr McCall was thanked for his participation in the CMD and he then left the CMD.
36. Mr Gray confirmed that the last time he got a response from the Respondent was a call on 20 September 2022, in which the Respondent asked for bank details to

make payments and said that he would make payments to the ongoing rent. Mr Gray stated that there have not been any payments.

37. Mr Gray made submissions in relation to the reasonableness test in relation to the eviction order which was sought. He stated that the Respondent has been served with a NTL and he has been given all the statutory timescales to find alternative accommodation but does not appear to have made any effort to locate any. He stated that the Respondent has been served with the tribunal paperwork and has come back with the information with regards to the postponement request in September but that he has entirely failed to comply with the tribunal's two sets of Directions. He stated that there is no information about any of the legal bases to challenge the application, the Respondent has made no bundle submission, he has not notified the tribunal about any representative. There are significant arrears. The Respondent is the sole tenant and only occupant so far as the Applicant is aware. For the above reasons, Mr Gray submitted that it is entirely reasonable for the tribunal to make an eviction order.

**38. The tribunal makes the following findings-in-fact:**

38.1. The Applicant is one of the directors of the registered proprietor limited company of the Property and has the consent of the other director to let the Property and to make this application to the tribunal.

38.2. There is a private residential tenancy agreement between the Applicant and the Respondent for the Property.

38.3. The start date of the tenancy was 1 June 2019.

38.4. Rent is payable at the rate of £750.00 per calendar month on the 1<sup>st</sup> day of each month.

38.5. On 6 and 27 April 2022, the Applicant's agent wrote to the Respondent about the rent arrears with pre-action options.

38.6. On 7 April 2022, a Notice to Leave containing ground 12 of Schedule 3 to the 2016 Act was served on the Respondent.

38.7. The Applicant has given the Respondent at least 30 days' notice that he requires possession.



- 38.8. The Application to the tribunal was made on 19 May 2022.
- 38.9. There have been rent arrears since in or around 1 June 2019.
- 38.10. As at 30 September 2022, the Respondent was in arrears of rent of £23,200.00.
- 38.11. As at 14 November 2022, the Respondent was in arrears of rent of £24,300.00.
- 38.12. The Respondent has offered to make payments towards clearing the arrears but had not done so.
- 38.13. The Respondent continues to reside in the Property and lives alone.
- 38.14. The rent arrears are not a consequence of delay or failure in payment to the Respondent of relevant benefits.

### **39. Findings in fact and law**

- 39.1. The tribunal is satisfied that the facts required in paragraph 12(2) of Schedule 3 to the 2016 Act have been established.
- 39.2. The tribunal is satisfied it is reasonable to make an order for possession.

### **Discussion**

40. The order for eviction is sought in terms of Section 51 and paragraph 12(2) of Schedule 3 to the 2016 Act. The tribunal was satisfied that the requirements of those provisions have been met.
41. In relation to reasonableness, reference is made to the tribunal's findings in fact. The tribunal was satisfied that there are rent arrears as at 14 November 2022 in the sum of £24,300.00 and that the Respondent has not paid any of the arrears despite offering to do so to the Applicant and his representatives. He lives alone in the Property. The Applicant is required to meet property outgoings in the meantime. The Respondent has not opposed the application for eviction. He has not produced any defence. He has failed to comply with two directions of the tribunal. He has had the opportunity to obtain legal advice. He has not notified the tribunal that he

has appointed any representative. There is no evidence that he is on any relevant benefits.

42. 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.**

S. Tanner

**14 November 2022**

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