



**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/21/1395**

**Re: Property at 1/5 Russell Gardens, Edinburgh, EH12 5PG (“the Property”)**

**Parties:**

**SDR Property Company Ltd, 93-101 Gorgie Road, Edinburgh, EH11 1TE (“the Applicant”)**

**Mr Craig Honeyman, 1/5 Russell Gardens, Edinburgh, EH12 5PG (“the Respondent”)**

**Tribunal Members:**

**Nicola Irvine (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”) refused the application.**

**Background**

[1] The Applicant submitted an application seeking an order to evict the Respondent from the property. The Tribunal issued a letter to the parties dated 26 August 2021 advising them of the date, time and conference call details of today’s case management discussion. In that letter, the parties were also told that they required to take part in the discussion and were informed that the Tribunal could make a decision today on the application if the Tribunal has sufficient information and considers the procedure to have been fair. The Respondent was invited to make written representations by 16 September 2021. No written representations were received by the Tribunal.

### **The Case Management Discussion**

- [2] The Applicant was represented by Miss Ridley. The case management discussion took place by conference call and in the absence of the Respondent.
- [3] The Tribunal referred to the Notice of Direction issued on 20 August 2021 and invited submissions to be made on whether it is competent for a limited company to seek an order for eviction in terms of ground 4 of schedule 3 of the Act. The Applicant's representative advised that the property was previously owned by a director of the Applicant and that that director is a registered landlord. An email has already been lodged with the application setting out the reasons why the director of the Applicant wishes to live in the property. The Applicant's representative advised that the Respondent has not paid rent for 17 months, but that is not the basis upon which eviction is presently sought. It was submitted that since it is the sole director of the Applicant who wishes to reside at the property, the order ought to be granted.

### **[4] Findings in Fact**

- i. The parties entered into a Tenancy Agreement which commenced 20 July 2018.
- ii. The Applicant served Notice to Leave by sheriff officer on 26 February 2021.

### **Reason for Decision**

- [5] The Tribunal proceeded on the basis of the written documents which were before it and the submissions made at the case management discussion. The Applicant's representative invited the Tribunal to make the Order sought, relying upon Ground 4 of Schedule 3 of the 2016 Act. The Notice to Leave had been served. However, the Tribunal was not satisfied that it is competent for a limited company to rely upon Ground 4 in seeking an order for eviction. The Applicant is a separate legal entity from its members and directors. A limited company cannot occupy a property as its only or principal home. Reliance was placed on the director of the Applicant having formerly owned the property and being a registered landlord. However, the Tribunal observed that the limited company

owns the property, is designed in the tenancy agreement as the landlord and is the Applicant in the present proceedings. The Tribunal was not persuaded that the present application is competent and therefore refused the application.

### **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.**

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**Legal Member/Chair**

**30 September 2021**  
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**Date**