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 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act")

Chamber Ref: FTS/HPC/EV/25/0336

Re: Property at 11, 0/1 Percy Street, Glasgow, G51 1NY ("the Property")

Parties:

Mr Niam Shaukat, 282, 1/2 Paisley Road West, Glasgow, G51 1BQ ("the Applicant")

Mr Sarwar Khan Afridi, 11, 0/1 Percy Street, Glasgow, G51 1NY ("the Respondent")

Tribunal Members:

Craig Chisholm (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an eviction order should be granted.

Background

1. By application dated 23 January 2025, the Applicant sought an order in terms of rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Procedure Rules").

2. On 22 April 2025, the application was accepted by the Tribunal and referred for determination.

3. A case management discussion (CMD) took place on 4 September 2025. The Applicant was represented by Mr MacAulay. The Respondent was not present or represented. An eviction order was sought by the Applicant. The tribunal was not satisfied at the CMD to grant an order for eviction, indicating the Respondent, whilst not represented at the CMD, evinced a desire to defend

proceedings and he was allowed a final opportunity to state a defence. Accordingly, a Hearing on evidence was fixed.

4. Following the CMD on 4 September 2025, the Tribunal issued a direction seeking the Respondent to provide written representations setting out his proposed defence by 16 October 2025. On 23 October 2025, the Respondent lodged a document entitled “Response in Defence of the Application”. In essence the defence purported that the Property was in very poor condition upon commencement of the Lease in December 2022 and the Applicant agreed to carry out works and failed to do so.

5. A Hearing took place on 11 March 2026. The Applicant was represented by Mr MacAulay. The Respondent was present. The Tribunal clarified with the Respondent that his position was that the Property is in a state of disrepair as a result of the Applicant’s failure to meet his repairing obligations and is withholding rent as a result. The Applicant’s representatives made submissions the Applicant had attempted to gain access to assess the state of the Property and had been refused entry. The Applicant was not present. In light of that, the Applicant’s representative sought to adjourn proceedings to allow for witness attendance. The Tribunal adjourned proceedings.

6. Following the Hearing on 11 March 2026, the Tribunal issued a direction requiring the Respondent to provide written representations specifying the items of disrepair in the Property, when they arose, when the items were reported to the Applicant, and whether they have been attended to. The Applicant was required to provide written representations specifying what efforts were made to access the Property and how he was prevented from doing so, and to produce an updated rental statement. On 22 April 2026, the Respondent lodged a document entitled “Response in Accordance to the Notice of Direction”. In essence, the Respondent identified six issues with the Property, stating the issue, when it arose, when it was reported and whether action had been taken. On 10 May 2026, the Applicant lodged two statements purporting to be from tradespersons who attended the Property and an updated rental statement stating arrears of £18,850.00.

7. A Hearing was due to be heard on 7 July 2026. This was postponed at the request of the Applicant’s representative.

The Hearing

8. A Hearing took place on 16 October 2026 *via* telephone conference call. The Applicant was represented by Mr MacAulay. The Respondent was personally present.

9. The Tribunal explained the purpose of the Hearing and the powers available to the Tribunal to determine matters.

10. The Tribunal asked various questions of the parties with regard to the application.

11. The Applicant's representative confirmed that the Applicant wished the Tribunal to make an order for eviction.

12. The Respondent confirmed he was opposed to an order being made.

13. Evidence was heard from the Applicant and Applicant's representative that since the last Hearing attempts were made to assess the condition of the Property. Submissions were made that contact with the Respondent occurred in June regarding access and it was agreed between parties for tradespersons to attend 29 June 2026. Submissions were made that the tradesperson attended on 29 and 30 June 2026 and they were unable to access the Property. Submissions were made to previous attempts to access the Property and access was obtained in October 2023 regarding an issue to the boiler. It was submitted a repair was effected. Further reference was made to WhatsApp messages from April 2024 purporting to show the Applicant asking for measurements for flooring on several occasions without response. Submissions were made that no rent had been paid by the Respondent with the exception of 2 payments totalling £800 since January 2024, although when questioned the Applicant appeared to suggest arrears had occurred prior to that. The Applicant's representative submitted the arrears were significant and the Respondent's actions of withholding rent were not justified, particularly when efforts had been made to attempt the Property to effect repairs.

14. Evidence was heard from the Respondent that the issues described in his document "Response in Accordance to the Notice of Direction" were still present and had not been resolved. He submitted he was willing to engage with the Applicant to affect repairs. The Respondent accepted someone attended at the Property in June 2026, but he did not hear the door being knocked. He submitted the Applicant was non-committal to accessing the Property and emails that were not lodged would demonstrate this. The Respondent stated his family moved into the Property in August 2023, and he was pushing to have issues sorted out between then and October 2024, and no issues were resolved. He stated because of that, action had to be taken and admitted to stop paying rent in October 2024, and owing rent between October 2024 and October 2026, which amounted to £15,600. He stated he did not pay due to sub-standard conditions. The Respondent stated he had the funds to pay this amount if repairs were effected. The Respondent stated legal advice was sought by Govan Law Centre when this application was first raised against him. The Respondent stated he had never received any advice regarding available recourse to seek a Repairing Standard Enforcement

Order by the Tribunal if he did not believe the Applicant was meeting the Repairing Standard. The Respondent stated he had not spoken with the local council to seek accommodation should he and his family be made homeless. The Respondent state he has made minimal effort to sort alternative private lets in the area as his young child attends the local primary school.

Findings in Fact

15. The Applicant is the registered owner of the Property.

16. The Applicant and the Respondent are respectively the landlord and tenant under a Private Residential Tenancy Agreement for the Property, entered into in terms of the 2016 Act and commencing on 5 December 2022.

17. On 28 August 2024, the Applicant served upon the Respondent a Notice to Leave (NTL) as required under the 2016 Act. Service was effected personally by Sheriff Officer. The Certificate of Intimation was included as part of the application. The NTL informed the Respondent that the Applicant wished to seek recovery of possession under Ground 12 contained within Schedule 3 of the 2016 Act, namely that the tenant had been in arrears of rent for three or more consecutive months.

18. The NTL was correctly drafted and gave appropriate periods of notice as required by law.

19. A Section 11 Notice under the Homelessness etc. (Scotland) Act 2003 was served on the local authority on 17 January 2025.

20. The agreed monthly rental was £650 per month.

21. Arrears have accrued since January 2024. The amount of arrears at the date of the Hearing was £15,600.

22. Appropriate accounting had been provided in respect of the outstanding rent as at the date of the application to the Tribunal.

23. The basis for the order for possession on ground 12 was thus established.

24. The Respondent was not entitled to withhold rent due to the state of the repair of the Property and had failed to meaningfully engage with the Applicant to allow access for any repairs required to be effected.

Reasons for Decision

25. The order for possession sought by the Applicant was based on the ground specified in the 2016 Act and was properly narrated in the NTL served on the Respondent. The Tribunal was satisfied that the NTL had been served in accordance with the terms of the 2016 Act and that the Applicant was entitled to seek recovery of possession on that ground.

26. The Tribunal accepted the Applicant's evidence regarding the rental arrears and efforts to access the Property to effect repairs. A rent statement setting out the history of the arrears was produced, however, the best evidence in relation to arrears was the Respondent's submissions stating no rent had been paid for two years. Since October 2024, the Respondent had failed to pay the full rent as it fell due, and significant arrears had accrued. Despite the Applicant's efforts to engage with the Respondent, significant sums remained outstanding.

27. The Tribunal was satisfied that the Respondent had been in arrears for a period far in excess of three consecutive months. Approximately two years arrears were due. The Tribunal accepted the Applicant's evidence regarding the arrears and found that the Applicant had made appropriate attempts to encourage the Respondent to address them.

28. The level of arrears was not disputed by the Respondent.

29. Ground 12 was accordingly established.

Decision

30. The Tribunal has a duty, in such cases, to consider the whole of the circumstances in which the application is made. It follows that anything that might dispose the Tribunal to grant the order or decline to grant the order will be relevant. This is confirmed by one of the leading English cases, *Cumming v Danson* [1942] 2 All ER 653 at 655, where Lord Greene MR said:

> *"In considering reasonableness... it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad commonsense way as a man of the world, and come to his conclusions giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account."*

31. In determining whether it is reasonable to grant the order, the Tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties.

32. In this case, the Tribunal finds that it is reasonable to grant the order. The balance of reasonableness weighs in favour of the Applicant. The Tribunal did not find the evidence of the Respondent reliable or credible. The Respondent made clear attempts to evade corresponding with the Applicant so avoid paying rent.

33. The Applicant has no other rental properties. This Property was burdened by a Standard Security. Submissions were made that the Applicants principal home was also burdened by a Standard Security. The Applicant made submissions there intention if eviction was granted would be to sell the Property and had suffered mental distress whilst these proceedings were ongoing. The Tribunal found these matters compelling in reaching its decision in relation to the reasonableness of granting same.

Right of Appeal

In terms of Section 46 of the Tribunals (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.

Craig Chisholm

Legal Member/Chair **Date: 16th October 2026**