Housing and Property Chamber
First-tier Tribunal for Scotland

Notes on a Case Management Discussion of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing Scotland Act 2014

Chamber Ref: FTS/HPC/CV/22/3341

Re: Property at Elmsley Hallyburton, Coupar, Angus, Blairgowrie, Perthshire, PH13 9JY ("the Property")

Parties:

Mr James (Jim) Sinclair, UNKNOWN, UNKNOWN ("the Applicant")

Mr Nicholas Llewellen Palmer, Hallyburton Estate Trust Estate Office, Hallyburton, Coupar Angus, Blairgowrie, Perthshire, PH13 9JR ("the Respondent")

Tribunal Member:

Jan Todd (Legal Member) and Helen Barclay (Ordinary Member)

Summary of Discussion

Background

(a) This was a hearing to consider the application by the Applicant dated 10th September 2022 for an order for payment from the Respondent in respect of originally abatement of rent paid in respect of the property by the Applicant to the Respondent and compensation for the impact on the Applicant's family. Prior to the hearing which took place in person at Dundee Tribunal suite, there has been quite a long procedural history with four previous Case Management Discussions held. The first CMD took place on 28th March 2023, the second on 16th June 2023 the third on 20th July 2023 and the fourth and last on 9th January 2024. The note of those discussions are referred to for their terms.

(b) A further repairs case brought by the Applicant involving the same property and Respondent was heard by a different Tribunal; an order was originally granted but was subject to an application for review and appeal by the Respondent and eventually the decision was recalled and the Application abandoned as the Tribunal in that case FTS/HPC/RP/22/3316, noted "The landlord had replaced the windows at the property which had been the subject of the Tenant's complaint and had also carried out further refurbishment of the property and

had arranged to replace all the floor coverings. The Tribunal was therefore satisfied that the issues raised in the repairs case had been satisfactorily resolved."

(c) The Applicant sought time to seek legal advice and eventually managed to obtain legal advice although he has remained unrepresented and has represented himself throughout these proceedings. The Applicant provided substantial submissions on 26th November 2023 after taking legal advice and the Respondent also lodged answers and submissions in relation to the further submissions. Both are referred to for their terms.

(d) The Applicant had originally sought the sum of £32,980.12 in his application. During the course of the case the Applicant has sought to amend and increase the sum sought to £49,213.48. The Applicant has since asked to amend and decreased the sum sought and has also withdrawn a claim for household insurance, a claim for fuel (as this was settled) and unlawful eviction as he advised he would raise it in a separate action which the Tribunal understands was raised and dismissed. He sought time to take legal advice and after obtaining this, requested to amend this claim further following advice from his legal adviser and after some clarification the sum sought was £12,000.

(e) The Applicant in his written response dated to the Tribunal's direction of June 2023 advised that this is broken down as follows:

a. a claim for loss of quiet enjoyment of the property; abatement for breach of the repairing standard, breach of tenancy loss of amenity and stress and inconvenience from the landlord's actings and those of his agents, affecting his enjoyment and use of the Property and a claim for loss of heating for several days. The Applicant also mentions statutory as well as common law breaches and a claim for personal injury for his partner Ms Jean Todd

b. The Applicant in particular regarding loss of enjoyment, failure to meet the repairing standard and breach of contract submitted the following:-

"Clause 4.1(c) of Short Assured Tenancy entered into by the parties and dated 24 February 2016 ("the Lease"), provides that: "the Landlord is responsible for ensuring the Subjects meets the Repairing Standard throughout the duration of this Lease." The clause provides inter alia that this means that the Subjects are wind and watertight and fit for human habitation, that the structure and exterior are in a state of repair and in proper working order, and that the installations in the Subjects for the supply of water, gas and electricity, space heating and heating water are in a reasonable state of repair. The Lease defines "the Repairing Standard" as "the standard to which the Landlord is obliged to put and thereafter maintain the Subjects as set out in Section 13 of the Housing (Scotland) Act 2006 and provided in Clause [4.1] hereof". Moreover, it is an implied term of the Lease that the landlord meets the repairing standard and keeps the property in tenantable and habitable condition. The Respondent has breached the aforementioned duties under the Lease. The property did not meet the repairing standard. Namely, the property was not wind and watertight. The windows were in a state of disrepair and were not fully operational. Further, vinyl flooring in the house required repairs which were not carried out. The Tribunal has previously found that the property did not meet the repairing standard based on those problems (FTS/HPC/RP/22/3316). Since the decision of the Tribunal, the property was subsequently without heating and

hot water for a period of four days in February 2023, which was a further breach of the repairing standard. The Applicant suffered loss of amenity, stress and inconvenience as a result of the Respondent's breach of contract. The Applicant was required to make complaints regarding the state of the property to the Respondent. The Respondent did not make timeous repairs and the Applicant was therefore required to chase the Respondent, resulting in inconvenience and frustration. In addition, the Applicant suffered loss of enjoyment of the property as a result of the breach of the repairing standard. It was unpleasant living in the property. The Applicant and his family had hoped to make the property their family home for many years. It was distressing that a property they had hoped to make a permanent home in was not fit for purpose. The Applicant was frustrated by the lack of repairs to the property and timeous responses by the landlord. The Applicant incurred costs in heating the property because the property was not wind and watertight and in attempting to draft proof the property. The Applicant is entitled to damages therefor. On or around February 2023, the property was without hot water or heating for a period of four days. The Applicant and his family required to source and chop wood to heat the one room of the property which could be heated using a wood burning system. The landlord's failure to repair the heating system timeously caused inconvenience. The other rooms in the property could not be heated and the Applicant accordingly suffered loss of enjoyment of almost all rooms in the property for a period of four days. The Applicant is entitled to damages therefor. During the period in which the property was without heating, the Applicant's partner, whilst chopping wood, sustained an injury to her forehead. A photograph of the injury sustained is produced. Had the heating system been timeously repaired by the landlord this injury would not have occurred. The Applicant's partner is entitled to reparation for the injury sustained therefor. Esto, the tenancy was a Short-Assured Tenancy and was therefore subject to the repairing standard duty in terms of Section 12 of the Housing (Scotland) Act 2006 ("the 2006 Act"). The Respondent was under a statutory duty to ensure the property met the repairing standard as defined in section 13 of the 2006 Act.

The property did not meet the repairing standard at the outset of the tenancy. The Respondent was therefore in breach of the duty set out in Section 14(1) (a) of the 2006 Act. The Respondent failed to maintain the property so that it continued to meet the repairing standard and was therefore in breach of the duty set out in Section 14(1) (b) of the 2006 Act. The Applicant notified the Respondent that the property did not meet the repairing standard. The Applicant first informed the Respondent that the windows required repairs in January 2018. The Respondent undertook to replace the windows in October 2019. The windows in the kitchen were replaced in July 2021. No further replacements or repairs to the windows were carried out during the tenancy. The Applicant notified the Respondent of problems with the vinyl flooring on 4 August 2022 by email. The flooring was not repaired. The Respondent failed to carry out repairs within a reasonable time in respect of both the windows and the flooring. The Respondent was therefore in breach of Section 14(1) (b) of the 2006 Act. The Applicant suffered loss of amenity, stress and inconvenience as a result

of the Respondent's breach of his statutory duties, as detailed above under the subheading 'Lease'.

The Applicant suffered loss of enjoyment of the property because it was not wind- and watertight, because the vinyl flooring required repair and because the Applicant was left without heating for the period of four days.

The Applicant suffered stress and inconvenience in communicating with the Respondent and in attempting to mitigate the effects of the breach of the repairing standard as set out above under the subheading 'Lease'. The Applicant is entitled to damages therefor.

Esto, The Respondent was under a common law duty to keep the property in tenantable and habitable condition. The Respondent failed to keep the property in the required condition. The property was not wind and watertight. The windows required replacement throughout the tenancy. The flooring required repair. The heating and hot water system was not operational for four days. The Applicant suffered loss of amenity, stress and inconvenience as a result of the Respondent's breach of his duties under common law as detailed above. The Applicant is entitled to damages therefor."

The Applicant goes on to aver that he suffered loss of enjoyment of the property, distress and inconvenience by various actions of the Respondent and by the managing agent; and finally that the Applicant's partner had suffered an injury due to the failure of the landlord to attend to a repair timeously.

The Applicant assesses his claim as follows:-

- *An award of damages for distress, inconvenience and loss of enjoyment is based on the length of time that the cause of the distress, inconvenience and loss of enjoyment persisted, the seriousness of the problems, and the frequency with which the problem occurred. The issues pertaining to the windows of the property was a breach of the repairing standard. It affected all rooms of the house except one. The property was not wind and watertight and was therefore difficult to heat and the living conditions were unpleasant. This was a serious issue affecting the whole property. The issue persisted throughout the tenancy, namely for seven years. The Applicant seeks compensation of £1000 per annum,* ***a total of £7000 in respect of the windows.***
- *The disrepair of the vinyl flooring was a breach of the repairing standard. The flooring was not repaired from the time when the Respondent was notified of the issue in August 2022 until the end of the tenancy. The flooring was unattractive and dangerous. The state of the flooring inhibited the Applicant's enjoyment of the property and he was inconvenienced in having to seek repairs from the Respondent.*
- *The failure of the heating and hot water system was a breach of the repairing standard. The issue persisted for four days. The Applicant and his family's only source of heat was a wood burning heater which could heat one room. This occurred during cold weather in February 2023. The Applicant and his family lost enjoyment of almost the entire property and were forced to live in a cold property without hot water. This was a serious problem.* ***In respect of the problems with the***

vinyl flooring and the heating the Applicant seeks a further sum of £1000, cumulative.

- *The behaviour of the Respondent and his agents was unpleasant and alarming to the Applicant It resulted in loss of privacy, distress and placed a strain on the Applicant's relationships with his family. The conduct complained of occurred throughout the tenancy with incidents occurring every few months.* ***The Applicant seeks a further sum of £500 per annum, a total of £3,500, in respect of the conduct as described above.***
- *The Applicant's partner, having sustained an injury within the property, and as a result of the landlord's failure to timeously attend to an urgent repair,* ***the Applicant seeks reparation of £500****.*

c. The Respondent has been legally represented since the start of this application and in his written response indicates that the Tribunal does not have jurisdiction to consider matters relating to Occupier's liability; has stated that incidents or events occurring more than 5 years ago should be excluded because of prescription and that generally the landlord denies the Applicant's version of events. In addition the Respondent avers that any claim for damages made by the Applicant's partner is incompetent.

(f) At the final CMD after written submissions were made and received, on 9th January 2023. Neither of the parties were on the CMD call. The Tribunal had been advised the Applicant would not be joining because of a training event he was required to attend for his work but had no notice the Respondent's agents were not going to attend.

(g) In the absence of the parties the Tribunal considered the submissions that had been received, noted that as the fundamental points in the Application were all disputed by the Respondent, and that the Applicant had sought and obtained legal advice, although he was not legally represented, that it would be appropriate and necessary for the matter to now proceed to a full hearing where evidence can be taken and final submissions made by both parties.

(h) With regard to the claim the Applicant was seeking to make in respect of an injury which had happened to his partner when cutting wood, which the Applicant attributed to the fault of the Respondent for a failure in the heating system at the Property, the Tribunal noted that the Applicant's partner is not a party to this application and therefore no order could be made in her favour. The Tribunal issued various directions to the parties in advance of the hearing and advised that if he Applicant was claiming £500 for himself he required to specify why he would be entitled to compensation for an alleged injury which was incurred by a different party. The Tribunal indicated that it was likely that this part of the claim would be considered incompetent unless the Applicant could persuade the Tribunal why is should be accepted.

(i) Both parties were asked to lodge a final inventory of productions and submissions which would be considered at the hearing.

The following directions were issued:-

The Applicant is required to provide:

1. The Applicant requires to specify how much he is seeking either £10,000 or £12,000.

2. The Applicant requires to provide submissions as to how the Tribunal has jurisdiction to consider any claim under the Occupiers Liability Scotland Act and to specify in particular what that claim is?
3. The Applicant requires to provide evidence at the hearing regarding each of his claims. The evidence can be provided in the form of evidence from witnesses and/or productions.
4. The Applicant requires to identify on which dates and times the Landlord's agents or contractors visited without notice so that the Respondent can respond to those particular dates and times.
5. The Applicant should provide submissions with regard to the Respondent's claim that some incidents the Applicant is averring took place over 5 years ago and cannot be relied upon due to prescription.
6. The Applicant should lodge along with his final written submissions a comprehensive and final inventory of productions paginated and with an index.
7. The Applicant should also advise his list of witnesses that he wishes to bring to the Tribunal.

The Respondent is required to provide:-

8. Any evidence that the landlord gave notice of inspections and repairs to the Applicant and what notice was given.
9. His final written submission encapsulating his position.
10. A final inventory of productions indexed and paginated.
11. A list of witnesses he wishes to bring to the Hearing at least 14 days prior to the hearing.

1. The Applicant responded to the Direction and summarised his claim as follows:-
    a. "The Applicant wishes to clarify that further to legal advice the total sum sought is £12,000.
    b. With effect of 1st December 2017 most types of legal applications in relation to private sector tenancies are dealt with by the Housing and Property Chamber rather than the Sheriff Court. The First Tier Tribunal has jurisdiction to deal with matters relating to private sector residential tenancies under the Housing Scotland Act 1988. The Applicant entered into a tenancy agreement with the Respondent to lease the property known as Elmsley Hallyburton in line with a Short Assured Tenancy under the Housing Scotland Act 1988. The Occupiers Liability Scotland Act 1960 places a duty on the landlord to take reasonable care to avoid any risk to the health and safety of anybody living in the property over which s/he has control. This duty of care extends to non- tenants including visitors. The landlord has therefore failed in their statutory duty to maintain the health and safety of the Applicant and his family in relation to their occupation of the property as the family home. The landlord also failed in regard to a common law duty of care towards all the occupants of the property.
    c. The Applicant acknowledges the Tribunal's direction.
    d. There were a number of times in early part of the tenancy in particular when representatives of the Landlord would arrive unannounced at the

property however I do not have specific dates for these incidents which were raised in my letter to the landlord's agent in December 2018. Specific incidents include:-

i. 25th November 2016: Gamekeeper behaved in a confrontational manner.
ii. Period September/October 2017: Forester contacted by Landlord to remove trees entered property unannounced causing fear and alarm to the Applicant's daughter.
iii. November/December 2017 ;- Maintenance manager entered property to remove leaves etc. from central gutter on roof causing fear and alarm to Applicant's partner who was preparing to enter a shower.
iv. 19th-22nd July 2021 Maintenance department access to replace kitchen windows
v. 23rd January 2023 heating engineer arrived at the property with no prior notice.

e. The Respondent refers to events occurring more than 5 years prior to the date of commencement of the action being time barred in terms of the Prescription and Limitation (Scotland) Act 1976. The Applicant notes that Section 6(1) of the Prescription and Limitation (Scotland) Act 1973 refers to the extinction of obligations by prescriptive period of five years without any relevant claim having been made in relation to the obligation and without the subsistence of that obligation having been relevantly acknowledged. The Applicant respectfully requests that the Tribunal consider that the current action was raised by the Applicant by application to the Tribunal dated 10th September 2022, thereby giving a prescription period of five years to 10th September 2017. However the Applicant would also respectfully request that the Tribunal note the Applicant in fact raised concerns in writing to the Landlord in his letter dated 28th December 2017 in relation to a number of matters. These relate to the other matters which the respondent claims would be time barred, However the Applicant's position is that the matters having been raised in writing dated 28th December 2017 (and therefore within the 5 year prescription limit) and having been acknowledged by the Applicant's agents through arranging to meet with the Applicant thereby relevantly acknowledging the matters dispenses with the Respondents assertion that any of the matters raised would be time barred."

2. The Applicant advised as well as himself, his partner Ms Jean Todd would also be a witness and he lodged an inventory of productions.
3.
4. The Respondent submitted an initial response to the Tribunal's direction on 20th February 2024 which includes the following response:-
    a. "Re Occupiers Liability – the Respondent's position is the Tribunal do not have any jurisdiction to consider any such application. Esto the Tribunal does have jurisdiction then;-
        i. The Applicant's claim is entirely lacking in specification and
        ii. The Act does not confer upon the Applicant any title to sue on behalf of any third party.

b. Claim for Loss of Quiet Enjoyment and Compensation for loss. It is accepted the parties entered into a Short Assured Tenancy Agreement dated 24th February 2016. The Respondent accepts that it is the Respondent's duty to ensure that the Property met the Repairing Standard throughout the duration of the lease. It is the Respondent's position that the Property met the repairing standard other than to the extent it was found not to in the decision issued in the case Ref:- HPC/RP/22/3316 dated 29th March 2023. The Surveyor member of the Tribunal stated during the hearing that he was content the windows were wind and watertight. The Respondent carried out extensive work to the property prior to the commencement of the tenancy and continued to carry out necessary repairs and maintenance during its term. Reference is made to the account records for the property (production 14).
c. In the statement of the decision issued 28th June 2023 the Tribunal reviewed its decision and recalled it and the Repairing Standard Enforcement Order issued in relation thereto.
d. It is accepted that it was a matter of agreement between the parties that the windows would be replaced. *This was to be an improvement to the property*. A survey of the property was undertaken and windows ordered from Sidey Solutions Ltd in January 2020. (Reference made to invoice no 13 of the Inventory of Productions). The intended installation of the windows was delayed and interrupted due to Covid. It was also not possible to carry out the work during the winter periods due to the effect this would have on the Applicant. That was a matter of agreement between the parties. Having ordered and purchased the windows there was no incentive on the part of the Respondent to deliberately delay their installation. There were problems making arrangements with the Applicant with regard to the installation of the windows due to the Applicant's particular requirements with regard to when and how the work was to be carried out. There was no fault on the part of the Respondent which led to any loss on the part of the Applicant.
e. The Respondent then referred to the original energy certificate obtained on 25th August 2014 suggesting energy costs for electricity would be £7800 excluding the standing charge and notice the Applicant had not produced any evidence to show what his actual costs were. The Respondent also suggests that the fact the Applicant and his partner worked from home would increase the costs.
f. The Respondent confirmed that from time to time other repairs were reported and attended to in a reasonable time.
g. With regard to the Applicant's complaint that it was unpleasant staying in the Property the Respondent notes the Applicant requested that the Respondent grant a private residential tenancy and this was not consistent with him not being content to live in the Property.
h. The Respondent accepts that in February 2023 the Respondent reported a fault with the oil fired heating system and states this was responded to appropriately by the Respondent via email production number 8. The Respondent also notes there was a log burning stove in

the property and hot water could be provided by an immersion heater and an electric shower.

i. The Respondent claims that the Applicant has not "provided any specification with regard to how he has calculated the alleged losses. As a consequence the Respondent not been in a position to make a detailed response. The Applicant has been called upon to provide a specification and has failed to do so." The Respondent submits the claim for failing to meet the Repairing Standard or any other breach of contract should be dismissed.
j. With regard to the Applicant's claim for loss of enjoyment of the property due to the behaviour of the Respondent or his agents the Respondent firstly stated that if this was the case why would the Applicant wish the lease to continue and be extended? In addition the Applicant also submitted that claims over 5 years old would time barred because they would have prescribed, and goes on to provide a detailed response to each claim which is referred to for its terms. With respect to the 2 more recent claims about the Respondent's agents, the Respondent advises the estate manager's son was helping the maintenance manager to carry out the replacement of windows and had walked backwards and forwards past the house collecting his tools. He advised that neither the son nor the maintenance manager was aware of which bedroom was the Applicant's daughters and the Applicant did not raise any issue for over 12 months.
k. The Respondent also asserts that the Applicant has produced no medical evidence to support his assertion that he or members of his family have suffered any stress or anxiety, nor any loss of enjoyment of the property as a consequence of any fault on the part of the Respondent.
l. With regard to the claim for damage to the vinyl the Respondent alleges that he undertook to do this on a voluntary basis and that there was no finding this did not meet the Repairing Standard, that the damage may have been caused by the Applicant and or their dogs and that it was only noted on 4th August, the Applicant was advised that the tenancy would be terminated and he did not want the vinyl repaired or replaced before he removed.
m. The Respondent advised that the Hallyburton Estate has approximately 45 properties, that Mr David McAhon had been employed for approximately 10 years and is a qualified joiner who has other employees assisting him. That the Estate has a system for dealing with faults reported to them and the Estate Office will call the maintenance manager and it is their policy to given notice to tenants where possible.
n. The Respondent submitted the application should be dismissed and expenses should be awarded to the Respondent as the Applicant had generally failed to provide the information requested by the Tribunal and the process of the application has been delayed at the request of the Applicant.
o. The Respondent advised Ms Janice Campbell and Mr David McAhon would be the witnesses for the landlord.

5. The Respondent provided an additional written submission on 1st March 2024 stating generally that the Applicant had not provided sufficient specification of

his claim and that he wished a preliminary hearing to determine the issues so as to avoid the Respondent being put to unnecessary expense in connection with the preparation of a full hearing.

6. Specifically the Respondent raised an additional point regarding the part of the Applicant's claim that related to events prior to 30th September 2020 and stated that as the Respondent only became the Applicant's landlord on the 30th September 2020 any aspect of the Applicant's case which related to the period before that should be directed as irrelevant. He also renewed his objection to the claim regarding the Applicant's partner. These submissions were received one week before the hearing.

The Hearing

7. The hearing took place in person at the Tribunal suite on 8th March at Endeavour House, Dundee.
8. Prior to the hearing both parties lodged further submissions, productions and a list of witnesses.

Preliminary Matters:-

Mr Lancaster raised as a preliminary matter that he wished the Tribunal to consider and rule on his last submissions namely that it would be incompetent for the Tribunal to award any sum to the Applicant for an alleged personal injury to a 3rd party namely the applicant's partner especially as there was no causal connection between the injury sustained and the lack of heating in the Property.

He also wished to exclude from the hearing any evidence regarding matters that were over 5 years old as they would have prescribed or any allegation or issue that occurred before the current Respondent became Landlord in September 2020. Mr Lancaster also averred there was a lack of specification regarding whether the claim for the damage to windows was a claim for abatement of rent or damages and submitted no evidence should be heard if there was insufficient specification.

The Tribunal heard from both parties on these matters and noted that with regard to the claim on behalf of Ms Todd which was a claim for £500 for an alleged injury to her head that allegedly occurred while she was chopping wood when the heating system had failed in February 2023, the Tribunal noted it had already warned the Applicant that this was likely to be a head of claim that was not permissible given the Applicant Mr Sinclair was the tenant, Ms Todd was not a party to this action and therefore whether or not there was any claim for negligence and any culpability for any injury sustained by her it could not be claimed by the Applicant and this Tribunal certainly had no jurisdiction to entertain a separate claim for personal injury by a party who was not a tenant or party to this application. The Tribunal noted it would not hear evidence on this matter.

With regard to the matter of any claim that was made in relation to the acting of a previous landlord or previous landlord's agent the Tribunal indicated that in principle and subject to hearing any evidence to contradict this, it did not appear likely that the Respondent who is Mr Llewellen Palmer could be liable for anything that predated

his acquiring title to the Property and becoming the landlord but reserved their position on this matter until all evidence had been heard and submissions made. Mr Sinclair acknowledged that the Respondent became the landlord on j30th September 2020.
The Tribunal disagreed there was a lack of specification with regard to the claim in general for damages and went on to hear evidence.

Evidence from the Witnesses:-

Mr Jim Sinclair.

9. Mr Sinclair is the Applicant and confirmed he was the tenant in the lease of the Property from the Landlord who is the Respondent. He confirmed that the tenancy commenced on 1st March 2016 and noted that the landlord at that point was Hallyburton Estate. He advised that the Property is a 3 / 4 bedroomed stone built cottage in its own grounds but that the 4th bedroom was used as a snug or office. There was also he advised a large kitchen and utility room.
10. He confirmed that his claim as tenant relates to the condition of the Property and in particular relates to the condition of the windows in the Property. He advised that the factor for the estate had given an undertaking that the windows would be replaced, he saw that as a requirement whereas he stated the estate saw it as an improvement. He advised this was agreed in 2019.
11. In 2020 and 2021 he advised that Covid 19 had occurred and caused delays to the repairs; he noted that he was asked for access in July 2021 to change the kitchen windows, he advised they were replaced but none of the other windows were repaired or replaced and then the tenancy was ended and he left in April 2023. He advised the condition of the windows was a breach of the repairing standard.
12. The windows he explained were traditional sash and case windows. He explained that they were not operational and the frames were significantly rotted, with the panes held in by putty and the wooden frames rotten. Glass was moving in the panes and gave him concerns for health and safety. He explained that in the 3 bedrooms the windows would not open and in the event of a fire they could not escape that way so they had to agree an evacuation plan.
13. Mr Sinclair advised that none of the top half of the windows opened and he had discussed the state of the windows and the lack of access with the property manager
14. Mr Sinclair advised that “we wouldn’t be here if the windows had been replaced” and also averred that he believed he had been asked to leave because of the condition of the Property. He advised that he had wanted to stay in the Property and had taken legal advice. He clarified that he was not claiming the windows were not wind and watertight but were in fact not operational. He also agreed that the windows were agreed to be replaced in 2019 by another factor Mr Willet and that a survey was undertaken by Sidey windows the survey being in 2020. He advised that he received notification of the change of the landlord, that he had acknowledged that Covid affected the

implementation of the windows and that after raising concerns Mrs Campbell sought access in July 2021 and the windows were replaced in the kitchen over 3.5 days on 12-16th July.

15. He advised that after this his partner and he had a conversation about her new job he acknowledged that there would be "less availability for us to be at the property". He also acknowledged that in December 2021 they agreed that they would revisit (the matter of the window replacement) the next year.
16. In June 2022 he confirmed that he and his partner had asked for a company to replace the windows, rather than one tradesman, the landlord's maintenance man because it would take quite a while to do change them stating "so we asked for an outside company and this was refused and so the July date was missed".
17. In an email send on the 4th August 2022 he advised that he accepted the windows would be done by the maintenance manager and that this would have an impact on moving furniture. (Mr Sinclair felt heavy furniture would have to be moved each day work was ongoing). He also stated that he asked that the workers confine themselves to the areas where they would be working. He then advised that he received an AT6 form giving notice of eviction proceedings and believed that this was in response to his concerns about the condition of the Property. He advised that he then contacted Perth and Kinross Council for advice re the condition of the windows and they advised to take a case to the Tribunal.
18. With regard to how the failure to change the windows affected the Applicant he advised that the kitchen was out of use for 3.5 days; that he had to move his vehicle to allow for access; that there was a health and safety issue because the windows could not be opened, he had concerns about the safety of them and could not let his children open them and fire evacuation was an issue and they had to make a plan if there was a fire. He confirmed that the overall condition of them was a problem. He also noted that they had to put a film over the windows to create a wind barrier.
19. With regard to the conduct of the Respondent's agents, Mr Sinclair noted that his daughter had been asked out by the maintenance manager's son and had refused, so when he came around the house this caused issues. In particular he felt that the gentleman was going around the whole house when the kitchen was on the side of the driveway and he did not need to go around the whole property agitating the dogs the Applicant owned and causing concern to his daughter. On the final day he noted that the gentleman did confine himself to the area of work. The applicant asked for any future work on the Property if the tradesmen could confine themselves to the area they were working in.
20. With regard to the claim for the lack of heating the Applicant explained that the heating failed in February 2023, he reported this to Janet Campbell but a heating engineer then appeared without notice one morning and the applicant advised that if the dogs that they owned had been in the grounds then he may have been at risk and this was another breach which added to their stress and anxiety. He advised that his view was that the lack of heating was a failure of equipment and it should have been fully operational. He advised that it transpired that the fuel gauge was faulty and a replacement watchman (fuel gauge) had to put in place but this meant they were without fuel and we were told to go to a depot and get some fuel but they did not give any information

about where to get it and fuel suppliers are busy and so he paid for a quick delivery.

a. Mr Lancaster asked if Mr Sinclair was aware that if the windows were designed to open or not and asked if it was possible the windows were designed to have a fixed upper pane. Mr Sinclair advised the panes looked like they were sealed and painted and he could not state if they would open or not. He advised the judgement in the repairs case says they should be fully operational.
b. When asked if he was concerned about the safety of the windows and escaping he said he was and that he had shared those concerns with the estate. Mr Sinclair also added that Mrs Campbell had asserted that the windows did not need to open but he thought there should have been a fire access.
c. With regard to the fact that replacement windows had been purchased by the estate Mr Sinclair advised he was only aware of this from the productions of the Respondent lodged in this case. He acknowledged that the Covid pandemic started in 2020 but advised that he thought the work on the windows would have continued after it started in 2021. When asked if he had had a conversation about Mrs Campbell's letter which stated that the windows would be replaced once a year being a typographical error, he advised that there was "no conversation with us" and thought the fact the Respondents had tried to do further work in 2022 supported this, but also agreed that he had agreed the work should not be tried to be carried out in the winter months.
d. With regard to the work carried out on the kitchen windows Mr Sinclair advised he was unhappy with the level of disruption and thought 3.5 days was unreasonably long. He based this on his previous experience as a tenant when all windows had been replaced within a week. He also agreed to Mr Lancaster's question as to whether he had put conditions on when the work could take place egg that someone could not be where he Mr Sinclair was working because of the confidential nature of his job. He advised that although he could wear a head set workers if close by could still hear his side of the conversation and he needed to keep his work confidential.
e. When asked if he had said he wouldn't be prepared to use annual leave to allow work to be done he agreed he had said that but subsequently he and his partner had indicated they would make 2 weeks available. He also agreed that due to underlying health conditions he did not want to move furniture in the house twice a day (to allow work to be carried out).
f. Mr Sinclair advised that while he had concerns about the tenancy there had been periods were repairs were carried out reasonably and he confirmed that he and his family were happy living there and wanted to continue. When referred to page 73 of the productions which refers to a new tenancy agreement, he confirmed that yes he was seeking a new tenancy agreement despite having raised concerns with the estate and then the new landlord he was seeking an apology about the tenancy and to live there in peace and quiet. He advised that he had sought reasonable adjustments in his email of 4th August.

g. When asked if Dave the maintenance man for the estate had ever refused to move his care if it was “parked in a bad way” Mr Sinclair confirmed he had not (refused to move it).
h. With regard to the heating engineer coming to the gate he advised that his dogs were not in the garden that morning but had they been outside it would be a risk and he had a conversation with the engineer about the lack of notice. He also added that the postmen knew not to come into the property and to leave and collect parcels from the delivery box.
i. With reference to the site plan Mr Sinclair advised that there were 3 doors on the plan and the main front door was opposite the garage and all were potential fire escapes but also potentially not available depending on where they were located.
j. In response to some questions from the Tribunal Mr Sinclair advised that he had had a discussion with Mrs Campbell when viewing the property about a rent abatement reduction, that Janet had said they wanted a long term tenant and would reduce the rent to £850 and then to £750 because of the windows and would hold the rent for a few years. He also advised Janet said, we would have to buy heavier curtains because of the single glazing. He indicated the rent did increase after 3 years he thought but the increase was based on inflation. He also confirmed the living room had draught proofing at the bottom and they bought heavy curtains. Mr Sinclair advised that Mrs Campbell was the property manager for the Hallyburton Estate Trust and he had to report any repairs to the Trust. He also advised Mrs Campbell offered to install wood burning stove when they moved in and this was put into the living room, he advised it was needed.
k. Finally he advised he reported the vinyl was breaking up and was a hazard in his email of 4th August but there was no direct response but at the Tribunal hearing for the repairs case Mr Hipwell had said it needed to be addressed and replaced. Mr Sinclair felt it was broken due to wear and tear.
l. He acknowledged that the Respondent had become the new owner and landlord.

Evidence from Ms Jean Todd

21. Ms Jean Todd confirmed she had lived at Elmsley Cottage with Mr Sinclair for 7.5 years and left in April 2023. Mr Sinclair asked Ms Todd to explain what had happened when the Estate had agreed to replace the kitchen windows in 2021 and what happened with “Dave’s son”. Ms Todd explained that in July 2021 Dave arrived at the house and explained that Brocus was his son and his apprentice and he was going to help with the windows. Ms Todd advised that she asked if this would only take around 2 days, as she had only prepared for 2 days. He said it would probably take 4 or 5 working days and that Janice didn’t know about these things.
22. Ms Todd went on to say that she was aware that Dave’s son had asked one of her daughter’s out and she had refused. Ms Todd advised that she was uncomfortable with the son in her own home and that previously he had been seen walking in the forest at the back of the house. She went on to confirm that during the period the windows were being installed she noticed Brocus

doing 2 laps of the garden perimeter and thought it was a bit strange, she warned her daughter in case it upset her and then advised he walked underneath the windows but despite asking her daughter if she wanted to close her curtains she did not and felt she was entitled to sit in her bedroom. Ms Todd then advised that her daughter reported that Brocus was doing dances outside the windows. Ms Todd then advised he was walking up and down the drive and the dogs were barking, she thought he was doing this to wind up the dogs and she did not know why he was not working with his Dad. She advised that she spoke to Jim about it (Mr Sinclair) and when Jim advised they might be working on further windows again I said I would not tolerate that behaviour again and that girls said they didn't want him near their bedrooms. Ms Todd confirmed this was in response to an email about windows being fitted in June 2022.

23. Ms Todd confirmed that this had been her ideal home that it was tranquil and she had wanted to stay there.
24. Under questions Ms Todd advised that she had not expected Mr Brocus McAhon to be at the Property because she thought he would be at school and had not expected him to behave like that. Ms Todd confirmed that the kitchen windows were fantastic and she was very happy with them. She also confirmed she gained employment as a social worker and told Janice that "when I was working access (for repairs) would be harder". They advised us it would take 4/5 days to replace the windows for every single room. Ms Todd advised that she understood that Covid would cause delays. She advised the windows did not get done in July 2022 as they were asked by the estate to move furniture and she said they would struggle to do that with health issues. She advised that she gave them 2 weeks later when I had annual leave and Jim could work in the office. She then confirmed they put a complaint directly to the Landlord.
25. When asked what the issues were with the existing windows she advised that they were not wind proof, that Janice had told them this at the beginning of the lease and that Ms Todd had to tape the window up and couldn't then open them. She advised that the warped glass " made her sick and that none of the girls were allowed to open them and that she told Janice that she was refusing to clean the windows in case the glass came away." She confirmed that they did not allow the children to open the windows and she and the Applicant had to open them very carefully. She also advised that she moved beds away from the windows and practised a fire drill in her daughter's room. She confirmed that while she was living there none of the windows ever smashed.

Evidence of Mrs Janice Campbell

26. Mrs Campbell confirmed that she was the manager of the Hallyburton Estate. She confirmed she worked for the Estate and for Hallyburton Properties but was paid by the Hallyburton Estate. She confirmed she had worked there for 32 years and the Estate managed 50 properties. She advised her role included running the estate, making and handling phone calls dealing with repairs and getting maintenance carried out. She confirmed that the landlord had changed from Hallyburton Estates to Nicholas Palmer. She advised that she would have registered Nicholas Palmer, the Respondent as a landlord

and she thought she had done the renewal of this at the end of 2023 and that it was renewed every 3 years so she felt the application would be done in 2020.

27. Mrs Campbell confirmed that in over 32 years she did not have many issues with tenants and had only issued around half a dozen notices to quit. She advised that generally the repair system works well in the office; that she would receive a phone call, make up a work card and if it is an emergency she would put a call into maintenance otherwise the repair card would be picked up daily. She also confirmed that they sometimes used outside contractors.
28. With regard to the start of this tenancy she advised that she showed the Applicant and his family round the property, she advised the rent was initially £950 but she noticed there was no double glazing and reduced the rent and agreed to put a wood burning stove in to given them a hand. She also confirmed that she said the windows would be replaced within a few years. She advised that otherwise the property had been refurbished before it was let. Mr Lancaster then referred to production 14.1 of his productions and Mrs Campbell confirmed that this was a ledger of works for Elmsley Cottage. In 14.4 she confirmed that the entry dated 3rd February 2016 is for a stove which was put in and the Property was then cleaned and made ready.
29. Under further questions from Mr Lancaster Mrs Campbell confirmed that the relationship with the tenant, the Applicant started off okay and requests by emails for repairs were dealt with but then she described the emails becoming more “keyboard warrior” and then there was a breakdown. When asked if she had sent an email confirming the lease would be terminated and why she advised that I spoke to the Factor about getting bombarded with emails and an allegation about a member of staff and I felt he (the Applicant) was not happy in the Property. She confirmed that the member of staff he was complaining about was Brocus and said that they had taken him on as a member of the estate when he was still at school. Mrs Campbell confirmed there had been no other complaints about Brocus.
30. With regard to the windows Mrs Campbell agreed that the estate accepted they should be replaced, that the windows had been purchased in February 2020 but because of the Covid pandemic they couldn’t install them and they were put in a workshop. She advised that during the pandemic the Estate tried to deal with emergencies but anything that was not urgent was put in backlog and with 50 properties there was quite a bit of backlog. With regard to why the Applicant’s request for an outside contractor to be used to install the windows was rejected she advised this was a financial decision and added that it was a busy time for all trades and they were difficult to get. She agreed the first windows were replaced in the kitchen in July 2021. When asked if she had sent an email saying the windows would then be done year by year and did she explain that she said “no it should have been per month” but she could not remember if there was an email explaining this. She advised that the estate wanted the windows out of the workshop though. Mrs Campbell advised that the Applicant refused to leave a key and access could generally be a problem saying when we were busy he wasn’t and vice versa. She then advised that they decided to hold off putting windows in after the Applicant made an allegation against a member of staff.

31. Mrs Campbell confirmed that she did not know whether the windows should have opened at the top; that she did not know how long with would take to put windows in each room but that she thought she might have said around 2 days. She also agreed there was a wood burning stove and a coal fire and immersion heater at the property.
32. Under cross examination from Mr Sinclair Mrs Campbell confirmed:-
    a. That she did not know how long Mr Brocus was employed by the estate; that he was employed as a labourer and that he was employed by the Hallyburton Estate. She confirmed it would be normal for 2 members of the team to work together and that her involvement with Brocus was from July 2021.
    b. She advised that after correspondence with Mr Sinclair on 4th August 2022 she spoke to the Factor regarding the termination of the tenancy. She confirmed the content of the conversation was regarding emails received and the allegation relating to the member of staff. Mrs Campbell confirmed that her comment about windows being replaced yearly should have been monthly and that getting access to the Property was difficult with Mr Sinclair refusing to leave a key. She said the kitchen windows were put in and thought the living room ones were fitted. Mr Sinclair advised in response to this that they had not raised concerns about Brocus until they were discussing access for the leaving room windows being done.
    c. In response to questions from the Tribunal for clarification, Mrs Campbell stated that the windows at that time were still waiting to be installed and “we thought we should not do the windows until he (the Applicant) had left. We did not advise the tenant.” She advised the discussion about this had taken place with the Factor herself and Mr McOwan and that any further small repairs would be decided upon and discussed with factor.
    d. Mrs Campbell confirmed the windows have now been replaced and this was done after the Applicant moved out and were installed by Mr Dave McOwan. She did advise that they had considered using a contractor after the repairing standard case. At this point Mr Hipwell, the factor who was present on behalf of the Respondent, provided some further evidence regarding the reason for not using a contractor, explaining that he had taken over in January 2023 from the previous Factor after shadowing him from November 2022. He took over the correspondence with Mr Sinclair and did consider using a contractor to replace the windows who could give a 10 week lead time. However Mr Hipwell advised that the contractor wasn’t needed as it was deemed impractical to do the work over winter and after the hearing and inspection which took place in early March, the tenant, (the Applicant) did not want the windows done as he was packing to move out in April. He confirmed that the windows were replaced in May 2023 and Mr McAhon did the work.

Evidence of Mr David McAhon

33. Mr McAhon advised he was the maintenance manager for Hallyburton Estate and the father of Brocus McAhon. He confirmed he was a joiner to trade and

had worked for 11 years for the estate. He confirmed he had carried out various repair works at the Property during the tenancy with the Applicant including dealing with blocked drains, gutters and issues with septic tank. He explained he would get a phone call or job card from Janice (Mrs Campbell) and would organise to get the job done.

34. With regard to the windows he confirmed he was involved in ordering the windows and carrying out a survey. He thought they were ordered before Covid or thereabouts and were stored in his workshop. He confirmed they were an inconvenience and took up a lot of room.
35. When asked what his involvement was with the installation of the windows he advised that he arranged with the office to contact the tenant and he installed the kitchen windows and it took around 3.5 days. He advised that it can take longer if he had other jobs to do on the estate. Mr McAhon advised he was not aware of any issues while he was there, that his son Brocus had worked with him on this job and he was not aware of any issue nor was he aware of whether his son was marching or doing laps round the house. He advised no issue had been raised by Mr Sinclair about this and that it was about a year later he heard about this. He explained that he had been in and outside the house and materials were in the workshp and trailer was parked between the trailer and garage. He also confirmed that he installed the rest of the windows after the Applicant had left.
36. Under questions from Mr Sinclair Mr McOwan confirmed that his son had started working around 2020 when he was 16 and that he worked as a part time labourer and it was normal for his son to work with him. He advised that the trailer would have been parked around the utility and drive and that they, he and his son would go round the study area to fetch materials and he confirmed both he and Brocus were working between the kitchen and the driveway.
37. When asked about the state of the windows he advised that they had got worse over the period between 2021 and 2023, but that there was often problems getting access to the Property, responding to Mr Sinclair " you said there would be problems (getting access) when you were on calls and (you) wouldn't leave a key". He advised that normally the office would arrange access but there were issues.
38. Mr McAhon advised that as far as he was aware the upper panes of the windows did not open because they had no sash cords in them and that they had never opened.
39. After the evidence was presented the parties agreed they would prefer to submit legal submissions in writing and the Tribunal directed that the Applicant provide written submissions within 3 weeks and the Respondent their response within a further 1 week.

Written submissions were submitted by both parties and are referred to for their terms.

Included in the written submissions of the Respondent is a copy of the confirmation of the Respondent being registered as Landlord on 4th November 2020 with a renewal date of November 2023 and a copy of the Deed of Appointment from the Trustees of Elmsley Hallyburton Estate dated 17th, 24th and 30th September 2020 transferring assets to the Respondent which includes amongst other properties Elmsley Cottage, the Property in this case.

Findings in Facts

1. The Applicant entered into a lease with Hallyburton Estate of the Property from 1st March 2016.
2. The Respondent became the Registered landlord on 4th November 2020.
3. The change of landlord was intimated to the Applicant on 1st November 2020 stating it took place from 30th September 2020.
4. The Applicant has raised this application, after amending it, against the Respondent who is the current landlord in this application.
5. The windows in the Property were not in a good condition at the start of the tenancy.
6. A discount in rent of £100 was agreed by Mrs Campbell the estate manager, on behalf of the then landlord due to the condition of the windows.
7. The current landlord is responsible for maintaining the Property from the date he became the landlord and is also responsible for the Property meeting the repairing standard.
8. The Respondent is responsible for the condition of the Property from 30th September 2020.
9. New windows were purchased in February 2020 and were available for installing into the Property from that date.
10. Covid 19 pandemic placed restrictions on the installation of the new windows during 2020 and parts of 2021.
11. The Applicant did not wish the windows installed during the winter period.
12. The replacement kitchen windows were installed in July 2021.
13. The Respondent's agent, Mrs Campbell sent an email on 27th July 2022 confirming the rest of the windows would be installed one per year. This was an error and she meant to say once per month.
14. The Applicant's request to have an outside company fit the windows was denied.
15. No further windows were installed.
16. The purchased window units remained in storage in the Respondent's agent's maintenance manager's workshop.
17. The remaining windows were in disrepair and not in proper working order.
18. Mr Brocus McOwan attended the Property in July 2021 as a labourer working with his father on the installation of the kitchen windows.
19. Mr B McOwan had occasion to go to the trailer in the driveway during this period of work.
20. Mr McAhon walked around the Property during this period of work at the Property.
21. The Applicant raised an issue about the behaviour of Mr B McOwan a year later in email correspondence with Mrs Campbell when discussing the matter of the installation of the remaining windows and in particular the living room windows.
22. The Applicant wrote to the Respondent on 7th December 2022 raising issues with the eviction notice and the windows
23. The Applicant was served with a Notice to Quit, S33 Notice and an AT6 notice asking him to leave the Property.

24. The Respondent's agent was not prepared to install the windows following the submission of the letter from the Applicant requesting an outside company complete the windows and complaining about the tradesman going round the whole property when only installing windows in one room.
25. The Respondent put a hold on the installation and was not prepared to do it until after the Applicant left.
26. The Applicant raised a repairing standard application reference FTS/HPC/RP/22/3316 on 10th September 2022
27. A hearing in the Repairs Application was held on 8th March 2023.
28. The Tribunal found in their decision "that some of the windows at the Property were in poor condition with evidence of rot and missing putty; that the upper sash and case windows did not open, and the vinyl flooring on the kitchen is torn and has holes in it and requires to be replaced.
29. The Tribunal in the repairs case found that the landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the 2014 Act.
30. The Tribunal granted a repairing standard order on 29th March 2023.
31. The Order specifies that the Respondent is required to "repair or replace the windows at the Property to ensure they are in a reasonable state of repair and in proper working order and lockable."
32. The Order also specifies that the Landlord is required to "replace the floor covering in the kitchen of the Property to ensure it is in a reasonable state of repair".
33. The Respondent via his agent agreed the windows should be replaced following the repairing standard hearing.
34. The Applicant agreed that as he was leaving the Property in April 2023 no further windows should be installed pending his departure.
35. The Windows apart from the ones replaced in the kitchen did not meet the repairing standard from at least February 2020.
36. The Respondent did not manage to replace all the windows between 2020 and August 2022 because of a combination of Covid 19 lockdowns and restrictions and the parties agreeing work should not be carried out in winter time.
37. In July 2022 the parties were corresponding to try and agree a mutual date to replace the windows.
38. A date of 16th August 2022 was suggested as mutually convenient.
39. Following an exchange of emails Ms Campbell advised she was recommending the lease be terminated.
40. A notice to quit, s33 notice and AT6 notice all dated 10th August 2022 was sent to the Applicant giving notice that he required to vacate the property by 31st October 2022.
41. From the middle of August 2022 the Respondent's agent Hallyburton Estate Trust decided to not replace any further windows pending the departure of the Applicant from the Property after serving the eviction notice.
42. The Respondent did not advise the Applicant of this decision.
43. After the hearing in the repairs case number 22/3316 which took place on 8th March 2023 the Factor for the Estate made an offer to have the windows replaced by an outside contractor.
44. The Applicant refused the offer as he was in the process of leaving the Property.

45. The windows were fully replaced after the Applicant left the Property in April 2023.
46. The Applicant reported an issue with the heating system in January 2023. The Respondent responded promptly, recording the issue and sending out an engineer.
47. The Respondent failed to notify the Applicant in January that the engineer would be attending on one occasion.
48. The heating failed on 23rd February 2023 and this was intimated to the Respondent by the Applicant.
49. The Respondent's agent Mrs Campbell arranged for a heating engineer to attend the property that day.
50. He advised that there was no oil in the tank.
51. The Applicant purchased oil for the heating and it was delivered on 27th February.
52. The Applicant had the use of a wood burning stove and coal fire during 4 day period the central heating was out of fuel.
53. When the Applicant reported the heating was still not working on 27th February the heating engineer was sent out immediately by the Respondent to replace the fuel gauge.
54. The Applicant reported that the vinyl was ripped and torn in the kitchen in an email of 4th August 2022.
55. No response was provided by the Respondent until the inspection of the Property with the Tribunal members of the Repairs case when the factor volunteered to have this repaired.
56. The Vinyl was replaced after the Applicant left.

Reasons

1. The Tribunal considered the application as set out and amended by the Applicant and contained in his submissions of 26th November 2023 which the Applicant again refers to in his final submissions as being the legal submissions he is relying on and ones he has submitted after taking legal advice. Taking those submissions as the summary of the Applicant's case the Applicant is seeking :-
    a. £7000 as compensation for damages in respect of the condition of the windows, based on breach of contract distress, inconvenience and loss of enjoyment of the Property and a failure to meet the repairing standard.
    b. Compensation for the lack of repair to the vinyl in the kitchen and the failure to complete the heating repair timeously, a claim of £1000.
    c. Compensation in the form of damages for the behaviour of the Respondent and his agents which the Applicant advised he found unpleasant and alarming to the Applicant, was a loss of privacy, and caused distress and placed a strain on the Applicant's relationships with his family. The Applicant is seeking £3,500 in respect of incidents throughout the duration of the lease.

d. Damages for the Applicants partner who sustained an injury at the Property due to the landlord's failure to timeously attend to an urgent repair. The sum of £500**.**

2. Taking claim d) first the Applicant in his final submissions withdraws this claim for £500 for an injury to his partner. The Tribunal had indicated previously that the Applicant would have to provide legal submissions as to why the Applicant would be entitled to seek compensation for his partner who is not a party to this Application nor a tenant in the lease. The Respondent also submitted in their written submissions that this was not a tenable claim. No evidence was presented about the injury at the hearing as the Applicant accepted this and the claim has now been formally withdrawn as set out in the Applicant's final submissions.
3. The largest part of the claim has from the outset, been the claim by the Applicant that the state of the windows were such that they constituted a breach of the repairing standard and that this in turn caused a loss of enjoyment and amenity, inconvenience and stress for the Applicant. He alleged he and his partner had to be careful how they opened the windows, that they were not draught proof, that he had to prevent his children from opening them, that their condition caused a fire risk in that there was a lack of fire escape routes and he had to enter into correspondence regarding the state of the windows and the lack of amenity. The Applicant had originally raised his application against the original landlord in the lease namely Hallyburton Estates, however he sought to amend this to change the Respondent to the current Respondent advising that he realised the Respondent was the current landlord and therefore responsible for the condition of the windows. This amendment was accepted and the Application has proceeded against the current Respondent.
4. The Respondent's solicitor in his submissions dated raised 2 preliminary matters regarding the Applicant's claims, firstly he submitted that any allegations that were over 5 years old were time barred by the operation of prescription and secondly, but this was only raised in March 2024 he submitted that all claims that predated his clients appointment as landlord could not be attributed to Mr Llewellen Palmer as he had no responsibility prior to November 2020. The Tribunal noted that it appeared that the latter position was correct, namely that a Landlord could only be responsible for any breach of tenancy or failure to meet the repairing standard in relations to actions that were carried out while he was the responsible landlord and not for actings or matters that arose before he became landlord. The Tribunal indicated it would therefor hear evidence as to the part of the Applicant's claim that post-dated Mr Llewellen Palmer's appointment as landlord subject to considering any submissions from the Applicant that could show why the Respondent would be liable for any previous actings. The Respondent lodged after the hearing evidence to show that the Respondent had become the owner and registered Landlord .

   The Applicant in his own productions and submissions accepts that he was aware of the change of landlord and the letter intimating this to him dated 1st November 2020 has been lodged by the Respondent. The letter is written from Janice Campbell on letter heading for the Hallyburton Estate Trust and states "I am writing to advise you that as of 30th September 2020 the Hallyburton Estate Trust will no longer be your Landlord. The Property you reside in has been transferred to Mr Nicholas Llewellen Palmer (trading as HB properties)

but all correspondence and repairs will still be dealt with through the Estate Office as usual."

5. It is therefore a matter of agreement that the landlord changed to the Respondent on 30th September 2020. the Applicant in his final submissions submits that despite this legal change of ownership and therefore change of landlord from the Hallyburton Estate Trust to the Respondent as an individual, that as the management of the property was still managed and operated by Hallyburton Estate Trust, the Respondent should be responsible for the actings of the Estate's employees before the vesting of him as the legal owner and the appointment as Landlord. The Tribunal does not accept that this is a valid argument. In law a Trust is a separate legal entity from the individual to whom the ultimate benefit of the estate is held. The Responsibilities of a landlord lie with the current owner of the Property or the person that owner has delegated responsibility to be a landlord to. Prior to his appointment as Landlord the Respondent was not the landlord of the Property, nor the legal owner. A separate legal entity was the responsible landlord namely Hallyburton Estate Trust. As a result if the Applicant had wished to raise a claim for any incident that predates November 2020 he should have done so with the relevant party responsible for the management of the Property or the landlord at that time, if he believed there was a valid claim and it had not prescribed. The Tribunal accepts therefore that the state of the windows or the conduct of estate staff who worked to carry out repairs on the Property as instructed by the then landlord is not the responsibility of the Respondent until after September 2020. However from that date the Respondent did become the responsible Landlord and all fixtures at the Property should have been in proper working order and comply with the repairing standard.
   Given that the Tribunal has decided that the Respondent can only be responsible for the condition of the Property or matters that occurred in relation to the repair of the Property in terms of the lease he had taken over responsibility for from the end of September 2020 the Tribunal notes this means that they are looking at the condition of the windows from October 2020 and any conduct alleged from that date only. The Tribunal did not therefore examine the claim by the Respondent that certain claims of lack of enjoyment or breach of contract in relation to the actings of employees of the Hallyburton Estate Trust had prescribed being over 5 years from the date this application was raised but notes that prescription may have applied if the landlord had not changed.

6. The Respondent has contractual obligations to the Applicant as regards the repair of the property which are set out in Clause 4 of the Tenancy Agreement and are applicable for the duration of the tenancy. Clause 4.1 (c) says:
   "The Landlord is responsible for ensuring the Subjects meets the Repairing Standard throughout the duration of this Lease."
   This means that the Subjects are wind and watertight and fit for human habitation, that the structure and exterior are in a state of repair and in proper working order,….
   The structure and exterior of the Subjects (including drains, gutters and external pipes are in a state of repair and in proper working order (having regard to the age, character and prospective life of the subjects and the locality in which the Subjects are situated.

The installations in the Subjects for the supply of water, gas and electricity, space heating and heating water are in a reasonable state of repair and proper working order…
Any fixtures, fittings and appliances are in proper working order".

7. The Repairing Standard is defined in S13 of the Housing Scotland Act 2006 The repairing standard

(1)*A house meets the repairing standard if—*

(a)the house is wind and water tight and in all other respects reasonably fit for human habitation,

(b) the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order,

*(c) the installations in the house for the supply of water, gas , electricity (including residual current devices) and any other type of fuel**]** and for sanitation, space heating by a fixed heating system**]** and heating water are in a reasonable state of repair and in proper working order,*

(d)any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,

(e)any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed, .

*(h)the house meets the tolerable standard.**]***

(i)any common parts pertaining to the house can be safely accessed and used,

(j)the house has satisfactory provision for, and safe access to, a food storage area and a food preparation space, and

*(k)where the house is in a tenement, common doors are secure and fitted with satisfactory emergency exit locks.**]***

(2)In determining whether a house meets the standard of repair mentioned in subsection (1)(a), regard is to be had to the extent (if any) to which the house, by reason of disrepair or sanitary defects, falls short of the provisions of any building regulations.

(3)In determining whether a house meets the standard of repair mentioned in subsection (1)(b), regard is to be had to—

(a)the age, character and prospective life of the house, and

(b)the locality in which the house is situated.

S14 states "Landlord's duty to repair and maintain

(1)The landlord in a tenancy must ensure that the house meets the repairing standard—

(a)at the start of the tenancy, and

(b)at all times during the tenancy.

(2)The duty imposed by subsection (1) includes a duty to make good any damage caused by carrying out any work for the purposes of complying with the duty in that subsection.

*(3)**The duty imposed by subsection (1)(b) applies only where—***

(a)the tenant notifies the landlord, or

(b)the landlord otherwise becomes aware,

that work requires to be carried out for the purposes of complying with it.

*(4)**The landlord complies with the duty imposed by subsection (1)(b) only if any work which requires to be carried out for the purposes of complying with that duty is completed within a reasonable time of the landlord being notified by the tenant, or otherwise becoming aware, that the work is required.***

8. From the evidence submitted in writing and orally at the hearing it is clear the parties are in agreement that the Respondent's agent Mrs Janice Campbell had indicated when she was the agent for the previous landlord, that the windows were not in a good state and were not double glazed. The lease was originally entered into in 2016 and Mrs Campbell agreed she had granted a reduction on the rent and also stated the windows would be replaced in a few years. The agreed reduction for the state of the windows from the evidence of the Applicant appears to be £100 from £850 to £750. From the written evidence it is clear there was a further inspection in 2019 and replacement windows were purchased in February 2020. It was also accepted by both parties that the reason the windows were not fitted that year was partly due to the Covid pandemic stopping all non- essential repair works being carried out due to several lockdown restrictions and not carrying out works in winter time. The Tribunal notes that the Respondent who became responsible for the state of the Property and the requirement that it meet the repairing standard had taken over a Property when it had already been agreed at least by late 2019/ February 2020 that the windows should be replaced. The Respondent has submitted via his legal representative that this was an improvement and not a repair however this submission is not supported by the evidence of the Applicant who advised that Mrs Campbell provided and purchased a wood burning stove to assist with warmth in the Property due to the lack of the windows being double glazed and offered a reduction in rent due to the condition of the windows at the beginning of the tenancy in 2016. Mr McOwan also noted that the windows would have deteriorated during that time and got worse in particular between 2021 and 2023. However this Tribunal does not have to only rely on the evidence of the parties, albeit that the Tribunal does find the Applicant and Ms Todd's evidence on the condition of the windows credible and supported by the pictures of the windows lodged with the application. The Tribunal also has the findings of an independent Tribunal which considered and made a decision on the Repairs application, where a

legal and surveyor member actually visited the property and found it failed the repairing standard. The Tribunal in their decision noted the following findings of fact under case number 22/3316 recorded in their decision the following:-

a. “The tenancy is an assured tenancy
b. Some of the windows at the property are in poor condition with evidence of rot and missing putty.
c. The upper sash and case windows did not open.
d. The vinyl flooring in the kitchen is torn and has holes in it and requires to be replaced.
e. The Tenant intends to move out of the property on a date still to be determined.”

9. The Repairs Tribunal also noted in its reasons for its decision that “the landlord was in breach of his duties under Section 14(1)(b) in that the windows were in a poor state of repair and not in proper working order”. The Repairs Tribunal also notes that Mr Hipwell agreed that replacement windows were available but that it would take about 3 months for them to be installed.
10. Mr Lancaster in his submissions asserts that as the Repairs Tribunal made a comment that the Property was wind and water tight that this means the Property met the repairing standard however it is clear from the Repair Tribunal’s decision that this was not the reason they found it failed the repairing standard. Mr Lancaster also notes that he had lodged an appeal and review of the repairing standard order and it was subsequently recalled. On reading the decision by the Tribunal to abandon the proceedings it appears they made the decision to abandon because the tenant had left the Property, and the windows had then been replaced and there was no further public interest in pursuing the matter. The Tribunal states in their statement of decision accompanying the Minute of Abandonment dated 28th June 2023 *“Whereas in terms of its decision dated 24 March 2023 the Tribunal determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) (Act 2006 and whereas by applications dated 6 and 11 April 2023 the Respondent sought a review of the said decision and permission to appeal to the Upper Tribunal and whereas the tenancy had come to an end, the Tribunal, in order to determine whether to continue the application or abandon it, carried out a further inspection of the property on 28 June 2023.*
2. At the said inspection the Tribunal ascertained that the Landlord had replaced all the sash and case windows at the property as well as three doors and was in the process of redecorating and had also arranged to replace the floor coverings throughout the property.
3. The Tribunal having carefully considered matters then determined at its own instance in terms of Rule 39(1) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 to review its decision and having done so has recalled its decision and the Repairing Standard Enforcement Order of the same date.
4. As the Decision has been recalled the Tribunal did not need to further consider the Respondent’s application for review or his application for permission to appeal.”
11. The Respondent in their earlier response to a direction agreed that “It is the Respondent’s position that the Property met the repairing standard other than to the extent it was found not to in the decision issued in the case Ref:-

HPC/RP/22/3316 dated 29th March 2023." From this compelling evidence of the Repairs Tribunal and the written and oral evidence of the Applicant, and the admission of the Respondent that the Property met the repairing standard other than to the extent found not to be the decision in the Repairs Case, this Tribunal accepts that the windows had failed the repairing standard.

12. Although the inspection by the Repairs Tribunal was carried out in March 2023 the Tribunal accepts that given the evidence of the poor state of the windows, the fact that windows do not deteriorate suddenly so this condition would have been apparent for some time and it was of course noted as such; and that both parties accepted the windows did not open and the Repair Tribunal notes this itself is a breach of the repairing standard as they should be in working order, means the windows had failed the repairing standard for some time.
13. The Tribunal notes the replacement windows had been purchased in 2020 this Tribunal accepts that at least from February 2020 the windows were not in good working order and should have been replaced. The requirement however for a landlord to meet the repairing standard can be excused if there is a reason why the repair cannot be made and in this case Covid 19 had a very significant effect on the ability to carry out repairs of a non -essential nature in 2020 and the early part of 2021. In light of this the Tribunal accepts that the landlord, who only became responsible for the windows and the Property from 30th September 2020 could only reasonable be expected to start fitting the windows by early summer 2021 and indeed the first kitchen windows were started then. The Applicant's partner Ms Todd confirmed that she was indeed very happy with those new windows and the Applicant himself acknowledged that he did not wish further windows to be removed and replaced during the winter months. While it seems unfortunate that further attempts were not made to fit further windows after July 2021 and before the onset of winter the Tribunal did hear that getting access could be difficult to arrange especially as the Applicant has a sensitive and very confidential job and worked from home so having workman in the house at the same time could cause issues for him and his partner was just starting a new job and found taking time off for repairs difficult. The Tribunal therefore notes that further window replacement was then discussed the following year, and culminate in emails from the Applicant to Mrs Campbell asking that an outside contractor is brought in to carry out the work on the windows.
14. The Tribunal notes that in response to emails trying to arrange a suitable date for the rest of the windows to be replaced Mrs Todd replies to Mrs Campbell asking if an outside company could be used to put the windows in as she states "both Jim and I are working full time including working from home and we would not be able to facilitate this lengthy process for the windows to be replaced and would be unwilling to use holidays or weekends to allow this to happen. She goes on to suggest however "to be as reasonable as possible I have 2 weeks holiday from 8th to 19th August where I would be happy to facilitate a company to come in and replace the windows." Ms Todd suggests it should only take a week with a company. Ms Campbell responds to deny this request and saying as agreed a room a year will be fitted with double glazing windows and Dave will be available on Tuesday 16th to fit the windows in the sitting room. The Applicant then responds repeating some of his partner's concerns about the length of time it would take if Dave is used and it

takes 4 days per window, asks that Dave park his trailer and vehicle in a manner that allows use of the property and that he and anyone assisting him confine themselves to the area of the property they are working inches notes that the last time “his assistant spent time outside my daughter’s room making her uncomfortable” The Applicant also asks who agreed to windows being replaced on a yearly basis?

15. Ms Campbell responds on 4th August at 14.55 to say “it is clear from your email that you are no longer happy living at Elmsley and as for your comment regarding Estate staff deliberately spending time outside your daughter’s bedroom window making her feel uncomfortable is an extremely serious allegation. With this in mind I am going to recommend to the landlord that steps are taken to bring your lease to an end. This will enable you to find alternative accommodation that meets your requirements”.
16. Ms Campbell then went on to serve notice to quit on the Applicant and the Applicant in September raised this application and the application for the repairing standard case.
17. Ms Campbell stated clearly in her oral evidence that the windows were then not fitted as they (the Estate team) did not want to complete that work until after the Applicant had left. The Tribunal accepts this as clear and unambiguous evidence that from August 2022 the windows were not fitted because the Estate had decided that they should not be done until the tenant had left. She made that comment initially under questions from Mr Lancaster and then repeated it under questions from the Tribunal. She advised that this decision had been taken in a meeting with herself and the factor and they did not advise the Applicant of this decision. It is clear therefore that the Respondent through the decisions and actings of his agent had clearly and deliberately refused to meet his obligations to keep the property in a state that meets the Repairing Standard. This continued until after the hearing of the Repairs Tribunal in March 2023 when the Factor sought to offer to have the work carried out but the Applicant refused on the basis that he was seeking to pack his effects with a view to moving out and did not want the disruption. He did in fact leave at the end of April 2023. The Tribunal therefore finds that the windows should have been replaced from the middle of August 2022 to the middle of March 2023 a period of 7 months where there was deliberate failure to attempt to put the windows in that were already purchased and languishing in the maintenance manager’s workshop.
18. The windows were then replaced after the tenant left and the repairing standard tribunal case ended with a Minute of Abandonment because the work had been done in June 2023.
19. The matter for the Tribunal to decide is what loss or inconvenience has this period of time when the windows should have been repaired but were not, caused and is this a reason to grant damages? Mr Lancaster has submitted there is no loss. The Landlord is not in breach of the repairing obligations until after the Landlord has had a reasonable period of time to carry out the repairs. The Tribunal has found that there has been a breach of contract and breach of the repairing standard that has occurred as set out above. The Applicant are seeking redress in the form of compensation The Tribunal notes that it is open to the Applicant to pursue different remedies when there is a breach of contract or breach of the Repairing Standard and this includes seeking a Repairing Standard Order but this does not displace the right of an

the Applicant to pursue a claim for damages for the breach. It is an actual term of the party's contract that the Property meets the repairing standard at the beginning of the tenancy and throughout the term of the tenancy. Clause4.1(c) makes it an actual contractual term and therefore if there is a breach of the term there is a right to claim damages.

20. There are various authorities for this position:- Gloag and Henderson – "Where specific enforcement of a contract is either incompetent or not demanded a party aggrieved by a breach is always entitled to damages nominal or substantial where it causes him loss or at least inconvenience. He may have other remedies. He may be entitled to an exercise a right of retention whereby without ending the contract he may withhold performance of the obligations incumbent on him until the obligations to him are tendered or performed."
21. In Paton and Cameron "There is a general presumption that a lease is to be regarded as a whole, that material failure on the part of the landlord to give full possession to the tenant will give the tenant grounds for reducing the lease if restitution in intergrum is still possible or failing reduction a claim of damages while a minor failure will entitle the tenant to an abatement of rent. If the landlord fails to a material extent to carry out repairs or improvements which he has undertaken the tenant may abandon the lease and depending on the circumstances also claim damages. Short of abandoning the lease the tenant may withhold rent if his loss exceeds rent withheld he may also claim damages but a tenant who has obtained an award of damages cannot also retain the rent in respect of them".
22. The Tribunal accepts that there is a breach of contract in a failure to meet the repairing standard and therefore the Applicant is entitled to seek damages in recompense for any loss.
23. The Tribunal then considered what the loss was. The windows were very unsightly, the Repairs Tribunal notes the putty was failing and the paint peeling. Ms Todd stated the glass was loose and they had to be careful opening and closing them, children were not allowed to open the windows and she stopped cleaning them due to concerns about the glass. The tenant has been put to the trouble of raising a repairing standard case and having to engage in letters regarding this. There was compensation at the start of the tenancy for the state of the windows but they have deteriorated over the years and these were meant to be replaced in due course. The current owner and landlord is liable for this period when the windows were available and should have been replaced. There is no evidence to show any extra cost for heating etc, there is no medical evidence to show any stress or anxiety around this, so the Tribunal considered only loss of amenity, inconvenience and loss of aesthetic value in not having fully functioning, deteriorating windows over a period of 7 months.
24. Given the rent was £750 and Mrs Campbell in 2016 gave a reduction of £100 for the condition of the windows the Tribunal agrees that is£100 is a fair amount for further loss of amenity, and inconvenience caused to the Applicant for not having properly working windows, which were also aesthetically displeasing. The loss is fairly assessed as £100 per month. A total of £700 is awarded for this head of claim.

Claim for Loss of Quiet Enjoyment

25. As the Tribunal accepts that the Respondent is only responsible for actions of himself as Landlord and his agents for the time he has been the landlord this claim is restricted to two incidents the Applicant avers took place first in July 2021 when the kitchen windows were being installed at the Property and the occasion where there was a fault in the heating oil gauge resulting in the tank running out of oil and a replacement part being ordered where an engineer had to attend to replace it and no prior notification was given that the engineer was going to attend.
26. The Applicant has alleged in his written submissions that the agent of the Respondent misrepresented the son of the maintenance manager namely Mr Brocus McOwan as an apprentice of the estate and he was therefore allowed access on that basis and he walked around the Property and gained access to areas he did not require to be in to carry out repairs and acted strangely including standing outside the Applicant's daughters' bedroom. Ms Todd submitted in her oral evidence that Mr B McOwan was acting strangely and marching in the garden as well as walking around the perimeter of the Property when he should have restricted himself to the area nearest where he was working. It is noted that prior to Ms Campbell advising she would be recommending the Applicant was served notice of eviction, the Applicant only sought in his email of 4th August to either have an outside contractor work on the installation of the remainder of the windows or if Mr Dave McOwan was to do the work he wished that he restrict himself to the area he would be working in. At no point up to then had the Applicant suggested he was seeking damages for loss of quiet enjoyment, stress or inconvenience for the time that Mr McOwan and his son had been installing the windows in the kitchen in July 2021. The Applicant advises in his written submissions the reason for this which the Tribunal does not feel is necessary to repeat here. In written representations responding to this part of the claim the Respondent had indicated that Mr B McOwan was indeed employed by the Estate and this was supported by the oral evidence of Ms Campbell and Mr McOwan.
27. The Tribunal finds that both these witnesses spoke openly, clearly and frankly in their evidence and accepts their evidence was credible that indeed Mr B McOwan was employed by the estate as a part time labourer, that he worked mostly with his father and that he was attending the Property in July 2021 on that basis. The Tribunal does not find it unusual or exceptional that a tradesman and his apprentice should need to fetch and bring materials from their vehicle and trailer into the house and even though this involved Mr B McOwan perhaps walking around the whole house to do so. Neither the Respondent nor even Mr D McOwan were aware that his son may have known the Applicant's daughter. There is no evidence to show that Mr B McOwan acted in a way that was inappropriate towards the Applicant or his family. Even if he was marching in the grounds this would not lead to a breach of contract, or loss of quiet enjoyment of the Applicant in his Property. He was there at the invitation of the Estate who manage the repairs at the Property he was there legitimately to assist his father install windows. It is suggested this caused distress to the Applicant's daughter but there is no medical evidence to support this and absolutely no evidence the behaviour would have caused such distress. This claim is rejected.
28. With regard to the claim that the heating engineer arrived without notice the Tribunal notes that the Applicant has some issues with the heating system in

January and February 2023 and a number of emails were exchanged with Ms Campbell regarding repairs. Ms Campbell arranged for a heating engineer to attend and he attended initially 5th January and advised he needed further parts. On 9th January the Applicant advised he notified the Estate of another fault and Ms Campbell relied the following day to confirm this had been added to the list. On 23rd January the Applicant submitted an email to the Tribunal to advise that the heating engineer attended at the Property with no prior notice, the Applicant wrote complaining this was not only a breach of the notice provisions in his lease but that he had dogs and people entering the Property with no notice put themselves and the dogs at risk, for instance if they had left the Property and been injured on the main road outside. In his oral evidence the Applicant accepted that his dogs were not in fact outside when the heating engineer arrived and so although there has been a breach of clause of the lease which requires due notice to be given of any tradesman attending the Property the Tribunal finds that there is no loss here and given the engineer was attending to fix a problem with the heating it was important that he attend and does not find it proven that there was any distress or loss on this occasion. A claim for compensation on this ground is rejected.

29. The final claim from the Applicant is for the lack of heating and hot water over 4 days and a claim based on the failure to repair the vinyl in the kitchen which was torn and worn. From the productions lodged The Applicant had advised the Respondent he had an issue with the heating and hot water in an email of 23rd February 2023. Ms Campbell responded by email at 8; 49 advising that the heating engineer could not attend until the following morning. However at 21;13 that evening the Applicant wrote again to Janice Campbell to advise that the heating engineer had attended and checked the watchman fuel gauge and discovered that the although the watchman was providing a reading showing that there was oil in the tank it was in fact empty. The Applicant indicated that he was concerned even if he ordered fuel that the equipment was faulty and they could not rely on it. He also claimed that they would be without fuel over the weekend and it was very cold in February. He also advised in his email as the issue had arisen on a Thursday night he could not get a delivery of oil until after the weekend. Ms Campbell advised that the heating engineer had indicated that “fuel could be bought by the barrel and they needed at least 100 litres to ensure the system worked. She ended by saying “let us know once you have purchased CH fuel if you cannot get the system to start as airlocks sometime occur when the tank has run out of fuel.” The Applicant advised at 10:37 on 27th February that the system would not start despite having fuel added and requested an immediate engineer. Ms Campbell responded at 10:46 advising the engineer would be there at 12.
30. The exchange of emails from 23rd February to 27th February shows that Ms Campbell on behalf of the Estate responded very promptly to the request for an engineer and although the lack of heating lasted 4 days, this was due to a failure of the system and lack of oil which the system failed to show. The Respondent has shown that they acted promptly in having an engineer attend very quickly on both days and the Applicant did have a wood burning stove and coal fire which would have provided some heat during this period. A lack of heating is a serious matter but the Tribunal finds that the Respondent responded to the request for the repair immediately, acted on the engineer’s suggestion and after 4 days this was resolved. The Applicant acknowledges

that the purchase of oil was always going to be delayed by a few days from ordering to delivery but the Respondent provided some advice on buying oil. The Tribunal accepts therefore that in the circumstances the Respondent acted promptly in dealing with this request and have not failed to comply with his duty to attend to repairs promptly. The Tribunal finds no damages are appropriate for this claim.

31. With regard to the claim for the torn vinyl in the kitchen/utility room. The email from the Applicant dated 4th August shows this was intimated to the Respondents agent Mrs Campbell at that date. No written response appears to have been made and the request for a repair does not appear to have been acknowledged. The Respondent did then shortly thereafter serve a notice to quit and s33 notice and expected the Applicant to leave. The Evidence from the hearing shows that Mr Hipwell offered to replace the vinyl during the inspection of the Property for the Repairs case but this was several months later in March 2023 with no recognition of the request or any attempt made to repair the vinyl made before then. The RSEO notes that this is one of actions the landlord has to take to comply with the repairing standard and so this Tribunal accepts that the torn vinyl which is shown in photographs lodged by the Applicant and reported on 4th August 2023 was a breach of the requirement to meet the repairing standard and an item that the Landlord was required to keep in proper working order. The Tribunal considers that a reasonable period of time for the Landlord to respond to this request would have been 2 months given it is not as urgent as for instance a repair to heating or plumbing but it was a trip hazard. Given there is no explanation for the failure to attend to this and given there was no attempt to inspect or consider it, the Tribunal finds that a fair assessment of damages for the inconvenience of having to avoid a trip hazard is £25 per month for 5 months from October 2022 to March 2023, when the Applicant advised he would rather not have the disruption of work done on the house while he was packing to leave. The Respondent has suggested that the damage could have been caused by the Applicant or their dogs but there was no evidence to suggest this was the case and the responsibility of maintaining the Property to the Repairing Standard was the Respondents and the Repairs Tribunal held this was part of the failure to meet the repairing standard. The total sum awarded for this part of the claim is therefore £125.

Claim for Expenses by the Respondent.

The Respondent has submitted in his written submissions a claim for expenses against the Applicant. The Respondents aver that “there should be an award of expenses made against the Applicant in favour of the Respondent. Such an award would be justified by the manner in which the Applicant has conducted the case. In particular his failure to comply with Directions in respect of quantifying and justifying his claim and the lodging of often lengthy and irrelevant submissions and documentation. It is submitted that it would be appropriate for separate detailed submissions to be submitted in relation to the issue of expenses once the principal action has been determined.”

Expenses are discretionary and not mandatory following the success of a case. Rule 41 lays out the grounds in which expenses can be awarded and it is a narrow ground.

“1. The first Tier Tribunal may award expenses as taxed by the Auditor of the Court of Session against a party but only where that party through unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense.
2. Where expenses are awarded under paragraph (1) the amount of the expenses awarded under that paragraph must be the amount of expenses required to cover any unnecessary or unreasonable expense incurred by the party in whose favour the order for expenses is made.”

The Respondent has suggested that it would be appropriate for further detailed submissions to be allowed regarding expenses after the principal action has been determined. The Tribunal does not agree this would be either appropriate or necessary. The parties were both clearly advised that these should make their final written submissions in writing after the hearing was concluded. The parties have had ample time to do so and indeed the Respondent requested and was granted further time to make his submissions after the Applicant had done so as his client was on holiday. Final submissions were received on 22nd April 2024 from the Respondent and that was his opportunity to make full submissions on the question of expenses.

The Tribunal has considered the Respondent’s submissions and rejects the claim for expenses. The Respondent has to show that due to unreasonable behaviour in the conduct of a case the other party has been put to unnecessary or unreasonable expense. The Respondent avers the Applicant has failed to answer Directions and has lodged lengthy and irrelevant information. The Tribunal notes that the Applicant has in fact responded on each occasion to the Tribunal’s directions. The Respondent may not like or appreciate the response but there has been one. At the beginning of the case there were at least 2 other claims that were settled or withdrawn following a CMD. Another claim went on to form a separate action by the Applicant. This meant that the CMD had fulfilled one of its purposes in defining what the dispute was about. The Applicant also asked for time and amended his claim in light of seeking and obtaining legal advice. This is something many party litigants do and it is appropriate to allow time for legal advice to be sought. The Tribunal does not regard the time taken for this and the amendments to the claim as unreasonable behaviour in this context. The Applicant may have lodged detailed submissions and productions but these all related to his application, that fact that some of the submissions have been rejected is the outcome of the Tribunal process and does not of itself render his behaviour in the conduct of this case in any way unreasonable.

The Application for expenses by the Respondent is rejected.

- **Decision**

1. The Tribunal finds it fair and appropriate to make an order for payment for the total sum of £825 as set out above.

2. An order for payment of the sum of £825 is granted in favour of the Applicant from the Respondent.

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.

J. A. Todd

30 May 2024

Legal Member **Date**