



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations

Chamber Ref: FTS/HPC/CV/23/3599

Re: Property at 29 South Bridge Street, Airdrie, ML6 6JQ (“the Property”)

Parties:

Cetad Limited, 11 Commerce Street, Glasgow, G5 8AB (“the Applicant”)

Mr Angus O'Donoghue, 3 Hamilton Avenue, Pollockshields, Glasgow, G41 4JG (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Gerard Darroch (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment by the Respondent in the sum of £1,234.50 should be made in favour of the Applicant.

Background

1. The application submitted on 11 October 2023 sought a payment order against the Respondent in the sum of £1,438.27 in respect of costs incurred by the Applicant in rectifying damage or restoring the condition of the Property after the Respondent vacated. Supporting documentation was submitted with the application, including a copy tenancy agreement, namely a Private Rented Tenancy agreement between the parties which commenced on 10 May 2021.
2. The application was accepted on 8 November 2023, a Case Management Discussion (“CMD”) fixed for 31 January 2024 at 2pm and the papers served on the Respondent by way of Sheriff Officer. The Respondent was given until 27 December 2023 to make written representations, which he lodged by email on 22 December 2023. The Respondent lodged further documentation on 23

January 2024, following which the Applicant also lodged further documentation on 23 January 2024.

3. The CMD took place by telephone conference call on 31 January 2024 at 2pm and was attended by Mr Ryan Malone, Business Manager and Mr Reza Cheshmehdoost, Director, both of the Applicant company, and by the Respondent.
4. It was noted that the application contained a breakdown of the sum claimed of £1,438.27, as follows:-
 - 1) Skip hire £240
 - 2) Labour for cleaning and removal £240
 - 3) Labour for fire escape roof repairs due to usage £290
 - 4) Labour for putting right the damages & paint £210
 - 5) B&Q materials £287.49
 - 6) Screwfix £38.10
 - 7) Keys £34
 - 8) Howden (2) kitchen unit doors £98.68
5. The documentation lodged by the Applicant consisted of the following:- invoices and receipts relative to the items claimed above; photographs; messages between Mr Malone and Mr Raymond Murphy [commercial tenant at the property below] between 12/4/23 and 21/4/23; Facebook messages between Mr Malone and Frasers Waste Management dated 24 April 2023; and a previous Tribunal Decision dated 19 June 2023 involving a previous payment (and associated eviction) application between the parties.
6. The documentation lodged by the Respondent consisted of the following:- emails between parties dated April and May 2023; photographs; and valuation/cost information in respect of various items similar to personal belongings of the Respondent which he claims were wrongly disposed of by the Applicant.
7. Following discussion at the CMD, it was ascertained the Applicant wished to recover costs incurred for removal of waste, cleaning and repairs to the Property which were required due to the Respondent's misuse and lack of care or action. The Respondent disputed that the sum claimed is due, as he considered that some of the costs claimed are excessive, false or have not been properly evidenced, or that he is not liable to pay them as some of the issues were due to normal wear and tear during the tenancy or that the condition of parts of the Property was no worse than when he first moved in. The Respondent also claims that the Applicant wrongly disposed of some of his personal belongings, without first giving him a reasonable opportunity to uplift them. It was noted that the Respondent had stated in his written representations that he considered the Applicant to be due no more than £150 from him in respect of a contribution to skip hire and cleaning. It was ascertained that the

Applicant would be prepared to reduce the amount claimed by perhaps 10% but would not be prepared to accept £150 in settlement.

8. Given the issues in dispute, the Legal Member determined that the application required to be continued to an Evidential Hearing for evidence to be heard by a full Tribunal. A Direction was also issued to parties, directing them as to the lodging of any documentation and the format of same, and the details of any witnesses, all to be lodged with the Tribunal at least 14 days prior to the date of the Evidential Hearing. The Evidential Hearing was subsequently scheduled to take place in-person on 21 May 2024 at 10am at Glasgow Tribunals Centre.
9. Prior to the Evidential Hearing, neither party intimated the intention to call any additional witnesses. The Respondent emailed the Tribunal on 26 March 2024 to advise that Ms Susan O'Donoghue (his mother) would represent him and he lodged his documentary evidence in accordance with the Direction by email on 4 May 2024. On 10 May 2024, the Applicant emailed the Tribunal with their documentary evidence/written submissions and apologised for this not being lodged at least 14 days prior to the Evidential Hearing in terms of the Direction, explaining that they had referred instead to the '7 day time limit' referred to in the correspondence received from the Tribunal Administration notifying them of the arrangements for Evidential Hearing. On 18 May 2024, the Respondent lodged by email some further documents which had been omitted from their previous email, namely a copy of an Employment Tribunal decision between the parties and copy emails between the parties dated April/May 2023. Most of the documentation lodged prior to the Evidential Hearing was the same as the documentation which had been lodged before the CMD, but formatted differently to comply with the Direction. The Applicant's list of documents were indexed with "C" numbers and the Respondent's with "R" numbers.

Evidential Hearing

10. The Evidential Hearing took place in-person at Glasgow Tribunals Centre on 21 May 2024, commencing just after 10am and concluding just after 4pm. It was attended by Mr Ryan Malone, Business Manager and Mr Reza Cheshmehdoost, Director, on behalf of the Applicant company. The case was primarily presented by Mr Malone but both gave evidence and made submissions. Mr Angus O'Donoghue, the Respondent, gave evidence. His case was primarily presented by Ms Susan O'Donoghue, his mother, but Mr O'Donoghue also made submissions on his own behalf.
11. Following introductions and introductory comments from the Legal Member, it was ascertained that both parties had had sight of all of the documentation lodged by the other prior to the Evidential Hearing and there were no objections to any of the documentation being lodged slightly late in terms of the Direction. It was also ascertained that there were no additional witnesses to be called by either party.

12. The Legal Member checked that neither party had anything that they wished to raise as regards the CMD Note produced following the CMD and thereafter confirmed that there was agreement between the parties on the following facts:-

- That, although the tenancy agreement produced indicated a commencement date of the Private Residential Tenancy of 10 May 2021, that the tenancy arrangement between the parties had, in fact, commenced on 10 January 2020;
- That the tenancy had ended when the Respondent vacated the Property on 11 April 2023 and posted the keys back to the Applicant;
- That the Applicant received the keys by post on 14 April 2023;
- That the Respondent was previously employed by the Applicant from 2019 until 27 May 2021 when he was dismissed;
- That the parties were previously involved in Tribunal proceedings in connection with the Property, namely an eviction application and payment application in respect of rent arrears and costs which concluded on 25 April 2023, with a payment order in the sum of £11,691.17 being granted against the Respondent. An eviction order had not been required, given that the Respondent had vacated the Property on 11 April 2023, between the two Evidential Hearing dates of 26 January 2023 and 25 April 2023; and
- That the Respondent had appealed the payment order to the Upper Tribunal but that this appeal had very recently been refused.

Applicant's Evidence

Mr Ryan Malone (Business Manager) and Mr Cheshmehdoost (Director) of Applicant company)

13. Mr Malone made reference to document C14 for the Applicant (previous Tribunal decision in the payment application). Mr O'Donoghue had vacated the property on 11 April 2023 leaving almost £11,700 owing in rent arrears. Mr O'Donoghue had appealed that decision but last week the Upper Tribunal had refused the appeal. The Property had been rented to Mr O'Donoghue when he was in the employment of the Applicant. This was intended to be a short-term arrangement and had started on 10 January 2020. Mr O'Donoghue had left the property 'out of the blue' on 11 April 2023. He had emailed the Applicant to say that he was posting the keys back. The Applicant then received these on 14th April 2023. On 21 April 2023, an e-mail was received from Mr O'Donoghue from which it was clear that he was accepting no responsibility for all the waste he had left at the Property. Reference was made to the emails lodged by Mr O'Donoghue. Mr Malone stated that it was clear from the previous Tribunal decision that Mr O'Donoghue had acted unreasonably. He had made no contact or comment to the Applicant prior to his removal from the Property. There had been no sudden requirement for him to remove. He could have kept hold of the keys until he had removed everything that he wanted from the Property. The Applicant had made arrangements and started removing the waste before Mr

O'Donoghue's emails of 21 April 2023 and subsequent dates had been received.

14. Following Mr O'Donoghue emailing on 11 April 2024 to say he had moved out, Mr Malone had messaged Mr Raymond Murphy, the commercial tenant in the shop below the Property to ask if he could confirm that Mr O'Donoghue had moved out. Reference was made to C9 (the screenshots of messages between Mr Malone and Mr Murphy, dates between 12 and 18 April 2023 and between Mr O'Donoghue and Mr Murphy, dates between 18 and 21 April 2023). Mr Murphy reported on 12 April 2023 that Mr O'Donoghue had dumped waste into his yard from the roof while moving out and Mr Murphy wanted this removed quickly as there was a risk of the drains being blocked. Mr O'Donoghue had messaged Mr Murphy to say he would be getting the waste removed that week and then later that he had messaged to say that he had instructed a waste disposal firm, Fraser's, to attend at the property on 20 April 2023 but that they had turned up too early and could not get access as Mr Murphy had not been there to give them access. Mr Murphy had responded to Mr O'Donoghue to say that he had been there all morning on 20th April 2023 and that Fraser's had not attended at all. Mr Malone subsequently checked with Fraser's and they confirmed that they had had no booking at all for this property address that week (reference made to C12 messages between Mr Malone and Fraser's Waste Management dated 24 April 2023). Mr Malone referred again to the previous Tribunal decision C14 where it was found that Mr O'Donoghue was not acting in good faith. He was just paying lip service to things. He had moved out and returned the keys. He had not made any direct contact with the Applicant about removing the waste he had left behind before they had made their own arrangements. He had not booked any waste removal firm.

15. Mr Malone then went through the photographs lodged as C5 to explain where the waste had been left behind by Mr O'Donoghue in various locations at or around the Property. Reference was also made to an aerial plan of the Property which had been lodged by the Respondent (R8) which was useful in providing the Tribunal with an overview of the property and its surrounds. It showed the street frontage of the Property (South Bridge Street), the roof of the Property which had been occupied by Mr O' Donoghue outlined in blue, directly behind that the flat roof of the commercial property below (a shop) let to Mr Murphy outlined in red, together with the area directly behind that which showed beige on the photograph, being Mr Murphy's yard. The photograph also showed an area for vehicle parking directly behind the rear boundary of Mr Murphy's yard which Mr Malone explained was where the skip they had arranged to remove the waste had been located. Mr Malone referred to photographs which he stated showed:-

- the front entrance door of the Property and the pavement outside with several black binbags and other waste sitting beside a bin, including an envelope addressed to Mr O'Donoghue which was clearly visible;
- a utility cupboard situated in the common entrance hallway which only Mr O'Donoghue and Mr Murphy had access to; the cupboard contained the electricity boxes for both properties; Mr O'Donoghue had left

furniture and other items within this cupboard which was waist high and when they cleared the larger items out, they found underneath more black bin bags and a substantial amount of rubbish which had spilled out, including food waste, that could have attracted vermin;

- the rear yard of the commercial property of Mr Murphy where Mr O'Donoghue had clearly dumped a large quantity of broken furniture and other waste items off the flat roof above into the yard below;
- an area of the carpark at the rear of the properties where Mr O'Donoghue had left other items;
- the flat roof area and low wall of the roof where a bench seat, weights, the remains of bamboo fencing, a barbeque and empty barbeque box, a stick and lots of dog waste had been left behind by Mr O'Donoghue;
- the internal hallway of the property itself showing items that Mr O'Donoghue had left in the loft, including some pillows, bedding, a blue storage box and a kettle;
- the skip hired by the Applicant loaded with the waste and other items left behind by Mr O'Donoghue in which items visible in some of the other photographs could be seen, including a red sofa which Mr O'Donoghue had left in the common utility cupboard.

Mr Malone stated that some of the photographs had been provided by Mr Murphy who had been first to see the situation, others had been taken by Mr Malone who had attended with his wife a day or two after as he had not wanted to attend alone in the circumstances and others were taken by Mr Cheshmehdoost. Mr Cheshmehdoost confirmed this.

16. Mr Malone then referred specifically to the photographs lodged which relate to the flat roof and the alleged damage and misuse of the flat roof by Mr O'Donoghue (C5 and C8). Mr Malone explained that the flat roof area is just supposed to be a fire escape for the Property. Mr Murphy could also access the flat roof area from his yard below but did not use it as such. Mr O'Donoghue had been told specifically not to use the flat roof area for other purposes as it was not designed for that and should not be bearing weight. However, Mr O'Donoghue used the roof frequently for exercising his dog, socialising and having barbecues, Mr Malone referred to the waste left behind on the roof area which confirms the use Mr O'Donoghue had made of the roof. He had left behind the barbeque and box, weights and a bench seat. The bamboo fencing had been put up probably to stop the dog falling off the edge of the roof, The photographs show all the dog waste on the roof, a large stick and a bucket of water, maybe for the dog to drink out of. When they accessed the flat roof after Mr O'Donoghue had left, they had moved the bench and weights off the roof surface as they should not have been there and placed these up on the low parapet wall, as shown in the photograph. Mr Murphy had reported previously that the roof was leaking into his property below. Mr Cheshmehdoost stated that he had tried to get a roofer out around 1 April 2023 but the roofer refused to even look at the roof because of the amount of dog waste lying around. It was felt by the Applicant that the bamboo fencing and the damage done by Mr O'Donoghue to the surface of the roof had contributed to water pooling on the roof as shown in the photographs. Mr Malone also referred to the photographs

showing scores, holes and slices out the roof surface which he said coincided with the area where the BBQ was found. It was explained that the roof had felt roof covering which what was what had been damaged by the sharp metal barbeque legs and probably the dog's claws. Mr Murphy had also been concerned about the drainage being blocked by the waste left behind on the roof itself and in his yard. Reference was again made to the screenshots of messages from Mr Murphy dated 12 April 2023 confirming this. Mr Malone said that Mr O'Donoghue had not been acting in good faith at the time and had no intention of removing the waste himself. When it had been pointed out to him that he had not instructed Fraser's as he had said he had, he said he must have made a mistake with the company name. The Applicant had responsibilities to their other tenant, Mr Murphy, too who was worried about drainage being blocked or vermin attracted by the rubbish left behind. The Applicant considered that the dumping of the waste could be a breach of the Environmental Health Act 1990 and maybe a criminal offence. They had no option but to make arrangements to deal with the waste issues quickly, so booked a skip which arrived on 20 April 2023 and started clearing the waste. Reference was made to the skip hire receipt produced dated 20 April 2023 (C4). They did not believe that Mr O'Donoghue had any intention of clearing the waste and no reason to think he wanted any of the items he had left behind which had already been cleared before he said that he wanted them. Mr Malone confirmed that the items were used and assumed to be broken or of no value, given their condition and where they had been left by Mr O'Donoghue. The Applicant considers Mr O'Donoghue's claim regarding his personal possessions being disposed of to be a continuation of his personal vendetta against the Applicant.

17. Mr Malone stated that one of the photographs showed two men in the process of cleaning the flat roof with a hose and brush. He confirmed that they were Mr Fatehi and Mr Fakhrirad. Mr Fatehi is employed by the Applicant as a repair and cleaning specialist in relation to hand-made rugs. Mr Malone confirmed that this is the business of the Applicant who are not primarily landlords. Mr Fakhrirad is a general handyman. He is not an employee of the Applicant but does do work for them sometimes. Mr Cheshmehdoost himself was also involved in the clearing of waste and cleaning which took place after Mr O'Donoghue left. Mr Cheshmehdoost confirmed that he also spent a lot of time organising things and driving back and forth collecting materials, etc. Mr Malone explained that, although all three men had been involved in the clearing and cleaning, the only labour costs charged to Mr O'Donoghue were for Mr Fakhrirad as he was not an employee of the Applicant. However, the work involved was considerable and it did take Mr Fatehi and Mr Cheshmehdoost away from their normal employment duties with the Applicant. Mr Malone referred to the documents at C4 showing bank transactions to Mr Fakhrirad which was his payment for work carried out and receipts/invoices in relation to skip hire and materials purchased. The removal of all the waste from the various locations took a while and was difficult to carry out as there were large, heavy items, some of which had to be taken down a ladder from the roof to ground level. Waste was removed from the street in front of the Property, the cupboard in the common entrance hallway, Mr Murphy's yard, the car park area at the rear, the Property itself and the flat roof area. Mr Murphy had allowed access

to facilitate the waste being removed and taken out the rear of the property and into the skip. There was a substantial volume of waste in total as can be seen from the photographs. The skip hired was a ten-yard skip and by the end was filled three to four metres high.

18. Mr Malone referred to the emails from 21 April 2023 onwards between himself and Mr O'Donoghue which he said showed Mr O'Donoghue's unwillingness to accept any responsibility for the waste he left behind or to pay anything towards the skip-hire costs being incurred by the Applicant, Mr O'Donoghue saw some items in the skip and then alleged that his possessions were being thrown out. Mr Malone had responded to say that Mr O'Donoghue could remove these items from the skip if he wished as it was going to be there for a few days.

19. Mr Malone then turned to the damages to the flat itself which he stated had been in pristine condition when Mr O'Donoghue moved in. Reference was made to documents C10 and C11 which were from the builders who had carried out the extensive renovation works to the flat for the Applicant in 2019 and confirmed that the interior was brand new and pristine. Mr Malone also referred to R1 which were the photographs Mr O'Donoghue had lodged showing the condition of the flat at the beginning of his tenancy. The blue polythene protective covering could be seen still on the new kitchen cupboard doors and the brand new flooring throughout and bathroom. Mr Malone stated that the photographs they have lodged at C6 indicate how Mr O'Donoghue had neglected the flat and caused damage which was more than wear and tear as he is claiming. He referred to photographs showing scuff marks above doors, scores, dents and discoloured areas on skirting and walls. One photograph shows the wall which Mr O'Donoghue had painted dark blue without permission, using an oil based paint which was peeling off around the edges. There were also scores and marks on the new flooring which they have not charged Mr O'Donoghue for as Mr Cheshmehdoost was told that the whole floor would require to be replaced, rather than repaired in parts. There had been a brand new oven and white goods when Mr O'Donoghue had taken entry. Mr Malone referred to the photograph showing the oven left caked in grease and food debris which had taken a while to clean and other photographs showing damage and chips in the fridge and freezer doors/drawer. These two kitchen cabinet doors required to be replaced. Many repairs were needed to the walls and skirting which needed filling, sanding and painting. The wall Mr O'Donoghue had painted blue required to be sanded to remove the peeling paint at the edges and then several layers of paint required to be applied to cover over the dark blue colour of the oil based paint which Mr O'Donoghue had used. There was a stopper missing from the kitchen sink and some of the internal door handles were bent out of shape which Mr Malone stated could only have been caused by rough handling. He referred to the photographs showing the damaged handles and missing threshold plate which had required to be replaced. Mr Malone explained that, although Mr O'Donoghue had posted back the keys to them, the Applicant considered that the Property locks had to be immediately changed, due to the circumstances in which Mr O'Donoghue had left and the fact that he was a hostile tenant. They did not know if Mr O'Donoghue had another set of keys kept aside or whether he would turn up

and try and gain access to the Property again. Mr Malone referred to C4 again and all the copy receipts produced for replacement items purchased, cleaning, repairing and painting materials, including roof felt and adhesive for the flat roof area. Mr O'Donoghue had offered to power-wash the roof previously and so had accepted his responsibility for all the dog waste and state of the roof. The rainwater was no longer running properly off the roof and it required to be properly cleared and cleaned and then its surface patched and repaired. It is quite a large area as can be seen from the photographs and took the three men a while to do and was in addition to all the man-hours taken to repair and clean the interior of the Property, including the oven, and clear all the waste from the various areas mentioned. Mr Malone reiterated that they had only charged Mr O'Donoghue for Mr Fakhirad's labour and pointed out that external contractors would have charged much more. Despite this, Mr O'Donoghue still refuses to accept responsibility for the condition in which he had left the Property.

20. Mr Malone and Mr Cheshmehdoost were asked questions by the Tribunal Members throughout their evidence and their responses are incorporated in the narrative above. They were asked some additional questions at the end. As to the changing of the locks, Mr Malone conceded that this had been their choice, as was getting additional copies of keys cut at a later date with a view to a new tenant coming in. When asked if they would not have done this as a matter of course when any tenant left, Mr Malone stated that not every tenant was as hostile as Mr O'Donoghue. They were asked if they had considered getting in a roofing contractor to repair the flat roof but they said that the previous roofing contractor would not go near it due to the dog excrement and that they wanted it repaired quickly due to the concerns of Mr Murphy, their commercial tenant. They conceded that they did not have any photographs showing the roof at the start of Mr O'Donoghue's tenancy but stated that it had been in perfect order and had been damaged over the course of Mr O'Donoghue's tenancy by his misuse of the roof. Mr Cheshmehdoost said that he had been made aware during Mr O'Donoghue's tenancy that he was going onto the roof and what he was doing on the roof, He said he had told him several times not to as it was dangerous and that he should have known this. According to Mr Cheshmehdoost, Mr O'Donoghue just ignored this and carried on. He said that, similarly, Mr O'Donoghue had, without the Applicant's permission, allowed a second occupant to move in, namely his girlfriend and also got a dog. Both his girlfriend and dog were there until the end of the tenancy. Mr Cheshmehdoost also stated that Mr O'Donoghue had previously sub-let to a male for a period of six months, again, without the Applicant's permission and that there had been allegations of drug misuse at the Property whilst the lodger was there.

21. Mrs O'Donoghue then asked some questions of the Applicant on behalf of the Respondent. She asked how long the building renovation works had taken before the Respondent had moved in and suggested that any damage to the flat roof could have been caused by the builders taking building materials across the flat roof and into the Property before the Respondent had even moved in, because there was no other way of getting materials in. Mr Malone explained that, at that time, the commercial tenant, Mr Murphy had not yet moved in so the ground floor property was empty and access was obtained that

way. He did not see the relevance of how long the renovation works had taken. Mrs O'Donoghue then asked how much per hour Mr Fakhirad was paid for the clearing and maintenance work he carried out for the Applicant, to which Mr Malone answered £15 per hour. Mrs O'Donoghue then put it to Mr Malone and Mr Cheshmehdoost that it was Mr Murphy who had in fact taken all the photographs produced showing the roof area and that they had been taken at an earlier date, around the time of the alleged leak into Mr Murphy's property, whilst the Respondent was still residing at the tenancy and not after he had vacated. Mr Malone and Mr Cheshmehdoost reiterated that they had each taken some of the photographs too and this was after Mr O'Donoghue had vacated. They conceded that one of the photographs showing the dog excrement may have been taken by Mr Murphy on an earlier occasion. They did not know exactly when the items on the roof, such as the weights, were moved onto the parapet wall but confirmed that the items shown on the roof had been there when they each accessed the Property after Mr O'Donoghue had moved out. They confirmed that Mr Murphy had a key and access to the common close but refuted any suggestion by Mr O'Donoghue that they or Mr Murphy had manipulated the rubbish in the utility cupboard by ripping open the bags to make the photographs of the rubbish spilling out look worse than it actually was, or that they had moved items around, such as the barbecue, which could have caused damage to the Property or to make the situation look worse. In response to Mr O'Donoghue who suggested the Applicant had manipulated and exaggerated matters, both Mr Malone and Mr Cheshmehdoost denied this.

Respondent's Evidence [and additional questions for/and responses from the Applicant]

22. Mr O'Donoghue then gave his evidence, at times assisted by Mrs O'Donoghue. It became clear in the course of giving his evidence that there were several other challenges to the Applicant's evidence and questions that the Respondent wished to ask of the Applicant's witnesses. The Tribunal decided that it was easier to continue hearing the evidence in this order as parties were not legally represented. Accordingly, any further answers or clarifications given by the Applicant's witnesses are shown in square brackets and italics in the paragraphs below.
23. Mr O'Donoghue said that Mr Cheshmehdoost said to him at the outset that it was a great property and that he could use the roof for sitting out for a few beers and things like that. Mr O'Donoghue referred to the Applicant's photographs of the interior. He said that there had been problems with the front door lock and internal door handles at the outset and he thought that the internal door handles had been a botched job originally. This meant that the door from the kitchen into the hallway of the flat always had to stay open. The sink plug was always missing and there were other repair issues which were never rectified. The Applicant had said that a threshold plate in one of the doorways was missing but Mr O'Donoghue referred to one of the photographs which he said showed that threshold plate bar clearly visible and in place. The Applicant had exaggerated all these things to make things look worse than they actually were.

For example, the photograph of the missing threshold plate showing all the dog hair in the gap was only how it looked after they had ripped it up. *[At this point the Applicant interjected to clarify that the threshold plate had been broken, was lifted by them and had to be replaced.]* Mr O'Donoghue stated that he had complained about various issues with the flat after he left employment with the Applicant and that, as issues were not resolved, he had withdrawn his rent payments. Mr O'Donoghue admits that he dropped a jar out of the fridge and that it chipped the top of the freezer door. However, he thinks the Applicant has photographed small items of damage such as this in such a way as to blow up the apparent size of the damaged areas and exaggerate how bad things were. Mr O'Donoghue accepts that some of the waste shown in the skip was his. However, several items were not, such as soil and a plank of wood. He thinks items were added to the skip to make it look worse. He estimated that only a third of the waste left was rubbish and that some of the rest were personal possessions. He questioned whether a skip had been required at all and this is why he refused to pay for it.

24. *[Mr Malone interjected at this point and conceded that sometimes items are added to skips which are left in the open by other people but that he was confident that 95 to 98% of what is shown was Mr O'Donoghue's waste and broken items of furniture, etc. He referred to the photographs showing this waste at various locations in and around the Property before it was placed in the skip. The skip was absolutely required as evidenced by the fact that three or four people were involved in removing the waste and filling the skip.]*

25. Mr O'Donoghue stated that he left the Property quite hastily and admits that he had used the utility cupboard for storing his rubbish before placing it out in the street at the front for collection there by the binmen. He admitted having forgotten that he had left rubbish in the cupboard and accepts that he had placed other items in the cupboard on top of the rubbish bags. He does think that the Applicant had deliberately split the bags and taking photographs to make it look really bad. Mr O'Donoghue stated that everyone on the street put their rubbish out front as there were no bins. He had no wheelie bin and would just place the black bags out in the street for collection on a Saturday morning. This happened for three years. This is why he had also put some of the bags out in the street beside the street bin when he left.

26. *[Mr Malone interjected and said that this was nonsense. Other people in the street do have wheelie bins. However, it turned out that Mr O'Donoghue had never registered for Council Tax or paid any Council Tax and had therefore never being given a wheelie bin by North Lanarkshire Council].*

27. Mr O'Donoghue referred to the photograph showing the front door of the building and the inside or the common close which he stated was never cleaned or repaired. He also stated that the front door of the building was in bad condition and not fit for purpose. Rubbish could blow in off the street and under the door. Mr Murphy also had access to the common close and had people in doing work from a time to time and they could have left items there or caused damage to the close. Mr O'Donoghue stated that some of the photographs the

Applicant had referred to as showing scuff marks on walls were actually of the close walls and outside his internal front door. He does not think that he should have to pay for the painting of these walls as it could just be down to wear and tear or could have been caused by other people. As to his personal belongings, Mr O'Donoghue confirmed that he had forgotten about two pillows, a duvet and a kettle which had been stored in the attic space. He claimed that it should have been obvious that these were personal belongings which he may have wanted and that the Applicant owed him a duty or care to store these belongings safely until he had an opportunity to collect them. When asked by a Tribunal Member about the Applicant's position that these were used items and that, for example, the pillows looked to be soiled in the relevant photograph, Mr O'Donoghue accepted that the pillows may have been dusty from the attic but explained that the kettle was a spare and did not accept that it was a reasonable assumption that he had not wanted these items due to their condition or the fact that he had left them behind.

28. As to the flat roof, Mr O'Donoghue does not accept that he left this in the condition shown in the photographs, particularly with regard to the dog excrement shown. He cleared up the dog excrement on a regular basis, He did not damage the roof. He offered to power-hose the roof as a gesture of goodwill. The drainage issue referred to was due to a build up of gunk on the felt roof surface which he considered would need replaced from time to time anyway, due to wear and tear, exposure to the weather and possibly due to issues with the guttering. Mr O'Donoghue confirmed that his girlfriend lived with him for the latter part of the tenancy and that it was she who had put up the bamboo for screening purposes, not anything to do with the dog. It was also his girlfriend who had obtained the barbeque and placed it on the roof. They did not have parties or regular barbeques on the roof as has been alleged. On a sunny day, they would sit out on the parapet wall referred to. The weights referred to and shown in the photographs had belonged to Mr O'Donoghue's sub-tenant who placed them on the roof. Mr O'Donoghue admits that he would let his dog out onto the roof a few times a day but denies that he exercised the dog on the roof or threw a stick for it as has been suggested. He would clear up the dog excrement every few days but accepts that the photographs showing the dog excrement were how the roof appeared at times, but not after he had left as he did not leave the roof in that condition. Mr O'Donoghue accepts that the bench seat shown in the photograph was his and that it usually sat on the roof, not the parapet wall. Mr O'Donoghue claimed that the roof was poorly maintained and that no maintenance was carried out on the roof while he was there, so any damage was just down to wear and tear. He mentioned that the barbeque seems to be moved around from photograph to photograph and suggested that any damage caused could have been by the Applicant's workers after he had left. Mr O'Donoghue stated that the roof was around 200 square metres in size and that it is not obvious where on the roof the photographs of the damage relate to. He did not use the whole roof area, only the part nearest his flat. No photographs have been produced by the Applicant of the roof surface at the start of his tenancy. The damage shown could therefore already have been there when he took entry. Some damage could have been done by his sub-tenant who was a friend he allowed to stay with him for the first six months of

the tenancy. Mr O'Donoghue claimed that there had been no objection by the Applicant who knew about the sub-tenant. *[Mr Malone clarified that he only knew about the sub-tenant after the fact.]* Mr O'Donoghue said that his offer to power spray the roof had been reasonable. He had been seeking to reassure the Applicant concerning the dog excrement. However they categorically told him not to do this as it could cause damage but then the photograph shows the Applicant's workmen doing that very thing. Mr O'Donoghue said that the lack of roof maintenance is obvious from the photographs showing the roof railings. As to the bucket of water referred to, he stated that was there when he moved in and was full of cigarette ends, he thinks left by the builders who had carried out the renovation works before he moved in. Mr O'Donoghue confirmed that he often swept up the leaves on the roof and that the pooling of water shown was due to a build up of such debris and the landlord's lack of maintenance of the roof during his tenancy. The leak into Mr Murphy's property below had not been caused by a hole in the roof surface but was due to lack of maintenance. It arose from a join at the wall on a different section of the roof. In response to a question from a Tribunal Member, Mr O'Donoghue accepted that he had acquired outdoor furniture to sit on the roof but stated that the bench seat was not being actively used. He accepted that he had been using the roof as a storage place for certain items.

29. Mrs O'Donoghue referred to C7 (the tenancy agreement) and stated that in the relevant section 4 (any excluded areas/facilities of the let property) there was no mention of the roof as the section has been left blank. *[Mr Malone responded that Mr O'Donoghue had refused to sign this tenancy agreement and that nor does the particular section in the agreement state that the roof was part of the let property or a shared facility. The purpose of the access to the roof was only as a fire escape.]*
30. *[In response to questions from the Tribunal Members, Mr Malone estimated that the roof surface dated back to around 2015. The Applicant did reject Mr O'Donoghue's offer to power-hose the roof due to concerns that he could further damage the roof. They would have wanted to bring in other people who knew what they were doing. Mr Cheshmehdoost reiterated that Mr O'Donoghue did not have permission to use the roof and he was well aware of that, having been told several times by Mr Cheshmehdoost.]*
31. Mr O'Donoghue made reference to the photographs he lodged as R1 which show the Property at the beginning of his tenancy. He does not think that the Property was in pristine condition as it was all covered in dust from the building work and needed quite a bit of cleaning and vigorous mopping which he did when he moved in. There were snagging items still being attended to and the builders' materials were still present, as can be seen in one of the photographs. *[Mr Malone stated that these were probably photographs taken by Mr O'Donoghue when he first viewed the flat, rather than when he moved in.]* Mr O'Donoghue explained that this was not a proper tenancy arrangement as he was working for the Applicant at the time. He does not think that he was obliged to leave the Property in a better condition than it was when he moved in. He put time and effort in to maintaining the condition of the Property throughout. Any

scuff marks or damage are simply down to expected wear and tear over the three year period of the tenancy. Mr O'Donoghue referred to photograph R3 which shows Mr Cheshmehdoost's dog and said that this was evidence that other dogs were in the Property too and that the Applicant had no objection to dogs in the Property. He said that Mr Cheshmehdoost had brought his dogs to the Property a few times when relations were amicable as Mr O'Donoghue's girlfriend loved dogs. *[Mr Cheshmehdoost confirmed this was his dog in the photograph but that he did not see the relevance of this.]* Having established that Mr O'Donoghue was not claiming that any of the alleged damage to the Property had been caused by the Applicant's dog, the Tribunal Members agreed that this was not relevant and requested that Mr O'Donoghue move on to other matters.

32. Mr O'Donoghue stated that if he had damaged the walls or skirting over and above fair wear and tear, he would have been willing to contribute to repair costs. He had offered to pay around £150 in total to the Applicant to settle the Tribunal proceedings to cover some of the clearance and cleaning works as he does accept that he had left some items and rubbish around and that some cleaning was required. He accepts that a table had fallen against the skirting and caused minor damage. He accepts that he overlooked cleaning the oven but he does not accept that the flat itself needed cleaning throughout. He said this was apparent from the photographs of the interior of the flat at the end of the tenancy which were lodged by the Applicant. He referred to some of the photographs which showed scuff marks on walls and explained that these were actually photographs of walls outside the front door of his flat or in the common corridor. He accepts that his dog's tail may have brushed against the corridor wall and caused a dirty mark or a scuff mark but objects being asked to pay for the corridor walls being repainted when he has produced photographs showing the general state of the corridor. He said that the Applicant had presented these photographs as if they were showing the interior of the flat to exaggerate the position and make the Tribunal think that Mr O'Donoghue had been a terrible tenant. He reiterated that the photographs had been taken close-up to make areas of damage seem larger or look worse than they actually were. As to the wall painted blue, Mr O'Donoghue stated that his girlfriend had painted this wall. He accepts that she had made a mistake with the type of paint and that it was an amateur job and was peeling away slightly at the edges. However, he thinks that more damage had been done to this wall by the Applicant for the benefit of the photograph, in the same way as with the threshold plate. As to the waste side of things, again, he considered that he had not left things as shown in some of the photographs and was being held responsible for items left or placed there by others. Mr O'Donoghue said that he had minimised things as much as he could as he knew there would be problems otherwise. He had cleared the flat properly, other than the personal belongings he had left behind in the loft in error. He had not left items in the corridor and thinks the Applicant had manipulated the rubbish left in the utility cupboard, again to make it look worse in the photographs. He had put items in there but had left it in a tidy condition. *[Mr Malone and Mr Cheshmehdoost refuted these suggestions of manipulation and exaggeration. They maintained that the flat, corridor, utility cupboard and roof required cleaning and clarified that they had only charged Mr O'Donoghue*

for painting the interior areas. They maintained that the damage caused by Mr O'Donoghue was more than wear and tear and that he was charged fairly for the labour and materials used to rectify the damage.]

33. Mrs O'Donoghue then made detailed submissions and asked questions of the Applicant in respect of C4 (the vouching produced by the Applicant in support of labour, materials and other costs charged to the Respondent). Much of the parties' evidence narrated above was reiterated and is not repeated at length here. Mr O'Donoghue does not accept responsibility for the skip hire costs of £240 which he considers are excessive and were unnecessarily incurred. He does not accept responsibility for all the cleaning and removal costs of £240 (although does accept that he should pay a contribution towards these and the skip hire costs totalling around £150). He does not accept responsibility for the fire escape roof repairs of £290 or the labour costs for putting right the damages and painting of £210. Mr O'Donoghue considers that the Applicant has exaggerated the amount of labour involved and that the labour costs are excessive. No breakdown of the labour costs has been provided by the Applicant. *[Mr Malone confirmed at this point that Mr Fakhrirad was paid £15 per hour and denied that Mr O'Donoghue had been overcharged. There was a substantial amount of man-hours involved, including hard labour particularly in the clearance of the waste].* Mr O'Donoghue was of the view that only the minimum wage should have been paid of around £10 per hour. Mrs O'Donoghue advised that they had obtained a quote from an Airdrie based company for a deep-clean of a property as a comparison and this was only £200 in total. A deep clean of the flat was not needed here, although it was accepted that the oven could have been left cleaner. Otherwise, the Applicant was getting a cleaner flat back at exit than when Mr O'Donoghue had taken entry. All that was needed was items being cleared from the utility cupboard and the back yard communal area. Mr O'Donoghue had no option but to put items into the back yard area which he thought was communal. He denies having left items, such as the bench, on the roof and had disposed of this into the back yard below. Mr O'Donoghue explained that he had been good friends with Mr Murphy and had spoken to him about leaving the waste there and thought he was fine about it. He referred to the messages from Mr Murphy that the Applicant had lodged and said that Mr Murphy had spoken to him differently behind the scenes. Mr Murphy had, for some reason, locked the back yard at some point so the waste could not be collected from there by Mr O'Donoghue as he did not have access. Mr O'Donoghue also thinks the amount of hours and quantities of materials charged for the repairs and painting are a gross exaggeration. He only used a very small area of the flat roof of around 3 square metres, whereas the amount of felt and adhesive purchased was enough to cover 35 square metres. Likewise, the area of blue wall which required to be painted over was only around 2.5 x 4 metres and minor damaged areas would have only required touching up. It was suggested that 4 litres of paint would have been sufficient, yet Mr O'Donoghue is being charged for 12 litres. Mr O'Donoghue thinks he is being charged for re-decorating the whole flat. The Applicant is not entitled to betterment of the flat or flat roof.

34. As to the receipts produced, Mrs O'Donoghue stated that there were no dates on many of the receipts and no receipt produced for replacement of the kitchen unit doors, charged at £98.68. Mr O'Donoghue returned all his keys by post which the Applicant confirmed having received, so he should not have to pay for the locks being changed. Nor should he have to pay for three sets of replacement keys for the new tenant, several weeks later. In addition, Mr O'Donoghue had complained about the internal front door lock during the tenancy and it was never repaired. He is not responsible for the missing sink plug or replacement of the door bar or internal handles.
35. *[Mr Malone denied that the Applicant had over-charged the Respondent, either in terms of labour, or in terms of materials purchased, with reference to their evidence already given. Mr Malone referred to one of the B & Q/Trade Point receipts in C4 which shows a credit note of £16 in respect of excess paint returned. He thinks there is an email from Howdens relating to the replacement costs of the kitchen doors. He denied Mrs O'Donoghue's suggestion that the receipts lodged had been deliberately produced in such a way as to cut off the dates. He checked his own records, confirmed the dates as dates in May 2023 and indicated that he could submit fresh copies to the Tribunal, if required.]*
36. Finally, Mrs O'Donoghue referred to document R18 which shows the cost (new) of the various items of personal belongings disposed of by the Applicant which Mr O'Donoghue considers should instead have been stored safely until he had had a reasonable opportunity to uplift them. Mrs O'Donoghue referred to authority for this being stated in the textbook by Stalker on Eviction. The items included pillows, a duvet, other bedding and a kettle, costed at £106.43. Mr O'Donoghue wants to counter-claim for this amount. It was explained by the Legal Member that there is no counter-claim before the Tribunal by the Respondent against the Applicant but it was noted that the Respondent wanted this amount off-set against the sum being claimed against him.
37. Mr Malone then asked Mr O'Donoghue some questions. He was asked if he had anything in writing from the Applicant which had authorised him to use the roof. Mr O'Donoghue stated that he was told verbally. He was asked why he had thrown furniture off the roof and left so much waste in the close cupboard and elsewhere, and why he had left so suddenly. Mr O'Donoghue stated that he had made an error in leaving food waste in the cupboard. He had been trying to move elsewhere for a long time and had to move quickly because he had managed to find new accommodation. He was asked why he had not paid the Council Tax, to which Mr O'Donoghue replied that he had thought it was the Applicant who was registered and paid for the Council Tax and that the tenancy was not a standard tenancy when he moved in due to how it come about. In response to further questions about the reasonableness of the costs claimed, Mr O'Donoghue reiterated that he accepted responsibility for only around a third of the skip contents and that he does think that the minimum wage would have been reasonable for the cleaning and clearing work. He does not think that £240 is a reasonable charge for the cleaning and clearing of the waste from the entire property. He does not consider that the receipts and other documents lodged support the amount claimed and pointed out that the bank transaction

document refers to payments being made to Mr Fakhirad for “repair and maintenance” and that maintenance was the landlord’s responsibility.

Summing-up

38. Mr Malone summed up by saying that the Applicant was claiming a reasonable sum from the Respondent and that they had not charged him for everything that they could have. They have provided a detailed breakdown of all the costs claimed and why these costs were incurred. The Respondent had left an excessive amount of waste around the Property and had caused damage to the roof through his unauthorised use of it by himself, other occupants and his dog. He had also caused damage to the interior of the flat, either through accident or carelessness and has refused to accept responsibility. Mr Cheshmhedoost added that he and Mr Malone are not bad people, they are both reasonable people and tried to be reasonable landlords.
39. Mrs O’Donoghue summed up by saying that the Applicant’s claim is exaggerated in terms of labour, hours and materials claimed and which is not backed up by evidence. There was no check-in schedule prepared at the start of the tenancy which could be produced for comparison purposes. There is no evidence of kitchen cupboards having been replaced. The Property has an old felt roof which was not properly maintained by the Applicant. It and the flat have been subjected to normal wear and tear during the three years of the tenancy. However, Mr O’Donoghue is being held responsible for this and over-charged for cleaning and repair, which results in betterment for the Applicant which they are not entitled to.
40. The Tribunal brought the Evidential Hearing to a close, thanked parties for their comprehensive preparation for, and presentation of, their cases and confirmed that the Tribunal Members would now deliberate and issue their Written Decision in due course. Although Mrs O’Donoghue indicated that they were happy to accept the dates given by Mr Malone in his evidence in respect of the various receipts, for completeness, Mr Malone was asked to submit fresh copies of these to the Tribunal following the Hearing. He did so later that day and these were also copied out to the Respondent. For the avoidance of doubt, the Tribunal only took into consideration the dates on the relevant receipts submitted and not any additional information or figures provided by the Applicant in this communication.

Findings in Fact/Reasons for Decision

1. The Applicant is the owner and landlord of the Property.
2. The Respondent was the tenant of the Property from 10 January 2020 until 11 April 2023.
3. The Respondent was employed by the Applicant when he took entry to the Property.

4. A written tenancy agreement was not entered into by the parties at that time but, given the commencement date of the tenancy, it was agreed that it was a Private Residential Tenancy.
5. A Private Residential Tenancy Agreement was subsequently prepared, bearing a commencement date of 10 May 2021, but was not signed by the parties.
6. The rent was £495 per calendar month.
7. The Respondent's employment with the Applicant ended on 27 May 2021.
8. The Respondent continued to occupy the Property after his employment with the Applicant ended.
9. The Respondent vacated the Property on 11 April 2023 and posted the keys back to the Applicant by recorded delivery post that day,
10. The Applicant received the keys back in the post on 14 April 2023.
11. At the time the Respondent vacated, the parties were involved in separate Tribunal proceedings whereby the Applicant was seeking an eviction order on grounds of rent arrears and a payment order against the Respondent in respect of those arrears.
12. The first day of an Evidential Hearing in respect of those Tribunal proceedings had taken place on 26 January 2023 and a second day set down for 25 April 2023.
13. As the Respondent had vacated the Property between the two Evidential Hearing dates, the application for an eviction order was withdrawn.
14. The application for the payment order continued and the Tribunal granted a payment order in respect of rent arrears and costs of £11,691.17, by Decision dated 19 June 2023.
15. That decision was appealed unsuccessfully to the Upper Tribunal by the Respondent.
16. The Respondent notified the Applicant on 11 April 2023 that he had vacated the Property and posted the keys back.
17. The Respondent did not give prior notice to the Applicant that he would be vacating on 11 April 2023.
18. The Property consisted of a first floor flat, situated above a commercial shop premises, also occupied by a tenant of the Applicant.

19. The front entrance to the Property was off South Bridge Street, Airdrie, via an external front door leading into a corridor and up a flight of stairs.
20. A common utility cupboard was located in the corridor and housed the electricity meters for both the Property and the commercial shop premises.
21. The fire escape from the Property was at the rear of the building via a large flat roof which could be accessed from the Property and led down a ladder/steps to ground level.
22. The flat roof was the roof of the commercial shop premises below.
23. The Respondent was not permitted to use the flat roof area other than as a fire escape.
24. The Respondent used the flat roof area for other purposes throughout the tenancy and permitted other occupants of the Property to do so, including his girlfriend and an unauthorised sub-tenant who lived at the Property for approximately 6 months.
25. The Respondent also kept a dog in the Property, without permission of the Applicant, and took the dog out daily onto the flat roof area and let it do the toilet there.
26. The Respondent used the flat roof area as a social space and placed (or allowed the placement of) items on the roof, including a bench seat, chair, barbeque and a set of weights.
27. The Respondent had put up (or permitted the putting up) of bamboo fencing/screening which had been affixed to the railings of the flat roof.
28. The Respondent left these items and many other items on the flat roof area when he vacated the Property.
29. Much of the bamboo fencing/screening had come down and was lying on the roof surface which appeared to be contributing to the pooling of water on the roof surface.
30. Significant quantities of dog excrement were left lying on the flat roof at times by the Respondent.
31. A roofer contracted by the Applicant on or around 1 April 2023 to investigate a leak from the flat roof into the commercial shop premises below refused to do so because of the quantity of dog excrement.

32. The flat roof had a roof-felt covering and the surface was found to be damaged, dirty and covered in debris when the Respondent vacated.
33. Some of the damage to the roof surface coincided with the area closest to the flat and where items such as the barbeque had been placed and was consistent with damage, such as holes, dents and scores, caused by the sharp legs of the barbeque and garden furniture.
34. The Respondent is responsible for damage caused to the surface of the flat roof by mis-use or negligence during his tenancy.
35. The Applicant required to have the flat roof surface cleared, cleaned and repaired to avoid further deterioration or damage to the roof or the commercial property below.
36. The Applicant incurred costs in doing so in terms of labour amounting to £290, paid to their contractor on 8 May 2023 and materials, including roof felt adhesive and brushes.
37. On vacating, the Respondent had deposited a significant quantity of waste off the flat roof into the rear yard of the commercial tenant below, without the knowledge or permission of that tenant.
38. The Respondent had also deposited significant quantities of waste in other areas in the vicinity of the Property, including on the pavement at the front of the Property, in the utility cupboard in the common corridor and in the rear carpark area.
39. The waste referred to included broken items of furniture, general bric-a-brac, boxes, containers and other items, bags of rubbish and loose rubbish, some of which consisted of food waste.
40. The commercial tenant reported the depositing of waste by the Respondent in his rear yard to the Applicant on 12 April 2023 and stated his concern that the location and quantity of the waste there could block the drains.
41. The commercial tenant also advised the Applicant that the Respondent had told him that he would remove the waste from his rear yard that week.
42. On 18 April 2024, the commercial tenant reported to the Applicant that the Respondent had not removed the waste from his rear yard but had sent him a message stating that he had now booked a contractor to do so on 20 April 2023.
43. On 18 April 2024, the commercial tenant reported his concern to the Applicant that the waste left in the common utility cupboard included food waste which could attract vermin.

44. On 18 April 2024, the Applicant advised their commercial tenant that they would arrange a contractor to attend to clear the waste.
45. The Applicant required to make arrangements quickly for the waste to be cleared due to the concerns of their commercial tenant regarding drains being blocked and vermin being attracted by the food waste.
46. Due to the quantity of waste left by the Respondent, the Applicant booked a skip which arrived on 20 April 2023 and was placed in the car parking area at the rear of the property.
47. The Applicant incurred skip hire costs amounting to £240 on 20 April 2023.
48. The Applicant also incurred labour costs of £240, paid to their contractor on 22 April 2023, in connection with the clearance of the waste and cleaning of the various areas where the Respondent had left the waste, as well as the Property itself, including the oven and corridor.
49. The clearance was labour intensive work, due to the logistics of clearing the waste from the various areas around the Property, the large quantity of waste involved and the nature of the waste, which included furniture and other large items.
50. The Respondent had cleared the flat itself, other than a few items which had been left in the attic area, including a kettle, some bedding and a storage box.
51. The Applicant regarded these items to be waste left behind by the Respondent and cleared them into the skip with the other waste.
52. The Respondent messaged the commercial tenant on 20 April 2023 to advise that the waste contractor (Frasers) he had instructed had attended earlier that day but could not get access as the commercial tenant had not been present.
53. The commercial tenant messaged the Respondent back on 20 April 2023 and advised that he had been there all day but that the contractor had not attended.
54. On 21 April 2023, the Respondent messaged the commercial tenant to advise that he would attend the following day to clear the waste.
55. On 21 April 2023, the commercial tenant messaged the Respondent back to advise that the Applicant had arranged for the waste to be cleared.
56. On 21 April 2023, the Respondent subsequently emailed the Applicant stating that he would not be responsible for the cost of the skip as he had been making arrangements with the commercial tenant to clear the waste and that his personal belongings should not have been cleared into the skip.

57. On 21 and 22 April 2023, the Applicant contacted Frasers Waste Management to enquire if they had had any bookings to attend at the Property that week.
58. On 24 April 2023, Frasers Waste Management messaged the Applicant back and confirmed that they had not had any bookings for the address that week.
59. There was further email correspondence between the Applicant and Respondent between 22 April 2023 and 2 May 2023 regarding the issues in dispute.
60. After the Respondent vacated the Property and returned the keys, the Applicant had changed the lock(s) to the Property, incurring costs initially of £22 on 19 April 2023 and subsequently a further £4.09, both to Screwfix on 12 July 2023 in respect of the new lock(s).
61. The Applicant subsequently had three more sets of keys cut for the Property with a view to a new tenant moving in, at a cost of £34 on 30 June 2023.
62. Immediately prior to the Respondent moving into the Property, the Applicant had had the Property completely refurbished including a new bathroom and kitchen, new appliances, wooden flooring and it had been freshly painted and decorated.
63. The Respondent occupied the Property for a period of three years and three months.
64. For around the first six months of the tenancy, the Respondent sub-let to a friend, without the Applicant's permission, and his sub-tenant occupied the Property together with the Respondent during that time.
65. Subsequently, the Respondent's girlfriend and a dog resided with the Respondent at the Property until the end of tenancy, without permission of the Applicant.
66. When the Respondent vacated the Property, there had been damage caused to the interior, including a wall painted dark blue with oil-based paint which was peeling off in places; marks and other visible damage to walls, plastering, skirting and flooring; damage to kitchen appliance unit doors, broken/bent internal door handles, a broken/clogged door bar and a missing sink plug.
67. The Applicant incurred labour costs of £210, paid to their contractor on 23 June 2023, in respect of rectifying the interior damage and painting.
68. The Applicant incurred costs of £287.49 on various dates, including 5,6 and 11 May 2023 and 11 June 2023, in respect of materials required to rectify the damage and to clear and clean the Property and the flat roof area.

69. The Applicant admitted that, other than the oven and items left in the attic, the Respondent had cleared the interior of the flat and left it in a clean condition.
70. The Respondent admitted that he had forgotten to clean the oven prior to vacating and that he had placed rubbish bags containing food waste in the common utility cupboard before piling other larger waste items and furniture on top.
71. The Respondent admitted having caused some damage to the Property but that this was normal wear and tear and not his responsibility.
72. The Respondent admitted that his girlfriend had painted the internal wall blue, using the wrong type of paint and that it had been an amateur job.
73. The Respondent admitted that he and other occupiers had used the flat roof area throughout the tenancy for purposes such as sitting out, barbeques and letting his dog out daily onto the roof.
74. The Respondent admitted that his dog did the toilet on the roof and that although the Respondent cleared this up every few days, there were periods when dog excrement was left lying.
75. The Respondent admitted that his girlfriend had erected the bamboo fencing/screening around the edge of the roof area and that the remains of this was left when he vacated.
76. The Respondent admitted having vacated the Property quickly, explaining he had found alternative accommodation and with reference to the ongoing eviction proceedings.
77. The Respondent admitted having left waste and other items on the roof area, in the rear yard of the commercial tenant's property, in the common utility cupboard, in the entrance corridor and on the pavement in front of the Property.
78. The Respondent admitted that he was due to pay a small proportion of the Applicant's costs for clearing the waste.
79. There was a considerable volume of waste left behind by the Respondent which justified the hiring of a skip by the Applicant.
80. Most items shown in the skip had been left behind by the Respondent.
81. The Applicant admitted that a few items may have been added to the skip by third parties.

82. The Respondent did not communicate directly with the Applicant between 11 April 2023 and 21 April 2023 regarding any intention to remove the waste or uplift any other items he had left behind.
83. The items left in the attic area appeared to be a used/broken kettle, soiled pillows and a bag of used bedding.
84. There was no obligation on the Applicant in these circumstances to set aside and store the items left in the attic area in case the Respondent wanted to claim them.
85. The Respondent is not entitled to off-set the replacement costs of similar new items against the sum claimed by the Applicant against him.
86. The damage to the Property and flat roof area exceeded fair wear and tear.
87. The labour and material costs referred to above were necessarily and reasonably incurred by the Applicant in respect of the works carried out at and around the Property following the Respondent vacating.
88. Other than the specific items specified in the Reasons for Decision below, the Applicant is entitled to recover all the costs incurred by them from the Respondent.
89. The amount of £1,239.50 is due and resting owing by the Respondent to the Applicant.
90. The Respondent has been called upon to make payment to the Applicant but has failed to do so.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, the extensive written representations and documentary evidence lodged by both parties and all the oral evidence and submissions heard at the lengthy Evidential Hearing.
2. The Hearing was quite heated at times and it was clear that relations between the parties remain very acrimonious. There was a significant background to matters and previous contested Tribunal proceedings had already taken place between them, both in respect of the Respondent's previous employment with the Applicant and in respect of eviction proceedings and a previous payment claim against the Respondent in respect of rent arrears. The Applicant had lodged a copy of the previous Tribunal Decision relating to the payment action in support of this application and referred to it several times when making submissions, for example, about the credibility of the Respondent. Whilst the Decision was useful in providing some further background on the tenancy and

how it had ended, the Tribunal did not rely on any findings of the previous Tribunal in respect of their assessment of this claim. Likewise, the Tribunal disregarded the Decision of the Employment Tribunal which the Respondent had lodged in support of his position.

3. That said, parties had clearly both prepared meticulously for this Evidential Hearing, addressed matters at length and in considerable detail for the benefit of the Tribunal and were each given the opportunity to cross-examine the other party. The Applicant's witnesses and the Respondent also answered numerous questions from the Tribunal Members.
4. With reference to its Findings-in-Fact above, the Tribunal considered overall that the Applicant's claim against the Respondent was well-founded. The Tribunal found both of the Applicant's witnesses to be credible in their evidence and their claim to be substantiated by the supporting documentation lodged, including photographs, receipts, invoices, copy messages and correspondence. The Tribunal did not consider that the Applicant had manipulated the evidence produced or exaggerated matters to support their claim, in the manner suggested by the Respondent, nor that they had charged the Respondent excessively for labour costs or materials (other than a few specific items, as outlined below).
5. On the contrary, although the Respondent did admit to some of the conduct alleged, particularly with regard to his use of the flat roof, and admitted to some aspects of the claim, the Tribunal considered that he 'down-played' any fault on his part or errors he had made and had a tendency to blame or accuse other people, including his girlfriend, his sub-tenant and the commercial tenant in the property below. The Tribunal considered that the Respondent was either unaware or chose to ignore his responsibilities as a tenant and appeared to focus only on the Applicant's duties and responsibilities as a landlord. For example, the Respondent appeared to think that the conduct of other occupants of the Property, or damage that they had caused, was not his responsibility. He also appeared to consider that any damage he, the other occupants or his dog had caused was not his responsibility if it had been caused accidentally, as opposed to maliciously, and that all the damage should be considered normal "wear and tear", given that he had occupied the Property for more than three years.
6. The Tribunal was satisfied that the Respondent had left a significant amount of waste behind when he vacated and that, although the Respondent had notified the Applicant that he had moved out on 11 April 2023 and posted the keys back, he had not mentioned anything in that communication about an intention to have the waste removed nor to uplift any of the items he had left behind. The Respondent only contacted the Applicant about these matters on 21 April 2023, by which time the Applicant had already had the skip delivered and had started clearing the waste. Although the Applicant had been told by their commercial tenant that the Respondent had made contact with him, it was clear from the messages produced that the commercial tenant was annoyed and concerned

by the Respondent's actions in depositing waste into his rear yard area and the common utility cupboard and corridor and did not believe that the Respondent genuinely intended, nor had instructed, a contractor of his own to remove the waste. Furthermore, it was verified by the waste company concerned that they had not been booked to attend. The Tribunal did not find the Respondent's explanation, that he had given the wrong name of the waste company he had instructed, to be credible. If he had instructed another company, the Respondent would surely have been able to provide proof of this and had not done so. In any event, the Tribunal considered that it was a reasonable assumption for the Applicant to make, on receipt of the keys back from the Applicant, that the Applicant was not intending to return to the Property as he would have been aware, in doing so, that he would no longer be able to gain access. The Tribunal considered that, in the circumstances and with reference to the chronology of events, the Applicant was perfectly entitled to make arrangements to have the waste removed and to do so relatively quickly, given the concerns of the commercial tenant regarding the potential impacts of the waste.

7. In the Tribunal's view, having regard to the photograph of the items left in the attic by the Respondent, it was also a reasonable assumption of the Applicant that these items were not wanted, were of little or no value and could be disposed by them as waste. The Tribunal was not persuaded that a landlord, in these circumstances, is under an obligation to safely store such items or to contact the tenant to establish if they want them. Mrs O'Donoghue had referred to a textbook on Evictions (by A. Stalker) as authority for this proposition but the Tribunal Members explained that, whilst this obligation may exist in some circumstances, in the Tribunal's view, it did not apply here, for the reasons explained. Accordingly, the Tribunal determined that the Respondent was not entitled to off-set the costs of purchasing new similar items against the sum claimed against him.
8. Given the volume of waste, the Tribunal was also satisfied that it was reasonable for the Applicant to hire a skip for the waste (or a skip of that size) and was not persuaded by the Respondent's argument that only a third of the items photographed in the skip belonged to him or were actually waste, as opposed to personal belongings which he should have been entitled to uplift. The Tribunal accepted the Respondent's position that certain items in the skip may not have come from the Property and that the Applicant conceded that items may have been added to the skip by third parties as it had been sitting open at the location for several days. However, the Tribunal did not consider this particularly relevant. The Tribunal was satisfied, from the photographs showing the waste in several locations around the Property, before it had been moved to the skip, that most of the waste in the skip was the responsibility of the Respondent. The Tribunal did not agree with the Respondent's position that £240 was an excessive cost for the skip hire, nor that the logistical and timescale difficulties referred to by him justified his conduct in respect of the waste or absolved him of his obligations as a tenant to deal with such matters responsibly at the end of a tenancy.

9. As to the flat roof, the Tribunal accepted the evidence of the Applicant that the Respondent was aware that it was a fire escape only and that he was not authorised to use the flat roof by the Applicant. Mr Cheshmehdoost's evidence that he had expressly told the Respondent not to use the roof as it was "dangerous" and could damage the roof itself and the commercial property below was credible. The Respondent admitted to use of the flat roof area for various purposes and to placing items on the flat roof. He admitted in his evidence that he let his dog out daily onto the roof and that the dog excrement shown in the photographs was from his dog and that he regularly left the excrement lying for a few days before clearing it up. The Respondent denied that he had left the dog excrement shown when he vacated and claimed that the photographs produced by the Applicant had been taken on an earlier occasion. He had produced a photograph of his own showing the roof surface clear of dog excrement which he stated had been taken when he vacated. The Tribunal did not consider this point particularly relevant, given the Respondent's admissions regarding the dog excrement and his offer to power-hose the roof previously to "reassure" the Applicant. The Tribunal considered that the roof surface was not left in a clean condition, nor free of other items and debris and that it was reasonable for the Applicant to charge the Respondent for the costs of clearing and cleaning the roof. The Tribunal did not accept, standing the other evidence, that the Respondent's use of the roof area had been restricted to only a small area nearest the flat or that any damage to the roof surface outwith that small area was not his responsibility. The evidence pointed to the use made of the roof area being over a larger area than the Respondent claimed, given that items and waste had been left over a larger area, the dog excrement photographed showed it strewn all over the roof and the bamboo fencing/screening had been affixed to railings along the edges of the roof. The Tribunal was not persuaded that the Applicant had repaired a larger area of the surface than had been required nor that their motivation had been to charge the Respondent excessively for the labour and materials involved, with the result that they ended up with a roof in a better condition than when the tenancy commenced.
10. The Tribunal had regard to, and accepted, the Respondent's argument that there was no evidence produced by the Applicant showing the condition of the roof when he took entry to the Property. The Tribunal also considered the Respondent's position that any damage was due to weathering, wear and tear or lack of maintenance by the Applicant. However, the Tribunal determined, on the balance of probabilities, that the damage to the roof surface had been caused by the Respondent, his other occupants and his dog by their frequent mis-use of this area throughout the duration of the tenancy. The Tribunal therefore determined that the Applicant was entitled to recover the costs they had incurred in this regard from the Respondent.
11. As to the damage caused to the interior of the flat, with reference to the Findings-in-Fact referred to above, the Tribunal determined that the Respondent was responsible for the damage caused and claimed for and did not consider that the Applicant had misrepresented or exaggerated their claim in this regard. The Applicant had admitted causing some of the damage himself

and that other damages were due to his girlfriend or dog. The Tribunal did not accept his arguments that the damage caused had been accidental or due to normal wear and tear nor that the Applicant had charged him for re-decoration works in respect of more of the Property than had been required and that this was “betterment”. The Tribunal had regard to the correspondence produced by the Applicant from the builder who had carried out the renovation works dated 18 May 2022 and 9 June 2023, detailing the extent of the works and that the condition on the Respondent taking entry to the Property had been “pristine”, albeit that they had had to attend at a later date to deal with some snagging issues. The Tribunal also compared the photographs of the interior produced by the Respondent, taken at the start and end of the tenancy, together with the photographs of the interior produced by the Applicant, showing the areas of damage after vacation. The Tribunal was satisfied that the condition of the Property had been pristine on entry and did not consider the Respondent’s position that there had been dust and some materials left by the builders to be of any relevance, nor that this led to the Applicant getting the Property back in a better condition than it had been at entry.

12. As to particular items claimed for, namely the missing sink plug, broken/bent internal door handles and the replacement of the front door lock, the Respondent had argued that these were pre-existing issues and stated that these, together with other repairs issues had been raised by him during the tenancy and had not been addressed by the Applicant. Repairs issues had been part of his defence to the previous Tribunal claim against him for rent arrears. The Tribunal had regard to the correspondence from the Respondent to the Applicant from 2022 regarding repairs issues which the Respondent had lodged and noted that it did make specific reference to the front door lock but not the other issues mentioned. Accordingly, in view of the other evidence produced, the Tribunal accepted the claim of the Applicant for replacement of the handles and plug. The Tribunal has disallowed the Applicant’s claim in respect of replacing the front door lock in any event, as explained below. below.
13. On cross-examination of the Applicant’s witnesses by the Respondent, they had been taken almost line by line through the various receipts, etc produced in support of the costs of materials purchased to effect repairs to damage, re-painting, clearing waste and cleaning. In the Tribunal’s view, other than the particular items excluded, as detailed below, the Applicant had fully justified in their evidence the materials and volumes of materials purchased and the extent of the works carried out. The dates of purchase of the various materials and the labour costs charged coincided with the Applicant’s evidence regarding the chronology of the works. The Respondent’s suggestion that areas of damage could have been just patched up or spot-painted was not, in the Tribunal’s view, a reasonable suggestion. Nor did the Tribunal consider that there was any evidence that the Applicant had taken advantage of the situation and charged the Respondent in respect of completely re-decorating the whole flat. The Tribunal had regard to the fact that the labour costs charged for all the repairs and painting was only £210 and to the Applicant’s evidence in which they clarified that, although some of the photographs may have shown marks on the walls of the external corridor and stairwell, they had only charged the

Respondent for paint and the painting work in the interior of the flat. The Tribunal also considered it of significance that the Applicant had given evidence that they had decided not to replace or charge the Respondent in respect of the wooden flooring, although they considered him responsible for the flooring damage and that they had returned surplus paint that had been purchased and produced vouching in the form of a credit note.

14. As to the labour charges which the Respondent claimed were grossly excessive, the Tribunal preferred the evidence of the Applicant in this regard. They had explained in some detail the amount of man-hours involved in the work and the heavy and difficult nature of some of the work, particularly in relation to the clearing of the waste and the cleaning afterwards of those areas where the waste had been left. In particular, the Tribunal noted that, although three men had been involved in the work, including Mr Cheshmehdoost, it was only the labour of one of the men involved that the Respondent was charged for, the basis for this being that the other two men were employees of the Applicant. The Tribunal considered that this pointed to a reasonable approach being taken by the Applicant, as opposed to over-inflating their claim as alleged by the Respondent. The Tribunal considered that the rate of £15 per hour was a reasonable pay-rate for the type of work and that the Applicant should not be restricted to paying the minimum wage. The Tribunal considered the evidence of the Applicant, that an external contractor would have charged much more for the work involved, to be credible and persuasive. The labour costs claimed by the Applicant had been substantiated by the production of bank transaction information showing the payments made, to whom and the dates thereof.
15. However, with reference to the photographs produced by the Respondent which he stated showed the interior of the Property when he vacated, it was admitted by the Applicant that, other than the oven and the small number of items left in the attic area, the flat itself had been left cleared and relatively clean by the Respondent. The Tribunal accepted the evidence of the Applicant that their contractor had swept and cleaned the interior of the flat, but the Tribunal's view was that this was more a matter of choice than necessity. Accordingly, the Tribunal considers it appropriate to find the Applicant entitled to the reduced sum of £195 from the £240 claimed in respect of 'cleaning and removal' costs, which equates to 3 hours' labour, charged at £15 per hour.
16. No vouching has been lodged by the Applicant in respect of the replacement of the two kitchen unit doors, so the Tribunal has deducted the amount of £98.68 from the claim.
17. The Applicant's decision to change the locks after the Respondent had vacated, despite receiving his keys back from him, was, in the Tribunal's view, a matter of personal choice for the Applicant for which the Respondent is not responsible, so the sum of £26.09 is deducted from the claim.
18. Likewise, the Tribunal considered that it was not reasonable to charge the Respondent for the three sets of keys acquired by the Applicant on 30 June

2023, with a view to a new tenancy commencing, so the sum of £34 is also deducted from the claim.

19. The Tribunal concluded that, in all the circumstances, the Applicant was entitled to an order against the Applicant in the reduced sum of £1,234.50.

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.

Nicola Weir

Legal Member/Chair _____

21 May 2024
Date