



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)

Chamber Ref: FTS/HPC/CV/24/0169

Re: Property at 146 Laurel Avenue, Inverness, IV3 5RS (“the Property”)

Parties:

Miss Diana McChesney, 24 Enniskillen Road, Lisbellaw, BT94 5EX (“the Applicant”)

Mrs Andrea Morgan (now known as Ms Andrea Harrison-Rae), 23 Drakies Avenue, Inverness (“the Respondent”)

Tribunal Members:

Nicola Weir (Legal Member) and Elaine Munroe (Ordinary Member)

Decision

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 £7,157.48 should be made in favour of the Applicant.

Background

1. By application received on 12 January 2024, the Applicant sought an order for payment against the Respondent in respect of rent arrears and repair/cleaning costs incurred by the Applicant when the Respondent vacated the Property. The application was subsequently amended to seek the total sum of £8,140.21, being rent arrears amounting to £6,220 and repair/cleaning costs of £982.73 (labour) and £937.48 (materials). Supporting documentation was lodged with the Tribunal, including an unsigned copy of the tenancy agreement, a rent statement, photographs of the condition of the Property and further details regarding the repair/cleaning costs.

2. On 26 April 2024, following initial procedure, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance in respect of the application in terms of Rule 9 of the Regulations. Papers were served on the Respondent by Sheriff Officer on 12 June 2024.
3. Written representations were lodged by the Respondent by email on 4 July 2024, in which she indicated that she denied the claim and which also requested a postponement of the Case Management Discussion (“CMD”) scheduled for 16 July 2024 at 11.30am. The Legal Member considered the postponement request and the reasons for the request but rejected same. Parties were advised of the Legal Member’s decision and the reasons for it on 10 July 2024, and were informed that the CMD would proceed as scheduled.

Case Management Discussion

4. The CMD took place on 16 July 2024 at 11.30am. It was attended by both parties. The Respondent was accompanied by her husband, Mr Rae, who was attending in a supportive capacity. Reference was made to the representations lodged by the Respondent and she confirmed that she was opposed to the claim in its entirety. As to the rent arrears, the Respondent’s position in respect of the arrears was that she had retained rental payments due to the Applicant’s failure to attend to repair issues at the Property and then required to save up for a deposit, etc in relation to another property as she wanted to move out. The Respondent admitted some of the issues claimed as regards the condition in which the property was left but provided her explanation for same. She denied some of the issues were her responsibility. The Applicant responded, giving further information, and contradicting the Respondent’s version of events.
5. Given that there were clear issues in dispute between the parties and to allow the matter to be heard by a full Tribunal, the application required to be adjourned to an Evidential Hearing. It also appeared that both parties may require to lodge documentary evidence in support of their respective claims. A CMD Note detailing the discussions above was issued to parties following the CMD, together with a Direction specifying requirements to be met in advance of the Evidential Hearing, including further documentation to be lodged and details of any witnesses. Both documents were dated 16 July 2024.

Further procedure following the CMD/in advance of the Evidential Hearing

6. The Direction dated 16 July 2024 required parties to lodge, at least 14 days prior to the Evidential Hearing, the following:-

“(1) An inventory or list of any documentation/further documentation upon which the parties wish to rely at the Evidential Hearing, together with corresponding numbered copies of any such documents;

*- to include, on behalf of the **Applicant**, invoices, receipts or other vouching or photographs in respect of the claims for labour costs and materials; any evidence in respect of repairs previously carried out during the tenancy;*

difficulties obtaining access; written communications with the Respondent regarding repairs issues/access; and the Tribunal process carried out in order to secure access to the Applicant on 4 September 2023 and the outcome of that;

*-to include, on behalf of the **Respondent**, any written communications with the Applicant reporting repairs issues to her, advising that rent was being retained and the reasons for this; or from CAB on behalf of the Respondent in respect of these issues; the Environmental Health report obtained by the Respondent in relation to the condition of the Property; and any other evidence contradicting the position of the Applicant, either in respect of rent arrears, repair and access issues or the condition in which the Respondent left the Property on vacating.*

(2) A list of any witnesses that the parties wish to call to give evidence at the Evidential Hearing to be fixed in respect of this application, and to make arrangements for the attendance at the Hearing of any such witnesses; or, alternatively, sworn Affidavits from such witnesses.”

7. The Evidential Hearing was subsequently scheduled to take place on 26 November 2024 at 10am by video-conference and parties were notified accordingly.
8. On 26 September 2024, the Applicant responded to the Direction by lodging copies of various messages between herself and a number of different tradesmen which spanned the periods December 2018 to September 2023. These appeared to involve plumbers/heating engineers/electricians named ‘Daniel’, ‘AR Electrical Services’, ‘Jack’, ‘Marcin’, ‘W & W Inverness’, ‘Jamie’ and ‘Shaun Maclean’. On 12 November 2024, the Applicant also lodged a receipt from ‘Safelincs Fire Safety Solutions which appeared to be for an order placed by the Applicant on 10 January 2023 in respect of two smoke alarms and a heat alarm, for delivery direct to the tenancy address. The Applicant also lodged a list of the evidence she considered she had previously lodged, namely confirmation that she had sought to gain entry through the First-tier Tribunal *[not lodged in respect of this application]*; a video *[the Applicant had sought to lodge this previously but had not completed the further procedures required]* and photographs *[lodged]* of how the house was left and evidence of labour costs and materials *[some lodged]*.
9. On 28 October 2024, the Respondent responded to the Direction by lodging a copy of a report from Highland Council Environmental Health department dated 4 April 2023. On 1 November 2024, the Respondent lodged a copy of CAB (Inverness) files which appeared mainly to cover advice on various housing related matters provided by CAB to the Respondent during January 2023 but also some ‘follow-up’ entries through until 7 October 2024.
10. On 25 and 26 November 2024, the Respondent emailed the Tribunal attaching a photograph which appeared to be of the garden shed at the property; a video; and a copy report from Highland Council which appeared to be file entries

regarding the Respondent's housing application and were mostly dated between 17 January 2023 and 26 April 2023, although there were also 'follow-up' entries dated 7 November 2023 (change of address) and 10 April 2024 (application closed due to lack of response). These were circulated to the Applicant and Tribunal Members on the morning of the Evidential Hearing. In accordance with the Tribunal's procedures, the video was not opened nor circulated and the Respondent was asked for further detail regarding the content of the video.

Evidential Hearing

11. The Evidential Hearing took place by video-conferencing on 26 November 2024, commencing at 10am. Both parties were in attendance. The Applicant, Miss Diana McChesney, had her 9 year-old daughter in the room with her as she was absent from school. The Respondent, Mrs Andrea Harrison-Rae, had in attendance with her Mr Ross Rae, her husband and her adult son, Mr Ethan McIntosh.

Preliminary Issues

12. The Respondent was unable to get her camera to work, despite several attempts, so it was agreed that both parties would remain off-camera, with the Tribunal Members and Clerk on-camera. The parties could both hear and be heard and the Evidential Hearing proceeded on this basis.

13. The Applicant confirmed she had no witnesses. The Respondent confirmed that she wished both her husband and son to give evidence, although her husband would also be acting in a representative/supportive capacity. The Applicant objected to Mr McIntosh giving evidence as the Respondent had not intimated details of any witnesses at least 14 days before the Evidential Hearing. The Respondent offered no explanation for this but, after some discussion it transpired that Mr McIntosh would only be available until around midday as he then had to leave for work. The Legal Member indicated that this was not satisfactory as witness details had not been intimated in advance and it was unlikely that the Tribunal would be in a position to hear Mr McIntosh's evidence before midday in any event. It was agreed that Mr McIntosh would, however, leave the room meantime, in case he was able to give evidence later.

14. There was discussion regarding the responses to the Direction which had been lodged timeously by both parties and also the further emails lodged late by the Respondent yesterday and earlier this morning and the fact that these had only just been circulated to the Applicant and Tribunal Members this morning. The Applicant had been unaware of these emails but, on checking, confirmed she had received them. She objected to the late lodging of these documents and again made reference to the time limit in the Direction which had not been complied with. She stated that she had not yet had time to read these documents and did not consider that this was fair. The Respondent explained that she had been trying to obtain the report from Highland Council for some time and had to raise a formal complaint before she got the information produced and, even then, it was incomplete. She only received the information

yesterday and therefore lodged it as soon as she could. She had to obtain the photograph of the shed from a neighbour who still lives there. She made the video of herself, in which she apparently provides some further background information. The Legal Member explained that the Tribunal procedures had not been complied with by the Respondent in respect of her video evidence, and nor by the Applicant in respect of her video evidence which she had sought to lodge much earlier in the process. It was explained to parties that, if either of them insisted that they required the video evidence to be included, then an adjournment of the Evidential Hearing would be required so that this could be arranged. Following some further discussion, parties both agreed to proceed without their video evidence.

15. The Respondent then indicated that she had lodged her own application with the Tribunal against the Applicant and, as many of the issues in the present application were also covered in her own application, she would like the Evidential Hearing adjourned so that both applications could be heard together. She explained that her video evidence was relevant to her own application too. The Applicant advised that she was not aware of any such application. The Legal Member explained that the Tribunal Members knew nothing of another application either and were not able to access papers relating to a separate application. It was explained that the Tribunal would not therefore conjoin applications in these circumstances, nor adjourn the Evidential Hearing in the present application, given the length of time this application had been progressing through the Tribunal procedures.
16. The Tribunal decided to have a brief adjournment to give the Applicant and the Tribunal Members an opportunity to read through the late documentation lodged by the Respondent. On re-convening, the Legal Member indicated that the Tribunal Members were minded to exercise their discretion in terms of the Regulations (Rule 22) to allow the late documentation in, given that the report was in fairly short compass and there was only a single photograph and that the Applicant had now been given an opportunity to look over these. The Applicant was asked if she was prepared to proceed today on this basis or was seeking an adjournment. She confirmed that she would prefer to proceed today, rather than the application being subjected to further delay.
17. The Tribunal confirmed that the Evidential Hearing would accordingly proceed. The Tribunal heard evidence and summing up from and on behalf of both parties, commencing around 11am and finishing just after 4pm, breaking for approximately 45 minutes for lunch. Both parties, and Mr Rae, became quite heated at times and had a tendency to argue with one another, which prolonged the proceedings somewhat. During the Respondent's evidence, the Applicant briefly lost connection with the video-conference but, on re-connecting, the Legal Member, with the agreement of the parties, was able to recap the small part of the Respondent's evidence that the Applicant had missed.

Evidence of Applicant – Miss Diana McChesney

18. Miss McChesney confirmed that she was still at the same address. She is 49 years old and self-employed. She entered into the tenancy with the Respondent, then known as Andrea Morgan, and her then husband, in 2016 but had used the wrong type of tenancy agreement and this caused difficulties for her when she was subsequently asked by the Respondent to issue her with a notice to quit. The Respondent initially lived at the property with her now ex-husband but he subsequently moved out and Mr Rae thereafter moved in. Miss McChesney experienced difficulties with Mr Rae, stating that he would shout and yell at her on the telephone when she was trying to get access sorted for repairs, which greatly affected her mental health. Miss McChesney confirmed that the rent was £650 per month which she did not increase at all during the tenancy. To her knowledge, three children resided in the tenancy which was a three-bedroom property, with the Respondent and Mr Rae. The reason the Respondent asked her to serve a notice to quit was because she was in debt and not paying her rent. Miss McChesney stated that when she explained that she could not serve a notice to quit but that the Respondent could instead give her notice, and started to chase for rent payments, she started to receive abusive messages regarding repairs needed to the property. She had not been told about these issues before but did try to address them once she was informed. However, she did have difficulties identifying tradesmen and getting tradesmen in during the pandemic. Then, once she had tradesmen set up who got in, parts needed ordered and then the Respondent would change dates, not be in when she was supposed to be in or would refuse to allow access altogether. Eventually, the Respondent abandoned the property around August 2023 but Miss McChesney had only found this out when she managed to get access to the property through the Tribunal process, on 4 September 2023. She recovered the property and found it to be in a terrible state. She got the boiler replaced and the property cleaned, repaired and re-decorated. Miss McChesney stated that the tenancy deposit of £650 was recovered by her through the tenancy deposit scheme and that the Respondent had not objected to that nor participated in the process.
19. Reference was made to the rent statement and numerous bank statements produced by Miss McChesney in support of her claim for unpaid rent totalling £6,220. She explained that, at first, rent was paid, but then payments started to be short here and there of £50 or £100. She would contact the Respondent and there would be promises to make up the shortfalls. Rent was then missed altogether a couple of times. The Respondent had agreed to pay her rent plus £50 per month towards the arrears which she did do, but then she stopped paying the extra. Miss McChesney admitted that she had not really always kept on top of the rent situation. In the early years of the tenancy, she explained that she had got on well with the Respondent. She had not realised that the rent arrears were as bad as they were until later when she had sat down, on return to Ireland from a visit to Scotland in 2022, and had calculated it all out. It was then, when she started chasing more for rent, that the Respondent made complaints about the toilet not working and then there being no hot water. The Respondent stopped making rent payments altogether from February 2023.

20. Miss McChesney said that she had originally got a plumber in to fix the toilet flush valve and thought it was fixed until the Respondent then claimed that it had not been working again for weeks. Miss McChesney said that she had repeatedly told the Respondent that she needed to report things to her, as she was not a “mind reader”. Miss McChesney accepted that there were sometimes delays with tradesmen attending or having to order and wait for parts to arrive or where she had instructed a plumber and it then turned out that an electrician was needed, for example, in connection with the issue with the immersion switch. However, she stated that she never ignored a call from the Respondent regarding repairs needed and sought to have issues attended to as soon as she was made aware of them. She accepts that there were genuine issues with the toilet and hot water intermittently but felt that the Respondent was only raising these issues when she chased for rent payments and then started to use the repairs as an excuse for not paying rent altogether. Miss McChesney stated that the Respondent became difficult about repairs, changing dates that tradesmen were supposed to be attending, not being in or answering the door to tradesmen and eventually refusing access altogether. Reference was made to the messages she has produced between herself and various tradesmen which she considered backed up what she was saying about her attempts to deal with repairs and the problems she was experiencing with tradesmen and the Respondent. She said some contractors refused to re-attend, either because they had not got in first time round or were unhappy dealing with the Respondent and Mr Rae or with the condition of the property. Miss McChesney stated that some of the tradesmen had reported to her that the property was dirty, neglected and smelled bad and the tradesman who had attended in September 2023, once Miss McChesney had gained access, alleged that he had picked up fleas when in the property.
21. When the hot water immersion stopped working again in January 2023, it had become apparent to Miss McChesney that a new boiler tank was needed. She wanted to get three quotes for this as it was an expensive repair. Initially, the Respondent said she would arrange the quotes herself, but no quotes came. Miss McChesney then tried to make arrangements to get quotes but stated that this is when the Respondent started refusing access altogether. This led to Miss McChesney making application to the Tribunal to obtain access. She was asked why she had not produced any paperwork in respect of that Tribunal process, as had been requested in the Direction. She responded that she had not retained the paperwork and had thought she would be able to access further copies via the Tribunal or that this Tribunal would have access to that paperwork directly. The Legal Member explained that this was not the case. Miss McChesney was able to access her emails during the hearing and confirmed that she has correspondence from the Tribunal dating back to May 2023 so must have applied before then, and then had received subsequent correspondence from the Tribunal during June, July and August 2023, until the access visit was arranged to take place on 4 September 2023. Miss McChesney confirmed that she attended at the property, as did Mr Rae. He did not say, at first, that they had already moved out of the property. It was only when she noticed that their dogs were not at the property and asked about this,

that Mr Rae then stated that they had already vacated. Miss McChesney said that she had not been given any notice of this to which Mr Rae responded that he was giving verbal notice there and then. Miss McChesney subsequently had to change the locks to the property as the Respondent had not returned the keys.

22. Miss McChesney confirmed that she subsequently had a new boiler installed and was able to get a Gas Safety Certificate. She stated that the previous Gas Safety Certificate had lapsed during the Covid pandemic when it proved difficult to get tradesmen in to do these checks. Miss McChesney asked her tradesman about doing a Gas Safety Check in October 2022 but it was thought better to wait until the boiler was fixed as she did not want the Respondent to be without heating if the boiler did not pass the check. Miss McChesney confirmed that she was aware of her obligations as a landlord and stressed that she got a Gas Safety Certificate as soon as she was able to get the new boiler installed.
23. Miss McChesney stated that she was quite upset when she saw the condition in which the property had been left. This was the first home she ever bought and it was upsetting to see it destroyed and disregarded in this way. She confirmed that she went into the house with the plumber. She stated that in the child's bedroom, which had been painted or wallpapered black, there was a strong stench of "wee". There was damage and dirt everywhere, including the floors which had not even been mopped. The back door was broken. Outside the property, the whole garden was a mess, with weeds and grass overgrown and items lying around, There were even nappies on the lawn which the grass had grown over. A trampoline had been left and the garden shed was stuffed full of rubbish, again including soiled nappies. Mr Rae had said to her on 4 September 2023 that they had not removed anything from the shed due to health and safety concerns, alleging that they did not know if the shed roof might collapse. Miss McChesney stated that a vanload of rubbish and garden waste had to be removed from the property. The cleaner she hired said that she could not cope with the level of grime in the kitchen. She thought the air fryer had probably never been cleaned.
24. Miss McChesney confirmed that she had been in the property on and off over the years and that she had always thought that it was not the cleanest. However, the Respondent had a family and dogs, and the Applicant also has dogs, so she said she had been prepared to turn a blind eye to an extent. However, the property was certainly not nearly as bad on earlier occasions as it was in September 2023, by which time it had been abandoned. Reference was made to the photographs produced by the Applicant which she had taken when she eventually got access. Miss McChesney described how the bath screen was detached and leaning up against the wall, the toilet and bathroom were dirty and there was a lot of black mould visible in the bathroom. The living room floor was damaged. The Respondent had previously said that she had bought new flooring to replace this. The shed was in a bad condition and the roof had partly come in which it was suggested may have been caused by storm damage but she still thinks it could have been cleared of all the rubbish. The garden required to be strimmed, weeded and cleared of all the rubbish,

including a fridge freezer which had been left and a trampoline, The patio area was messy, neglected and overgrown. In the back door, there was board where the glass should have been. This had been broken by the Respondent some time ago. The glass had never been replaced although the Respondent had said that she had purchased new glass for this to be fixed. Miss McChesney confirmed that there had been louvre slatted doors on all the storage cupboards and that one of the cupboard doors had been broken by the Respondent who had removed and disposed of the slats. This meant the door was not in keeping with the rest of the property. Miss McChesney had had to replace a number of items, including the cooker hood and the vinyl in the kitchen, and had had to pay for cleaning, clearance, gardening costs and repair. Reference was made to the credit card statement produced by Miss McChesney in support of her claim for materials purchased, amounting to £937.48. Miss McChesney explained that all of the entries in her statement where she had left in the relevant figures related to her purchase of materials to fix up the Property. It was noted that there were numerous entries between 23 October 2023 and 21 November 2023 for B&Q, Toolstation, Screwfix and Wicks, all Inverness. Miss McChesney was asked about an entry for "MFG Kessock" in Inverness in the sum of £97.27 and she confirmed that it was for the purchase of wood for repairs. As to labour costs claimed, Miss McChesney confirmed that she provided a breakdown of these costs, including for cleaning and joinery, in addition to which she stated that she had carried out a lot of work herself which she has not charged for. She was asked why she has not produced any invoices from contractors or receipts in support of her claim, as had been requested in the Tribunal's Direction. Miss McChesney explained that she had just made direct bank transfer payments to contractors.

25. Miss McChesney stated that she did not really have any contact or discussions with the Respondent after she abandoned the property. She thinks that when they moved out, they had blocked her number. She confirmed that she had not been provided with any forwarding address for the Respondent but was subsequently informed by someone else as to where they were staying. She thinks this is another private let property. Miss McChesney confirmed that she had never received any direct contact from CAB or the local authority on behalf of the Respondent. She did, however, speak to CAB because the Respondent had told her at one point that CAB had advised her to withhold rent. CAB informed Miss McChesney that this was not their policy. She is also aware that the requirement is for the tenant to place any withheld rent in a different account until repairs are carried out and then pay it over and to formally notify the landlord that they are withholding rent and why. This was not done. Miss McChesney confirmed that she has never had notification of any Repairs application lodged by the Respondent against her with the Tribunal. She considers that she was always responsive to complaints. She did not ignore calls or messages from the Respondent, and informed her what was happening, even although communications with the Respondent and Mr Rae had become increasingly more difficult. Miss McChesney tried to rectify things as quickly as she could but some things were not within her control. She does not accept that there was any justification for the Respondent stopping paying

her rent and thinks the Respondent became so difficult about the repair side of things so that she could use that as an excuse for not paying.

26. Miss McChesney was asked questions and for clarification throughout her evidence by the Legal Member.
27. The Respondent was also given an opportunity to ask Miss McChesney questions. Miss McChesney was asked about the lack of a Gas Safety Certificate during the later years of the tenancy and it was suggested to her that she had failed in her duties as a landlord and that her stated reason about not being able to get tradesmen in during the Covid pandemic was not true, as essential safety checks could still be done. Miss McChesney accepted that, in hindsight, she could perhaps have pushed harder on this issue but maintained that she had not been able to arrange access. She commented that the Respondent had also indicated to her that, being an essential worker, she was not wanting to have people in the house at that time. The Respondent interrupted and denied this but was asked by the Legal Member to cover this when she gave her own evidence. Miss McChesney was asked to confirm that hygiene had never been an issue during the Respondent's tenancy until the Respondent had no hot water and that some of the issues that Miss McChesney had described had been in existence for some time. Miss McChesney confirmed that she had had a laxer approach previously when she had visited the property but that the hygiene issues had gotten much worse by around October 2022 when the condition of the property was reported to her by tradesmen. She confirmed that the damage to the glass in the door had been apparent to her when she had visited the property in the summer of 2022 when she was told the Respondent would fix it. However, it remained the same by September 2023.

Evidence of Respondent – Mrs Andrea Harrison-Rae

28. Mrs Ray confirmed that she was still at the same address. She is 49 years old and employed as a mental health support worker. She denied the rent arrears owing amount to £6,220, although accepted that the equivalent of around two months' rent was owing (£1,300). She explained that they had tried to start a business which had failed in 2020 during the pandemic and caused them financial difficulties. She was unable to pay her full rent but promised the Applicant that she would start paying the arrears back. She said that the Applicant had been understanding about this at the time, but that the Respondent had then not managed to sort this out as she had hoped. Mrs Rae explained that she had had to leave her job due to mental health reasons in November 2021 and had difficulties getting a reference from her previous employer. This caused problems from November 2021 over the Christmas period. In summer 2022, the Applicant had visited Mrs Rae at the property as she was home from Ireland for a while. Their daughters got on well, as did they at that point. However, when the Applicant had returned to Ireland, she seemed to have realised that she was owed more rent than she had thought and started chasing for this around September 2022. Mrs Rae was not issued anything in writing by the Applicant. She was paying what she could towards the rent and

the arrears. Since she had started work again in January 2022, she had been trying to pay £50 per month towards the arrears over and above the rent. However, Mr Rae, who worked as a chef, was then not working for a period, during which they had stopped paying the £50 per month towards the arrears. Around October 2022, Mrs Rae eventually sought advice from CAB and was so worried about the rent arrears that she was trying to organise a loan to help pay them off. However, everything was then happening at once. The toilet would not flush, they were not getting hot water some of the time and there was a problem with the drainage in the kitchen and water flooding out of the sink, causing the damage to the kitchen flooring. Mrs Rae said that other damage to the flooring was caused by wear and tear since this tenancy had started in 2016. Mrs Rae said that works needed earlier in the tenancy had been carried out by the Applicant without difficulty, including a previous issue with the washing machine. Mrs Rae said that she initially felt sorry for the Applicant with all these repairs arising and confirmed that they had communicated the repairs needed to the Applicant by way of telephone calls, messages and Facebook. Mrs Rae stated that she had not been able to produce any of these messages as they had been on a previous phone. She confirmed that these messages would have shown a different version of events to that stated by the Applicant. Mrs Rae said that one tradesman, 'Graham', did come out to fix the toilet and sink initially but that they were told by him and other tradesmen that the reason they were not coming out subsequently was because the Applicant was not paying them properly and was going behind their backs to other contractors at the same time. A tradesman called 'Daniel' said that he was also fed up with being put in the middle of them and the Applicant. Mrs Rae denied that she was difficult about giving access to tradesmen. She understood the Applicant's wish to get quotes but that this takes time and their situation was urgent. She let various tradesmen in and out from about October 2022 until early 2023 but repeat problems were arising with the toilet and hot water. She had anxiety about some of the people turning up as she did not know if they were qualified or who they were as they sometimes did not have identification on their van. On one occasion she accepts that someone turned up and she had not yet washed up the dishes but denies that there were hygiene issues or that this was what had caused problems with the tradesmen. Mrs Rae confirmed that she stopped paying rent altogether from February 2023 because of the repairs situation. She made this clear to the Applicant but has no messages to produce regarding this for the reason previously stated. She had taken advice from CAB and maintained that they had advised her to use the rent money to get tradesmen in herself to get things fixed. However, Mrs Rae was unable to get anyone to come in because word had gone around Inverness by then that the Applicant could not be trusted to pay tradesmen properly. Mrs Rae said that they had had no hot water on and off from October 2022 until March 2023. At one point, it looked as if things were going to be fixed, so she paid rent over to the Applicant, only to be told that a part was required before the repair would be done. Mrs Rae confirmed that this led to the relationship with the Applicant breaking down.

29. Reference was made to the documentation Mrs Rae had lodged from CAB and she confirmed that she had had advice from them, mostly in January 2023, regarding her rent arrears situation and her rights as a tenant, including in

relation to repairs. As to what the Applicant had said about CAB not recommending the withholding of rent, Mrs Rae reiterated that they suggested she obtain quotes and arrange to pay for the repairs herself from the rent. She accepts that the toilet was fixed. She stated that the Applicant knew that 'Graham' had said in 2019 that the boiler would have to be condemned if a Gas Safety Check was done and that something should have been done to fix the boiler much earlier. Mrs Rae referred to the landlord's obligations in terms of the legislation and said that she wanted the Tribunal to grant her a Rent Relief Order to do with the repairs. The Legal Member explained that this type of order could only be granted by the Tribunal in the context of a Repairs application under the Housing (Scotland) Act 2006 and could not be granted in relation to this payment application, where the Tribunal could only assess whether she had been entitled to withhold rent or have her liability for paying rent abated. She was asked why she had not made a Repairs application to the Tribunal at the relevant time. She responded that she was collecting evidence for this but got fed up with the situation and wanted out of the property by then. Reference was made to the report Mrs Rae had produced from Environmental Health at Highland Council dated April 2023. She said that all that they had done was award her 40 points towards her housing application. Mrs Rae stated that she was annoyed with the Council as they have not produced half the paperwork she had asked for and that she has had to make a formal complaint regarding this. Reference was made to the documentation she had just lodged from the Council which she said was all that she had managed to obtain from them. She had sought advice from them between January and April 2023 and was going down the homeless route. By this time, her two older children had moved out of the Property as they had had enough, but she still had her nine year-old daughter living in these conditions, with no hot water. She thinks social work could have been involved as it was so bad. The Council were no help and just told her to contact the Applicant and ask for a notice to quit so that her homeless application could progress. However, the Applicant refused to issue a notice and said she was not going to help Mrs Rae get a Council house. The Applicant told her that she was going to sell the property and asked for an estate agent to be allowed in, which was very upsetting to Mrs Rae. The Council also said that that they had contacted the Applicant on behalf of Mrs Rae but that they did not hear back from her. Mrs Rae had been hoping the documentation she obtained from the Council would show this but it did not. Mrs Rae said their only option then was to find another private let. She confirmed that she did not send any formal notice to the Applicant about moving out as by then, their relationship had broken down completely. Mrs Rae stated that she did engage with the Tribunal process for the Applicant to get access to the property by confirming that access would be granted on 4 September 2023 and then arranging for her husband to attend on that day. Mrs Rae confirmed that they had moved into their new accommodation by then but had not completely moved out. She stated that they had had difficulty finding a private let, as she still had two dogs which some landlords will not allow. Eventually, they had found a property, around July 2023. They told the new landlord about their situation and fortunately, she was sympathetic, and they still live there now. Mrs Rae was asked about the rent money that she had withheld. She confirmed that she had initially kept the money aside and was going to use it to get the property

repaired and done up herself. However, after eight months of having no hot water, they decided they had to move, and they used the rent money for rent and the deposit for the new property and to cover their moving costs. As to the Applicant saying that she had recovered the tenancy deposit through the tenancy deposit scheme, Mrs Rae stated that she does not believe the Applicant had put the deposit in a scheme as she had previously checked with the three schemes, and they had no trace of the Applicant nor any deposit held for her. She had raised this issue with CAB too.

30. Mrs Rae was asked about the condition of the property when they had left. She explained that it had been the intention to clean the property during the month notice period. She confirmed that her husband had given notice to the Applicant verbally on 4 September 2023 and they still intending to go back and clean the property and do some painting, etc. However, the Applicant must have used the spare key to let workmen into the property even though many of their clothes and personal belongings were still there. Mrs Rae said that they were still in the process of moving out the property in September 2023 and posted the keys to the property through the letterbox only after the month's notice period was up. Mrs Rae accepts that they had left stuff in the shed but that there was no way that they were going to risk going into the shed because the roof had partially collapsed. Mrs Rae stated that the Applicant had actually climbed in through the roof of the shed on 4 September 2023 and had suggested that her husband do the same but he refused as it was unsafe. Mrs Rae said that they would have got the grass cut and left the garden looking nice but were not given the chance to do this. Mrs Rae stated that she had arthritis in her knees and had no motivation to clean the property before they had moved out due to its condition, especially as there had been no hot water for several months. She explained that they were having to boil kettles to get hot water and had spent hundreds of pounds on electricity doing this. If the boiler had been fixed and they had hot water whilst they were still there, Mrs Rae said that she would have arranged to get a cleaner in but had not had that chance because the Applicant had already let her own tradesmen in. Mrs Rae stated that the shower screen had kept falling off and confirmed that she had eventually just propped it up against the wall. As to the cupboard door, Mrs Rae stated that it just fell apart when they were moving out. She accepts that they broke the glass in the back door on one occasion when they had been locked out and had ordered fresh glass but it had been the wrong size. They therefore boarded the door up. She confirmed that this was the back door of the property which leads into the back garden so did not think that this was a major issue. Mrs Rae alleged that the property was full of damp and that this was the cause of the mould. She accepts that she should have put this in a Repairs application. She explained that the flooring in the living room was laminate and that the damage shown was just wear and tear. The vinyl in the kitchen had been damaged due to water pouring out of the kitchen sink onto the flooring. There was damp in the kitchen and an infestation of slugs which Mrs Rae said could have killed her dogs if they had eaten them. Mrs Rae stated that she always treated her dogs for fleas and that the workman who had mentioned catching fleas does not like her or Mr Rae. The bedroom that the Applicant had referred to as being black was in fact painted a grey colour which had been requested by her daughter. It needed

to be a dark colour because there was mould in that room too, which she used to have to wash off all the time. She has no idea why the Applicant would say there was a urine smell in this room as she would certainly not have had her daughter sleeping in there if that had been the case. Mrs Rae stated that she had not seen any invoices relating to the property having to be cleaned, etc or proof as to what had been done. She accepts that the Applicant will have had to have the trampoline and other items removed, cut the grass and paint here and there. She is not willing to pay for wood purchased by the Applicant if this was in relation to the shed as this was not her responsibility. Mrs Rae referred to the photograph she had just lodged of the shed, which was taken by a neighbour recently, just to show that the shed is still there and in much the same condition. Mrs Rae stated that, personally, she thinks she is due compensation from the Applicant due to them having to stay in a hotel at one point just to get away from the condition of the property and all the electricity costs incurred. She is claiming compensation from the Applicant as part of her separate Tribunal application against the Applicant.

31. Mrs Rae was asked questions and to clarify issues throughout her evidence by the Legal Member.

32. Miss McChesney was then given an opportunity to question Mrs Rae. Mrs Rae was asked to confirm that, although she had said repeatedly that there was no hot water, that the electric shower was working. Mrs Rae confirmed that the family could use the electric shower to wash themselves but was incredulous if Miss McChesney was suggesting that they could use water from the shower for doing dishes or cleaning the house. When asked about the louvre door and how and when that damage had occurred, Mrs Rae stated that it had just fallen apart when someone walked past the door and that this had been witnessed by both her husband and her son when they were moving stuff out. Miss McChesney asked what had been done with the wooden slats, to which Mrs Rae responded that they had been broken so she had thrown them out, rather than keeping them to repair the door as Miss McChesney suggested she should have. Miss McChesney challenged what Mrs Rae had said about there having been slugs in the kitchen and also that these could have killed her dogs but Mrs Rae maintained her position on this. Miss McChesney asked Mrs Rae to justify how she managed to spend the eight or ten months' rent she said she had been holding in an account on just one months' rent and a deposit for a new property and moving costs. Mrs Rae reiterated that she felt should be compensated for all the electricity, gas and other costs and debts they had incurred due to the condition of the property. Miss McChesney asked why Mrs Rae had not asked to be switched to a pay-as-you-go meter during the tenancy if this had been such a problem. Mrs Rae said it was not the type of meter that was the issue and that they did not receive any benefits which would have helped them get assistance with heating costs through CAB.

Evidence of Mr Ross Rae (the Respondent's husband)

33. Mr Rae confirmed that he lived at the same address as the Respondent, was 47 years old and employed as a head chef. He did not understand why the

Applicant had personal issues with him. He considered that she was very fluid as regards her landlord obligations, was reluctant to fix things, flippant and seemed to think she was above the legislation. Mr Rae stated that it was woeful that the Applicant left them to live in a property that was unfit to live in according to Environmental Health. He compared the conditions they had been living in to Victorian squalor. Mr Rae mentioned that his wife had both physical and mental health issues and things got so bad that Mrs Rae had no longer been able to deal with the Applicant. This is why he would speak to her when she called and also deal with some of the tradesmen. The Applicant blamed Mr Rae and blamed the tradesmen but, in his view, it was she who was to blame. There was no flue from the boiler or extraction. There were issues with the radiators, as well as months of no hot water. It was a crisis situation but the Applicant just appeared to do what she liked. The tradesman 'Graham' told Mr Rae that the Applicant did not pay tradesmen and this was the main problem.

34. Mr Rae confirmed that he moved into the property in 2016, not long after the tenancy started. Like his wife, he had no issues with the Applicant, until much later. He said that he did not deny that on one or two occasions, his discussions with the Applicant became heated but explained that this was because she was making demands for rent when they had no hot water, a blocked washing machine and issues with water damage in the kitchen.
35. On 4 September 2023 when he met the Applicant at the property for access, Mr Rae said he told her that they were still moving their belongings out. She had a handyman with her called 'Spike' who had been involved in work at the property previously and not made a good job of it. He said that the Applicant spent the time taking photos and videos and that she had endangered herself by climbing into the shed roof and suggested that he should do the same, to remove the items which had been left in the shed. Mr Rae referred to issues with the smoke alarms at the property which he knows are the landlord's obligation in terms of the 2006 Act. However, he referred to the documents the Applicant had lodged to do with the smoke and heat alarms and pointed out that these should not just be sent out to a tenant, as the Applicant had done. It was her responsibility to get someone to install them properly. She should not be able to be so flippant with the law and her obligations as a landlord and still be able to recover rent. The Applicant did not get the required repairs done to the property and they left the property because it was unliveable. Mr Rae confirmed that he agreed with Mrs Rae's position on both the non-payment of rent and the costs claimed by the Applicant to do with the condition of the property.
36. Miss McChesney was then given an opportunity to ask Mr Rae questions. She asked Mr Rae to confirm that he had not informed her when he had moved into the tenancy, that she had not given permission for this, that he was not on the tenancy agreement and did not therefore have any say in the tenancy. Mr Rae confirmed that his wife was the tenant but that he had lived there since 2016 with the Applicant's knowledge and she had not previously had any issues with this. Miss McChesney referred to Mr Rae's evidence about the blocked washing machine and asked him to confirm that this was not her responsibility as the

tenancy was for an unfurnished property. Mr Rae responded that there was a washing machine and other white goods in the tenancy but, in any event, the issue with the washing machine was to do with blocked drainage which is down to the landlord. As to the mention of slugs, Miss McChesney asked why there had never been any mention of this until today, to which Mr Rae stated that he was sure it had been mentioned before. Miss McChesney asked Mr Rae if they had put oil down the sink, stating that this was found to have been the cause of the blocked pipes and the related problems which arose. Mr Rae denied this. Miss McChesney suggested that, on 4 September 2023, it had not been 'Spike' who was with her. Mr Rae confirmed that he thought it was.

Summing-up

37. Miss McChesney stated that she had to apply to the Tribunal to get access as she was not getting any rent paid. Her relationship with the Respondent had broken down and she was unable to get any access to the property for the repairs to be done. She had some mental health difficulties herself at the time, following the birth of her second child but she genuinely wanted to get the repairs done. She never ignored calls from the Respondent like some landlords might do. She accepts there was an issue with the hot water and that the boiler needed replaced. If it had not been for Covid, this would have been done sooner. She did not intend to sell the property. She needed someone to go in and value it in order to remortgage. She was having difficulties because rent was not being paid at all by then, but she was still having to pay her mortgage. Miss McChesney stated that her discussions with the Respondent were always better than with Mr Rae. He started answering her calls and would be aggressive, which she found upsetting, but denied that she would call 'in tears', 'begging for rent to be paid' as the Respondent had claimed. She maintained that tradesmen refused to go into the property for the reasons she had stated and denied suggestions made by the Respondent and Mr Rae that she did not pay tradesmen and that the tradesman she had used were 'cowboys'. The Respondent had said she would get quotes but none ever came. Miss McChesney said she had wanted to get the jobs done and felt that the Respondent was deliberately creating issues with tradesman and access so that she could justify not paying rent and then abandoning the property in this condition.

38. Mrs Rae stated that she was aware that the relationship with the Applicant was breaking down. She commented that she had been a landlord herself and had some sympathy for the Applicant at first when things were going wrong with the property. However, she did not understand the Applicant's vendetta against her husband. The Applicant made her feel guilty about the situation and eventually she had to get Mr Rae to speak with the Applicant on her behalf. Mrs Rae denied that Covid was the cause of any of the problems. She stated that the last Gas Safety Certificate was obtained in 2019 and that she felt unsafe living in the property with her family. There were serious issues with the property. She stated that Miss McChesney was known in Inverness amongst the tradesmen for doing things on the cheap and that Mrs Rae actually felt sorry for them being stuck in the middle. Mrs Rae stated that she had been extremely affected by all

of this and does not consider that Miss McChesney is sorry at all about what happened.

39. Mr Rae stated that it is difficult to describe the situation that they were living in. They had problems with the washing machine due to the drainage issues and no hot water for eight months. He recognised that what was needed with the property had become a very big job but considered that this does not excuse the Applicant's failure to get things done. It was a disgraceful situation that they were living in and the Respondent's other two children had to move out and go and live with the father because things were so bad. Mr Rae considered Miss McChesney's comments about them still having a working shower to be unbelievable. It was shocking that she did not comply with her landlord obligations relating to gas safety and electrical testing. When they withheld rent they were originally going to use it to pay tradesmen themselves. He considered the loss of ten months' rent for the Applicant to be reasonable, given the conditions they were living in. Highland Council agreed with them. As to the Applicant claiming to have suffered mental health issues, Mr Rae stated that she was not the only one. There had been a complete breakdown in their relationship with the Applicant and this caused Mrs Rae to have to attend doctors and be prescribed medication.
40. In response, Miss McChesney stated that the eight months period mentioned by the Respondent and Mr Rae was eight months of her trying to get the situation sorted and that it only became eight months as she could not get access for the repairs to be done. There was nothing that she could do. She denied that she was a bad landlord and the suggestion that she has been taken to Tribunal several times. As to Mr Rae's comments about the lack of electrical testing, she stated that PAT testing is only required where there are electrical appliances supplied, which there were not in this tenancy. Miss McChesney stated that, rather than raising all these issues retrospectively, the Respondent should have reported these repairs issues to her in the proper way at the relevant time. She does not consider the Respondent and Mr Rae to have any credibility. In her view, it was clear that the property had not just become run down over a short period of time at the end of the tenancy, as had been claimed by the Respondent. She gave as an example the mess in the shed.
41. The Tribunal brought the Evidential Hearing to a close, thanked parties for their attendance and confirmed that the Tribunal Members would now deliberate and issue their Written Decision in due course.
42. On 28 November 2024, the Applicant emailed the Tribunal regarding something that she thought she may have forgotten to say in her evidence at the Evidential Hearing regarding the living room floor. However, the Tribunal disregarded same as the email had been lodged after the Evidential Hearing had concluded.

Findings in Fact/Reasons for Decision

1. The Applicant was the owner and landlord of the Property.

2. The Respondent was formerly the joint and then the sole tenant of the Property from in or around February 2016 until in or around September 2023.
3. The Respondent initially lived with her former husband, the joint tenant, but he moved out of the Property not long after the tenancy commenced.
4. The Respondent subsequently lived at the Property with her current husband, three children and three (then subsequently two) dogs.
5. The Respondent had obtained alternative accommodation and vacated the Property on or around July/August 2023 but had not notified the Applicant of this, nor returned the keys.
6. The Respondent's husband met the Applicant at the Property on 4 September 2023 to provide her with access, which had been facilitated by the Tribunal in a 'right of entry' application made by the Applicant earlier in 2023.
7. The Respondent's husband informed the Applicant on 4 September 2023 that they had already left the Property and were living elsewhere.
8. The Respondent's husband deemed this to be the Respondent giving verbal notice to the Applicant.
9. The rent was £650 per calendar month throughout the tenancy.
10. There was a background of rent arrears dating back to around 2019, with monthly payments sometimes being a little short.
11. Arrears accrued gradually and amounted to £1,670 by November 2022.
12. No rent was paid for the month of December 2022 nor for the months of March to September 2023 inclusive, totalling eight months' missed rent.
13. By the end of the tenancy, the total rent arrears amounted to £6,870.
14. The Applicant applied the tenancy deposit of £650 to the rent arrears, leaving a balance owing of £6,220.
15. The Respondent did not dispute the amount of rent arrears but claimed that she had been entitled to withhold the eight months' rent, amounting to £5,200, due to repair issues, and should not be required to pay this.
16. Repair issues had arisen with the Property during the tenancy, including with the kitchen drainage/pipes and, from around October 2022, issues with the toilet flush and intermittent hot water, due to issues with the boiler and the hot water immersion/switch and a complaint regarding the lack of a current Gas Safety Certificate.

17. The Applicant had instructed repairs, had some of the repair issues resolved and had sought to attend to the outstanding issues within a reasonable period of time.
18. The Respondent refused to allow further access to the Applicant/her tradesmen from around February 2023 and from that time also stopped paying any rent.
19. The Applicant required to make a 'right of entry' application to the Tribunal in order to obtain access to the Property for purposes of inspection and repair.
20. Through the Tribunal process, the Applicant was eventually able to access the Property on 4 September 2023.
21. The Respondent was found to have vacated the Property some time prior to 4 September 2023, without informing the Applicant or providing formal notice.
22. The Respondent had not properly withheld rent and was not entitled to an abatement of rent, in the circumstances.
23. The amount of £6,220 is due and resting owing by the Respondent to the Applicant in respect of unpaid rent incurred during the tenancy.
24. The Respondent has been called upon to make payment to the Applicant in respect of the rent arrears but has failed to do so.
25. The Respondent had vacated the Property, without prior notice, and left it in a poor condition.
26. The Applicant required to change the locks and have the Property cleared, cleaned, repaired and redecorated and to have gardening services carried out.
27. The Respondent admitted responsibility for some of the works required to the Property but claimed some damage was due to wear and tear or was not her responsibility.
28. The condition in which the Property was left by the Respondent exceeded fair wear and tear.
29. The Respondent was responsible, as tenant, for the condition in which she left the Property.
30. The Applicant spent £937.48 on materials in order to restore the condition of the Property and is entitled to recover these costs from the Respondent.

31. The Applicant also incurred labour costs for cleaning, repairs, joinery, gardening and decorating the Property, but did not provide any vouching in respect of the sums claimed, which amounted to £982.73.
32. The Applicant is not entitled to recover the labour costs claimed of £982.73.
33. The total amount of £7,157.48 is due by the Respondent to the Applicant in respect of rent arrears and the costs of materials.
34. 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 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 following the breakdown of their landlord/tenant relationship. The Respondent became quite upset at one point whilst giving her evidence and both parties described how their respective situations and their relationship breakdown in the latter part of the tenancy had caused them upset and distress.
3. Parties had clearly prepared for the 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 parties and the Respondent's witness, Mr Rae, also answered a number of questions from the Legal Member.
4. With reference to its Findings-in-Fact above, the Tribunal considered, on the whole, that the Applicant's claim against the Respondent was well-founded. The Tribunal found the Applicant's evidence to be credible and consistent throughout. Her oral evidence was supported by the documentary evidence lodged, including the rent statement, bank statements, photographs, credit card statement and copy messages between the Applicant and various tradesmen.
5. The Applicant's evidence as to how the rent arrears arose and her calculation of the total amount of unpaid rent of £6,220 was not contested by the Respondent. She had admitted that she and Mr Rae both had some employment issues, causing them some financial difficulties during the tenancy, resulting in some arrears accruing, which she thought amounted to around two months' rent (£1,300) in total by around the summer of 2022. Both parties confirmed that relations between the parties were amicable at that time and they had communicated regarding the rent situation on an informal basis, with

the Respondent confirming that arrears would be paid off. Both parties spoke of the Applicant having visited the Respondent at the Property in the summer of 2022. Following that visit, it appeared that the Applicant had calculated the total amount of arrears and then started to push harder for the arrears to be cleared. The Respondent gave evidence that she had proposed to the Applicant that she would pay the ongoing rent plus £50 per month towards arrears and that she started doing so, but then she and Mr Rae encountered further financial difficulties and could not afford the extra payments. It is apparent from the rent statement that these additional payments mentioned by the Respondent were made in March, September and October 2022 and then stopped. This appears to be the point when relations between the parties deteriorated and, in response to the Applicant's ongoing requests for payments towards the rent arrears, the Respondent made complaints about repairs issues affecting the Property. Following this, rent was only paid in November 2022 and January and February 2023, although the tenancy continued until September 2023.

6. The Respondent's evidence, supported by Mr Rae's evidence, was that they were entitled to withhold the rent for the eight months of December 2022 plus March to September 2023, due to the repairs issues arising and the conditions they were living in during that time. They admitted that eight months' rent was unpaid at this time (£5,200). They both gave evidence about a problem with the toilet flush and that the problem re-occurred after the Applicant had a tradesman out to repair it. The Applicant admitted this but explained that she had arranged a tradesman to attend to this on the issue first being reported to her and had thought the issue was resolved. When the Respondent reported that the initial repair had been unsuccessful, the Applicant instructed a tradesman to attend again and the issue was fixed. The Applicant denied that there had been any undue delay on her part attending to this issue and that it had been several weeks after the initial repair before the Respondent reported that the issue had re-occurred. The Tribunal considered that the copy messages lodged between the Applicant and her tradesmen confirmed the Applicant's position with regard to this repair and the timeframe involved in it being resolved. The most significant repair issue for the Respondent and Mr Rae was that involving the lack of hot water. Their evidence on this issue was supported by the documentation produced from CAB which showed that they had sought general advice, including on this issue, during January 2023, and from Highland Council's Environmental Health section which confirmed in their report dated 4 April 2023 that there was, at that time, no hot water and that the boiler needed to be replaced. Again, the Applicant admitted that there had been issues reported to her by the Respondent from around October 2023 regarding the lack of hot water. However, again, the Tribunal considered the Applicant's evidence in this regard, that she had sought to resolve the issues within a reasonable period of time, to be credible and supported by her documentary evidence of her messages with the various contractors. The Tribunal was satisfied that, on the issue first being reported to her, the Applicant initially instructed a plumber to investigate and that it transpired that the issue was electrical in nature, involving the immersion switch. This was resolved at the time and hot water was restored but, by January 2023, the issue had re-occurred and, on the advice of her tradesman, the Applicant accepted that the

boiler now had to be replaced, rather than relying on the back-up water immersion heater. The Applicant was quite candid in her evidence that she had been aware, since around October 2019, that the boiler would need to be replaced at some point but that she did not consider this to be an urgent matter at that time. She also admitted that, thereafter, she had been unable to get the annual gas safety checks done, explaining that it was difficult to get contractors in during the Covid pandemic and that the Respondent had also been reluctant to allow people in during that time as she was an “essential worker” in healthcare (although this was denied by the Respondent). It appeared to the Tribunal that the complaints regarding the Applicant breaching her duties as a landlord, including duties in connection with gas safety checks, were not made by the Respondent at the relevant time but were only made once relations had broken down and/or in the context of these proceedings. Although the Respondent had sought and been given advice by CAB in relation to these issues in January 2023 and from Highland Council in April 2023, the Respondent, by her own admission, did not seek the assistance of the Tribunal by pursuing a Repairs application against the Applicant under the 2006 Act. It was apparent from the Respondent’s evidence and the documentation produced by the Respondent from CAB and Highland Council that she had not followed-up on her initial advice from CAB in January 2023, leading to them closing her file, and that the main reason for involving Highland Council was to support her housing application with them. The Applicant gave evidence that neither organisation had ever contacted her on behalf of the Respondent. The Respondent had not been able to produce any evidence to the contrary. Likewise, the Respondent had not been able to produce any of the messages she had directly sent to the Applicant over this period, regarding either the repair issues nor the withholding of rent, explaining that she had changed her phone since and was not able to access same. The Respondent confirmed the Applicant’s evidence that, when she first retained rent, she was intending to obtain quotes in relation to the boiler herself, given her concerns and the difficulties experienced with some of the Applicant’s tradesmen. Although the Respondent’s position had initially been that she had been advised to withhold rent by CAB, and told the Applicant this at the time, at the hearing, the Respondent’s position was that CAB had not advised her to withhold rent as such, but, rather, had suggested that she arrange with the Applicant to instruct and pay for the repairs herself using the rent money. The Respondent admitted that she had been unable to obtain quotes but explained that this was because tradesmen in the Inverness area were by then refusing to attend the Property as they had issues with the Applicant not paying or wanting things fixed cheaply. The Tribunal considered, on the basis of all of the evidence presented in this regard, that, although it understood the Respondent and Mr Rae’s frustrations regarding repairs having to be repeated, delays with parts having to be ordered and awaited, or tradesmen not always attending when they had been arranged by the Applicant, that, when they started withholding the rent after February 2023, they had already likely decided to move out of the Property and no longer co-operated with the Applicant in allowing access and trying to get matters with the boiler resolved. The Respondent had given evidence about she and Mr Rae experiencing financial difficulties due to employment related issues. She had already approached the local authority from January 2023 to

apply for housing with them and when it became evident that they were unlikely to obtain social housing, they sought an alternative private let. By the Respondent's admission, this took some months, due to them having dogs and requiring to save up for advance rent and a deposit. Again, by the Respondent's own admission, they ultimately used the rent money they had withheld to save up for an alternative private let and to cover their moving costs. As to the remainder of the rent they had not paid, the Respondent and Mr Rae appeared to think that they were entitled to retain this themselves, as 'compensation' for the conditions in which they were claiming to be living, for hotel costs and for the high electricity costs they claimed to have incurred, none of which they had provided vouching for. In order to successfully argue a case for retention of rent, the Tribunal considered that the tenant had to demonstrate that they had acted in good faith. Tenants require to show that they have properly advised the landlord at the relevant time that they are retaining rent and the reason for this, as well as demonstrating that they had put the withheld rent money aside for paying over to the landlord once the relevant repairs are carried out. The Respondent here had been unable to persuade the Tribunal that they had done either of these things. Nor was the Tribunal persuaded that the Respondent had allowed the Applicant a reasonable opportunity to resolve matters, particularly once it was identified and accepted that a new boiler was required. The Tribunal accepted the Applicant's evidence that she had been attempting to attend to matters concerning repairs appropriately since first being notified of same in October 2022 but that, unfortunately, some issues and delays arising had been outwith her control. The Tribunal also accepted the Applicant's evidence that some of these issues and delays were down to the Respondent and Mr Rae and the issues arising between them and some of the tradesmen instructed by the Applicant. The Tribunal considered the Applicant's evidence to be supported by the fact that, once further access was denied altogether and the Respondent also failed to obtain her own quotes in respect of the boiler as she had said she would, the Applicant had made a successful 'right of entry' application to the Tribunal, eventually obtaining access on 4 September 2023 when it was discovered that the Respondent had already left the Property several weeks before but had not informed the Applicant. In all these circumstances, the Tribunal determined that this was not a legitimate withholding of rent situation and nor was the Respondent entitled to any abatement of the rent due, nor compensation in the context of this application as the matter of compensation was only raised for the first time during the hearing and was not vouched in any way by the Respondent. Whilst the Tribunal accepted that it would have been unpleasant and inconvenient for the Respondent and her family not to have hot water for periods between October 2022 and January 2023, the Tribunal felt that this was overplayed somewhat by the Respondent and Mr Rae and did not believe that they had been living in "squalor" or that the conditions in the Property were "unliveable" as had been claimed by Mr Rae. The point was made by the Applicant that the Respondent and her family still had access to hot water from the electric shower, for showering, and from boiling kettles. Furthermore, most of the eight months during which the Respondent and Mr Rae complained of having no hot water was due to their own refusal of any further access to the Applicant's tradesmen

to fix the boiler. Accordingly, the Tribunal determined that the Applicant was entitled to recover the total amount of rent arrears claimed of £6,220.

7. The Tribunal was satisfied from the Applicant's oral evidence, together with the photographs, credit card statement, and some of the messages between the Applicant and her tradesman in September 2023 which had been produced, that the Property was left by the Respondent in the condition claimed by the Applicant and that she was entitled, in principle, to recover the costs she had incurred in this regard. The Respondent and Mr Rae did not really contest most of this evidence, but had provided some explanation as to why the Property was left in this way, or alternatively, why the Respondent was not responsible for certain items. The Respondent admitted liability for the broken external door glass which she had undertaken earlier in the tenancy to fix but had then not done so, leaving the door boarded up instead. Evidence was heard from the Applicant that the Respondent had previously advised her that she had purchased replacement flooring for the living room. However, at the hearing, the Respondent claimed this damage had been due to wear and tear and therefore not her responsibility. A similar argument was made in respect of the detached shower screen and the broken airing cupboard door. In the Tribunal's view, the damage caused to the Property exceeded fair wear and tear. As to the Property and various fixtures and fittings being left dirty, the Respondent stated that the lack of hot water had made it more difficult to clean in the final months of the tenancy and that she incurred large electricity bills through having to boil kettles to get hot water. However, she also claimed that she had arthritis in her knees and a lack of motivation due to the outstanding repairs issues. The Tribunal considered that the Respondent had likely just 'given up' on the Property by that time, ultimately deciding to abandon the Property in this condition, without notifying the Applicant, as a consequence of the breakdown in their relations. However, it appeared to the Tribunal from the Respondent's evidence that she recognised that the Property had not been left in an acceptable condition and indeed had stated that the intention had been to carry out some painting, cleaning, gardening and clearing of the Property during the months' notice period which, in their view only began on 4 September 2023, although they had already left the Property by then. The Tribunal did not find the Respondent's argument that they had been prevented or deterred from doing this by the Applicant taking back possession of the Property and getting her own tradesmen in, to be persuasive.
8. The Tribunal considered the Applicant's claim for £937.48 in respect of materials. The Applicant's credit card statement produced in support of this part of her claim was referred to in detail during the Applicant's evidence and the Applicant was questioned in respect of some of the entries. Having done so, the Tribunal was satisfied that the Applicant had only claimed for items purchased using her credit card which related to restoring the condition of the Property. It was noted that the relevant entries were for varying sums, purchased in various 'DIY' stores in Inverness on various dates in October and November 2023 and that the transactions shown totalled the amount claimed by the Applicant of £937.48. The Tribunal determined that the Applicant had established this part of her claim in evidence.

9. As to the Applicant's claim for £982.73 in respect of labour costs she claimed to have incurred, the Tribunal's determination was that this had not been established in evidence. Whilst the Tribunal believed the Applicant's evidence that she had incurred costs in respect of joinery services, gardening, cleaning, etc and that the Applicant had provided a breakdown of the £982.73 claimed, the Tribunal noted that the Applicant had not provided any documentary vouching in respect of these costs. Following the CMD, the Tribunal's Direction had specifically requested the Applicant to lodge invoices, receipts or other vouching in respect of the labour costs claimed but she had not done so. She was asked about this at the hearing and she explained that she had made payment to contractors by way of direct bank transfers. That may well be the case, but, in the Tribunal's view, the Applicant could therefore have produced extracts from her bank statements, or similar, showing these payments. It was noted that the Applicant had produced bank statements in respect of the rent arrears part of her claim but that these only covered the period November 2018 to August 2023. Accordingly, the Tribunal was not satisfied that this part of the Applicant's claim should be granted.
10. Given all of the above, the Tribunal concluded that the Applicant was entitled to an order in the sum of £6,220 in respect of rent arrears, plus £932.48 in respect of the cost of materials, totalling £7,157.48.
11. The Tribunal's decision was unanimous.

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

26 November 2024

Legal Member/Chair

Date