Housing and Property Chamber
First-tier Tribunal for Scotland

Decisionwith Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/19/0577

Re: Property at 1 Lennie Cottages, Craigs Road, Edinburgh, EH12 0BB ("the Property")

Parties:

Mrs Agnieszka Fraser, 18 Ochilltree Gardens, Edinburgh, EH16 5SN ("the Applicant")

Miss Linda Elizabeth Collie, 51 Parkgrove Drive, Edinburgh, EH4 7QG ("the Respondent")

Tribunal Members:

Joel Conn (Legal Member) and Janine Green (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that

Background

1) This is an application by the Applicant for civil proceedings in relation to an assured tenancy in terms of rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended ("the Procedure Rules"), namely an order for payment of a sum in damages. The tenancy in question was an Assured Tenancy (said to be a Short Assured Tenancy but it was not relevant to examine any AT5) of the Property by the Applicant's late husband to the Respondent dated 22 April 2011 ("the Tenancy"). The Tenancy ran from 9 May 2011 to 8 November 2011 and then was to "continue thereafter on a monthly basis until terminated".

2) The application was dated 24 February 2019 and lodged with the Tribunal by email that day. The application was accompanied by a lengthy paper apart setting out the background, a copy of the lease, copy photographs, invoices, and documents from a previous Simple Procedure before the Sheriff Court (which had been raised by the Applicant on similar grounds before being dismissed when the issue of the Tribunal's exclusive jurisdiction was noted by the Sheriff).

3) The application expressly sought an order for "£4,092.28 + the interest on that sum at the rate of 0.35% annually". The paper apart broke down that amount as follows, across seven categories:

"DAMAGES"

a) £300 for "fixing the damaged (broken glass) built-in wardrobe";

b) £200 for "fixing the broken sink (broken plughole element and the pipe)";

c) £468 for "replacing the damaged carpet (permanent stains) in the upstairs bedroom";

d) £641 for "replacing the damaged wool carpet (permanent stairs and iron marks) in the living room";

e) £150 for "fixing the damaged IKEA carousel in the kitchen cupboard";

f) £125 for "fixing the kitchen sink (completely blocked and needed a plumber's intervention)";

g) £125 for "broken boiler";

h) £140 for "3 lamps in the hallway";

"DAMAGES OF NON-FIXABLE ITEMS"

i) £120 for "damaged brand new IKEA hanging unit";

j) £120 for "damaged portable large oil filled radiator";

"PROBLEMS THAT ESCALATED... DUE TO THE TENANT NOT INFORMING THE LANDLORD..."

k) £400 for "kitchen wall and the dormer";

"MISSING"

l) £120 for "the original wireless doorbell"

m) £60 for "parts of the pine bed";

"COST OF REMOVING THE TENANT'S BROKEN ITEMS..."

n) £145 for "uplifting items at the property";

"CLEANING SERVICES"

o) £118.28; and

"LOSS OF RENT"

p) £860 said to be for a month's rent.

4) The Respondent had lodged a lengthy written Response with vouching, prepared by her then representative Graham MacPherson. In it she disputed liability for the majority of the heads of claim, and offered concessions on head of claim (a), (d), (e) and (o) but all at sums lower than the Applicant sought. The total of the concessions within the Response was £327.18.

The Hearing

5) Following a case management discussion and ancillary procedure, the matter was assigned to a Hearing. In all, two full days (including some sitting on) was required to conclude all the evidence. The first day of the Hearing of the First-tier Tribunal for Scotland Housing and Property Chamber, was at George House, Edinburgh on 18 September 2019 and the second was at Riverside House, Edinburgh on 15 November 2019. At both days of the Hearing, we were addressed by the Applicant on her own behalf. The Respondent was in personal appearance on both days and partly represented herself and was partly represented by her brother, Bruce Collie.

6) At the commencement of the first day of the Hearing, we sought to clarify whether there was any prospect of an agreed settlement between the parties. The Applicant confirmed that the order for £4,092.28 was still sought. The Respondent's

representative indicated that though the Response set out a concession for several heads of claim (as set out above) this was now withdrawn.

7) The parties were able to agree:
   a) That the Applicant's late husband had received a deposit of £850 from the Respondent at the start of the lease;
   b) That the Respondent had not paid the final month's rent of £825;
   c) That the unpaid rent should be deducted from the deposit, leaving a credit of £25 due to the Respondent; and
   d) That the £25 was thus deducted from the sum sought reducing it to £4,067.28.

   (We do note that this means the Applicant's late husband had failed to lodge the deposit with an approved tenancy deposit scheme provider.)Though this agreement meant the parties were in agreement on the sum of the monthly rent, the Applicant did not appear to make any concession to reduce the sum sought under head (p) (one month's lost rent) from £850 to £825 however. Further, during the course of the first day of the Hearing, the Applicant conceded that the invoice vouching heads (f) and (g) was the same invoice, meaning that only £125 was claimed for both in total. This further reduced the sum sought to £3,942.28.

8) The parties remained at a significant distance apart at the start of the Hearing. There was reference by them to mediation during the Simple Procedure process but there was disagreement between them as to whether the Respondent had offered a figure in settlement (which figure, it seemed, was not currently acceptable to the Applicant in any case). In the circumstances, we noted the limited concession on the deposit and commenced hearing evidence.

9) Much of the evidence went over each of the heads of claim in turn. Along with hearing evidence from the parties, the Applicant had two further witnesses, both witnesses to fact. MariuzStepien, a builder, was heard on the first day. He provided his evidence in Polish and the assistance of the Tribunal's interpreter. Mr Stepien's company Dekor Style having carried out much of the work that the Applicant carried out after the Respondent vacated (the costs of which formed large parts of the sums sought). Dekor Style had also carried out work at the Property when the Applicant and her family had lived there, and Mr Stepien described himself as a "qualified builder" who specialised in joinery who had operated Dekor Style for many years.

10) The second of the Applicant's witnesses was Rita Henderson, who was both a landlord herself as well as a former letting manager in two different law firms. She had over 20 years experience in such property management and arranging for tenants to check out of rented properties. Ms Henderson provided evidence on the second day. Ms Henderson was a friend of the Applicant and before that her late husband. She had volunteered to assist with the letting of the Property, effectively acting as letting agent during the Respondent's vacating of the Property and the new tenant moving in.

11) Though we heard the witnesses separately (with Mr Stepien being heard in the middle of the Applicant's evidence, so as to allow him to be completed in full on the first day), the evidence is recorded in this Decision broken down by each head of claim. This does mean some of the evidence is ordered in a manner different to how we heard it, and certain of the background evidence is not recorded below at all (as we do not regard that it added to our consideration).

12) For the Respondent, although he was not said to be a witness, Mr Collie frequently expressed his own views during his submission of questions, and interjected at other

times. Mr Collie clearly had been involved with some work for his sister at the Property and the Respondent appeared to accept some of his comments and adopt them as her own. Accordingly, Mr Collie's "evidence" may occasionally be mixed within that evidence noted from the Respondent.

13) In regard to credibility and reliability, we found Mr Stepien to be both credible and reliable, though part of his evidence was made in reference to a written statement that he admitted his wife had assisted him with. The tone and language of the letter was much different to the straight-forward and factual tone of Mr Stepien's oral evidence (albeit filtered through an interpreter). Also, given he required an interpreter to provide oral evidence, we thought it likely that his written statement was far from his own creation. We gave little weight to the written statement but, considering the points at issue and the oral evidence given, we had no need to consider his written statement in our Decision.

14) We found Ms Henderson to be both credible and reliable. She was also straight-forward in her evidence and had a measured tone.

15) We found both the Applicant and the Respondent credible, in that we did not think they were seeking to mislead us, but we found neither particularly reliable. They were, each in their own ways, unable to assess clearly their own decisions and actions. Despite ample photographic evidence of items being left at the Property or its outbuildings, areas insufficiently cleaned, and evidence that her vacating of the Property dragged on, the Respondent seemed adamant that she had promptly left the Property and left it in a clean and void condition. Only in the final moments of the Hearing did she concede a restricted amount for cleaning costs (and none for removal of items). As for the Applicant, her evidence seemed coloured by a strong belief that the Respondent had been dishonest in her dealings with her. When confronted with alternative explanations, she rarely appeared to countenance them, preferring any explanation which portrayed the Respondent as careless or negligent.

Head (a): "fixing the damaged (broken glass) built-in wardrobe"

16) The Applicant lodged a photograph of a crack in the top left hand corner of the left-hand mirrored door of a sliding wardrobe. Her evidence was that this was discovered during an inspection on 31 July 2017, which she and Ms Henderson had undertaken following the Respondent indicating that she wanted to vacate (but before the Respondent had vacated). The Applicant said that the crack was probably less than 10x15cm.

17) The Applicant attributed the crack in the door to misuse by the Respondent. She said it was not wear and tear and the door must have been forced in some way. She thought that the Respondent may have overfilled the wardrobe, resulting in the door being forced by her when trying to open it.

18) In regard to quantification, she said that she had taken Mr Stepien's advice that it was cheaper to replace the doors than replace just the glass in a single door. She had therefore engaged Dekor Style to replace both doors at a cost of £480, of which she sought to recover only £300 which she thought was as a reasonable contribution. She identified an estimate from DekorStyeon which there were a number of items listed including: "purchase and repair and in-built wardrobe with sliding doors (including the smashed mirror) 480" (*sic*). The estimate was undated but bore the narrative "Date Priced: 29.08.2017". She provided evidence that all the work in the estimate had been

subsequently carried out for the price quoted.(This estimate was referred to frequently but we received no evidence to suggest that Mr Stepien did visit the Property on 29 August 2017, which would have been while the Respondent was still in possession. We do not think anything significant follows from this. It may simply be a typographical error.)

19) During cross-examination, it was put to the Applicant that the reasonable price for a single door was £120 and that the doors were still available from a well-known supplier. (An invoice for, what was said by Mr Collie to be a similar door purchased for another property, was shown to the witness.) The Applicant answered that she followed the advice of her builder to replace both doors. The Applicant was further satisfied that £400 was a reasonable cost for the doors because she said that this was a figure that the Respondent had suggested to her. She described discussions between them after the crack was noted. In the discussions, the Applicant said that the Respondent had suggested the Applicant claim on her own insurance because the cost, at £400, was too high for the Respondent to pay. The Applicant said that she had suggested to the Respondent that they share the cost "half and half". The Applicant attempted to show a text message that she said supported the discussion of £400 but the one lodged did not contain that figure (just a reference to the cost being "dear"). The email did show a suggestion by the Respondent that the Applicant should claim on insurance.

20) The Applicant was also asked in cross-examination as to what she would have done had such a crack been reported to her during in the tenancy by a tenant requesting repair. She said she would have probably replaced it but, in this case, the Respondent had kept this issue (and others) "a secret" and she ended up with significant extra work to be carried out when the Respondent left, losing her around two months of rent to the new tenant.(This is the claim in head (p).) The Applicant said that she had attempted to have the Respondent agree to the builders coming in before she vacated, so as to allow a start on the work but the Respondent had refused. The Applicant conceded, on questioning from the Tribunal, that there was no legal requirement on the Respondent to allow such building work to take place while she was in the Property. The Applicant did however regard some of the work that Dekor Style did as fixing repairs which the Respondent had already requested and identified (such as the wardrobe and head of claim (b)) so she implied that it would have been reasonable for the Respondent to have allowed access for such repairs even while she was packing up to leave the Property.

21) Mr Stepien's evidence was that the door, when he saw it after the Respondent had vacated, was off its rails and the glass broken. He said that the cost of replacing the whole wardrobe was less than replacing the mirror. He confirmed that new rails and "all elements of" the wardrobe were replaced as brand new. He said that in his opinion the door had been "pushed in" but he conceded it was hard to say if it had broken due to pressure arising from it not running true on the rails, as it was already broken when he arrived at the Property.

22) Ms Henderson confirmed that she noticed the broken mirror on the wardrobe during her visit of 31 July 2017. She said that she had discussed matters with the Respondent who had told her that she did not know how it had become broken. (As we understood Ms Henderson's evidence, she appeared to have the impression that the Respondent was aware of the crack prior to Ms Henderson noting it.) Ms Henderson understood the Respondent to have priced the replacement herself at around £400 and to have suggested the Applicant claim on her insurance. She understood this, she

said, from the contents of a handwritten letter that the Respondent had prepared after the visit. (There were sections of a handwritten letter lodged with the papers but no party referred to the relevant contents of the letter at any point.)

23) On cross-examination by Mr Collie, it was put to Ms Henderson that sliding mirrored doors can come off their runners and that this may result in them jamming and a crack occurring through such tension. She responded that she was aware that wheels of such doors can come off their runners and she was sure that the tension could cause a crack in some circumstances. She described the doors as running fine when she saw them. She also said that she had never experienced such damage on such a door in all her prior experience. On quantification, Mr Collie asked what she would do if there was such a crack. Ms Henderson thought it likely that she would replace only the mirror (implicitly that she would not replace the whole door). Ms Henderson was also asked what her view was on whose responsibility it was for such a repair. She said she would have to understand the crack and what caused it.

24) The Respondent's evidence was that she was unaware of the crack until it was noticed by Ms Henderson on 31 July 2017, due to the crack being quite high. She said that the doors frequently came off the runners and they were too heavy for her to fix. She described them being fixed on a number of occasions on behalf of the landlord and then latterly by Mr Collie. (In his questioning and interjections, Mr Collie also stated that he had fixed them on occasion.) She was adamant that she had not pushed the door and hypothesised that, as the doors were "seven feet tall", had someone pushed them, then the crack would not had occurred right at the top. In all, she was of the view that the crack must have occurred due the tension when the doors were moved but had been off the runners or jammed on the runners.

25) We asked her to comment on the Applicant's view that the doors may have jammed because the wardrobe was overfilled with clothes. She conceded that she had many clothes but that they were between three rooms and the wardrobe was not jammed due to its contents.

Head (b): "fixing the broken sink (broken plughole element and the pipe)"

26) The Applicant gave evidence that a pop-up plug in a bathroom sink had been pushed in and did not work. No photograph was provided of the issue. The Applicant said that she believed it had been pushed in with great force (though she also later appeared to adopt Mr Stepien's theory that the mechanism had been damaged due to someone attempting to fish out broken glass from the plughole). In regard to quantification, she identified a line on the Dekor Style estimate which contained the entry: "removal of old and applying new silicon in the bathroom, tiles painting, replacement of doors with fittings, walls painting, replacement of plaster, repair of bathroom basin – in-built plug – damaged by the tenant 320" (*sic*). She accepted that not all of this work was related to the plug but sought £200 as a reasonable division of the work, given that she held there was significant work needed to dismantle wooden panels around the sink in order to have access to repair the plug mechanism.

27) On cross-examination, it was put to the Applicant that a replacement trap for a sink is only £8.95; that the Respondent had pointed out to the Applicant the broken sink during the Tenancy; and that it was the duty of the landlord to repair such a matter. The Applicant rejected these points, and maintained that there was significant work to repair the sink. She did confirm that the panelling around the sink, which had been installed on the instructions of her and her husband prior to the Tenancy for aesthetic

reasons, did not have an access panel and so it was necessary to remove the panelling, make the fix, and reinstall the panelling. She conceded that she had no picture of the glass that was said to have been found in the plug hole as this was discovered by Dekor Style. It was put to the Applicant that the plug had been broken for four years and that the Respondent had told the Applicant of it on previous occasions. The Applicant did not accept this.

28) Mr Stepien's evidence on this matter was simple. He said that the "element that blocks water was not there". We took this to be a translation issue and Mr Stepien was saying that the sink was lacking a plug. He further said that inside the plughole there were pieces of glass. He described having to remove the panels around the sink to gain access to effect the repair to the plug mechanism, and then he replaced the panelling. He said that he thought the broken mechanism arose because someone had broken glass which went into the plug hole and then the damage occurred when someone tried to take out the glass. On cross-examination, Mr Stepien confirmed that he could not simply have unscrewed the waste pipe on the sink to gain access to the mechanism because it was blocked by the panelling.

29) Ms Henderson gave little evidence on the sink beyond confirming that the problem was noted during the inspection of 31 July 2017. Under cross-examination, she was asked whether the landlord or the tenant should bear the cost of such a repaid. Ms Henderson said that a tenant should pay if they broke it, and she had been told by Mr Stepien that glass in the drain had caused the damage. Ms Henderson clearly attributed the fault for the repair to the tenant based on this comment. Ms Henderson also confirmed in cross-examination that the sink had been panelled in and the panelling needed removed in order to repair the sink.

30) The Respondent's evidence was that the problem was a "little tag thing" (which we took to mean the part of the mechanism in the plug hole that allowed the plug to be lowered or raised). She said that she had pointed it out to the Applicant during an inspection around a year before she vacated the Property and the Applicant had suggested that the Respondent have her own handyman "John" look at it. The Respondent said she did have "John" look at it and he said that a new trap was needed but that he could not access it without removing all the panelling. She decided just to live with the problem, which meant that they could not fill the sink (as the water would just run out through the plug hole). When asked by the Tribunal about the presence of glass in the plug hole, she had no explanation but said that she did have candles in the bathroom at times and it was possible that a glass container for a candle had broken at some point and pieces fallen into the plug hole. She could not remember such an incident specifically however.

31) On cross-examination, the Respondent maintained that she had informed the Applicant of the problem around a year before vacating and that the Applicant had told the Respondent to have her own handyman look to fix it. The Respondent said that she recalled the visit because her son Jack had been with her at the time and had asked the Respondent "when are we getting this fixed" (prompting the Respondent to bring the issue up to the Applicant).

Head (c): "replacing the damaged carpet (permanent stains) in the upstairs bedroom"
Head (d): "replacing the damaged wool carpet (permanent stairs and iron marks) in the living room"

32) The Applicant accepted that the Respondent had paid for the carpets to be cleaned twice but both the carpets in the upstairs bedroom and the living room needed replacing for different reasons. The upstairs bedroom carpet was said by the Applicant to still be generally dirty and to smell after the second cleaning. The living room carpet had two different scorch marks from where an iron had been placed directly onto the carpet. The marks remained after carpet cleaning. The Applicant described one "in the corner kind of" and one that was perhaps under an armchair. She said the marks were only discovered after the Respondent had vacated because a rug had been placed over at least one of the marks. Photographs of the scorch marks were provided but the Tribunal found it hard to tell which mark was said to be which from the Applicant's description.

33) The Applicant explained that it had taken over a month to have the Respondent finalise the carpet cleaning. (It was a matter of agreement that a third carpet, a bedroom carpet that was stained (but which the nature of the staining was a matter of significant dispute) was replaced by the Respondent at her cost and did not form part of the claim.)

34) The Applicant provided evidence that she had spent £726.62 for purchase of carpets in 2010, though she could not recall whether this was for all carpets in the Property. She referred to an estimate from Dekor Style for £468 for replacement and fitting of the upstairs carpet and £641 for the living room but she said that she had obtained other quotes which were in that region. The living room was described as being 15 square metres in size on the estimate. The Applicant confirmed that she did not take up this quote from Dekor Style and the upstairs bedroom was refloored instead.

35) On cross-examination, the Applicant was shown an email from Ms Henderson of 12 October 2017 when she complimented the quality of the second carpet cleaning. Nonetheless, the Applicant explained that she needed to replace the upstairs carpet because the new tenants had complained about a smell. The Applicant conceded that she had not experienced the alleged smell herself. It was put to her that the smell may have arisen from the nearby dormer window, which had suffered water ingress and which Mr Collie suggested would still have been drying out by the time the new tenants took possession. The Applicant rejected this but said that Ms Henderson may have a view. In regard to the living room carpet, the Applicant conceded the carpet was not replaced for around a year until all works in the kitchen were completed. She explained that the new tenants were asked if they were willing to see the carpet left in place, though scorched, and they agreed. No invoice was identified for the actual replacement carpet in the living room. The Applicant was pressed on whether £641 was a reasonable estimate for carpet and she held that it was in line with another quote of £600 she had obtained (verbally) one day when she had visited a carpet shop with Ms Henderson.

36) Mr Stepien's evidence on the carpets was limited. He recalled a carpet cleaner coming towards the end of their time working, but only recalled them attempting to clean the living room carpet and them saying that they could not clean it. He remembered only one iron mark on the living room carpet and that it was towards the fire place. He confirmed that they also removed the upstairs bedroom carpet. He recalled giving the

quotes for the carpets. He was asked if the living room carpet was a good quality carpet. He said that it was "not too much for that job".

37) Ms Henderson was asked what she thought of the carpets on her first visit of 31 July 2017. She said that she was able to view the living room and back bedroom and thought they were very dirty. Due to the number of items in all the other rooms, she was not able to view all the carpets at that time but thought the front bedroom looked to have chewing gum or something similar stuck on it. Once the Respondent had vacated, she was able to view the living room carpet more clearly. Once a circular rug and furniture had been removed, she saw three scorch marks; two had been under the rug and one – from position of indentations on the carpet – had probably been under a chair. She gave evidence of the carpets being cleaned twice. She confirmed that she had not been impressed with the first carpet cleaner but did think the second had done a "really good job". She gave evidence of much correspondence with the Respondent to have the second carpet cleaner arranged, explaining that there had been at least one cancellation at short notice, and then the Respondent had been reticent to book others due to cost. Ms Henderson gave evidence of giving the Respondent suggestions of other cleaners. She described the process of obtaining the second carpet cleaner as going "on and on for quite a while".

38) In regard to the upstairs bedroom, she thought the carpet had up cleaned well but there was a damp smell from the cleaning when she inspected it (which smell she expected after a carpet had been recently cleaned). After the new tenants moved in, they had complained to her that they thought it was smelly and still dirty. She said that she discussed the matter with the Applicant who agreed to put down flooring instead. Ms Henderson said that she had experienced a musty smell from the carpet when visiting with the new tenants to inspect. She said that the smell went away when the carpet was replaced with flooring. She said that she could not say how bad the smell was compared to other carpets of that age which had been cleaned but she attributed the smell to the Respondent's use of the carpet and not normal wear and tear. She confirmed that she was aware of the Applicant seeking alternative quotes for the carpets and them being in the region of £500 to £600. On cross-examination, it was put to Ms Henderson that the smell may have arisen from the nearby dormer window but she rejected this.

39) In regard to the living room cleaning, Ms Henderson said that the second carpet cleaner had made a good attempt to clean the scorch marks but that the pile itself was very burnt and the marks remained.

40) The Respondent's evidence on the upstairs carpet was that it was off-white and became dirty easily. She recalled spilling coffee on it which she cleaned as best she could but it did have marks on it. She did not accept that it smelled and hypothesised that the carpet may have become smelly from the blocked kitchen sink drain (referred to under head (f)) though she accepted that was not near the upstairs bedroom. In regard to the downstairs carpet, she accepted that she dropped an iron once and there was only one scorch mark which had not been covered by the rug but had been half-way between the rug and the television. She insisted that the photographs showed the same mark but had been "doctored" (apparently by the Applicant or someone on her behalf moving around dirt or fluff marks to make it look like different scorch marks).She conceded some cost for the downstairs carpet and suggested £55, being 20% of the cost of a carpet at £25 per square metre.

41) The Respondent did concede that the carpet cleaning dragged on and that it took around a month after she vacated for the carpet to be cleaned the second time. She did think, however, that the presence of workmen had perhaps resulted in extra dirt to be cleaned up.

Head (e): "fixing the damaged IKEA carousel in the kitchen cupboard"

42) The Applicant identified a photograph of what she described as the pivot of a kitchen carousel. The photograph showed a plastic spindle with lugs spaced evenly around it (probably to support circular shelves or another piece with supported circular shelves on which the kitchen goods would be stored). Some of the lugs looked to be broken off. The Applicant said that she suspected the carousel had been forced by the Respondent and this had caused the lugs to break. The Applicant accepted that she may have replaced the parts had she been informed of the breakage during the course of the tenancy. She said it was not noted until the new tenants had raised it after they had moved in. It was fixed right away and an invoice from Dekor Style for £150 dated 8 November 2017 vouched the cost.

43) On cross-examination, Mr Collie asked how the Applicant was so certain that the Respondent had broken the carousel. The Applicant responded that the Respondent had told her that she had broken it. (At this the Respondent exclaimed that she had said to the Applicant that the carousel was "squint".)

44) Mr Stepien confirmed that he had fixed the carousel as the spindle part could not be fixed. He did not think it was normal wear and tear and accepted that it could have broken because it was forced. In cross-examination, Mr Collie put it to him that parts in such a kitchen may break after seven years of use but Mr Stepien did not agree and said that he had a similar IKEA kitchen which was eight years old with no such problems.

45) The Respondent's evidence was brief on this point. She said that the carousel had become squint but she was happy to continue to use it. She said the carousel had broken through use over time.

Head (f): "fixing the kitchen sink (completely blocked and needed a plumber's intervention)

46) The Applicant's evidence was that, after the Respondent vacated the Property, it was noted that the kitchen sink was blocked. She believed it took a week or two to fix. She confirmed that there had been previous problems with blockages at the Property but she did not know the details. (The plumber was not included as a witness.) She conceded that had she been told of the problem during the tenancy or on check-out, she may not have charged it as a repair due by the tenant. She provided an invoice from A&C Express Plumbing & Heating dated 8 November 2017 for £125 for both the repair of the sink and the boiler (head (g)).

47) On cross-examination, the Applicant said that she believed the problem had been noted when cleaners were trying to obtain hot water. She was asked whether she accepted it was a landlord's repair and what she would have done if such a blockage had been reported by the Respondent during the time she had been a tenant. The Applicant accepted that she would have sent a plumber but, as for paying for it, she said that she "could not say" what she would have done. She said that she may have taken a different view at the start of the lease, as she said that "things were being broken all the time" by the Respondent during the lease.

48) Mr Stepien confirmed that his company had tried to fix the problem but had not been successful. He was aware from the neighbour "in the middle" that there had been similar problems in the past. Mr Stepien did not attribute the blockage to the Respondent putting anything down the drain.

49) Ms Henderson said that she had discovered the blocked drain when she had been working with a cleaner to clean the Property before the new tenant moved in. She said that due to the blockage they needed to boil kettles for hot water, rather than use the kitchen sink. This added to the time taken to clean the Property. On cross-examination, she confirmed that she was aware the Property used a septic tank system that was cleaned twice a year. She said that, in her opinion as a landlord, a landlord should always arrange for such blockages to be cleaned but the cost can be for the tenant to bear if the blockage arose from negligence or "not taking care". She said that she had a "general view" as to the "respect" that a tenant should have for a 100 year old property such as this one. In answer to questions from the Tribunal, she accepted that such a blockage might be for either the landlord or tenant to pay for, depending on the circumstances, and she accepted that she did not known the cause of the blockage here.

50) The Respondent said that the sink had blocked on the day she had left but she had forgotten to mention that to anyone on the day. She said that she told Ms Henderson about it after she left. (Ms Henderson was not asked about this by either party.) The Respondent did not offer a theory as to why it had blocked, other than implying it was from the level of use the day she was clearing out.

Head (g): "broken boiler"

51) Much evidence was lead on this point, but none of it from the plumber who effected the repair who was not called as a witness. All that was clear was what was said in the invoice from A&C Express Plumbing & Heating dated 8 November 2017; that the fault was traced to a "faulty water pressure sensor". Beyond that the evidence was mostly hypothesis by the witnesses.

52) The Applicant, in line with the tenor of her evidence, attributed the fault with the boiler to misuse by the Respondent in that she had not been using it correctly. She did not specify what this misuse was and cited in support only that there had been a historic issue where the Respondent had not known how to top up the water pressure in the boiler. She said that she had sent someone to show the Respondent how to do this. She said that it was suggested to her by the gas engineer that the fault had been caused by the Respondent not topping up the water pressure but that engineer was not called as a witness. The Applicant was also satisfied that the Respondent had effectively confessed to her and Ms Henderson that the issue may have been due to the Respondent's previous ignorance as to how to top up the water pressure.

53) Mr Stepien accepted that he was not an expert on boilers and knew only that there was a problem as the boiler was not keeping pressure well. He said that they called a qualified engineer to fix it.

54) Ms Henderson had heard of the Respondent having an issue with the boiler pressure but accepted that this may have been an issue which had been fixed by the time the Respondent had vacated.

55) The Respondent accepted that she had experienced problems with the pressure in the boiler but had been taught by a plumber sent by the Applicant during the Tenancy how to top up the boiler. Once she had learned how to do so, she encountered no further problems and the boiler was working to her satisfaction at the time she left the Property.

Head (h): "3 lamps in the hallway"

56) This was another head of claim which took up much evidence but none from the contractor (this time an electrician) who effected the repair. Though the invoice was from Dekor Style's main estimate (a line entry stating "purchase of 3 lamps – downstairs 140"), their electrician did not give evidence. The evidence was mostly hypothesis by the witnesses.

57) The Applicant's evidence was that the Respondent had used the wrong bulbs and there was an ongoing issue during the Tenancy. She said that the Respondent had been told to use the correct bulbs on many occasions. She explained that the lamps were on dimmer switches so you needed to use a specific bulb. She said that the lights were not working when the Respondent vacated. On cross-examination, she was asked what evidence she had that the Respondent had broken the lights. She said that the Respondent had told her that the bulbs "kept popping" and she had been told by the electrician that the wrong bulbs had been used. She was clear that the problem was now fixed. There was a disagreement between Mr Collie and the Applicant as to whether the electrician that had been sent during the Tenancy was qualified. On response to the Tribunal, the Applicant accepted that she was unclear whether the repair after the Respondent left was a repair to wiring or installation of the correct (but expensive) bulbs. The Applicant was pressed on whether a landlord choosing to use a specific consumable after a tenant has left could be held to be a cost attributable to the outgoing tenant. She made no clear response.

58) Mr Stepien said that the lamps in the hall were not working when they were at the Property and that he called a qualified electrician ("Douglas") to fix it. He was asked if there was any problems with the switches or wires but did not give an answer to this.

59) Ms Henderson was asked in cross-examination what she would have done if a tenant had reported that bulbs "kept popping" in a hallway. She said that she would have instructed an electrician to inspect.

60) The Respondent stated that the bulbs were 10 foot off the ground and she could not readily access them. She said that there had been an ongoing problem for two years with the hallway and the bathroom. She said that she had used many bulbs over the time. She said the bathroom light fitting had been changed and the problem fixed in the bathroom. This lead her to believe that the problem with the bulbs in the hallway was related to the wiring and that was now fixed. She said that she had spoken to a neighbour, who was an electrician, at one point and he had thought it was a problem with the circuit. She held that such a problem with the wiring would be a landlord's repair.

Head (i): "damaged brand new IKEA hanging unit"

61) Consideration of this head of claim was hampered by the lack of photographic evidence. The Applicant insisted that a photograph had been submitted of the unit with

the original application. She brought to the Hearing a photograph which, as appeared to the Tribunal, simply showed a jumble of items stacked up. The unit was said to be one of them, but its alleged damage was not visible in the photograph and the photograph was not within the application papers. (It may have been lodged but not printed and included in the application papers due to clerical error by the Tribunal clerks. Between the first and second days of the Hearing, the Applicant was allowed to double check the photographs sent at the time of lodging against those in the application papers. Some photographs were found to have been omitted, and were considered at the start of the second day, but not the one that allegedly showed the unit.)

62) The Applicant's evidence was the unit was relatively new but left by her and her late husband in the shed at the Property in 2011 at the start of the Tenancy. On recovering it from the shed after the Respondent vacated, a wooden panel was broken and the unit had to be thrown out. She said that the damage must have arisen from the manner in which the Respondent had placed items in the shed, which had come into contact with the hanging unit. She attributed a replacement value of £120 to the unit but did not provide evidence of this. She did not discount that replacement value in consideration that the unit was at least six years old (and had been left by her during that time in an unheated shed in a property that she had rented out). She gave no evidence that she did replace the unit.

63) Ms Henderson confirmed that she had seen the unit in the shed with the door off its hinges. She regarded it as badly damaged and thought it would have cost more to fix than replace.

64) The Respondent's position was simple. She said that the unit had been left in the shed by the Applicant and her late husband since she moved into the Property and she had not touched it during the Tenancy.

Head (j): "damaged portable large oil filled radiator"

65) The Applicant's evidence was the radiator was around one year old when left in the shed at the Property in 2011. On recovering it from the shed after the Respondent vacated, in the hope that it could still be used in the Property, she found that it was split. She said that the damage must have arisen the Respondent dropping it, or allowing it to be dropped, due to the way she kept the shed. She attributed a replacement value of £120 to the unit but did not provide evidence of this. She did not discount that replacement value in consideration that the radiator was at least seven years old (and had been left by her during that time in an unheated shed in a property that she had rented out). She identified a photograph of the top of the radiator marked with rust.

66) On cross-examination, the Applicant was asked whether she would have used the radiator if it was so rusty. She said only that she may have "possibly" used it though rusty, if otherwise working. She confirmed that she did not replace the radiator. She said that she had seen the radiator "on top of things" and could not reach it, when in the shed to collect a different radiator some time in 2016 or 2017 (prior to the end of the Tenancy).

67) Ms Henderson said that she had seen the radiator and described it as "damaged and rusty". She said that it was so badly rusted that it was broken in "two or three places". She said she had spoken to two people who told her it was not fixable. She had been

told by those who inspected it that the internal wires had damaged and it was physically "rusted or split". She said one foot had cracked off as well. She attributed the damage it being kept in the shed and potentially to things being placed on top of it. She did, however, appear also to agree with a proposition put to her by the Applicant that the mere state of keeping it in the shed could have caused the "mechanical damage" (which was probably a reference to the physical splitting, but the Applicant was not clear in her question nor the witness in her answer).

68) The Respondent's position was simple. She said that the radiator had been left in the shed by the Applicant and her late husband since she moved into the Property and she had not touched it during the Tenancy.

Head (k): "kitchen wall and the dormer"

69) The Applicant's evidence was principally that Mr Stepien would speak to this matter and it was clear that she materially altered her view of this item after his evidence (when Mr Stepien's evidence was that the dormer window had nothing to do with the repair to the kitchen wall). The Applicant identified a photograph said to be of the kitchen wall, showing bubbling or marking in the plaster. She said that this was not discovered until after the Respondent had vacated as the Respondent had covered the area with a calendar. The Applicant clearly thought this was a deliberate attempt to hide the issue from routine inspection. The Applicant further identified a picture of the dormer window and a piece of flashing that had come loose. She believed that this was connected to the water ingress that caused the problem with the kitchen wall.

70) In respect of quantification, the Applicant sought a contribution of £400 from a total cost of £784.92. That larger amount was made up from various invoices. First there were two items from the Dekor Style estimate of 29 August 2017: "inspection and repair of the kitchen wall (with bisters (*sic*) – caused by blocked gutter 160" and "dormer repair 340". Next there was an item in an invoice of 10 December 2018 listed as "repair of damaged wall in the kitchen". This latter item was not separately priced and was one of five items costing a total of £280. The Applicant sought £180 for this. Finally £104.92 was sought for drying the wall but an invoice for this was not referred to. She confirmed that the £400 contribution figure was her own figure.

71) On cross-examination the Applicant was asked why this repair was to be paid by the Respondent. She responded that the Respondent had failed to report it. It was put to the Applicant that it had been reported to her late husband who had advised the Respondent to rub down the wall and repaint it. The Applicant did not have a response on this and conceded that Mr Fraser may have had such a conversation but not related it to her. The Applicant remained insistent that the Respondent had covered the problem with a calendar and that this meant the internal issue was not noted during routine inspection. She conceded that external inspections may have picked up the problems with the guttering. When asked if she would have fixed it, if it had been reported to her during the Tenancy, she said: "I suppose". She said that she thought £400 was a fair estimate of costs because the problem "escalated" due to the Respondent not telling her about it.

72) Mr Stepien confirmed that he repaired the flashing at the dormer but said that he did not believe it was connected with the issue in the kitchen. (This, of course, was in line with a plain reading of this estimate of 29 August 2017 which said the problem with the kitchen wall as "caused by blocked gutter".) He said that they found the gutter to be blocked by slates and water was overflowing onto the outside of the kitchen wall. In

regard to the work inside the kitchen, he described an initial attempt to remove the marks on the wall but that resulted in the swelling returning after the new tenants moved in. They then removed the plaster from the wall until they reached the brickwork and left it to dry. The wall was re-plastered some time later. (No witness gave evidence as to who cleared out and fixed the guttering that was the cause of the water ingress. We assume it was Dekor Style and that it was a quick job carried out shortly after the Respondent vacated.) Mr Stepien was asked if the damage would have been reduced if the problem had been reported to the landlord earlier. He said that if the problem had been reported earlier, there would have been less effect from the water ingress and easier to fix. He was not asked to quantify how much less work or time it may have taken to fix in that hypothetical scenario.

73) On cross-examination, Mr Stepien was asked whose responsibility it would have been to maintain the roof and his view was that it would have been the landlord's responsibility. Mr Stepien was asked to describe the work involved in fixing the wall and said that they scrapped the wall, removed plaster, skimmed the wall with plaster it, and repainted it. He said that the skimming was sometimes more than 3mm in thickness as there were deeper sections to fill in first. He said that the area involved was around 25x30cm. He confirmed that he saw no water in the kitchen, just bubbling in the plaster.

74) On re-examination, Mr Stepien explained that the first thing they noticed when starting the work was the problem with the kitchen wall and that lead them to notice the overflowing gutter. He said that the gutter could be viewed from outside due to a slope in the ground opposite that section of gutter that made the guttering easily visible when he stood on the slope. He said that around three different people visited the Property from Dekor Style in regard the work, and monitoring the drying of the wall before the wall was replastered.

75) Ms Henderson confirmed that she had noted the problem with the flashing during the inspection of 31 July 2017 and the photograph used to illustrate the problem was taken by her. She said little about the kitchen wall but did say that she thought the problem was not noticed on 31 July 2017 because a calendar was on that part of the wall. On cross-examination, she confirmed that if a problem was reported by a tenant to a landlord, she thinks a landlord should have instructed a professional contractor to inspect further.

76) The Respondent accepted that the affected wall was the wall on which she hung her calendar but that she had always hung her calendar on that wall and she had not done so to disguise the issue. She said that she had reported the problem to Mr Fraser around 2013. This followed her painting the kitchen "beautifully". The wall had started to have flaking and bubbling and she pointed it out to Mr Fraser. She said he had touched his hand against the wall and suggested that she rub it down and paint it. The Respondent said that she was not very good at decorating so just chose to live with it and never mentioned it to Mr Fraser or the Applicant again. She accepted that over time the bubbling may have moved further down the wall. She insisted that had she seen any wall or dampness, she would have reported it to the landlord.

Head (I): "the original wireless doorbell"

77) The Applicant estimated a cost of £120 for the original doorbell but provided no vouching. She said that on the Respondent vacating, the original doorbell was missing and there was a new wireless doorbell that was not working. She said that she had not

replaced the doorbell and simply installed a knocker (which was not charged for). The Applicant did not give any theory as to what had happened to the doorbell. Her claim was that it had been there at the start of the Tenancy and the Respondent was liable for its cost because it was not there at the end of the Tenancy.

78) On cross examination, it was put to the Applicant whether she would have replaced the doorbell if, during the Tenancy, she had been told it had stopped working. She said that she did not know what she would have done in that circumstance.

79) Mr Stephien's and Ms Henderson's evidence on this matter was restricted to them both saying that they had found the doorbell not to be working.

80) The Respondent was adamant that the doorbell was working when she left and that she had visited the Property recently, rung the bell, and found that it was answered. She explained that the original bell had stopped working so she replaced it at her own cost. She said that a "Mr Macpherson" had purchased it for her from B&Q and fitted it.

Head (m): "parts of the pine bed"

81) The Applicant explained that, at the start of the Tenancy, her late husband had dismantled a pine bed which the Respondent had not required and placed it in the shed. When the Respondent vacated, she had instructed Dekor Style to take out the bed. When they took it out, they found that two long slats were missing, leaving the bed unusable and requiring to be disposed of. She confirmed that the bed had not been needed and was not replaced by her. She did, however, think it had a value of £60. On cross-examination, she said that the figure was reached through an internet search but documentary evidence of this search was not provided.

82) On questioning from the Tribunal, the Applicant was asked why a sum was being claimed against the Respondent in this regard. The Applicant, once again, blamed the Respondent for somehow interfering with items that had been placed in the shed. Her logic was that her late husband must have placed the entire bed frame and parts in the shed and, if all the parts were not there now, then it must be the Respondent who removed the parts. The Applicant did accept that the shed was very full, and that the bed parts had not been readily accessible. When pressed by the Tribunal whether she was maintaining that the Respondent must have manoeuvred around the shed so as to remove two pieces of a bed frame, the Applicant maintained her position that this must have occurred.

83) Ms Henderson's evidence was that she recalled that the bed was being moved to another property and it was a gentleman with a van, who was to take it to a new property, that confirmed to her that two pieces were missing.

84) The Respondent's position was as with the hanging unit and radiator, also stored in the shed. She said that to her knowledge the entire bed frame had been left in the shed by the Applicant's late husband since she moved into the Property and she had not touched it during the Tenancy. She did, however, posit that the pieces may not have been placed there together by the Applicant's late husband and may have been overlooked. She said that if they had been left lying around, then they may have been used by one of the local children in their play. The Respondent gave no evidence for this (and the Applicant was noticeably dismissive of it as a theory).

Head (n): "uplifting items at the property"

85) The Applicant sought the cost of two sets of removal men: £60 to Piotr Wos of Edinburgh on 10 October 2017 and £85 to Mr Walker'z of Dalkeith dated 19 October 2017. Her evidence was that the work arose from two issues. First, there was rubbish left at the Property (especially the shed and garage) by the Respondent. Photographs were provided of a box of food stuffs; a drawer of cables and computer console discs; a bedside cabinet (of which some evidence suggested that this was where the drawer of cables was); some children's chairs next to a cardboard box; a pool or snooker table; and paint tins. Second, the Applicant said that the Respondent had asked to leave a single bed and a sofa bed which were in an upstairs bedroom. When she inspected these after the Respondent vacated, she found that the mattress of the single bed was stained; and the sofa bed was also in a poor condition. She required to pay for the removal of both.

86) On cross-examination, the Applicant accepted that the single bed and sofa bed were left with her agreement but that there were holes in the sofa bed. She said that the £60 invoice was for removal of the pine bed (in head (m)), the pool table in the shed, a bedside cabinet left in the garage, and the hanging unit (in head (i)).

87) Mr Stepien gave evidence of having to move items from the house to the garage in order to start work. This included the single bed and mattress, and the sofa bed. He said that one of his employees dismantled the single bed but he does not recall what damage there may have been as their work was restricted to taking it to the garage.

88) Ms Henderson gave evidence that the Respondent had asked her if it was acceptable to leave the single bed and sofa bed. She had asked the Applicant who had agreed to this. On the Respondent vacating, she had asked Mr Stepien to unscrew the single bed and take it downstairs. She said that they were to be removed from the Property as they were not being kept for the new tenant. At that point, it was discovered that the mattress was badly stained and there were tears in the sofa bed. She confirmed that the Applicant then decided to dispose of the items.

89) Ms Henderson also identified the photographs of the box of food stuffs and the drawer of cables and discs. She could not remember whether these photographs were taken in the house, shed or garage. She said that she had taken the photograph of the latter to ask the Applicant if they were her belongings. (The Respondent interjected that they were her son's, which had been left in error, and that they were now in his possession.) She said that on 11 September 2017, when the Respondent handed back the keys, she had helped the Respondent pack her car but that items were still left for later collection in the front garden. She said that the Respondent then asked about something left under the stairs that she also wanted to collect. After the date the Respondent returned the keys, she described six weeks of communication with the Respondent on the Respondent's request for fresh access and on the carpet cleaner. She thought that there were about six occasions when she arranged to give fresh access to the Respondent, and on at least one of them the Respondent had failed to turn up.

90) On cross-examination, Ms Henderson accepted that she would have changed the mattress on the single bed before giving to a new tenant, given that it was a six year old mattress. Ms Henderson said that the bed itself was on an angle and, though she first thought the floor was uneven, she thinks it was missing a piece. (No witness gave

clear evidence on what piece was said to be missing from the bed.) She said that the sofa bed was ripped in a way that you could not simply replace the ripped part.

91) The Respondent insisted that she could have removed the single bed and sofa but she thought they may have had some use to the Applicant so offered to leave them. She said that the bed had been her son's bed for six years. She said that apart from those items, which were left with the Applicant's permission, all she left in the house was a popcorn maker – which she thought the new tenants may want – and a curtain pole under the stairs which she left in error (and asked Ms Henderson for access to collect). She rejected the suggestion that she asked for access to the Property six times after leaving. She accepted that she left the children's chairs and the pool table in the garage without mentioning this to the Applicant but, again, she thought they may be of use to the children in the neighbourhood or the Applicant's daughter. She had no view on what the cardboard box (photographed with the children's chairs) contained and disputed that it was hers. She said that the box of foodstuffs was not left and she suspected that photograph was taken during the inspection of 31 July 2017. She thought very little had been left in the Property and "five things were being homed in on". She said that all paint pots were already at the Property from before she moved in.

Head (o): cleaning services

92) The Applicant described the Property as "filthy" at the end of the Tenancy. She identified an invoice of £84 from CLU Cleaning dated 11 October 2017 and an invoice from Ms Henderson was lodged which listed cleaning products purchased adding up to £34.28. Photographs were lodged (some of them only seen at the second day after the Applicant had confirmed which photographs had been missed from the application papers) which the Applicant said showed rings on the ceramic hob; dirt on the kitchen kickplate; dirt on the oven door; and dirt inside a drawer. The Applicant implied that these were just examples of a greater issue. On cross-examination, it was put to the Applicant that the ceramic hob marks were not dirt but marking that forms on such a ceramic hob. The Applicant insisted that she herself had cleaned the marks away, and she had also cleaned the dirt on the oven door.

93) Mr Stepien's evidence was unclear in this regard. When asked if the Property was clean, he responded that it was not tidy and they required to clear it out to commence their work.

94) Ms Henderson's evidence was that the Property, once vacated, was "empty" but "not clean". She described spending over 11 hours working alongside a cleaner to clean the Property. She described specific jobs such as cleaning under the cushions of the sofa, which she did not think had been cleaned by the Respondent before leaving. On questioning from the Tribunal, she did not think that the contractors had generated much dust and the need for cleaning was from dirt existing since the Respondent moved out. Ms Henderson further produced a photograph on her phone (which the Applicant had sent her) showing the ring marks on the ceramic hob cleaned away by the Applicant's effort.

95) The Respondent's position was that she had left the Property clean though she conceded the kick plate may have been overlooked by her. At the conclusion of the second day, she did concede that she would accept £60 towards the costs of cleaning.

Head (p): loss of rent

96) Much evidence was lead on this point and we think much more would have been lead had we allowed the evidence to continue unabated. The Applicant's position was that the works took 1 month to 1.5 months more to be undertaken than expected due to the condition of the Property as left by the Respondent (and all the wants of repair that she said the Respondent had failed to report during the Tenancy). She said that the new tenants were identified before the Respondent had left and that they wanted to move in as soon as possible. The Applicant also gave evidence that the Respondent's leaving date moved later on the Respondent's request.

97) On cross-examination, the Applicant said that she estimated two weeks would have been sufficient to repaint the Property. She also said finalising the work was held up by the Respondent undertaking to have the carpets cleaned after she left but the second carpet cleaner took weeks for her to arrange.

98) Mr Stepien did not quantify how much time may (or may not) have been added to the original intended work by the additional work items issues of which the Applicant complained. His evidence on this matter went little further than confirming that initial work was needed by him to move items to the garage in order to start work. How much of this was attributable to the condition that the Respondent had left the Property, as opposed to the landlord's furniture that remained, was not clear from his evidence.

99) Ms Henderson confirmed that the Respondent's leaving date moved, with the Applicant's permission, from 8 September to 12 September 2017 but that keys were received from the Respondent on 11 September 2017 with an additional set provided a few days later. She confirmed that the new tenants were living with one of their mothers and they were keen to move in as soon as possible. The new tenants could not however move in until early November 2017 due to the work. She said that was not until around 11 October 2017 that the second carpet cleaner was finally arranged by the Respondent.

100) The Respondent accepted that she provided keys on 11 September 2017 and that it took "about a month" from her vacating for the carpets to be cleaned a second time at her expense.

Final matters

101) No motion was made to support the specific interest sought in the application of 0.35% per annum. It was not said to be a contractual rate (and it seems to us most likely to be a passing interest rate that the Applicant currently receives in one of her bank accounts). The Respondent did not make any submission objecting to interest though her written submissions did not concede it. In any case, the rate sought is significantly less than the judicial rate we are entitled to grant from the date of the Decision in terms of Rule 41A.

102) Given that any motion for expenses, if made, would be informed by the Decision issued, and we were not in a position to issue our Decision orally at the conclusion of the second day of the Hearing, we reserved any question of expenses as detailed below.

Findings in Fact

103) On 22 April 2011, the Applicant's late husband let the Property to the Respondent by lease (stating it was a Short Assured Tenancy) with a start date of 9 May 2011 and an end date of 8 November 2011, continuing "thereafter on a monthly basis until terminated" ("the Tenancy").

104) The Applicant succeeded to the landlord's interest in the Tenancy on her late husband's death.

105) Under the Tenancy, the Respondent was to make payment of £825 per month in rent to the Applicant in advance, being a payment by the 9th of each month to cover the month to follow.

106) As of 8 September 2017, there was unpaid rent of £825 due by the Respondent to the Applicant in terms of the Tenancy, being unpaid rent due for the period from 9 June to 8 July 2017.

107) The Applicant holds a deposit of £850 for the Respondent, not held within an approved tenancy deposit scheme provider.

108) The terms of the Tenancy include at clause 14 a provision that: "The tenant agrees to take reasonable care of the accommodation and any common parts...".

109) The terms of the Tenancy include at clause 26 a provision that: "The tenant undertakes to immediately notify the landlord... of the need for any repair. The landlord undertakes to carry out necessary repairs within a reasonable period of time after having been notified of the need to do so."

110) On or around 31 July 2017, at a property inspection, a mirrored sliding door of a wardrobe at the Property was found to be cracked, with a crack of around 10x15cm on the top left hand corner.

111) Such a crack may occur for various reasons, including if a sliding door is opened when off its runners.

112) On or around 31 July 2017, the plug mechanism in the main bathroom remained damaged and required a simple plumbing repair to fix.

113) Access for such a plumbing repair required the removal of panelling from the underside of sink and, after the removal, reinstallation of the panelling, as the panelling had no access panel to allow access to the sink's drain and trap.

114) The Respondent informed the Applicant of the broken plug mechanism in or around 2016 but the Applicant did not instruct a repair at that time.

115) Rita Henderson became aware of the broken plug mechanism during the inspection of 31 July 2017 and shared this with the Applicant on or around that time.

116) But for the presence of the panelling, parts and labour for repair of the broken sink would have been significantly less than £200.

117) On leaving the Property, the Respondent undertook to arrange a second carpet cleaning of the living room and upstairs bedroom carpets but delays in identifying a suitable and available contractor lead to the work not being carried out until on or around 11 October 2017.

118) On the Respondent vacating the Property, theupstairs bedroom carpet was heavily stained.

119) The upstairs bedroom carpet was cleaned twice, the second time at the Respondent's expense on or around 11 October 2017. This left the carpet acceptably clean for a carpet of its age.

120) But for the request of the incoming tenants after they had taken possession, the upstairs bedroom carpet would not have been removed by the Applicant.

121) On the Respondent vacating the Property, the living room carpet was stained as well as marked by at least one scorch mark from an iron.

122) The living room carpet was cleaned twice, the second time at the Respondent's expense on or around 11 October 2017. The scorch mark or marks remained visible.

123) The living room carpet was not replaced prior to the new tenants taking occupation and was not replaced until in or around 2018.

124) The living room is 15 square metres in size.

125) A reasonable living room carpet for a rental property of this type costs around £25 per square metre.

126) The carousel in the kitchen had become squint due to parts on the spindle or pivot breaking through routine use.

127) The sink in the kitchen of the Property blocked on or around 11 September 2017 during the time the Respondent was moving out of the Property.

128) The sink in the kitchen of the Property had blocked on previous occasions.

129) On no previous occasion had a cause of the blockage of the sink in the kitchen been attributed to an act by the Respondent in breach of the terms of the Tenancy.

130) After the Respondent vacated the Property, a fault was noted with the boiler which was fixed by a plumber. The plumber identified the issue as a faulty water pressure sensor.

131) During the Tenancy, the Respondent frequently reported a fault with the bulbs in the hallway failing.

132) The bulbs in the hallway are no longer failing, after certain work was undertaken by Dekor Style's sub-contractor electrician after the Respondent vacated the Property.

133) Due to a gutter becoming blocked with slates, water started to overflow onto the outside of the kitchen wall of the Property.

134) The said overflow of water caused water ingress with resulted in bubbling and flaking of plaster on a small section of the internal kitchen wall. That the source of the problem was the overflowing gutter was not identified until after the Respondent vacated the Property.

135) The Respondent informed the Applicant's late husband of the problem with the plaster in the kitchen and he advised her to sand down and repaint the wall. The Respondent did not follow this suggestion.

136) The area on which there was visible bubbling increased over time.

137) The problem with the kitchen wall was resolved between September 2017 by December 2018 through the clearing of the gutter, cutting away affected plaster, letting the wall dry out, and replastering.

138) During the course of the Tenancy, the doorbell at the Property broke and the Respondent fitted a new wireless doorbell at her own cost.

139) The Applicant has not fitted a new doorbell at the Property since the end of the Tenancy.

140) At the commencement of the Tenancy, the Applicant's late husband dismantled a pine bed and placed some or all of the pieces in the shed at the Property.

141) At the end of the Tenancy, the complete pine bed frame was not located at the Property.

142) At the end of the Tenancy, the Applicant had no need for the pine bed frame at the Property and intended to remove it from the Property.

143) Prior to vacating the Property, the Respondent offered to leave a single bed with mattress and sofa bed in an upstairs bedroom for the Applicant's future use. The Applicant agreed.

144) On vacating the Property, the Respondent without consent from the Applicant left a popcorn maker and curtain pole in the house but subsequently requested access to remove the curtain pole.

145) On vacating the Property, the Respondent without consent from the Applicant left a bedside cabinet containing computer cables and console discs in the garage but subsequently requested access to remove the cables and discs.

146) On vacating the Property, the Respondent without consent from the Applicant left children's chairs and a pool table in the garage.

147) The Property was left dirty at the end of the Tenancy, in particular the kitchen and under furniture cushions.

148) Ms Henderson and a cleaner spent around 11 hours cleaning the Property so that it was ready for being re-tenanted.

149) The Applicant spent £84 on a professional cleaner at the Property.

150) The Applicant reimbursed Ms Henderson for £34.28 of cleaning products.

Reasons for Decision

151) The application was in terms of rule 70, being an order for civil proceedings in relation to assured tenancies.

Head (a): "fixing the damaged (broken glass) built-in wardrobe"

152) Though there was no doubt that the mirrored wardrobe had a crack, visible on 31 July 2017, little else was clear. The evidence supported consideration of a number of hypotheses for the damage: that it was pushed in (Mr Stepien); that it was forced when the wardrobe was overfilled (the Applicant); and that it broke at some unknown time when the door came off its runners (the Respondent). All mechanisms could arise from a case of accidental damage or negligent handling. The last could also occur if the doors' sliding mechanism was faulty or poor quality and the door kept coming off its runners unexpected, even if used correctly.

153) We were satisfied that such a crack may occur due to tension arising if the door was used when off its runners but we do not make a finding whether this caused the crack or, if it did, whether the Respondent misused the door when it was off its runners. Insufficient evidence was provided for us to make such a determination. On consideration of all the evidence, the Applicant failed on the balance of probabilities to satisfy us that the crack occurred for a reason that demonstrated that the Respondent had breached the lease by failing to "take reasonable care of the accommodation". We award no sum in regard to this head of claim.

Head (b): "fixing the broken sink (broken plughole element and the pipe)"

154) We were satisfied that the plug was broken but were not satisfied as to the mechanism by which it had broken. It seems to us unlikely that significant amounts of glass would find their way into the plug hole of a bathroom sink if the plug was present. The Respondent gave convincing evidence that the plug had not been present for some time, due to the mechanism being broken.

155) It seemed to us just as likely that the glass fell into the plug hole after the plug had been removed due to the broken mechanism, rather than being part of the circumstances in which the mechanism had been broken. In any event, no photographs were provided to us of the plug, broken mechanism, or glass. The Applicant had one theory (that the plug mechanism had been pushed in by force, for reasons unexplained) and then a second vague theory, adopting Mr Stepien, that the glass was somehow involved. We were, however, satisfied that the broken plug mechanism was not normal wear and tear.

156) We were further satisfied that the repair would have been a simple one but for the Property's owners' decision at some point prior to the Tenancy to box in the underside of the sink, without leaving an access panel. Apart from the Applicant's evidence that she thought £200 was a reasonable allocation from the more significant bathroom works quoted, no evidence was provided on quantum (though Mr Collie proffered during his cross-examination that the cost of the parts was less than £10).

157) We do hold that the Respondent had liability to fix the broken plug mechanism which appears to have arisen other than from a fault in the mechanism or normal wear and tear but that the costs of repair would have been limited but for the manner in which the Property lacked normal access to the underside of the sink. We think £50 is a reasonable sum for damages under this head of claim.

Head (c): "replacing the damaged carpet (permanent stains) in the upstairs bedroom"

158) The Respondent accepted that the upstairs carpet was badly stained but the evidence from Ms Henderson was that the second carpet cleaning had left it in acceptable condition. No photographs were provided for us to make any other judgment, and although Ms Henderson did say that the incoming tenants were unhappy with it remaining dirty, but it was the alleged musty smell that appears to have been the major complaint. It was not possible for us to determine whether any of the Respondent's other theories for the smell (the dormer window still drying out, or a lingering smell from a blocked drain) were accurate.

159) We did think that Ms Henderson's judgment that the carpet was adequately cleaned and suitable for re-tenanting was significant. We think it unlikely the carpet would have been changed but for the request of the incoming tenants and a desire to please them. We are not satisfied that, after cleaning a second time at her expense, that the upstairs carpet (being around seven years old by that time) was left in a condition that breached the tenancy. We award no sum under this head of claim.

Head (d): "replacing the damaged wool carpet (permanent stairs and iron marks) in the living room"

160) All witnesses accepted that there was at least one scorch mark on the carpet and there was no reason to disbelieve Ms Henderson that the mark or marks could not be removed by carpet cleaning. We were not satisfied that the Applicant had given us adequate vouching for the carpet actually installed, and when it was replaced it was around eight years old.

161) The Respondent accepted responsibility for scorching the carpet though we thought the sum she offered in concession was insufficient. The carpet, though of some age, was still usable but for the scorching. Further the scorching was a clear breach of the Respondent's obligations to take care of the Property. We award £125 in this regard, being calculated on the basis of one-third of the cost of a carpet at £25 per square metre.

Head (e): "fixing the damaged IKEA carousel in the kitchen cupboard"

162) Notwithstanding the view of the Applicant that the carousel must have been forced by the Respondent, and Mr Stepien's view that the carousel may have been forced and that it would not normally break over seven year's use, we preferred the evidence of the Respondent. The part is plastic and clearly supports a great deal of weight (from the shelves and the tinned goods, etc.). We were not satisfied on the balance of probabilities that it broke through any breach of the terms of the tenancy.

163) Further, we accepted the Respondent's evidence that the carousel was squint but useable. We also noted the Applicant's admission that she would have repaired the

part had it been notified to her by the Respondent. As it was, it was notified to her by her new tenants and she repaired it. We award no sum under this head of claim.

Head (f): "fixing the kitchen sink (completely blocked and needed a plumber's intervention)

164) Apart from it being clear that the sink in the kitchen was blocked, and was found to be blocked by Ms Henderson when she was cleaning the Property, there was little clear evidence lead. Both the Applicant and Ms Henderson accepted that a blocked drain may be a landlord's repair or a cost to a tenant depending on the circumstances. No evidence was lead on the cause of the blockage and therefore it was not possible for us to determine that this was a repair for which that the Respondent should be held liable.We award no sum under this head of claim.

Head (g): "broken boiler"

165) Apart from it being clear that a repair was made to the boiler, again there was little clear evidence lead by any witness. No evidence was lead on the cause of the faulty sensor and the only hypothesis put forward which was connected to the Respondent was that she had somehow broken the sensor due to a historic issue where she did not know how to top up the water pressure on the boiler. The Tribunal found this far-fetched and it was certainly unsupported by direct evidence from the boiler engineer.

166) It was not possible for us to determine that this was a repair for which that the Respondent should be held liable but we would go as far as saying that we doubt it was. Further, following the evidence that the Applicant was putting forward, the sensor was somehow rendered "faulty" due to the Respondent being unaware how to operate the boiler and not topping up the boiler when needed (and instead calling for the Applicant to send a plumber to fix it when the pressure was too low). If that was true, we do not see how this would be a repair for which the tenant could be liable.We award no sum under this head of claim.

Head (h): "3 lamps in the hallway"

167) Apart from it being clear that something was done to the lights in the hallway after the end of the Tenancy, there was even less clear evidence on this matter than most heads of claim. No evidence was lead on what was actually repaired and it was unclear whether it was a replacement of non-working bulbs (which would be a cost borne by the landlord in preparing a property for a new tenant) or a wiring repair. If a wiring repair, there was no evidence that this arose from the Respondent's misuse of the light-fittings by using the incorrect bulbs. Again, the Tribunal found this far-fetched and it was certainly unsupported by direct evidence from the electrician who carried out the repair.

168) It was not possible for us to determine that this was a repair for which that the Respondent should be held liable but, again, we would go as far as saying that we doubt it was.We award no sum under this head of claim.

Head (i): "damaged brand new IKEA hanging unit"

169) We were given no photographic evidence of the damage to the unit, or written evidence as to its value. No evidence was given as to how the Respondent was said to have damaged it, beyond the Applicant's hypothesis that she must have damaged it through her placing of other items in the shed.

170) We were not satisfied that the Applicant had a claim against the Respondent for damage that occurred to an item that she and her late husband had chosen to place in an unheated shed for six years, on a property which was not under their control, due to the Respondent's alleged lack of care putting other items into the garage. Further, we do not see that an item of this nature has any meaningful value after six years in such conditions. It would have depreciated to nil even if in perfect condition.We award no sum under this head of claim.

Head (j): "damaged portable large oil filled radiator"

171) There is clear evidence that the radiator was rusted but we were shown no clear photographic evidence of the alleged split, the internal wiring damage, or written evidence as to its value. No evidence was given as to how the Respondent was said to have damaged it, beyond the Applicant's hypothesis that she must have damaged it through dropping it and Ms Henderson's theory that things may have been placed on it (though Ms Henderson's evidence did not make clear that she thought the Respondent would be liable if damage had occurred in that way). Ms Henderson's evidence further supported the hypothesis that all material damage arose from the conditions in which the radiator was stored.

172) We were not satisfied that the Applicant had a claim against the Respondent for damage that occurred to an item that she and her late husband had chosen to place in an unheated shed for six years, on a property which was not under their control, due to the Respondent's alleged lack of care putting other items into the garage. Further, we do not see that an item of this nature has any meaningful value after six years in such conditions. It would have depreciated to nil even if in perfect condition. As it was, it was heavily rusted. The Applicant, when asked if she would have used it in such a rusty condition, only said that she "possibly" would have. We award no sum under this head of claim.

Head (k): "kitchen wall and the dormer"

173) We accepted that the Respondent had told the late Mr Fraser of the problem but then not followed his advice. We were also satisfied that, had she followed his advice, it would have had no effect because it would not have stopped the water ingress. We were not satisfied that the Applicant could not have identified part of the problem prior to the Respondent vacating. Leaving aside whether a proper inspection of the internal areas would have noted the bubbling on the plaster (which we did not accept were entirely covered by a calendar), the Applicant's routine inspection of the exterior of the Property could have uncovered the blocked gutter, or the lost slates that would have been found blocking the gutter.

174) We do not think that the late Mr Fraser's suggestion that the Respondent repaint a wall was the appropriate step that a landlord should have taken. That all said, we do think a tenant who identifies a problem and is given a suggested remedy, and does not do that remedy and sees the problem exacerbating, should update the landlord. The Respondent did not do so.

175) If any liability attaches to the Respondent, we cannot however determine how much loss arises. No evidence was lead from Mr Stepien either on how much worse the water ingress may have become over time, or how much more the cost of the repair would be. Turning to the Applicant's quantification of £784.92, part of this includes the

unconnected dormer repair (which was entirely a matter for the landlord to fix). Less than £450 was actually spent repairing the gutter and the kitchen wall. We cannot determine what element of this may have arisen due to the works being carried out belatedly but we think it unlikely that there was any significant addition of cost. Even if there was, the Applicant still has the hurdle of Mr Fraser's initial failure to address the problem, and her own failure to maintain the roof and guttering that is the real source of the issue. We award no sum under this head of claim.

Head (l): "the original wireless doorbell"

176) If the doorbell had broken, it would have been for the Applicant to replace it (or not replace it and fit a knocker). We are satisfied with the Respondent's evidence that it did break during the Tenancy. No cost is recoverable against the Respondent for such an item breaking and being disposed of during the Tenancy, absent any fault on the part of the Respondent (though it would have been appropriate for the Respondent to have informed the Applicant of the breakage, which she did not appear to have done). No evidence was provided of any fault on the part of the Respondent in breaking the doorbell and none was attempted. We award no sum under this head of claim.

Head (m): "parts of the pine bed"

177) We had no reason to disbelieve that the pine bed frame was incomplete at the end of the Tenancy. No evidence was given as to how the Respondent was said to have been responsible for it being incomplete beyond the Applicant's hypothesis that the Respondent must have removed the pieces, despite the difficulty that she would have encountered in accessing them and the pointlessness of such an action.

178) We were not satisfied that the Applicant has a claim against the Respondent for missing pieces of a bed frame which her late husband had chosen to place in an unheated shed for six years, on a property which was not under their control. No one could reasonably give evidence the entire frame was even left in the shed. Further, we do not see that an item of this nature has any meaningful value after six years in such conditions. It would have depreciated to nil even if complete and in perfect condition. Further, the Applicant admitted that she was not seeking to use the bed frame at the Property. She sought to use it elsewhere (or perhaps donate it). Why it was uplifted at the end of the Tenancy, and not anytime during it, was not made clear. (The same could be said for the hanging unit and radiator.)We award no sum under this head of claim.

Head (n): "uplifting items at the property"

179) The Respondent did not leave the Property and its outbuildings as clear and void as she wishes to believe of herself. Leaving aside those matters in dispute (such as the box of food stuffs and paint pots), she omitted to collect the computer items and the curtain pole and needed to return for these. Also, during the course of the evidence she conceded leaving the popcorn maker, children's chairs and pool table. Taking her at her word, she believed these may be of use to an incoming tenant but that was not her decision to make unilaterally and the Applicant was entitled to regard them as junk that needed to be removed at a cost to the Respondent.

180) We were not similarly minded in regard to the single bed and sofa bed. We accepted Ms Henderson's concession that the mattress of the single bed would always need disposing of, so by accepting the donation of these items from the Respondent, the

Applicant was immediately taking on a requirement to dispose of part of them. Further, by not inspecting them before accepting the donation, the Applicant accepted them as she found them. She chose not to retain either and assumed the responsibility of disposing of them. In any case, the evidence was clear that the Applicant was to employ someone to take these to another property. In the end, there was a trip to the dump instead and this is cost neutral to the Applicant.

181) In all, we were satisfied that the Respondent left some items at the Property without consent and these required to be disposed of. We regard £60 as a reasonable cost for disposing of these. This is not based not on the Piotr Wos invoice (which happened to be £60) but our own assessment of the costs incurred in general.

Head (o): cleaning services

182) We were willing to accept the Applicant's and Ms Henderson's evidence that there was significant cleaning required after the end of the Tenancy and this was not generated by the contractor's work. We were not willing to accept the Respondent's evidence that the Property was left clean. The photographs, though focusing on the kitchen, show that the Respondent's cleaning was not as thorough as she wishes to believe of herself. We found it easy to accept that Ms Henderson on, for instance, lifting sofa cushions, found much cleaning work left to be done to make the Property suitable for reletting.

183) Although detailed evidence was not provided on what cleaning services were obtained for the £84, the total claim of £118.28 is a reasonable amount to pay for cleaning services for a deep clean of a Property where the tenant has clearly omitted to clean certain areas, and there may be further hidden areas of dirt yet to be uncovered.

Head (p): loss of rent

184) On the balance of probabilities, the Applicant did not satisfy us that the duration of the works at the Property were 1 month to 1.5 months longer as a result of additional works identified only after the Respondent moved out. There was no material evidence to support this. Further, of the additional work, the repair to the sink and the dormer flashing was known of from 31 July 2017 and we have expressed our views that the need for a repair to the kitchen wall could have been identified by the Applicant earlier. (Further Mr Stepien confirms that there was an initial failed repair to the kitchen wall, and the final repair occurred after the new tenants moved in over the course of a year. This most major repair mostly took place after the new tenants had arrived.)

185) We do accept that the increased requirement for cleaning, and removal of items, along with the one month delay in arranging the second carpet cleaner all delayed the progress of matters, and the new tenants moving in though clearly work was going on in the meantime.

186) We think it is reasonable to hold the Respondent liable for some delay occasioned by the condition in which she left the Property and her further delays in carrying out the promised remediation (the second carpet cleaning). We award £412.50, being equivalent a half of one month's rent, under this head of claim.

Conclusion

187) The total sums awarded by us amount to £765.78 against which a deduction from the balance of the deposit of £25 is to be made. We award this with interest at 0.35% running from today's date as sought in the application. We would have been entitled to grant a higher rate of interest but, in consideration of the low level of success and the history of the application, we think it appropriate to restrict interest only to the level originally sought.

Decision

188) In all the circumstances, we were satisfied to make the decision to grant an order against the Respondent for payment of £740.78with interest at 0.35% running from today's date.

189) We have reserved any decision on expenses. Should either party seek to make a request for expenses of the application (or any part of the application), this should be submitted in writing to the Tribunal within 14 days of the date of this Decision and the Tribunal will consider further procedure in order to determine the request for expenses. Should no request be made by either party by that date, no request for expenses shall be considered by the Tribunal.

Post-script

190) The Hearing lasted two days and, without the indulgence of witnesses and the Tribunal in sitting on both days, and active management by the Tribunal during the Hearing, it would easily have required three days to complete the evidence alone. Though there may have been less prolix ways to record our Decision, we regard that the length of it does justice to that evidence that we heard without recording the many parts of evidence that we do not think were relevant. Thisall raises questions as to appropriateness of this application, the prior case management, the Applicant's insistence on advancing all points, and the Respondent's withdrawal of all concessions at the start of the Hearing. Of the 16 heads of claim, 10 are for £150 or less and added up to under £1,100. We awarded less than £180 in regard to these items yet they took up the majority of the evidence and consideration time.

191) Further, a number of claims were unvouched by any documentary evidence, though the Applicant could easily have sourced some written evidence to support her oral evidence.In consideration of the over-riding objective (rule 2 of the Procedure Rules), in hindsight it may have been appropriate for us to have declined to consider any further those heads of claim which lacked proper vouching as soon as we noted this absence. It would certainly have been appropriate for the Legal Member at the original case management discussion to have declined to allow those to proceed further, at least without first providing documentary evidence. Responsibility for this issue, however, lies principally on the Applicant. The Tribunal's informality of procedure is not to be mistaken for a licence for applicants to insist on litigating in full the most trivial and unvouchedof claims.

192) The parties previously entered into mediation (as part of the erroneous raised Simple Procedure). It was unsuccessful in resolving matters. The Respondent insisted that she offered £1,000 as a without prejudice offer as part of that process but the Applicant rejected it. The Applicant did not accept that such an offer had been made but clearly was not willing to consider an offer of that amount. It was not clear to us at

the start of the Hearing whether the Respondent was still willing to offer as much as £1,000. She withdrew the concessions that had been made in her Response to the application (which amounted to less than £330 as we say) and, only at the end of the Hearing, she made concessions which totalled £90. The parties' failure to mediate successfully has resulted in two days of Tribunal time plus writing up time. The Tribunal's lack of court fees should also not be seen as an invitation to parties to abandon attempts to resolve matters through prior discussion, and instead insist on an evidential hearing.

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.

Joel Conn

22 November 2019

Legal Member/Chair **Date**