Housing and Property Chamber
First-tier Tribunal for Scotland

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

Chamber Ref: FTS/HPC/CV/19/3515

Re: Property at 11 Annfield Gardens, Stirling, FK8 2BJ (“the Property”)

Parties:

E.D.M. Landscaping Limited, a Company incorporated under the Companies Act (Company Number SC098480) and having its registered office at Orchardhead, Blairdrummond, Stirling, FK9 4UP (“the Applicant”) Represented by Andrew Cullens, Solicitor, Messrs Jardine Donaldson, Solicitors, Alloa

Miss Karen Morrison, 11 Annfield Gardens, Stirling, FK8 2BJ (“the Respondent”)

Tribunal Members:

Ewan Miller (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision

The Tribunal determined that an order for payment against the Respondent in favour of the Applicant should be granted in the sum of SIX THOUSAND POUNDS (£6,000) STERLING.

The Decision was unanimous.

Background

1. The Applicant was the owner of the Property. A Lease had been granted to the Respondent of the Property in April 2016. Around August 2019 the Respondent had ceased to pay the monthly rent of £500 to the Applicant. The Applicant had raised a payment action with the Tribunal in respect of unpaid rental that had built up. The Applicant sought a payment order against the Respondent in this regard.

2. The Respondent did not dispute that rental had not been paid under the Lease since August 2019. However the Respondent’s position was that she was entitled to withhold the rent due under the lease due to a failure on the part of the Applicant to maintain the Property to the appropriate standard.

There were three key areas in dispute, in the view of the Respondent, that merited a withholding of rent, being (1) the boiler at the Property and the level of electricity bills that were being incurred; (2) the oven/grill; (3) the condition of the bathroom.

3. The Tribunal had before it the following documentation:-

    - The Applicant's application to the Tribunal dated 31 October 2019
    - Copy Lease and AT5 dated 18 April 2016;
    - A statement of outstanding rent (accruing at £500 per calendar month) since 1 August 2019;
    - Minute of Agreement between the Applicant and Hugh Cullens dated 5 April 2017;
    - Land Certificate STG6530 in the name of the Applicant for the Property;
    - An Inventory of Productions from the Applicant dated 10 August 2020
    - Paperwork from the Respondent dated 24 July 2020;
    - Copy Citizen's Advice Bureau Notes relating to the Respondent dated 3 September 2020;
    - Submissions and photographs from the Respondent dated 3 September 2020;

Case Management Discussion ("CMD") and Hearing Chronology

4. A CMD took place on 20 January 2020 at Wallace House, Maxwell Street, Stirling. The Applicant was not present but was represented by Andrew Cullens. The Respondent was present and was unrepresented. The CMD identified that the principal defence from the Respondent was that the Applicant had breached their obligations in maintaining the Property as set out in para 2 above. The Legal Member at the CMD, Mr Doyle, determined that the matter would require to go to an evidential hearing. In paragraph 8 of his CMD note he stated, inter alia, "Both parties will lodge documentary evidence they intend to rely on together with a list of the witnesses they intend to call not less than 14 days before the full hearing".

5. A hearing was then held, again at Wallace House, Maxwell Place, Stirling, on 3 March 2020. Mr Hugh Cullens was present for the Applicant and was represented by Mr Andrew Cullens again. The Respondent was present and represented herself.

6. Little progress was able to be made at the first hearing. There was no dispute between the parties that no rental had been paid since August 2019. Accordingly, the entire points to be determined were whether the Respondent had justifiably withheld her rent from that date. The Respondent had submitted no documentation or evidence prior to the first hearing of 3 March 2020, notwithstanding the terms of the CMD note. However, on the day of the hearing the Respondent produced a large bundle of paperwork. Some of this was handwritten, there was no index and she did not have any copies for any other party. Unfortunately, there were no photocopying facilities at the venue

at the first hearing and accordingly the Tribunal felt unable to make any material progress in relation to determining whether the Respondent's defence to the payment application was valid or not.

7. Notwithstanding that the Respondent had specifically been requested per Para 8 of the CMD Note to submit all paperwork in advance, the Tribunal determined to continue the hearing to a later date. The Tribunal was conscious of the overriding objection of fairness and wished to give the Respondent an opportunity to present her case. When questioned as to why she had not produced the documentation as requested, she submitted that she had been too nervous for both herself and the parties mentioned in her papers and was concerned that they may be intimidated by the Applicant.

8. The Tribunal did not perceive that there was any merit in the Respondent's stance. Whilst Mr Cullens of the Applicant appeared to be a fairly direct individual, the Tribunal did not get any impression that he would take any inappropriate actions against any party. All parties were entitled to see documentation in advance and to have the opportunity to form a view on it. It was unhelpful for the Respondent to arrive on the day with a jumble of papers that only she had seen and without any copies. In any event, as stated, the Tribunal was keen to afford the Respondent an opportunity to put her case forward and resolved to continue the matter to a later date to allow her to put her papers in order and to circulate them to both the Tribunal and the Applicant for consideration.

9. Subsequent to the first hearing the Tribunal issued a hearing note that required all evidence to be submitted 21 days prior to the date of the hearing. The Respondent was specifically asked at item 3 of the hearing note to provide the Tribunal with a written timeline and brief summary of the issues she alleged allowed her to validly withhold rent. Shortly after the first hearing the Covid-19 lockdown came into effect and the business of the Tribunal was put on hold. A second hearing was not held until 4 August 2020 by telephone conference. Mr Hugh Cullens of the Applicant was present, again with Mr Andrew Cullens, his solicitor. The Respondent was again present and represented herself.

10. The Tribunal, at the second hearing, had before it the bulk of the information the Respondent had originally intended to discuss at the first hearing. However, the Respondent indicated that she also now wished to put forward a significant amount of paperwork from her correspondence with Citizens Advice Bureau ("CAB"). She stated that this would show that the boiler was generating excessive bills due to failings in its condition. The CAB notes would show that she had been in discussion with Scottish Power regarding her electricity bills and would substantiate her position. Due to the impact of Covid-19 she had been unable to obtain those notes in time for the hearing as the CAB offices were still shut due to Covid-19. She also wished to show video evidence to the Tribunal, particularly in relation to the boiler, again which she stated would substantiate her position. The Respondent was of the

view that her position would be unfairly prejudiced if she was unable to access her notes from CAB and put the video evidence to the Tribunal. The Applicant's solicitor highlighted that the direction note requiring her to produce information had been given at the start of March following the first hearing and lockdown had not taken place until towards the end of March. She had therefore had the opportunity of two or three weeks of time to get the relevant documentation before the lockdown took effect. The Tribunal considered the matter and was reluctantly prepared to grant one further extension and continue the hearing to 7 September 2020. Although there had been a window of opportunity for the Respondent to get the notes from the CAB she had had limited opportunity to do so. Taking into account the overriding objective of fairness the Tribunal concluded it was not a failing or error on the part of the Respondent that she had been unable to access the notes but simply a consequence of the impact of Covid-19. In relation to the video evidence, the Tribunal noted that due to internal IT issues the Tribunal was not in a position to view video evidence as at the date of the second hearing. However it was hoped that this issue would be resolved shortly. Again, taking into account the overriding objective of fairness, the Tribunal was satisfied that it was appropriate to grant a final continuation of the hearing to hopefully allow the Tribunal to have the appropriate systems in place and to allow the Respondent to show the video evidence. The Tribunal did highlight that this would be the final continuation that they were prepared to allow. Whilst the Tribunal had been fair to the Respondent they also needed to take into account the position of the Applicant. Matters had been continued for a considerable period and rent was continuing to accrue. Had the Respondent followed the direction in the original case management discussion and submitted all evidence timeously in March then the matter may have been able to have been dealt with fully at the first hearing.

11. It was noted during the course of the second hearing that both parties accepted that the oven/grill had been repaired in August 2019. Accordingly this was no longer a relevant factor in assessing whether there was a valid withholding of rent or not and that only the two remaining issues to be determined were the bathroom and the boiler.

12. One further point that arose in the second hearing was that the Respondent had been unaware that she would be entitled to get her own reports on the condition of the bathroom and boiler as she took the view that it was not her property. The Tribunal highlighted that she was perfectly entitled to have her own tradesmen inspect the systems and to submit evidence and reports from them to substantiate her position if she so wished. The Respondent indicated that she did wish to do so and accordingly the Tribunal was satisfied that the further continuation would allow her time to do so. The Respondent did seem to indicate during the second hearing that she would not wish to allow the Landlord access or at least would want to obtain her own reports before allowing the Landlord access to inspect the Property. The Tribunal discouraged her from taking this course of action. The Landlord was entitled to inspect the Property and to carry out any appropriate repairs.

13. A final hearing too place via teleconference on 7 September 2020. Again Mr Hugh Cullens was present for the Applicant and Andrew Cullens, solicitor, represented him. The Respondent was again present and represented herself. Just prior to the hearing the Respondent had lodged extensive notes that she had obtained from CAB. She also submitted various pictures that she had taken of the Property, some being of the boiler from 2018 and others of the boiler and bathroom from August 2020. The Applicant submitted a report from a Robbie Cullens on the condition of the bathroom.

14. The Tribunal had managed to arrange for video evidence to be heard at the hearing. The Tribunal had advised the Respondent and her solicitor, Alan Cox of Barton & Hendry Solicitors, of this. Despite this, no video evidence was provided prior to the third hearing by the Respondent. At the third hearing the Respondent indicated that she still had video evidence that she wished to submit and would provide it a couple of days after the hearing. The Tribunal took the view that it could no longer continue the matter any further to accommodate the Respondent. The matter had been ongoing for many months and whilst this was partially due to the impact of Covid the Respondent had simply not moved matters forward as swiftly as she could have. The Tribunal had been fair to her to and given two extensions to submit evidence. She had been advised that video evidence could be submitted but had failed to lodge it timeously. If the video evidence was to be reviewed after the hearing it would need to be circulated to both parties, everyone would need the opportunity to comment and the matter would be elongated yet again. The Tribunal was satisfied that sufficient time had been given and that the matter needed to proceed to a determination on the day.

Preliminary Matter

15. At the first hearing in March 2020 the Respondent had highlighted that the Lease in favour of her had been granted by Hugh Cullens whereas the true owner of the Property was E.D.M. Landscaping, a company owned by Mr Hugh Cullens and others of his family. There was at the first hearing a conjoined eviction case against the Respondent. The eviction case was dismissed on the basis that the eviction documentation had been granted by Mr Cullens rather than by the company as the Landlord and so was defective in relation to the statutory requirements applicable. However, in relation to this matter, the Tribunal was prepared to amend the Applicant from Mr Cullens as an individual to E.D.M Landscaping Limited. There was, undoubtedly, some form of Lease between the parties, albeit it had been entered into defectively by Mr Cullens as an individual. Whether the Lease existed as an assured tenancy rather than a short assured tenancy or as common law lease was academic for the purposes of the hearing. Nonetheless it was clear that the Property was owned by the limited company and that the Respondent was a tenant of that company in some way, shape or form. The Tribunal was aware that in terms of paragraph 32 of the First Tier Tribunal for Scotland Housing & Property Chamber (Procedure) Regulations 2017 as amended, the Tribunal may add, substitute or remove a party whether the wrong person has been named as a party. The Tribunal did not perceive that there had been any deliberate intent to confuse matters here. There was a Minute of Agreement

from April 2017 between E.D.M Landscaping Limited and Hugh Cullens as an individual appointing him as the agent of that company and entitling him to act on behalf of the Company in his own name. Whilst this agreement did post date the entering into of the Lease with the Respondent it did show the connection between the limited company and Mr Cullens as an individual. Mr Collins was the majority owner of the company and clearly viewed the properties held by the company as his own, albeit that title sat with a limited company. The Tribunal did not perceive there to be any prejudice to either party by substituting E.D.M Landscaping Limited in place of Hugh Cullens as the Applicant. The Respondent did not raise any objection to the point at the first hearing (and the point was never appealed by her subsequently). On that basis the Tribunal had ordered the substitution of E.D.M Landscaping Limited in place of Hugh Cullens.

Findings in Fact & Law

16. The Tribunal found the following to be established:-

- The Applicant is the owner of the Property;
- On or around August 2016 the Applicant had entered into some form of Lease of the Property with the Respondent;
- The monthly rental under the Lease was £500 per calendar month;
- The Respondent had ceased to pay rent from August 2019;
- The Respondent had failed to establish in relation to the boiler it was in sufficient disrepair to carry out a valid withholding of rent;
- The Respondent had failed to establish in relation to the bathroom that it was in sufficient disrepair to carry out a valid withholding of rent nor had she given sufficient access to the Applicant to address any issue;
- There were arrears of rental of £6,000 due by the Respondent to the Applicant as at August 2020.

Reasons for the Decision

17. The Tribunal based its decision primarily on the written evidence before it and the discussion between the parties at the various hearings. Whilst the three hearings were relatively lengthy, the matters before the Tribunal requiring determination were limited. There was no dispute between the parties that the rental of £500 per calendar month would normally be due in terms of the lease. There was also no dispute that the Respondent had ceased to pay rent from August 2019 to date.

18. What was in dispute was whether or not the Respondent was entitled to withhold rent due to the condition of the Property. As highlighted previously, the areas of dispute centred around the boiler, the bathroom and the oven/grill. As noted at Para 11 it was established at the second hearing that the oven/grill had been repaired in August 2019 and therefore there was no question of withholding of rent in that regard.

19. There was also information within the paperwork about an injury sustained by the Respondent due to a shower door falling on her in the bathroom at the

Property. The Respondent, however, had indicated that she was dealing with this as a separate matter and was raising a claim in a different jurisdiction for personal injury. The Tribunal was content that it did not need to deal with the matter on that basis.

20. Accordingly, the Tribunal required to determine whether there had been a valid withholding of rent in relation to the boiler at the Property and the condition of the bathroom. Given that it was the Respondents allegation that the Property did not meet the required standard and it was she that was withholding rent, the onus of proof lay with her.

21. In relation to the boiler, the Respondent indicated that from the very start of her tenancy the boiler had been defective and generated excessive electricity bills. The Respondent stated that she was originally from the north of Scotland and was used to living in a property set at a cooler temperature. She submitted that she was well aware of what her electricity bills should be at and the level of bill being charged to her by Scottish Power was double what she would have anticipated. She had, since the commencement of the tenancy in April 2016, run up an electricity bill of circa £5,000. Upon being questioned by the Tribunal she confirmed that she had made no payments or contributions to her electricity provider at all since the commencement of tenancy. She was of the view that the Applicant should be making a significant contribution towards her electricity bills.

22. Amongst the Respondent's submissions was a "rental property checklist" which she had signed on 1 May 2016. This was not a formal checklist that had been carried out by both parties and agreed by them, rather it appeared that the Respondent had taken this document and used it as a template to advise the landlord of various items of disrepair that she had noted after the commencement of the lease. This note did highlight that, in the view of the Respondent, the boiler had stopped working and the "overheat" sign was flashing and that generally the boiler was not in proper working order. There was therefore some *prima facie* evidence that there was something wrong with the boiler at the point that the Respondent took entry. The Applicant, in response, did not dispute that some works had been required to the boiler. A fuse board had required to be replaced and one or two other repairs had been carried out earlier in the tenancy. However, since 2018 the Applicant was of the view that the boiler had been in proper working order and it was simply the case that the Respondent was not operating it correctly. The Applicant had produced a report from Switch Gas Scotland from July 2018 which confirmed that the system was in proper working order. An updated report from August 2020 was also provided confirming this.

23. The Respondent disputed this and referred to her own report which she had submitted just prior to the third hearing. Her report was very informal and comprised two parts. The first headed "Boiler and Bathroom Report Number 1" was simply notes on plain A4 paper written by the Respondent of what she stated her plumber had reported to her. In relation to the boiler it stated that on a visual inspection it appeared that the hot water expansion vessel had lost its charge and needed replaced. It did state that the hot water immersions

were working however they did not shut off when they reached the relevant temperature causing high temperature hot water. The second report was simply 3 handwritten lines on plain A4 paper by a person unknown but whom the Respondent advised was her electrician. The Tribunal questioned the veracity of the reports and highlighted to the Respondent that it was not helpful simply to receive a handwritten note from the Respondent of what she stated other parties had stated to her. She stated that the tradespersons she had employed did not wish to provide her with a report unless they knew they were getting the work. She initially refused to state to the Tribunal who the tradespersons were. There did not appear to be any justifiable reason why this was the case and she did eventually state the name of two companies. She stated that again she did not wish them to be intimidated by the Applicant. The Tribunal considered the evidence before it. The Tribunal accepted that, on the balance of probabilities, that the system had some defects at the time the Respondent took occupation. It did appear that the Landlord had carried out some works and he had produced an independent report twice confirming that the system was in proper working order. The Tribunal however, could not, on the balance of probabilities, be satisfied that the system had not been in proper working order since 2018. Whilst the Respondent had produced some evidence it was poor in quality. A handwritten note by her carried little weight with the Tribunal. The Tribunal was unaware of who had inspected the system, their level of experience and whether they had stated other points that may not have assisted the Respondent and she had simply omitted them from her handwritten report. She had also submitted some pictures that appeared to be taken in 2018 and showed a red alarm sight. The Tribunal could not, however, assess whether this was a temporary fault or had since been repaired. She submitted that she would be able to submit video evidence in a few days showing the boiler put out water at too high a temperature. For the reasons set out in Para 14, the Tribunal could not delay matters further when the Respondent had already been advised that video evidence could be submitted on the day. No reason was given why she had not submitted video evidence when she had previously been insistent upon it. The Respondent had also been insistent on the CAB notes being provided at the second hearing. At the third hearing, despite them having then been submitted, the Respondent made virtually no reference to them. The Tribunal considered them in any event. They did not substantiate her position in any meaningful way. They simply showed that the Respondent had been to CAB to have them assist her in giving readings to Scottish Power and included some of her correspondence with the Applicant.

24. The Tribunal was also of the view that there were inconsistencies within the Respondent’s evidence. She stated that the system was faulty in that it put out scalding hot water that would burn anyone touching the water. On the other hand she stated that when she took a shower at the Property (despite also stating there was no shower head on the shower) it would send out freezing cold water on her. Her evidence was not consistent throughout.

25. The Tribunal was aware that the storage heating system powered by the boiler within the Property can be a difficult one to operate. It is designed to draw power on a cheaper tariff at night and to release heat out during the day.

At the second hearing the Respondent seemed to indicate that she did not operate the system in the conventional manner and had it switched off for long periods and switched it on when she needed it. If the system is operated in such a manner it will lead to difficulties and higher charges. The Tribunal also noted from an electricity bill that the Respondent had submitted that whilst the charges were higher than would normally be expected for a property of this type she did appear to be on an unusual tariff that was not correct for this type of system.

26. Overall, the Tribunal struggled with the credibility of the Respondent. She was evasive in answering questions, frequently giving answers that gave the information that she wished to be heard, irrespective of what the question was. Even when a "yes or no" question was put to her she simply stated information that she wished to put before the Tribunal rather than answer the question that was asked. She frequently interrupted the proceedings particularly when the Applicant was giving evidence. After much contemplation, and on the balance of probabilities, the Tribunal could not be satisfied that she had provided sufficient evidence to show that the boiler was not in proper working order to any material extent. Whist she had produced some evidence, the quality of it was low and her evidence was inconsistent in places. Accordingly, the Tribunal was of the view that the issues she was facing were potentially as much due to errors on the part of the Scottish Power meter, in the manner in which she operated the system or the fact that this type of system is generally more expensive or a combination of all of the above. It appeared to the Tribunal that there was a strong possibility that she was seeking to withhold the rent to help her address the electricity bill that she had run up rather than because of any fundamental repairs required to the boiler. Even if there had been some substance to her argument that the boiler was not operating correctly, the fact that she had paid no electricity bills at all for over 4 years was an unusual position to put herself in. It was not realistic to look to the Applicant to rectify this matter by withholding rent.

27. The Tribunal then considered the position in relation to the bathroom. Again the original property inspection checklist from 2016 that the Respondent had prepared was of benefit. It did indicate that there were issues with the bathroom at the time of entry and this did lend credence to the Respondent's position. This made reference to the radiator in the bathroom not working, the shower seal leaking and the plug not draining properly in the bath.

28. Little appeared to happen between 2016 and 2019 in relation to the bathroom. The Tribunal enquired of the Respondent why she did not take the matter any further with the Applicant until 2019 when she started withholding rent. The Respondent indicated that she had been prepared to tolerate the position but after several years she felt she needed to take a stand and started to withhold her rent. The Tribunal accepted that a party may tolerate a position for so long and then decide to raise it again as an issue. The Tribunal did consider it somewhat unusual that the Respondent would leave it so long when she appeared to be a fairly particular individual about matters.

29. The Respondent had indicated that the carpet in the hallway was continually soaked as a result of these leaks and that this was apparent to the naked eye. The Applicant submitted that he had had some minor works carried out to the bathroom in the past such as replacing some silicone. However, he had been unaware until August 2019 that the Respondent was still unhappy with the bathroom. The Applicant had written to him on 6 August 2019 to complain about various matters and her letter highlighted a leaking seal/silicone, the shower screen falling and causing injury (as highlighted this is being dealt with in a separate jurisdiction) and the faulty plug. There was no reference in the letter to the carpet in the hallway being wet.

30. The Applicant submitted that he was happy to address any required repairs. He owned a number of other properties and was used to carrying out maintenance. On receipt of the letter of 6 August 2019 he had texted the Respondent on 8 August looking for a time to attend at the Property. This had gone unanswered and on 10 August he delivered a letter to the Property. The letter indicated he was surprised by the issues raised in the letter as he had had no contact with the Respondent for a year. He asked for a time to attend at the Property with an electrician. This letter went unanswered as well and so he wrote on 21 August by special delivery letter indicating that he would attend on 28 August at the Property. He would bring an electrician with him.

31. The Applicant confirmed that he had then attended the Property on 28 August 2019. He had an electrician with him to look at the oven/grill. He had attempted to take access to the bathroom to see what the issues were. The Respondent had, however, refused access to the bathroom. When questioned by the Tribunal as to why she had refused access the Respondent indicated that it was because the notification from the Applicant had made reference to an electrician to look at the oven and therefore, in her view, the notification given was only sufficient to require her to give access to the kitchen and not the bathroom. When the Tribunal indicated to her that such an approach was not helpful if she had a genuine desire to have repairs done, the Respondent then stated that she had not had time to allow any further access as she needed to leave to catch a train to see patients of hers. The Tribunal found her explanation as to why she had refused access lacking a degree of credibility and changed upon being questioned. If the bathroom had genuinely been an issue for her at that stage a reasonable person would have allowed a landlord to take a brief look to ascertain the position as the Applicant had requested. The Respondent could not have known how long the visit by the Applicant was going to take that day and so the fact that when the bathroom was to be inspected she needed to go elsewhere suddenly seemed implausible.

32. The Applicant submitted that he had remained willing to carry out any required repairs but that the Respondent had been unhelpful in arranging access and then matters had been placed before the Tribunal to be resolved. Access had, however, been taken between the second and third hearing and a report had been submitted by a Robbie Cullens for the Applicant advising that there was a leak from underneath the bath that had damaged the bathroom floor. The

bathroom would require to be stripped out and replaced. The Applicant had tried to carry out these works just prior to the hearing but had been refused access by the Respondent. The Tribunal did not place material weight on the fact that the Respondent had refused to allow access just prior to the hearing as the notice period of one week given was relatively short for the extent of the works required.

33. The Tribunal did note that as well as having a relative represent him, Mr Hugh Cullens had another relative prepare the report, Robbie Cullens. Nonetheless, notwithstanding the family connection, the Tribunal did accept the terms of the report as being an accurate reflection of the works required. The report provided a reasonable level of detail and did not attempt to downplay the works that were required. Rather the report highlighted that there was a leak underneath the bath that was damaging the floor underneath and would, in due course, damage other properties in the larger block, of which the Property formed part. It highlighted that the bathroom would require to be stripped out and that the works would take several days. The Applicant was not trying to deny that now that he had been able to get access and identify the issues, that works were required. He accepted that and was keen to carry them out. The Applicant appeared as a credible witness before the Tribunal and overall they accepted his evidence.

34. The Tribunal considered matters. The Tribunal accepted that it appeared that the bathroom was not in the best condition at the present time. One issue, however, was that the Respondent did not appear to have notified or raised any issue with the bathroom with the Applicant for a couple of years until a letter was sent out of the blue on 6 August 2019. That was also the point that she started withholding rent. The Applicant was not given any prior notice that withholding would occur unless repairs were carried out. The Respondent did not appear to be setting the monies aside to pay the rent when the works were completed. Given the length of time that had passed without any correspondence on the need for repairs, the Applicant was entitled to take the view that there was no issue prior to him receiving the letter of 6 August. When the issue was highlighted to him on 6 August he moved quickly to try and inspect the Property. The Respondent, in the view of the Tribunal, had acted unreasonably in refusing him access to the bathroom on 28 August. Her explanation as to why she refused access changed during the course of her submission and lacked credibility. It appeared to the Tribunal that the Applicant was happy to carry out any works that were required and he had tried to do so. In addition, the pictorial evidence submitted by the Respondent was of limited benefit. The pictures were of low quality and taken too close to the walls and fixtures within the bathroom to give the Tribunal a consistent overview of the condition of the bathroom. The Tribunal did note that there appeared to be some mould/damp spotting in some of the pictures. However, in the experience of the Tribunal, this is as often from condensation caused by poor ventilation by tenants as it is a defect in the Property. Whilst there did appear to be a leak within the bathroom that needed addressed, the pictorial evidence from the Respondent did not address this and the Tribunal could not ascertain how recent the leak in the bathroom was. The Tribunal could therefore not properly determine the condition of the bathroom, how much

deterioration was caused by condensation or the actions of the Respondent (if any) or how recent the leak was. On balance, aside from the question of notice and access to the Respondent, the Tribunal could not be satisfied on the evidence before it that a withholding of rent was appropriate.

35. It is an essential element if a tenant is to withhold rent that they allow a landlord access so that the repairs can be made and the rent then paid. It did not appear to the Tribunal that the Respondent had done so and accordingly the Tribunal did not take the view that there had been a valid withholding of rent. No reasonable notice had been provided to the Applicant before rent was withheld. The Respondent had also been difficult in allowing the Applicant to ascertain what repairs would be required and whilst her evidence had gone some way to showing there were repairs required it was not of sufficient quality to meet the threshold on the balance of probabilities.

36. Towards the end of the hearing the Respondent appeared to indicate that she did not now view her case as one relating to withholding of rent but should rather be seen as some form of claim for abatement of rent or compensation for the conditions in which she had had to live. The Tribunal did not take the view that a different basis of claim would have any material impact on their decision. Either way the Respondent would have required to establish that the level of repair merited this and that she had given reasonable opportunity to the landlord to rectify. The same reasons that applied to the Tribunal finding there had not been a valid withholding of rent would apply to an argument for abatement or compensation.

37. Finally, the Tribunal required to consider the amount of the award to be granted in favour of the Applicant. £6000 had been sought at the 2nd hearing At the 3rd hearing the Applicant sought to increase the amount on the day to £7000 as additional arrears had accrued. There is, however, a notification procedure within the Tribunal rules relating to seeking increased amounts which had not been followed. On that basis, the Tribunal was content to restrict the order to the previously sought sum of £6000

38. **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.

Ewan Miller

3 November 2020

Legal Member/Chair	**Date**