Housing and Property Chamber
First-tier Tribunal for Scotland

Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18 of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/EV/19/2279

Re: Property at Glendale Cottage, 2 Small Holdings, Sauchenford, Stirling, FK7 8AP ("the Property")

Parties:

Mr Russell Gordon, Mrs Lesley Gordon, 92 High Blantyre Road, Hamilton, Glasgow, ML3 9HS; Glenside Farm, Plean, Stirling, FK7 8BA ("the Applicants")

Ms Cara Craig, Glendale Cottage, 2 Small Holdings, Sauchenford, Stirling, FK7 8AP ("the Respondent")

Tribunal Members:

Helen Forbes (Legal Member)
Elizabeth Currie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for possession of the Property should be granted against the Respondent

Background

1. By application received in the period between 19th July and 9th October 2019, the Applicants are seeking an order for possession of the Property under grounds 8, 11, 12, 13, 14 and 16 of Schedule 5 of the Housing (Scotland) Act 1988 ("the 1988 Act") and Rule 65 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended. The Applicants lodged a copy of the tenancy agreement, rent summary, supporting statement, copy Form AT2 with evidence of service, copy form AT6 with evidence of service, rent arrears notification, email to Homeless Housing Options, transcript of text messages between the parties, copy correspondence to the Respondent, copy previous Tribunal decision FTS/HPC/EV/17/0480, copy bank statements, and copy section 11 notice.

2. By emails dated 28th and 30th November 2019, the Respondent lodged photographs of the Property and copy transcripts of email conversations between the parties.

3. A Case Management Discussion ("CMD") took place on 6th December 2019. Parties were required to lodge written submissions and evidence prior to a continued CMD.

4. By email dated 14th January 2020, the Respondent lodged written representations, copy pages of a tenancy agreement, Notice of a previous Tribunal (FTS/HPC/RE/18/1962), copy Notice to Quit dated 14th December 2016, copy transcripts of text messages, copy emails between the parties, copy email from Stirling Council, and photographs of the Property.

5. The Applicants lodged written submissions together with inventory and documents comprising copy AT5, tenancy agreement, text message transcripts between the parties, landlord registration information, tenancy deposit information, bank statements, account summary, case law, copy Form AT2 and service, mortgage information, copy Form AT6 and service, copy Notices to Quit dated 3rd August 2017 and 3rd April 2019 together with service information, witness statements and photographs of the Property. These were received by the Housing and Property Chamber on 17th January 2020.

6. A CMD took place on 11th March 2020. Preliminary issues were discussed as follows:

(i) Type of tenancy

There is disagreement between the parties as to whether the tenancy is a short assured or an assured tenancy. The Respondent alleges that she did not receive a Form AT5 prior to the commencement of the tenancy. It was agreed by parties that this matter is not relevant to the grounds in this case. It is a rule 65 case, and the same rules in relation to recovery of possession apply whether it is a short assured or an assured tenancy.

(ii) Identity of Landlord(s)

The Applicants' position is that Mrs Gordon, despite not being on the tenancy agreement, has always been a joint landlord with Mr Gordon and that the Respondent's actions towards her, in contacting her and paying rent to her over the years, mean that she had accepted her as landlord. The Respondent's position is that only Mr Gordon is the landlord, as he is the only party mentioned on the tenancy agreement. Her argument is that any notices which mention Mrs Gordon are invalid, namely notices to quit, Form AT6 and Form AT1.

(iii) **Notice to Quit/Form AT6**

The Tribunal took the view that the Notice to Quit ("NTQ") dated 14th December 2016, which is in the name of Mr Gordon, is the relevant NTQ that has had the effect of ending the contractual tenancy between the parties. Even if the Applicants' argument that Mrs Gordon is a landlord was successful, it would not invalidate the NTQ, as a NTQ can be served by only one owner or landlord. The validity of the Form AT6 is to be considered at the hearing.

(iv) Ground 8

It was agreed that this ground is no longer being insisted upon, as the Respondent paid a sum in advance of the last CMD that brought the amount under that required for a successful challenge on this ground.

(v) Extent of Property

Parties agreed that the definition in section 13 of the Act applied in this case and that the house was let together with other land, and the land should be considered as part of the Property.

7. The case was set down for a two-day hearing to be heard along with cases FTS/HPC/CV/19/2282 and FTS/PHC/PR/20/0480. Parties indicated they would call witnesses at the hearing. Parties were asked to lodge any further written submissions, productions and witness lists 14 days prior to the hearing.

8. The hearing was scheduled for 10th and 11th August 2020.

9. By email dated 2nd August 2020, the Applicants lodged a witness list and notification that they were no longer insisting on Ground 16.

10. By email dated 6th August 2020, the Respondent indicated that she wished the Tribunal to report the Applicants to the Procurator Fiscal for submitting false information in relation to Ground 16 and that the application should be dispensed with and a new application lodged.

11. By email dated 7th August 2020, the Respondent applied for postponement of the hearing due to ill-health and ongoing medical investigations.

12. By email dated 9th August 2020, the Applicants opposed the postponement of the hearing, stating that they had both taken time off work for the hearing, and their witnesses had made arrangements to give evidence. The Applicants were on the brink of financial ruin.

The Hearing

13. The case called for a hearing by telephone conference on 10th August 2020. All parties were in attendance.

Preliminary Matters

(i) Request for postponement.

The Respondent said she had felt unwell after a CMD in relation to another case on Friday 7th August 2020, and over the weekend. Her symptoms included chest pain, and had been ongoing for several months. Although she had previously been signed off work, she was currently self-certifying her sickness. She had been referred by her GP to cardiology and was awaiting an appointment. Asked by the Tribunal how long she expected it would be before she would be fit to take part, she said she hoped it would be weeks rather than months before she had a cardiology appointment. She said she had been advised to avoid stress.

The Applicant, Mrs Gordon, said she was sympathetic to any genuine health concerns; however, this case was having a detrimental effect on everyone. She required to move back into the Property and was about to be made homeless. A conference call should not affect the Respondent's health. Both parties were suffering from health problems. The case had been going on for a considerable length of time. The Respondent was ignoring emails concerning unpaid rent. The Applicant, Mr Gordon, said the case was detrimental to the health of all parties and that the Property was in danger of being repossessed as the rent was not being paid.

The Tribunal indicated that it had considered all the information and submissions. While it was sympathetic to the Respondent's condition, it had to balance the interests of all parties. The case had been ongoing for a considerable length of time and the arrears were high. It was felt that any further delay would cause prejudice to the Applicants. There was no medical evidence of the Respondent's ill health or inability to take part in the hearing. The Tribunal refused the Respondent's application. The Tribunal indicated that the Respondent should inform them if she was feeling unwell and ask for breaks as necessary.

(ii) Respondent's email of 6th August 202

The Tribunal indicated that they would not be making any referral to the Procurator Fiscal in the circumstances, and it was a decision for the Applicants whether or not to withdraw a case.

(iii) Mrs Gordon as joint landlord

The Applicant, Mrs Gordon, made a motion that she ought to be considered joint landlord, citing the doctrine of *rei interventus.* Despite not being included in the tenancy agreement, the Respondent had acted in a way that indicated that she accepted Mrs Gordon as a joint landlord by paying the rent to her account and communicating with her, particularly by text message, regarding the tenancy agreement.

The Respondent said she had only ever contacted Mrs Gordon about an adjacent holiday cottage. She did not accept her as landlord, as only Mr Gordon is named on the tenancy agreement. She paid her rent into the account provided by Mr Gordon. She only later found out it was Mrs Gordon's account, when she saw the name on her bank statements. It was her position that, if the terms of the tenancy were to be altered to include Mrs Gordon as landlord, a Form AT1 ought to have been served upon her.

(iv) Validity of Form AT6

The Respondent submitted that the Form AT6 was invalid because it included Mrs Gordon as landlord.

The Applicants relied upon their earlier submission that Mrs Gordon is a joint landlord, failing which they relied upon the case of *Ravenscroft Properties Ltd v Hall 2001 WL 1479821 (2001)* as authority that an error in a notice does not invalidate the notice. Mrs Gordon said she is entitled, as co-owner of the Property, to serve such a notice, relying for authority upon an excerpt from *Evictions in Scotland* by Adrian Stalker, page 36, paragraph (6), which states that, generally speaking, any person who has title to sue in an action for removing has title to serve a notice to quit. By the same token, as co-owner, she would also be entitled to serve an AT6.

(v) Witnesses

It was agreed that the Respondent did not dispute that she was running a livery business at the Property during her tenancy, and the witnesses did not require to speak to this aspect of the case. Their evidence would be restricted to matters concerning dilapidation of the Property as pertaining to Ground 14.

Responding to questions from the Tribunal, the Respondent indicated that she wished to call Paul Moffat as a witness in respect of Grounds 13 and 14. Although she had not lodged a witness list in advance, it was noted that she had stated at the CMD in March 2020 that she would be calling Mr Moffat. The Applicants had no objection to this.

Ground 14

Witness Evidence for the Applicants

Evidence of Ms Carol Ann McPhail

14. Ms McPhail is a telecare support officer with a local authority. She has been in that position for two and a half years. The witness liveried her horses at the Property from February 2016 to October 2018. She described the stables as ‘smashing’ when she first began to use them. Everything was ‘in fantastic working order’. Gradually she observed that broken items, such as automatic drinkers and fence posts, were not getting replaced or repaired. Automatic drinkers were in full working order when she began to use the livery. Her horse kicked one of the drinkers and it was no longer working. She was told by Mr Paul Moffat, the Respondent’s partner, that the automatic drinkers would not be repaired and she should use another stable or a bucket. The witness did not use the arena, but her daughter used it. It was fine when she first came to the livery. The wall and fencing were fine; they were adequate. She noted that the arena was not being weeded. The surface was occasionally harrowed to level it. The lights in the arena were not working properly. Her father offered to have them looked at by an electrician, but the offer was refused by Mr Moffat. It was impossible to use the arena in the dark. The wall at the back of the stable was coming away and she was concerned her horses would get stuck. Mr Moffat told her the stable wall would not be fixed. The husband of one of the livery clients was a joiner and he patch-repaired the wall.

15. The dung heap was originally emptied regularly by contractors. In time, this stopped, and the dung heap spread into the yard, and the back wall fell down. It was attracting vermin. One of the livery clients had to arrange for it to be emptied and the cost taken off her livery. There was nothing wrong with the fencing when she started using the livery. There was a functioning electric fence on top of the middle fence in the big field for the first year she was there. It was not maintained. The witness and another livery client put up electric fencing in the far away field. Fencing was generally not maintained and fell into poor condition. The gate in the middle field was falling down and she had to prop it up on a couple of occasions. There were 12 horses at the Property, which has 6 acres. This is not enough land for 12 horses. General weeding, rolling and maintenance was not being carried out. The livery clients had to ‘poo pick’ of their own accord as this was not carried out by the Respondent, and the livery clients were not asked to do it.

16. The drains were not 100% free-flowing when the witness came to the livery, but by the time she left, there were inches of stagnant water and a puddle four or five feet wide and four inches deep. She never saw the drains being cleared. She highlighted the drain problems to the Respondent or her partner several times. There was no written livery agreement between the Respondent and the witness. Their agreement was verbal. She often discussed issues with Paul Moffat, the partner of the Respondent.

17. Under cross examination, the witness denied that livery clients were asked to ‘poo pick’ on numerous occasions and were expected to fill a wheelbarrow per week. She said the arena lights were not all not working at the same time. Two bulbs were gone and this cast shadows. The witness said she was unaware of who had responsibility for electric fencing on fields that neighboured land belonging to another. It was her position that her contract was with the Respondent, and she should report any concerns to her. The witness was asked whether the automatic drinkers were all in working order initially. The witness said she could only speak to the drinkers in the stables she had used. She agreed she preferred to use a bucket for one of her horses. The Respondent asked if the witness was aware that the drinkers all had to be turned off because one was not working. The witness described this as ‘nonsense’, saying that at least one drinker was still functional when her livery ended.

Evidence of Mr John Alan Cowie

18. Mr Cowie is a semi-retired, part-time first line manager with thirty-seven years’ service with the Prison Service. Mr Cowie and his wife kept two horses in livery at the Property from October 2016 to July 2019. The witness described the yard as being in excellent condition for the first year that he was there, before it went downhill. It then fell into a sorry state. The decline was rapid and the Respondent and Mr Moffat appeared to have no interest in the yard. He described the standard as going from A to Z, and said it was quite sad to see the decline. The midden was initially emptied regularly. It then grew to three times the size it had been and the back wall collapsed into the neighbouring property. The fencing was good at the start. The posts were good and the wire was tight. Eventually, some Shetland ponies at the livery began to eat the fence posts. There were too many horses in the yard and the grass was getting eaten too quickly. This resulted in the horses and ponies foraging and damaging the fence posts. There were concerns that horses would get caught up in the wire from the fences. Most of his discussions were with Paul Moffat as he was there every day, putting out the horses for all the liveries. The witness offered to fix the fences, as they were concerned about the safety of their horses, but Mr Moffat and the Respondent did not take him up on this.

19. The drains were good for the first eighteen months to two years. The witness’s wife and her friend tried to clean them out. Mr Gordon arrived and asked them what they were doing. A neighbour complained about the drains. The witness reported concerns to Paul Moffat. He was unaware if Mr Moffat or the Respondent attended to matters, but the drains did not improve. Automatic drinkers were fitted. The witness did not know if they were in working order as he used a tap and buckets. The livery clients had to ‘poo pick’ of their own accord. They did not have to do this for the first eighteen to twenty-four months, but did it thereafter. This was not discussed with the Respondent or Mr Moffat. The witness was concerned that the grass was not getting a chance to grow. The witness said his verbal contract was with the

Respondent. He usually paid Mr Moffat the livery fee. He said the place had been pristine at the start. It had gone downhill rapidly, and he should have left sooner, but it was very handy for him. The livery he was now using was more expensive

20. Under cross examination, the witness said he had reported the matter of the Shetland ponies eating the fence posts to Paul Moffat on numerous occasions. Responding to questions about liability for the midden wall, the witness said he would expect the Respondent as the tenant to have responsibility for emptying the midden, and that the wall would get damaged if the midden was overfull. Asked why he left the livery, the witness said it was because it went to the dogs and he felt as if he was contributing to the misery of the owners by continuing to support the place. He said he and Mr Gordon had fallen out in 2011 and had not spoken to each other since, so, although they had the same employer, they were not friends.

Evidence of Mrs Maureen Cowie

21. The witness is a prison officer with twenty-three years' service. The witness and her husband kept two horses in livery at the Property from October 2016 to July 2019. The witness described the condition of the livery as good at the start and said it suited her and her husband well. They had to wait for space at the yard. It was a good yard with good people. All the stables were full. The fences gradually declined as they were not being fixed. There had been electric fencing initially. The witness described replacing electric fencing on the main fence in the middle paddock. The Shetland were eating the fence posts. The posts looked like they had been eaten by beavers. They were rotten and broken. She and her husband offered to fix the fencing. She thought the offer was made to Paul Moffat. The midden was not getting emptied. The witness arranged for it to be emptied and deducted the cost from her livery fees. She reported the problems with the midden to Mr Moffat and he told her to leave it as the Respondent knew someone that would deal with it.

22. The witness said she and a friend tidied and weeded the drain between the wash bay and the horse walker. They tried to unblock it with rods. Mr Gordon came and asked what they were doing. There was muck stuck in the drain and they couldn't clear it. The witness never saw the Respondent or Mr Moffat try to clear the drain. The witness did not use the automatic drinkers. She used buckets and thought no one used the automatic drinkers. The witness did not use the arena but she saw others use it. She said it was fine when she first went to the livery. There was a wee bit of junk in it. The witness said she left the livery because she was concerned about the safety of her youngest horse in case he got caught up in the fencing. She heard that people had been asked to leave the livery and she was worried that she might find it locked one day. The condition of the yard made it impossible to get her trailer into the yard.

23. Under cross examination, the witness said the main concern that made her leave the yard was the safety of her horses, but she said she could give a hundred reasons. She was fed up of being asked by visitors if she was the Respondent. The place was in a state beyond belief and the Respondent appeared uninterested in the place. She said she had not been in the yard for more than a year and was unaware of the current state of it. She could not confirm it was in a significantly better state.

Evidence of Ms Lauren Moran

24. Ms Moran is a police officer with four years' service. She used the livery from January 2017 to December 2018. She saw significant changes in the condition of the yard during that time. When she finally left the yard, she approached Mrs Gordon to pass on her concerns about the yard. The witness said the fencing was good at first but it ended up being inadequate and she and other livery clients had to put up electric fencing to avoid injury to their horses. There was always a puddle around the drain, and stagnant water lying. The dung heap was initially maintained but eventually, the concrete wall at the back caved in. There were vermin in the muck heap. The witness's mother and another person arranged to clear the muck heap and poison the vermin. This issue was raised with the Respondent and Mr Moffat several times. The automatic drinker worked initially but a horse kicked it and it no longer worked. This was brought to the attention of the Respondent and Mr Moffat but it was never fixed and buckets were then used. The arena was initially in good shape. It then became very deep. It was not turned over or harrowed. The tarpaulin membrane began to show through the surface.

25. Under cross examination, the witness said she left the livery because she was moving to England. That did not work out. She conceded that she contacted the Respondent thereafter to ask if she could return short term, if necessary, at short notice.

Witness Evidence for the Respondent

Evidence of Mr Paul Moffat

26. Mr Moffat is a security guard and has been in that position for over nine years. He is the partner of the Respondent and resides at the Property. The witness confirmed he and the Respondent had been using the yard since November or December 2014, before the tenancy commenced in February 2016. The fencing at the yard before the commencement of the tenancy was in poor condition with posts toppling. There was a wobbly post in the middle fence. Mr Gordon said at the start of the tenancy that he would replace the fence, but he only replaced a small part of it between his field and the field next door. Mr Gordon tied bits of electric fencing together. The witness said no one had told him the Shetland ponies were eating the fence posts. He had once seen Mrs Cowie's horse eating a fence post, taking chunks out of it, and backing into the fence. He replaced one fence post.

27. The witness said there was not an automatic drinker in each stable at the start of the tenancy. Only about half of the stables had one. They were now all turned off because there was a concern about a leak. They tend to freeze in the winter and there is not a valve on each one, so they all have to be switched off. The drainage in 2014 and 2015 was not in a good state. There was bad flooding. Both drains were very clogged and one drain was overgrown before the tenancy began. Mr Gordon unblocked the drains prior to the tenancy commencing. There is another small drain that is always choked. Mrs Gordon said they would fix the drain. The arena is now better than it was when the tenancy commenced. Prior to that, it was rarely harrowed. The lights are now all in working order. The arena fencing is now in the same condition as it was at the start.

28. Under cross examination, the witness said he and the Respondent had six horses. They had one when they moved into the Property. There are now five automatic drinkers off the wall. These five were like that at the start of the tenancy. In response to questioning about how often he had rodded the drains, the witness said he had bought rods but they didn't work. He said he had cleared the pot regularly, every couple of months. In response to the question of when he stopped clearing the pot, he said that was a wee while ago, when Mrs Gordon said she was getting the drain fixed. The drain was supposed to be fixed at the start of the tenancy and it had never been right. The witness insisted that the drain was blocked at the start of the tenancy. He said that the arena was being used for turnout at present. This means there are horses in it full time. This has been the case since excavation took place in the field and the grazing was reduced. The excavation finished six weeks ago but the horses are still in the arena. The witness said the electric fencing only worked for about four days after the tenancy commenced. He tried to patch it up but it is now not possible to do that. The witness said the corner of the muck heap wall was down in 2014 and at the start of the tenancy and there were cracks all over the wall. The height of the muck heap was always the same and it always over-spilled. It was the Respondent's responsibility to arrange contractors to empty it. One of the livery clients had arranged to have it emptied. He was unaware that there were vermin in the muck heap.

29. Asked by the Tribunal why a joiner had been refused entry to the Property, the witness said he felt Mrs Gordon had been harassing. He said she could be intimidating and had driven behind him, 'sitting on' his bumper. Asked why he had not reported issues to the Applicants, the witness said he was led to believe all issues would be sorted out, and that Mr Gordon was there often enough and could see the issues for himself.

30. Responding to questions from the Tribunal, the witness said he carried out two to three hours maintenance daily as well as general maintenance, poo picking and chasing the liveries to poo pick. The livery clients were expected to keep the muck heap to a good height, and keep the stables clean and tidy, poo picking once weekly. This is common for a DIY livery yard. Everyone knows what is expected of them. The husband of one of the liveries had repaired the wood at the back of the stable wall. Another livery client had

arranged an electrician to see to the arena lighting. The witness spoke to the electrician and asked for a price. The electrician did not get back to him.

31. Under re-examination, the witness said he had never refused a joiner access to the Property.

32. The hearing was adjourned to the following day, 11th August 2020.

11th August 2020

33. A further request was received from the Respondent to postpone the hearing due to ill-health and worsening of symptoms. The request was supported by a GP letter dated 10th August 2020 and stating: *On soul and conscience have been asked by the above patient to exclude her from giving evidence tomorrow due to anxiety/chest pain/high heart rate. As I was only asked today to provide the letter I have not had the opportunity to review her in person. The symptoms have been reported by the patient.*

34. The Tribunal considered the request by the Respondent, including all the information provided at the start of the hearing. The Tribunal was sympathetic to the Respondent's case, however, it noted that the medical letter did not state that the Respondent was unfit to continue with the hearing, rather that she had self-reported her symptoms and asked the GP to excuse her. She had not been seen by the GP, and he did not refer to any ongoing issues or investigations that might cause concern. The fact that it was a telephone hearing was taken into account, and the Tribunal felt it was likely to be less stressful than a hearing in person. The Respondent did not have to travel and she was able to participate from her home. It was open to the Respondent at any time to inform the Tribunal if she was struggling to continue. Again, the Tribunal took into account the length of time the case had been ongoing, the level of arrears said to be due, and the likely prejudice to the Applicants of any further delays and the impact upon the health and well-being of the Applicants. The application was refused. The Respondent was informed again that she could ask for a break at any time if she was feeling unwell or if she required a rest.

Ground 14

Submissions by the Applicants

35. The Applicant, Mrs Gordon, referred the Tribunal to the Applicants' photographs 1-3, 5-7, 13-19 and 21-26, all of which had been taken in December 2019, and were said to indicate the decline in the condition of the yard and stables over the time since the Respondent's tenancy commenced. The issues referred to by Mrs Gordon included a leaking trough affecting runaway soak-off for septic tank; damaged fencing and gates; unmaintained electric fencing; overgrowth of weeds in several areas including hard standing obscured by weeds; rubbish kept in the dog kennel including white goods and basketball net, and an overgrowth of grass and weeds; trees overgrown and

obscuring the fence; muck heap spilling out of its original footprint and spreading across yard, and grass growing on the muck heap; drains blocked and covered with an overgrowth of weeds; horse walker area not maintained with a failure to clear mud from the stone ground, allowing grass and weeds to grow; weeds growing in outdoor arena, which might lead to damage to the underlying membrane; lack of maintenance of the arena and continuing use of it for turning out horses

36. Responding to questions from the Tribunal regarding photographs from the start of the tenancy, Mrs Gordon said there were none. She referred to photographs 89-94, which were labelled 2017, and photographs 95 and 96, which were labelled 2016. The photographs from 2017 were said to indicate that the fencing was in better condition at that time. The photographs showed the yard and horse walker with less weed and grass overgrowth, the dog kennel in a tidy condition, and a reduced muck heap that was within the original footprint.

37. The Applicants said that the muck heap required to be emptied three times a year. By the time the 2019 photographs were taken, the liveries had stopped and the muck heap should have been smaller. Also, there ought not to be grass on it from summer growth. The Tribunal pointed out that Mr Gordon had mentioned in an email to the Respondent dated 13th December 2015 that he would be carrying out repairs to the muck heap before the tenancy began. Mr Gordon said he had repaired the back wall along with a local tradesman within the first year of the tenancy.

38. The Applicants said they replaced two fence posts and a piece of metal wire during the first summer of the tenancy. Repairs had also been carried out to the roof of the garage and the stable. The stable guttering had not been maintained. It had been damaged by horses. There had been an infestation of mice due to rubbish kept behind the kennels.

39. Responding to questions from the Tribunal as to the maintenance of the arena expected from the Respondent, Mrs Gordon said they had left harrows for the use of the Respondent. The Respondent knew what was expected. Maintenance such as weedkilling is usually carried out from March to October, which would ensure the place was clean and weed-free over the winter. On a recent visit to the yard, Mrs Gordon found it in a terrible state with weeds, including ragwort.

40. The Applicants said that access was denied by the Respondent and they could not carry out annual checks. They once went to the Tribunal to get access to carry out an inspection, and the Respondent refused to accompany Mrs Gordon during the inspection. The Respondent failed to notify the Applicants of repairs and problems, with the exception of a repair required to the shower in the house. The relationship between the parties deteriorated towards the end of 2016. This coincided with attempts by the Applicants to recover possession of the Property. The Respondent had refused to engage with an electrician and had blocked the electrician's telephone number.

41. Mr Gordon had sent a letter to the Respondent outlining his concerns about the Property and asking for access by email and recorded delivery, dated 28th July 2017 (Applicants' production 10). He received no response.

42. The Applicants said it is going to cost a significant amount to address the condition of the outdoor areas and stable. The Respondent would not discuss the issues with them, even at the time of a Tribunal member attending to gain entry. The Applicants had to step back eventually as they were being accused of harassment.

Submissions by the Respondent

43. The Respondent said that the muck heap was the same now as it was at the start of the tenancy. It had always over-spilled onto the yard. It was not emptied before the tenancy commenced. The Respondent disputed Mr Gordon's testimony and said he had promised to rebuild the back wall and this had never happened. The Respondent often had to prop the wall back up until this was no longer possible. Mr Gordon said he would get a JCB in to top up the hardcore and this was never done. The stable roof repair by Mr Gordon was not adequate, and Mr Moffat had to attach felt at one stage. The garage roof was never repaired. The yard has always looked bad in the winter time. It is a difficult yard to keep in the winter, when weedkilling is impossible. The Respondent, Mr Gordon, had said that at the start of the tenancy. It is easier to get on top of it in the spring. If it was seen today, it looks very different from the photographs taken in December 2019. All livery clients had responsibility for poo picking. They were all aware of the routines. Some did more of this than others.

44. The dog kennel area was messy at the start of the tenancy. The Respondent accepted that she had stored a fridge freezer and basketball net there. Problems with sewerage had prevented access to the area to clear it. Two previous tenants had left rubbish in the outbuildings. The Respondent disputed that photographs numbers 95 and 96 were taken in 2016. They were not an accurate reflection of the layout at that time.

45. The drain in front of the wash bay always had a large puddle in the winter. The photograph number 19 showed the puddle was quite small and not the large stagnant puddle referred to by the witnesses. The drains were always problematic, even before the start of the tenancy. There was also flooding from a neighbour's property.

46. The Respondent said the membrane in the arena is not burst. The fencing and wooden boards around the arena are inadequate for the level of material forming the floor of the arena, and the boards were split before the tenancy commenced. The hard core in the yard has been worn away by the number of vehicles that access the yard. Much of the yard is not hard core – it is dust.

47. Responding to questions from the Tribunal comparing photographs 18 and 92 (horse walker area), the Respondent said number 92 was taken in the winter, when it is difficult to deal with weeds, and there is flooding.

48. Responding to questions from the Tribunal regarding the evidence of the four witnesses for the Applicants that there had been a significant decline in the condition of the yard and associated areas, the Respondent said their evidence was untrue and she did not know why they had given this evidence. She suggested they might be unhappy to be told they had contributed to some of the issues. She said they are all friendly with one another. The evidence about the fencing was untrue. The evidence that the Shetland ponies were eating the fence posts was completely false. There were lots of rotten posts at the start of the tenancy. The electric fencing was never operational, except for one area with a neighbouring fence. Mr Gordon had said he would replace areas of fencing and the middle fence posts, and he did not do that. It became impossible to replace the fencing, but repairs have been carried out.

49. The Respondent referred to her photographs. Numbers 16-19 showed rotten fence posts. Number 22 was taken in 2014 and showed damage to the wooden fence. Numbers 20 and 21, taken in 2019, show that the Respondents have replaced fence posts.

50. The Respondent denied blocking the electrician and said that he came and carried out works. It was not true that she had not notified the Applicants of concerns. She had contacted Mr Gordon multiple times by telephone and email and he had not responded. She had to contact Environmental Health about sewerage and septic tank problems and they contacted Mr Gordon, and they did not always get a response from him. Access was not denied to the Applicants; they sought access through their solicitor.

51. The Respondent said the state of the yard is good at the moment. She has been attempting to keep on top of ragwort, which has to be pulled up by the roots and burned. It has always been a problem in the summer.

52. The Tribunal asked the Respondent about the letter dated 28th July 2017 (Applicants' production 10). The Respondent said she had not received this letter, and had only become aware of it when the applicant was lodged with the Tribunal.

53. The Tribunal asked the Respondent if she believed she had complied with clauses 8 (a) and (b) of the tenancy agreement, namely to keep the property clean and properly aired and to keep any garden ground, stables and stable yard in a neat and tidy condition; and to maintain the outdoor riding arena and stables and grazing land to same condition as at start of lease. The Respondent said she believed she had done so. As for Ground 14, there had been no acts of neglect. The standard of care taken of the stables and land at the Property was the same as had always been carried out. It currently looks

good. It was not reasonable of the Applicants to expect the Respondent to carry out repairs.

Response of Applicant

54. Mr Gordon accepted that the photographs said to have been taken in 2016 may not have been taken at that time.

Ground 13

The Applicant's case

55. The Tribunal asked the Applicants if the statement in their application was correct, namely that they had only recently discovered that the Respondent was running a business from the property, as it seemed from the evidence and the productions that they could not fail to be aware that there were ongoing livery clients. Mr Gordon said the statement was not correct, and the word 'recently' was the wrong word to use. He had always been aware that the Respondent was running a livery business. She had inherited livery clients when she took over the Property. However, the Applicants had been very clear with the Respondent from the start of the tenancy that she was expected to end the livery arrangements within four or five weeks and use the stables and yard for her own ponies. She was not permitted or expected to take on new livery clients.

56. Responding to questions from the Tribunal about the emails lodged by the Respondent dated 17th and 27th August 2016, which purport to be emails from Mr Gordon to the Respondent, mentioning the livery business, continuity of service after the Respondent's departure, and stating that Mr Gordon may organise more liveries to come after 1st October, Mr Gordon said he had not sent emails in those terms. It was his position that the Respondent had falsified the emails.

57. The Applicants explained the position in relation to livery clients, saying they were sub-tenants of the tenant, and would normally transfer with the tenancy; however, the Respondent had been told to end their sub-tenancies.

The Respondent's case

58. It was the Respondent's submission that she had not wanted to take on livery clients but she took on the tenancy and the livery clients to avoid someone else taking it on. The understanding between her and the Applicants was that the livery would continue and no clients were to be moved on. Some of the livery clients had been there with the two previous tenants. She felt there was almost an obligation that she would carry on with the business, as that was what previous tenants had done. It was her position that, if the Applicants did not want her to run the business, they should have ensured vacant possession before her tenancy commenced. They were aware of the livery business throughout.

59. The Respondent pointed out an inconsistency in that both Applicants had stated that they had learned lessons because previous tenants had not looked after the place, yet they were saying that things were perfect when she moved in.

60. The Respondent denied altering the emails of 17th and 27th August 2016, saying she wouldn't know how to do that, and offering to make the original emails available to the Tribunal.

61. The Respondent said she eventually asked the livery clients to leave as there was no money to be made from the livery and it was hard work. Some of the clients were disgruntled about being asked to leave.

Evidence of Mr Paul Moffat

Examination in Chief

62. Mr Moffat gave evidence that there were eight livery clients when the tenancy commenced. They had all been there in 2015. He was not aware of any conversations with the Respondents concerning the removal of the livery clients, or that the Property was for the sole use of the Respondent. It was his understanding that the Respondent could continue with the livery and get new clients if she wished. He had a conversation with Mr Gordon concerning the liveries at the time that Mr Gordon first asked the Respondent to leave in the summer of 2016. It was his evidence that Mr Gordon had asked him if the liveries would be staying after the tenancy ended. There had also been a letter from Mr Gordon after the Respondent was asked to leave, requesting all the details of the livery clients.

63. Under cross examination, the witness said the stables were not full during the Respondent's tenancy.

Grounds 11 and 12

Applicant's submissions

64. Mrs Gordon referred the Tribunal to production D21, a rent statement from 1st January 2017 to 6th November 2019, with an outstanding balance of £4,480 in rent arrears. The rent was initially £1200 and it was due on the 1st of the month. The Respondent had paid her rent on time prior to December 2017. No rent was paid for the first three months of 2018. From 1st April 2018, the rent was almost always paid late, and on three further occasions, no rent was paid. The Respondent did not notify the Applicants of the reason for the late payment. It was only at a case management discussion in December 2018 that the Respondent said she had been withholding rent because of repairs. The rent was increased from March 2019 to £1500 by serving an AT2 notice.

65. Just before the case management discussion in March 2020, the Respondent paid a sum that brought the arrears down to less than three months rent outstanding, so that Ground 8 could not be relied upon. This was the second time the Respondent had done this.

66. Mrs Gordon referred to a recent rent statement showing the rent paid throughout the tenancy. The arrears are now £12,880, as no rent has been paid since 1st April 2020. Mrs Gordon said she appreciated that people may have difficulty paying their rent in the current climate, but tenants were encouraged to engage with landlords if they were having difficulty and the Respondent had not done this. Mrs Gordon had emailed the Respondent every month to ask why the rent had not been paid. She had not received any response.

67. Mrs Gordon pointed out that the Respondent actually paid her rent in full in early 2017, during a time when there were problems with sewerage and the septic tank. There had been no problems with the septic tank prior to the Respondent's tenancy and a report had shown the problems were due to items being flushed by the Respondent.

68. Mrs Gordon said the Respondent had never contacted her to say she was withholding rent. Any time there were concerns, the Applicants addressed them. The Applicants had tried to gain entry to assess the Property several times and entry was refused by the Respondent.

The Respondent's case

69. The Respondent said she did accept the sum of £12,880 was outstanding, as she does not accept the validity of the AT2 notice that purported to increase the rent from £1200 to £1500 from March 2019. Leaving that issue aside, she said she had withheld rent on five occasions due to problems with sewerage at the Property. She had notified Mr Gordon of this but none of the repairs were carried out. Mr Gordon would say he was sending someone to carry out work, but it didn't happen. In December 2018, the sewerage problems were so bad, she had to leave the Property and stay in a hotel. She had to pay for flooring repairs within the Property. She said she may not have told Mr Gordon that she was offsetting the cost of the repairs against the rent, but she told him she was withholding rent. Responding to questions from the Tribunal, the Respondent was unable to quantify the cost of the repairs she had paid for, saying that Mr Moffat carried out some of the repairs.

70. It was the Respondent's position that she may have been persistently late in paying her rent, although she disputed that she had ever been told that it was due on a particular day. She believed the rent was not lawfully due, as she had been informed by Stirling Council's Housing Options Team that Mr Gordon was not a registered landlord, and she did not have to pay rent. She withheld the rent for January, February and March 2018 for this reason.

71. Responding to questions from the Tribunal, the Respondent said she took legal advice on this issue and was told an argument could be made that the rent was not lawfully due, and it was open to interpretation. There had been no mention by Stirling Council of a Rent Penalty Notice being required.

72. The Respondent said she had withheld rent from April 2020 due to repairs required at the Property. Her health and the furniture within the Property had been affected. She said she had informed Mr Gordon by email and recorded delivery letters that she was withholding the rent, and that she had placed it in a separate account and would pay when the repairs were carried out. The recorded delivery letters had come back undelivered. A contractor hired to carry out excavations by Mr Gordon had severed an electricity cable and there were holes in the fields that were dangerous. She had to pay for extra bedding and feeding for the horses. She had kept the £6000 rent in a separate account.

73. Asked why she had not lodged copies of her correspondence to Mr Gordon with the Tribunal, to evidence that she had informed him of the issues and the withheld rent, the Respondent blamed her recent ill-health.

74. The Respondent agreed that she now accepted that the rent withheld because of Mr Gordon's status was lawfully due, despite Mr Gordon not being a registered landlord at that time; however, she had been entitled to believe it was not lawfully due at the time, given the advice received. The rent withheld due to repairs was not lawfully due. Even if Grounds 11 and 12 were established, the Respondent's reasons for withholding rent should be taken into account.

Response by the Applicants

75. Mr Gordon said categorically he had not received any notification about repairs during the tenancy except in relation to a shower. The Respondent had not provided any receipts for work that she had arranged. He said he lives three miles away from the Property and it would not be difficult to contact him. If he had received correspondence, he would have dealt with it. Nothing had been received regarding the unpaid rent from April 2020 onwards. He had been communicating very well with Environmental Health about sewerage.

Reasonableness

Submissions by the Applicants

76. Mrs Gordon referred to the paper apart lodged with the application. She required the Property for herself, her son and his family. She referred to an offer that she described as more than reasonable made to the Respondent in March 2018, following the Respondent stating that she was keen to move out. The Applicants offered to: (i) not pursue the rent arrears of £3600; (ii) pay up to £750 deposit on a new property; (iii) pay the first month's rent on a new property; and (iv) return the deposit of £1200 regardless of any damages. In

April 2018, they offered a further six months to the Respondent to find alternative accommodation and said that her ponies could remain at the Property for a further period of three months. Furthermore, their solicitor, who sits on various housing committees had offered assistance to the Respondent in finding social housing. The Respondent did not respond to the offers.

77. Mr Gordon said he had always tried to do the right thing by the Respondent. The situation has had a terrible impact on him, contributing to the end of the Applicants' marriage, to his mental health and his financial position. He said he could not take any more.

Submission by the Respondent

78. The Respondent said the Applicants had been trying to make life more difficult, in order to make her leave. She is keen to leave the Property and has been liaising with Stirling Council in this regard. She said Multiple assessments, including occupational therapy, have been carried out, and, prior to the Covid 19 pandemic, the family were at the top of the housing list and expected to get accommodation. However, since the pandemic, the options have reduced, as only homeless people are being housed, and many of the properties that were available are no longer available. She had spoken to the housing manager this morning and nothing was available. She is concerned that, if she was made homeless by eviction, the family would be housed in temporary accommodation. She has three children, two of whom are disabled. One of the children requires intervention that could not be carried out within temporary accommodation.

79. The Respondent said that it was difficult to obtain a private let that would suit the family as well as the Property has suited them, given it is almost all on one level and has an accessible shower.

Findings in fact

80.

(i) The Property, which comprises a dwelling-house and a stable yard with associated buildings, fields and arena is registered in the Land Register for Scotland under Title Number STG4101. It is in the joint ownership of the Applicants. The Applicants are joint mortgage holders.

(ii) Lesley Gordon became a registered Landlord with Stirling Council on 24th December 2012.

(iii) Russell Gordon became a registered Landlord with Stirling Council on 7th December 2017.

(iv) Russel Gordon entered into an agreement purporting to be a short assured tenancy agreement with the Respondent commencing on 1st February 2016 at a monthly rent of £1200.

(v) At the time of the commencement of the tenancy, the Respondent inherited livery clients as sub-tenants.

(vi) The Applicants were aware that the Respondent inherited livery clients as sub-tenants.

(vii) The Respondent kept her own ponies at the Property.

(viii) The Respondent paid her rent, as instructed, into a bank account held by Lesley Gordon. From the start of the tenancy to December 2017, the Respondent paid her rent prior to, or on the 1st of each month.

(ix) From February 2016, the Respondent entered into verbal agreements with further livery clients to livery their horses at the Property.

(x) The Applicants were aware that the Respondent had arranged further livery clients at the Property.

(xi) In or around August 2016, Russel Gordon intimated to the Respondent and her partner that he wished to recover possession of the Property. The relationship between the parties declined thereafter.

(xii) On 14th December 2016, Russell Gordon served a Notice to Quit on the Respondent, requiring her to remove on 30th April 2017. This notice terminated the contractual tenancy between the parties.

(xiii) In early May 2017, the Respondent corresponded by text message with Lesley Gordon regarding sewerage and septic tank concerns.

(xiv) By letter dated 28th June 2017, Russell Gordon wrote to the Respondent informing her of areas of concern within the Property, including weeds, inoperative stable guttering, lack or repairs or maintenance to field fencing, blocked drainage, and weeds and lack of grading in the arena that might damage the terrain membrane. He asked for access to the Property for inspection. The letter was sent by recorded delivery on 6th July 2017. No response was received.

(xv) On 8th August 2017, the Applicants served a Notice to Quit dated 3rd August 2017 on the Respondent requiring her to remove from the Property on or before 31st October 2017.

(xvi) The Respondent did not pay rent in January, February and March 2018.

(xvii) On 10th and 16th April 2018, the Respondent paid her monthly rent plus a sum towards the rent arrears that brought the outstanding sum below three months of rent arrears, thus avoiding a finding in terms of Ground 8 of the 1988 Act.

(xviii) On 16th April 2018, a Tribunal hearing took place (FTS/HPC/EV/17/0480) at which the Tribunal was informed that agreement had been reached and the Respondent was seeking alternative accommodation.

(xix) Lesley Gordon sent regular text messages to the Respondent regarding delay and lack of rent payments. The Respondent did not respond.

(xx) On 15th August 2018, the Applicants served a Form AT2 Notice, in terms of section 24(1) of the 1988 Act, dated 13th August 1988 on the Respondent to increase the rent to £1500, to take effect from 17th February 2019. The Notice described both Applicants as landlords.

(xxi) The Respondent took the view that only Russel Gordon was her landlord and the Form AT2 Notice was not, therefore, valid.

(xxii) From 1st September 2018, the Respondent was often late in paying the rent.

(xxiii) On 17th September 2018, the Applicants served Notice to Quit and a Form AT6 Notice, in terms of section 19 of the 1988 Act, both dated 13th September 2018 on the Respondent. The Form AT6 informed her of their intention to raise proceedings for possession under Grounds 8, 11 and 12 in Schedule 5 of the 1988 Act.

(xxiv) The Respondent did not pay any rent in March, September and December 2019.

(xxv) On 4th April 2019, the Applicants served Notice to Quit and Form AT6 Notice, in terms of section 19 of the 1988 Act, both dated 3rd April 2019 on the Respondent. The Form AT6 informed her of their intention to raise proceedings for possession under Grounds 8, 11, 12, 13, 14 and 16 in Schedule 5 of the 1988 Act.

(xxvi) On 6th November 2019, the Respondent paid a sum towards the rent arrears that brought the outstanding sum below three months of rent arrears, thus avoiding a finding in terms of Ground 8 of the 1988 Act.

(xxvii) The Respondent did not pay rent from April to August 2020.

(xxviii) The Respondent has failed to keep the garden ground, stables and stable yard in a neat and tidy condition.

(xxix) The Respondent has failed to maintain the outdoor riding arena and stables and grazing land to the same condition as at the start of the lease.

(xxx) The failure of the Respondent and Paul Moffat to maintain the stables and outdoor areas constitutes neglect and default, and has led to deterioration of those areas.

Determination and Reasons for Decision

81. The Tribunal took account of all the documentation provided by parties and the oral submissions and evidence led on behalf of both parties.

Mrs Gordon as joint landlord

82. The Tribunal did not find that an argument of *rei interventus* had been made out. It was noted that an email dated 11th September 2018 (Respondent's production 3) from the Applicants' solicitor to the Housing and Property Chamber states '*The title to the property is in joint names albeit the tenancy agreement is in Russell Gordon's name only. He has entered into that agreement on behalf of both parties with his wife's authority*.' It was clear to the Tribunal that only Mr Gordon was intended to be the landlord at the time of entering into the tenancy agreement, and this position was reinforced by the solicitor's letter in 2018. Although the Respondent contacted and responded to Mrs Gordon on occasion, and paid her rent to Mrs Gordon's account, the Tribunal was not persuaded that the Respondent had, by her actings, accepted Mrs Gordon as her landlord, thus curing any defect in the tenancy agreement.

Validity of Form AT6

83. The Tribunal considered section 19 of the 1988 Act. It provides that the Tribunal shall not entertain proceedings for possession of a house let on an assured tenancy unless the landlord or joint landlords has served on the tenant a notice in accordance with the section, in the prescribed form. The notice in this case was served by the landlord, Russell Gordon, but Lesley Gordon's name was included as landlord. The Tribunal considered whether the formal requirements for validity of the notice were met. The notice was in the prescribed form and contained all the necessary information. There was no error in the content of the notice. The notice fulfilled the function it was meant to perform. The Tribunal considered that the inclusion of Mrs Gordon's name in the notice did not go to the fundamental validity of the notice. Therefore, the Tribunal found the notice to be valid.

Ground 14

84. Ground 14 provides:

The condition of the house or of any of the common parts has deteriorated owing to acts of waste by, or the neglect or default of, the tenant or any one of joint tenants or any person residing or lodging with him or any sub-tenant of his; and, in the case of acts of waste by, or the neglect or default of, a person lodging with a tenant or a sub-tenant of his, the tenant has not, before the making of

the order in question, taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant.

In this Ground, "the common parts" means any part of a building containing the house and any other premises which the tenant is entitled under the terms of the tenancy to use in common with the occupiers of other houses.

85. The Tribunal found Ground 14 to be established. The condition of the outdoor areas and stables have deteriorated owing to acts of neglect and default of the Respondent and Paul Moffat, who resides with her. The Respondent was required, in terms of clauses 8(a) and (b) of the tenancy agreement to keep the garden ground, stables and stable yard in a neat and tidy condition, and to maintain the outdoor riding arena and stables and grazing land to the same condition as at the start of the lease. The Respondent has failed to do that, and this has led to a deterioration in the condition of the stables and outdoor areas.

86. The photographs taken in December 2019 showed considerable disrepair in the fencing, excessive spillage from the muck heap, and overgrowth of weeds in the outdoor areas, including the drains and the dog kennel. Although the Tribunal would have preferred to see photographs taken at the start of the tenancy, for the purposes of comparison with those taken in December 2019, the Tribunal found all the witnesses for the Applicants to be credible, reliable and compelling in their evidence that the condition of the outdoor areas and stables had declined markedly during the time they were livery clients, which was within the tenancy of the Respondent. Ms McPhail was there from February 2016, when the Respondent's tenancy began. Photograph 92 showed the condition of the horse walker in 2017. Its condition had deteriorated considerably by the time it was photographed in December 2019 (photograph 19). The failure of the Respondent and Paul Moffat to maintain the electric fencing led to damage by the horses and deterioration of the wooden fence posts. They failed to maintain the automatic drinkers and keep the arena lights in working order.

87. The Tribunal considered that there may have been underlying issues with the drains that made maintenance difficult, and existing issues with the wall at the back of the muck heap; however, it was incumbent upon the Respondent to bring ongoing problems to the attention of the landlord throughout the tenancy. When asked why problems had not been brought to the attention of the landlord, the witness, Paul Moffat, stated that Mr Gordon was there often enough and could see the problems for himself. The Tribunal found that the failure of the Respondent and Paul Moffat to bring issues of concern to the landlord's attention constituted neglect and default.

Ground 13

88. Ground 13 provides:

Any obligation of the tenancy (other than one related to the payment of rent) has been broken or not performed.

89. The Tribunal did not find Ground 13 to be established. The Tribunal found that the Applicants were aware that the Respondent was running a business from the Property. Even if the disputed evidence that they asked the Respondent to cease running a livery at the start of the tenancy was true, they did not take steps thereafter to ensure that she ceased running a business, thereby acquiescing in her actions.

90. The Tribunal did not make any findings in relation to the veracity of the emails of 17th and 27th August 2016.

Ground 11

91. Ground 11 provides: *Whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due.*

92. The Tribunal found this ground to be established. The Respondent has persistently delayed paying rent which has become lawfully due. The Tribunal considered that the Respondent ought to have taken further and proper advice before withholding rent and jeopardising her tenancy in January, February and March 2018, because of the failure of Russell Gordon to register as a landlord. The Respondent went on to pay the rent in April 2018 in order to avoid eviction under Ground 8, thus somewhat undermining her argument that the rent was not lawfully due, an argument that she continued to make as recently as December 2019.

93. The Respondent persistently delayed paying rent from 1st September 2018, and failed to make payments of rent on 1st March, 1st September and 1st December 2019. The Tribunal was not persuaded by her claim that there was no specific date on which rent was due. The tenancy commenced on the 1st of the month; rent thereafter was due in advance of, or on, the 1st of the month, a position that she maintained for the first year of her tenancy. The Tribunal was not persuaded that the reason for delaying payment of rent during 2018 and 2019, and failing to make payment of some rental payments in 2019, was due to the Applicants' failure to carry out repairs, except in the case of repairs to a shower on an unspecified date. No documentary evidence to support the Respondent's claim was lodged with the Tribunal and no good reason was given as to why copy letters and emails she claimed to have sent to Russell Gordon regarding repairs and withheld rent were not lodged.

94. The Respondent has persistently delayed paying rent from 1st April 2020 to the present day. The Tribunal was not persuaded by the Respondent's evidence that she had notified Russell Gordon that she was withholding rent due to repairs required. Again, no documentary evidence of this was provided to the Tribunal.

Ground 12

95. Ground 12 provides: *Some rent lawfully due from the tenant—*

(a) is unpaid on the date on which the proceedings for possession are begun; and
(b) except where subsection (1)(b) of section 19 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings.

96. The Tribunal found this ground to be established. Subsection (1)(b) of section 19 of the 1988 Act does not apply. Rent lawfully due from the Respondent was unpaid on the date on which notice was served and on the date on which proceedings for possession were begun.

Reasonableness

97. The grounds established, namely Grounds 11, 12 and 14 are discretionary grounds. In terms of section 18(4) of the 1988 Act, the Tribunal must be satisfied before making an order for possession that it is reasonable to do so.

98. The Tribunal took into account all the relevant circumstance affecting the interests of parties including their conduct and any possible hardship. The outstanding arrears, as calculated by the Applicants, amount to £12,880. The Tribunal noted that £5400 of this sum is in dispute due to the issue of whether or not the Form AT2 is valid, which will be addressed in the rent arrears case FTS/HPC/CV/19/2279. In any event, the outstanding sum is considerable and the case has been ongoing for over a year. The conduct of the Respondent in delaying and failing to pay rent lawfully due, and allowing arrears to accrue, has caused considerable financial and personal hardship to the Applicants.

99. The Applicants made a generous offer to the Respondent in the past, which was ignored. The Respondent's conduct in failing to communicate her reasons for withholding rent has caused the Applicants distress and hardship. The Respondent's failures in relation to the condition of areas of the Property is likely to cause hardship to the Applicants in rectifying the condition.

100. The Tribunal considered the personal circumstances of the Respondent and any likely hardship caused by granting of the order. The Tribunal took into account the considerable concerns of the Respondent in relation to her children's disabilities and the possible practical difficulties of dealing with those disabilities in temporary accommodation. It is not at all certain that the Respondent and her family will require to reside in temporary accommodation. If they are so required, they may find the temporary accommodation is suitable. They may well be allocated a permanent property if the order is granted. The local authority is already involved in trying to source suitable housing, the occupational therapy service is involved, and assessments have been carried out. In any event, the Tribunal found that it would not be fair to the Applicants to put matters on hold until suitable housing is found.

101. Taking all the circumstances into account, the Tribunal considered that it was reasonable to grant the order for possession of the Property against the Respondent.

Right of Appeal

102. 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.

Helen Forbes

Legal Member/Chair

11th August 2020
Date