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/19/1692

Re: Property at Laurenstone, Westown, Errol PH2 7SU("the Property")

Parties:
Mr Dean Thomson, 3 Cox Street, Dundee DD3 9HA ("the Applicant")

Mr Derek McLeod, c/o MML Legal, 45 King Street, Perth PH2 8JB ("the Respondent")

Tribunal Members:

George Clark (Legal Member/Chair) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") upheld the Applicant's complaint that the Respondent had failed to comply with Clause 24 of a Tenancy Agreement between the Parties dated 28 January 2016 and made an Order for Payment by the Respondent to the Applicant of the sum of £100. The Tribunal did not uphold any other aspect of the Applicant's complaint.

Background

1. By application, received by the Tribunal on 26 August 2020, the Applicant sought an Order for Payment by the Respondent to the Applicant of the sum of £10.343.70 by way of abatement of rent and damages for stress and inconvenience in the sum of £5,000 or such other amount as the Tribunal should deem fit.

2. The application was accompanied by a copy of a Tenancy Agreement between the Parties, commencing on 28 January 2016, and amended defences in relation to another case (Tribunal ref: FTS/HPC/CV/19/0512) and the Applicant's agent advised that these defences formed the basis of the present

application. In the other case, the Tribunal had made an Order for Payment against the present Applicant in respect of unpaid rent, the sum being £10,343.70. The Applicant was alleging breaches by the Respondent of a number of clauses in the Tenancy Agreement, namely Clauses 22, 23, 24 and 27 and also breaches of the Respondent's common law duties.

Summary of Application

3. The Applicant deliberately stopped paying rent on the basis of significant defects within the Property and the Respondent's refusal/delay to effect repairs. The monthly rent was £900 which was significantly above average, entitling the Applicant to a higher standard of property. The Respondent was contractually bound to provide the Applicant with a property that was wind and water tight, lock fast and fit for purpose. The Respondent failed to do so. As a result, the Respondent was in material breach of contract and the Applicant was entitled to withhold rent. Clauses 22, 23, 24 and 27 of the Tenancy Agreement broadly relate to the first four elements of the repairing standard. Failure to comply with the repairing standard is not of itself a breach of contract and the remedy for a tenant is to apply to the Tribunal for a Repairing Standard Enforcement Order, but the effect of including these clauses in the lease is that the landlord's obligation to repair is an express contractual obligation, breach of which entitles a tenant to seek contractual remedies, irrespective of whether an application is made to the Tribunal. Repair and Habitability are also implied into leases at common law.

4. On the date of entry, an electrician was still finishing off the smoke alarms. He told the Applicant that the Property needed a full rewire and that there were three/four pages of recommendations regarding the electrics. There were constant problems with the electrics during the Applicant's tenure and eventually there was no electricity to power the lights from mid-December 2016. Only two bedrooms at the end of the Property had working lights. As a result, the Applicant and his family had to plug in lamps all around the Property. None of the outside lights worked, which was extremely hazardous especially in the winter when it was pitch black. At least four or five electricians visited but could not get to the bottom of the issue. It was five months before an electrician eventually got the lights working, but various issues with the electrics continued. One day the Applicant went to turn on the consumer board in the garage but as soon as he did it had sparks and smoke coming from it. The faults had existed at the commencement of the lease. The Respondent had breached his obligations under Clause 24 of the Tenancy Agreement and his common law obligations.

5. The flooring in the hall, livingroom, kitchen and one bedroom is a "floating floor". The Applicant believes there must have been some flood damage at some time, leading to the chipboard layer between the laminate and the concrete turning to mush. As a result, the flooring moves any time weight is put on it and it is a health risk, especially to children and older people. The Applicant spoke to the previous tenant who said that she fell on it numerous times and one of the Applicant's children was lucky not to sustain a serious foot injury. Anyone

visiting the Property commented on the springing sensation and it was extremely embarrassing to the Applicant and his wife. When the Respondent eventually did try to effect some repairs there were parts of the Property left with no flooring and with nails sticking up. There were constant delays. The Applicant told the Respondent that he required it fixed urgently as he had children running around the house. The Respondent told the Applicant to get his children to wear slippers. One joiner who tried to resolve the issue told the Applicant that he had advised the Respondent not to rent out the Property until the floors were fixed. The faults had existed at the commencement of the lease. The Respondent had breached Clauses 22, 23 and 27 of the Tenancy Agreement and his common law obligations.

6. The front door did not lock as it was poorly fitted. Only the Applicant could lock the door if he pushed hard on the door with his shoulder. His wife and children could not lock the door on their own. If it was damp, the door could not be locked. The conservatory doors and inner doors were in such poor condition they never locked and were difficult to open. The garage door was metal, but the wooden runners were rotten, so the garage could not be used. The faults had existed at the commencement of the lease. The Respondent had breached Clause 23 of the Tenancy Agreement.

7. The Property had three bathrooms but only one was in full service. One bathroom had no cold water throughout the tenancy. A plumber had refused to fix it, as the basin had a long-standing crack in it and the plumber felt that if he tried to fix it, there was a risk that the basin would further crack or split and he would be liable to provide the Respondent with a new suite, as it was an uncommon colour. In the other bathroom the shower tray leaked, flooding the whole bathroom when anyone took a shower. The faults had existed at the commencement of the lease. The Respondent had breached Clause 24 and 27 of the Tenancy Agreement.

8. There was a leak in the extension which required the Applicant to place a bucket to collect the water. The Respondent had told him that the gutter probably needed cleaned, but he did nothing about that, and the leak eventually stopped on its own. The fault was in existence at the commencement of the tenancy. The Respondent was in breach of Clauses 22 and 23 of the Tenancy Agreement and his common law obligations.

9. There was a pump in the livingroom roof above the chimney breast which pumped the central heating around the house. It let off a very noisy knocking sound, to the annoyance of the Applicant and his family. He had contacted the Respondent who had advised that he had never had any problems with it, but the previous tenant had told the Applicant that she had complained about it and the Respondent had gone into the loft to replace it. She specifically remembered it because the Respondent had a broken ankle at the time and had climbed the ladder with a cast. The fault had existed at the commencement of the lease. The Respondent had breached Clause 24 of the Tenancy Agreement and his common law obligations.

10. The Gas Safety Certificates were never renewed on time rendering the Property potentially unsafe. The Respondent had breached Clauses 22 and 24 of the Tenancy Agreement.

11. A tenant at common law can assert that he can withhold rent due to the landlord's being in breach of the express and implied obligations under the tenancy agreement. The Applicant has exercised that remedy, purely due to the defects and lack of rectification and not due to financial difficulty. The Applicant also seeks to rely on remedy of abatement of rent for the period that the Respondent was in breach of his obligations. The Applicant was entitled to expect a high standard of property in return for the rent of £900 per month. He did not get that from the date of entry. The monthly rent should be abated to a significant degree, circa 75% to 100%. The Applicant is also entitled to rely on the remedy of damages and, if the abatement results in a higher amount than the Respondent claimed in the other case, the Applicant is seeking the balance in damages together with the sum of £5,000 for stress and inconvenience and reimbursement of legal fees incurred in connection with this matter.

12. In summary, the Applicant's position is that he was entitled to exercise his right of retention of the rent during the currency of the lease and, now that the tenancy is at an end, he relies on the remedies of abatement and damages.

Summary of Respondent's written representations

13. On 1 October 2020, the Respondent lodged written representations, namely a document with background evidence, a copy of the Tribunal's Decision in the earlier case dated 28 August 2020 and a written statement from Premier Properties Perth Ltd, an Inventory of the Property taken prior to the commencement of the tenancy, and a number of photographs.

14. The Respondent used Premier Properties Perth as his letting agents for a number of years and always received a very professional service from them. His belief was that the Applicant and his family wished to rent the Property while they built a house in Errol. The Applicant, however, proved to be a somewhat excitable and volatile character from the beginning of the tenancy. He took it upon himself to obtain the Respondent's private mobile number from a previous tenant and made a menacing call to the Respondent to say he did not like the agents and wanted to rent directly from the Respondent at a much lower rent. The Respondent told him not to contact him directly.

15. The Inventory at the start of the tenancy shows the neat and tidy condition the Property was in when it was handed over to the Applicant, The Tenancy Agreement stated that the tenant had seven days to report in writing to the maintenance portal any issues he had with the Property. No such concerns were ever received by the letting agents, so the Applicant had no issues after seven days.

16. The Applicant would only communicate with the letting agents via the mobile phone of the letting office secretary, even though they would always respond via the correct method and tried endlessly to remind the Applicant to use the correct procedure. This resulted in delaying tactics being used by the Applicant over and over again, with the Applicant stating he did not know how to use emails and texts or, it would seem, reply to phone calls. The result had been very damaging to any general maintenance or repair timescale. The Respondent found it very hard to believe that as a self-employed mechanic, the Applicant could not answer an email, text message or phone call. Delaying tactics followed by blame became a common routine with the Applicant.

17. They stated that the Applicant's failure to report any issues via the recommended maintenance portal in writing and delaying tactics on his part had played a huge part in any repairs taking longer than the Respondent ever wanted. The issue with the electrics was repaired; it had been caused by a mouse chewing a cable in the loft and any delay had been due to the Applicant not replying to calls and emails from the letting agents and the electrician.

18. A problem had arisen with the flooring, which had resulted in new floorboards being laid over the space of two days. The Respondent had appreciated the inconvenience of the situation and had granted the Applicant a rent-free month.

19. The Inventory taken at the start of the tenancy showed that the front door was in working order and the Respondent had no evidence of this being reported to the letting agents.

20. A regular wear and tear replacement of silicon sealant was needed near the door on the shower base and this was repaired eventually when the plumber could gain access, the Respondent having used delaying tactics.

21. The cloak room bathroom suite could have been replaced if needed, but the Applicant had said it did not bother him.

22. The noise from the pump had never been brought to the attention of the Respondent. If the real fire had been burning too hot, it could have created a creaking noise in the water pump in the loft.

23. Gas Safety Certificates were organised on a professional routine basis by the letting agents. The Respondent knew that they had tried desperately to inform the Applicant that this was due and that the engineer needed access, again to no avail, with ignored calls and emails. The Respondent had become so worried about this that he and his wife had stopped at the Property one evening to make sure the family were alright, as the curtains were constantly closed. Once the Applicant had been evicted, the Respondent had found out from the Calor gas engineer that the pipe to the house for the gas supply had been pulled off the wall and the tank itself had been tampered with. Proof of this was, the Respondent said, enclosed in photographs.

24. The Applicant phoned the Respondent after some extreme weather to say a small amount of water appeared on the windowsill. The Respondent told him again to report it through proper channels to the letting agents, again to no avail.

25. Any minor repairs or defects reported through the correct method set out in the Tenancy Agreement, namely the letting agents' maintenance portal, would have been addressed immediately, but it was clear that the Applicant never intended to stick to the rules.

26. The Applicant stopped paying rent, blaming the Respondent for disrepair and taking too long. The Respondent then received a letter from the Applicant's uncle, a solicitor, stating that the Applicant wished to reclaim 50% of his rent plus damages, but that he would be open to buying the Property at a much-reduced price. The Respondent found this to be beyond belief and arranged for a Notice to Quit date to allow the Respondent to put the Property back on the market for sale.

27. The Applicant's wife and children left the Property on the correct date, but the Applicant refused to leave and stayed for another eight months until the Respondent eventually managed to have him evicted. He left the Property in a complete mess and court action letters arrived at the Property due to unpaid bills for electricity, telephone, gas and Council Tax. The Respondent also now had reason to believe that the Applicant was using the property for business purposes, as neighbours had counted regularly up to 12 vehicles parked on the drive and over the boundaries to neighbouring property.

28. It seemed that the Applicant's plan to build a house in Errol never materialised and the Respondent felt that he had used every tactic he could to paint a bad picture of the Respondent to allow him to try and blackmail the Respondent into selling the Property to him at a much-reduced price.

29. The Respondent stated that he has a recent Home Report which shows no major issues with the Property and at a substantial market value, proving it is far from the uninhabitable hovel the Applicant would have everyone believe it was. At a rent of £900 per month, it was not above average for the size of property and gardens.

30. The Respondent concluded by saying that the whole situation has caused him and his wife great distress and they feel that this is a last attempt on the part of the Applicant to obtain money not due to him. He had not retained rent in good faith for disrepair and clearly knew how to work the system by using vindictive tactics. The Respondent was seeking justice for the damage the Applicant had caused to him and his wife through this whole experience.

31. The Respondent provided the Tribunal with copies of emails from two contractors, relating to electrical work and replacement flooring at the Property, and a snapshot of the letting agents' Maintenance Portal.

Further Written Representations by the Applicant

32. The Applicant's agent provided further written representations on his behalf, received by the Tribunal on 4 December 2020. They were a response to the written representations of the Respondent.

33. The Respondent was called upon to confirm whether he knew about certain defects but did nothing about them because they had not been reported via the recommended maintenance portal. It was contended that the Applicant had a separate agreement to lodge complaints/defects by telephone, the letting agents having told him at his first meeting with them that if there were any problems, the Applicant should just phone them. The Applicant had told them that he was hopeless at working computers and that, as his wife suffered from depression, he did not want her to be bothered with anything, so all correspondence was to go via the Applicant. However, at a meeting in May 2017, the letting agents had told the Applicant that they were taking over the maintenance. The Respondent was called upon to clarify who was responsible for maintaining the defects, and from what period.

34. An electrician, who was leaving the Property as the Applicant was moving in had indicated that the Property had "around three pages" of recommendations for electrical work. The Respondent was called upon to produce the list of recommendations and/or any documentation concerning the electrics given to the Respondent at the date of entry.

35. The workman instructed to fix the floor only ever came on a Friday afternoon and the Applicant believed he was doing it as a "homer". The Respondent was called upon to state the name and contact details of the person they instructed to carry out the works. For over a year the floor was just hardboard with tacks nailed down and the Applicant's child had almost lost a toe. The Applicant identified the issue with the spongy floor at the first viewing and the letting agents had said they would get it fixed.

36. Even at the first viewing, the letting agents' representative had to barge the door with his shoulder to get it open.

37. The Respondent was called upon to produce evidence of the alleged delay on the part of the Applicant in respect of the bathroom. The Applicant's wife was in the Property the vast majority of the time.

38. It was denied that the Applicant had said that the issue with the cloakroom did not bother him. He was getting nowhere with the major defects, so he gave up on the small ones, asking the Respondent to focus on the lights and the floor.

39. The noise from the pump was notified to the Respondent by a direct phone call from the Applicant.

40. The gas was replaced by Calor but following that the gas supply stopped working and the Applicant called Calor Gas directly. They talked him through what to do to get it working again by releasing a valve. The Applicant did not pull anything off the wall and did not damage it.

41. The Applicant called the Respondent to tell him that water was pouring in around two feet from the wall with the sun lounge. The Respondent told him that the valley became clogged if there was heavy rain. The Applicant contended that the previous tenant had suffered this leak as well.

42. The present action relates to the defects being present at the date of entry or throughout the currency of the lease.

Case Management Discussion

43. A Case Management Discussion was held on 9 October 2020 at which the case was continued to a further Case Management Discussion or a Hearing. The Tribunal also issued Directions to both Parties in relation to documentation they were required to provide no later than 21 days prior to the Hearing on evidence in relation to the application.

44. On 4 November 2020, the Tribunal advised the parties that a Hearing would take place on 11 December 2020. On 16 November 2020, the Tribunal, in response to a query from the Applicant's agent, confirmed that it would be an evidential Hearing. This was confirmed again to the Applicant's agent on 1 December 2020.

45. The Hearing commenced on 11 December 2020, but the Applicant's agent told the Tribunal that he had not been aware that it was to be a full evidential Hearing, so his witnesses had not been called to appear. The Tribunal decided to adjourn the Hearing on the basis that the Applicant might not have been told that the proceedings were to be a full evidential Hearing, although this had been made perfectly clear to his agents on a number of occasions. The Tribunal also issued further Directions to the Parties to provide certain documentation in advance of the adjourned Hearing.

Hearing

46. The adjourned Hearing was held by means of a telephone conference call on 28 January 2021. The Applicant and the Respondent participated in the conference call. The Applicant was represented by Mr Stephen Forsyth, solicitor, of MML Legal, Perth. The Respondent was accompanied by his wife, Mrs Louise McLeod, as joint owner of the Property during the period of the tenancy.

Evidence for the Applicant

47. The Applicant was the first witness called by Mr Forsyth. He confirmed that he had moved into the Property on 28 January 2016 and had vacated it in October 2018. He stated that his reason for withholding rent was not financial. He had decided to withhold it because there were a number of issues with the Property from the start. The letting agent had to shoulder charge the door to get in. The conservatory was in a bad condition and there were issues with the flooring. The kitchen was really dated. The agents said they would get things fixed. The Applicant told the agents that the rent was high for what they were getting. He had, however, taken the house despite the issues as his wife was not keeping well and he thought this was the move to make.

48. The issue of the flooring was raised at the first viewing. The garage door did not work, and the Applicant screwed it shut to prevent it from falling. There were other defects that the Applicant would not have been able to spot at the first general look. He told the letting agent that he was not good with computers. The agents never mentioned that any notification of any repairs issues would have to be done electronically. The agents had said that he should just phone them if there was anything he needed and the Applicant said he would phone or message the agent. He confirmed that he never sent anything through the portal.

49. The Applicant withheld rent and asked for a meeting, after which the Respondent had offered a rent-free month.

50. The Applicant described each of the issues in turn.

51. There were issues with the flooring throughout the tenancy. Someone had come to repair it about a year into the tenancy. The kitchen floor had hardboard on it to the very end.

52. The garage was out of bounds, and there were issues with the light switch in the kitchen. After two or three weeks, a leak appeared in the joint between the house and the extension. The Applicant put a bucket under it and telephoned the Respondent, who said it would be the valley gutter full of leaves and that it had happened before, but nothing was done about it and it eventually stopped. The problem lasted for about two years. The leak had not resulted in water on the window sill, as it was about two feet into the room.

53. On the day the Applicant and his family moved in, an electrician was finishing off fitting the smoke detectors. He told the Applicant that there were quite a lot of recommendations on his list. The Applicant confirmed that he had since seen the Electrical Installation Condition report dated 28 January 2016 and it tied in with what the electrician had told him. The electrician had said that the Property "could be doing with a rewire". The Applicant accepted that the Respondent had said in written representations that the answer was that a mouse had chewed a cable in the loft, but that did not explain why the outside lights did not work. The Applicant had not had working lights in the kitchen, livingroom, hall

and one of the bedrooms from December 2016 until March 2017. Electricians had tried various things but could not find the source of the problem. After it was eventually fixed, the electrics were fine.

54. The wooden conservatory was rotten. It was a struggle to get the inner door to lock or to open. The Applicant told the letting agents about it at the first viewing and they said they would have to look at it. No repairs were ever done.

55. The Applicant told the agents that he would screw the garage door shut, so the agents knew there was a problem with it. The agents told the Applicant that the fridge and dishwasher were not working, but there was a second dishwasher and the Applicant agreed to use his own fridge/freezer.

56. The Applicant himself only used the shower in the bathroom once, as it leaked. His wife had, however, used it regularly and had to put towels down on the floor before she went in. The Respondent had replaced the silicon in the shower, but it still leaked a bit. There was no chain for the bath plug. In the little bathroom off the vestibule there was only hot water. The plumber who came to fix it said that there was a crack down the back of the sink. He refused to fix the problem with the tap as, if he changed it and the basin broke, he would be expected to renew it. The Applicant told the plumber that he was not really worried about the problem with the tap. He had also told the Respondent he could live with it if the rent was reduced, but the Respondent had rejected this suggestion.

57. The Applicant denied the contention of the Respondent that the repairs had taken time due to his delaying tactics. He said that it was of no benefit to him to delay repairs. He was still paying the rent and he only kept back money at the end.

58. The noise from the pump at the top of the chimney breast was intermittent and it had either cured itself or it had stopped working. The Applicant phoned the Respondent as soon as it happened, which was immediately the heating was switched on. The Respondent said that it had never been a problem before, but one of the Applicant's witnesses had told him that it had happened when she was there and she clearly remembered it, because the Respondent was wearing a plaster cast when he went up to look at it. The Applicant did not recall a plumber ever looking at it. The Respondent had said in the written representations that it had never been brought to his attention by proper means. The Applicant presumed they meant reporting it on the portal, but the Respondent and the letting agents knew the Applicant could not use the portal.

59. The Applicant accepted that Gas Safety Certificates had been lodged but stated that some of them were three months overdue.

60. The Applicant was asked if he was satisfied that the Respondent knew about all the difficulties either at the start or during the tenancy. He said that the Respondent knew about a lot of the issues and the letting agents knew about a number of them. The Respondent told the Applicant in March 2017 that the letting agents were taking over the maintenance of the Property. He denied the

allegation of the Respondent that he was a bit of a troublemaker and that he never used the proper channels of communication. He also denied that he had ever said the house was an "uninhabitable hovel" as the Respondent had said was being implied in this case. He also rejected the claims of the Respondent about the condition in which he had left the Property but accepted that the glass on the stove front had broken and that the utility room window had broken a week before he moved out. There was nothing else damaged in the Property. The garden had been quickly done but, in the tenancy agreement, the landlord was meant to do the gardening.

61. The Applicant did not think the Respondent had adhered to his responsibilities under the lease and felt that the letting agents were also to blame. The problems had contributed to the breakdown of the Applicant's marriage. He himself was able to put up with things, but not where his family were involved. He stated that the Respondent was probably entitled to rent for the months that he had not paid, but things should have been fixed and he should be entitled to be refunded for the months he did pay. He had been unfairly treated for the rent he was paying. As well as abatement, he was also seeking damages of £5,000 because, apart from the effect on his mental health, he had to instruct a solicitor, which would cost him money and had to take days off to see his solicitor. £5,000 would not cover the stress he has gone through.

62. In cross-examination, the Respondent asked the Applicant why he had not gone down the route of reporting things to the letting agents, as everything would then have been documented and, if so many things had gone wrong, why had he not applied for a Repairing Standard Enforcement Order. The Applicant said he did not know the process for obtaining an Order and perhaps did not want to take things that far.

63. The Respondent asked why the Applicant had paid rent for 14 months if things were so bad. He replied that there were issues with his wife's health and he was not in a position to move at that point.

64. Asked why he had not asked to delay moving in if he had issues at the first inspection, the Applicant said that he had 5 children and they had sold their house.

65. The Applicant was then referred to the Inventory that had been carried out before he and his family moved in. He stated that, as they had already moved in, he would not have read the Inventory. He had no idea about renting.

66. The Respondent told the Applicant that he and his wife had called at the Property, because the Applicant would not answer phone calls and the inspection for the Gas Safety Certificate was due. The Applicant said that he had no evidence of any unanswered messages or phone calls.

67. The Respondent asked the Applicant why he stayed on after the Notice to Quit expired, when his wife and children had moved out. He replied that he did not

know what to do. Some people were advising him to go, and others were telling him he should stay put.

68. The Tribunal Members then sought clarification on some aspects of the Applicant's evidence. If the letting agents had said that he should phone them if he had any problems, why had he not done that? The Applicant said that only one inspection had been carried out and he realised there was no point in other inspections as he knew he would just be asking the same questions. He had contacted the letting agents but had given up on that as nothing then happened. The issue with the front door changed depending on the weather, because it was made of wood. Both doors were a problem, so the Applicant decided to stop locking the inside door. They used the patio door more, because the front door was so difficult to use. The Applicant's children would not have been able to get out by the front door in the event of a fire. Outwith the four-month period where there were problems with lights not working, it was only the kitchen light that had not worked properly. There had been a meeting at the house, attended by the Respondent and his wife and two people from the letting agents, in March 2017 to discuss the flooring and the electrics and the Applicant had been offered one month rent-free and had been told the flooring would be dealt with in the next few months.

69. The second witness on behalf of the Applicant was Ms Ruth Keogh, who confirmed that she and her parents had been the Respondent and his wife's tenant of the Property from the summer of 2013 until July/August 2016. She told the Tribunal that the front door of the Property had at times been very difficult to open, depending on the prevailing weather. The door would swell and would require a good shove to open. She was uncertain as to whether the issue had been brought to the landlord's attention. It was not a tremendous issue.

70. The flooring in the living room and main corridor moved all the time and bits of laminate floor edgings would lift. Someone had come out to see it and had said that it was a floating floor and that there was nothing that could be done about it. Ms Keogh's mother had on one occasion stumbled on a gap left where the laminate pieces had moved. Ms Keogh said that she had raised the issue with the letting agents, who said the landlords were dealing with maintenance, and with the Respondent, who said he had fitted the floor himself, so he was aware that there was a problem.

71. The worst electrical problem was the lampposts outside. One of them never worked and the bulb in the other one blew more or less every week. Given the location, it was very dark going from the car to the house. Indoors, the problem was the number of bulbs that went and sometimes the sockets would not take an extension cable without tripping the fuse box. These issues had been brought to the attention of the Respondent. Ms Keogh was unsure whether anyone came to look at the electrics. On one occasion, she had fallen outside the front door and had torn her achilles tendon.

72. Ms Keogh had mainly used the family bathroom, where there had not been any problems. The shower in the en-suite would overflow and the toilet would sometimes back up. She recalled the Respondent coming out with a digger.

73. There was a leak in the extension to the living room, at the joint with the main house. It would drip constantly when it rained. The Respondent had suggested putting something beneath it to catch the water and Ms Keogh's father had cleared the gutter, which solved the problem. Nobody came to fix the leak.

74. The Respondent had called at the Property when the tenants reported that the pump in the living room chimney breast had suddenly started. The Respondent was on crutches, but he went up the ladder with another person and stopped the noise. It only happened one other time, but it started and stopped itself, so the tenants had not called out the Respondent. There had been no issues with the banging noise at the time that the tenants left the Property.

75. The Respondent told the Tribunal that the banging happened when the wood-burning stove was used for the first time after an interval. It was possibly an airlock and would stop when the airlock cleared. The flooring clicked together but could start to move if someone dragged their feet on it.

76. The Respondent's wife told the Tribunal that she and the Respondent had never been made aware that Ms Keogh's mother had fallen or of the injury to Ms Keogh herself. Ms Keogh confirmed that neither incident had been reported to the Respondent or the letting agents. She could not recall to whom the issue of the lights had been reported, as it had been her father who dealt with such things.

77. The third and final witness for the Applicant was Mr Brian Cruickshank, who said that he was a friend of the Applicant. Shortly after the tenancy started, he thought in the summer of 2016, the Applicant had asked his opinion as to how much it would take to bring the Property up to date. It was very tired and had lacked maintenance for some time. He had thought that the Applicant was paying too much rent, given the condition of the Property. He was aware that there was a problem with the electrical consumer unit in the garage. The flooring in the living room was very badly holed. He had gone back again and the Respondent had put down joiner-laid plywood in the living room area. The problem was not near the outside wall, it was in the body of the room. The laminate flooring was very poorly laid, as it should not move when people walked on it. Mr Cruickshank was back at the Property again and noticed that another floor had been laid on top. The work had clearly been done by a joiner. No carpet had been laid on top and Mr Cruickshank had assumed the problem was sorted as the Applicant had not mentioned it.

78. Mr Cruickshank said that the front door was badly fitted and needed to be adjusted. It was difficult to close and lock. He could not recall whether it had been repaired by the time of his second visit, as it was not the purpose of that visit to look at the Property.

79. The bathroom taps needed maintenance. The problem was not serious, but some work was needed.

80. Mr Cruickshank had not been aware of any water ingress and could not remember the Applicant mentioning anything about a noisy pump.

81. Mr Cruickshank told the Tribunal that he had been a landlord for 47 years and a NHBC registered builder for 2 years. In his opinion, the rent was too high and a figure of £600-£650 per month would have been realistic.

82. In cross-examination, Mr Cruickshank was asked what repairs were required to merit a rent of £900 rather than £600-£650 per month. He answered that the house was tired. It needed painting, the kitchen needed to be renewed and the flooring was definitely a problem. It was just the cosmetics that he did not like. It just needed a freshen-up.

83. When Mr Cruickshank finished giving evidence, Mr Forsyth advised that he would not be calling any other witnesses. The Tribunal decided that, given the lateness of the hour, it would adjourn the Hearing. The date of the reconvened Hearing would be intimated to the Parties.

Evidence for the Respondent

84. The Tribunal reconvened on the morning of 22 March 2021, again by means of a telephone conference call. The Applicant was again represented by Mr Forsyth and joined the telephone conference call himself but did not participate in the discussion. The Respondent, Mr McLeod, and his wife, Mrs Louise McLeod, were present and indicated that they intended to call two witnesses.

85. The first witness called was Mr Alan Keddie, a Director of Premier Properties Perth Limited. He confirmed that the second witness was not in the room with him and could not hear the evidence that he was about to give.

86. Mr Keddie stated that he had rented properties for over 20 years, that the company had been formed in 2009 and currently rented some 400 properties. It had won a number of industry awards, including Best Letting Agent in Scotland in 2019/20.

87. Mr Keddie told the Tribunal that the tenancy in the present case had started as normal, but a pattern of late rental payment had developed, and the agents then always had to chase it up. The Applicant would not return telephone calls or calls from tradesmen and it became very difficult to obtain access for the agents or for the electricians, the gas engineers and the joiner. The Applicant had first refused to deal with the staff member whose task was to chase unpaid rent, then with Mr Keddie and with various other staff members. Mr Keddie had met with the Applicant at the Property to sign the lease and to hand over the keys and a 64-page Inventory of the Property. He had also handed over a “Report a

Repair" procedure document. Tenants have a period of 7 days to look at the Inventory and to note any additional things they want to raise with the agents. The Applicant had not raised any issues at that time or within the 7-day period.

88. Mr Keddie did not consider the rent, at £900 per month, to be too high for a 5-bedroom bungalow with a nice garden and fantastic views. That was the market value at the time.

89. Mr Keddie stated that no issues regarding the Property had been raised by the previous tenants at the checkout of their tenancy. He had never before had to deal with a course of events similar to the present case. This was the first tenancy in relation to which his company had had any involvement with the Tribunal. The Applicant did not have any special arrangement with the company regarding reporting any problems. They treated every tenant in the same way. If there were issues, they wanted to know about them and to deal with them as soon as possible.

90. In cross-examination by Mr Forsyth, Mr Keddie confirmed that he had not been present when the Applicant viewed the Property, so was not party to any discussion between his colleague, Mr Hall, who conducted the viewing, and the Applicant. He repeated that nothing had been mentioned at the meeting he had had with the Applicant to sign the lease, of any arrangement the Applicant had made with Mr Hall, when Mr Keddie handed over the "Report a Repair" factsheet. He did not accept the suggestion put to him by Mr Forsyth that if a report was not made on the company's website portal, then, so far as the company were concerned, it did not exist. He could not recall any tenant saying that they wished to use an alternative method of reporting repairs issues and added that, if such an arrangement had been agreed with the Applicant, surely there would be some evidence of text messages. The Applicant had not provided any evidence of any such messages. Pressed by Mr Forsyth on his reliance on the 7-day period, Mr Keddie explained that that related to issues that a tenant might find on moving in and going over the Check-in Report. It did not relate to repairs issues that might arise at a later date. He had not had any involvement in drawing up the Check-in Report. He had no knowledge of any discussion between the Applicant and Mr Hall at the viewing regarding the door not opening properly or any problem with the flooring.

91. Mr Keddie said that he did not recall anything being said at the start about the flooring and that he had not noticed any of the issues now being raised by the Applicant when he visited the Property to have the lease signed. Mr Forsyth pointed out to the witness that the previous tenant had told the Tribunal that she and her parents had had issues with "spongy" flooring, that the Applicant had commented on it at the viewing and that the Respondent had said that he knew there was an issue, and yet it had not been mentioned in the Check-in Report. Mr Keddie responded that it had not been reported to them by the previous tenant or at the Check-in.

92. Mr Keddie stated that the responsibility for dealing with repair and maintenance of properties depended on the arrangements with the landlord. If a landlord said

that they wished to use their own tradesmen for a particular repair, the agents gave the landlords their place. In the present case, it was a mixture, but nothing had been reported on the portal or by text message by the Applicant or the previous tenant. If a matter was reported in a telephone call, they would accommodate that and, if the Applicant had reported issues by telephone, he presumably would have access to phone records showing that such calls had been made. Mr Forsyth put it to Mr Keddie that in May 2017, Premier Properties had told the Applicant that they would be taking over all repairs and that the Applicant had interpreted that as meaning that up until that point, the Respondent had been responsible for repairs. He responded that it depended on what the repair was for, but that the agents never shied away from their responsibilities.

93. Mr Forsyth then asked Mr Keddie what his position was in relation to the electrics, the front door, the bathrooms, the noisy plumbing and the leak in the sun-lounge which the Applicant had said had all been reported by telephone to Mr Hall. He confirmed that he had become aware of them, but their problem had been their inability to gain access to the Property, because the Applicant was not responding, perhaps as he knew discussions would include the issue of the rent arrears, but if the Applicant did not wish to use e-mail, he could still have sent text messages, made telephone calls or even sent in photographs to alert the agents to any repairs issues. He accepted that landlords can take steps to gain access to properties but stated that that process would only be used in extreme cases. No formal steps had been taken to gain access in the present case. He had not been aware of a complaint of a leak in the sun-lounge.

94. In response to questions from the Tribunal. Mr Keddie confirmed that the Check-in reports are prepared from scratch and that they generally also have a six-week settling-in visit, to allow them to obtain insight into how the tenants are looking after the property and to give tenants the ability to raise any issues of concern. He also recollected that the rent originally sought had been £950 per month, but this had been negotiated down to £900. He had been at a meeting in the Property in March 2017. The problem had been the rent and they had set up a meeting of all concerned to try and get things back on track. The Respondent had given the Applicant one month rent-free because of the concern raised about the floors. Again, there had been issues regarding access, but the rent was always a problem.

95. The second witness called by the Respondent was Mr Murray Hall, the Head of Lettings at Premier Properties Perth Limited. He confirmed that he had carried out the Applicant's initial viewing of the Property. It had been a very normal, routine, positive viewing and nothing negative was discussed. There was no discussion at any time about any special arrangement of phoning in if there was a repairs issue. The Applicant and his family then moved in. Everything had gone fine for the best part of the first year, but then there was an issue with the floor, which was fixed fairly quickly by the Respondent's joiner. There was a bit of a delay, but that was due to difficulty in getting access to the Property. Mr Hall confirmed that the company now arrange an inspection after 6 weeks but could not recall whether that procedure was in place at the time the Applicant's tenancy began. The first he had known of any problem was that

the rent was not being paid. The initial period of the tenancy was six months and Mr Hall confirmed to the Respondent that the Applicant must have been fairly happy if he stayed on at the end of that period.

96. Mr Forsyth then cross-examined Mr Hall, putting it to him that the Applicant's evidence conflicted with the evidence that Mr Keddie had just given. In particular, the Applicant had stated that there was an issue with the entrance door when they arrived for the first viewing. Mr Hall could not recall there having been any such issue. He also did not recall the Applicant making any comments about the flooring or of having said he knew about it and it would be fixed. He further denied that there had been a conversation in which the Applicant had said he was not good with computers and that Mr Hall had told him to phone him directly if there were any issues. Mr Hall told the Tribunal that he would, of course, deal with any issues reported by telephone, but there was no special arrangement for the Applicant. He said that there had been no telephoned reports of issues received from the Applicant until quite a while into the tenancy.

97. Mr Forsyth told the witness that the present case was that a number of repairs issues had been reported directly to him by the Applicant, but nothing was done to remedy them. Mr Hall remembered an electrician being called out. The problem had been a cable that had been chewed by a rat or a mouse. He did not recall any issue being raised about the front door, or any telephone calls about the bathrooms, or a leak in the sun lounge or a knocking sound above the living room being reported but said that he was happy to be corrected if there was evidence to suggest that his recollection was wrong. He accepted that he would not necessarily have known if the Applicant had gone directly to the Respondent, but he would have expected that the Respondent would keep him in the loop if he had dealt directly with issues raised with him.

98. Mr Hall said that he had not had any dealings with the previous tenants. He had joined the company not long before the Applicant moved in. At the start of the tenancy, Mr Hall had been responsible for arranging most of the repairs and maintenance. If work was needed, he would report it to the Respondent and, if the Respondent wished to instruct his own tradesmen, he could. Mr Hall instanced that he had instructed the electrician, but the Respondent had used his own joiner, so it was always a mix.

99. Mr Hall confirmed that he had prepared the Check-in Inventory from scratch. Mr Forsyth questioned why he had not mentioned the spongy flooring when the Applicant had noticed it immediately a friend of the Applicant had noticed it and the previous tenant had told the Tribunal that she too had known about it. Mr Hall replied that if he said it was in good condition, then it was, when he carried out his inspection. It was only later that a problem was raised, and it was then fixed. Mr Forsyth directed Mr Hall to a photograph in his Check-in Report which showed a black line across the flooring at the entrance to the sun-room from the living room. Mr Forsyth suggested that it looked like a raised area. It seemed obvious, yet it was not mentioned in the report. At this point, the Respondent intervened to advise the Tribunal that it was a joining strip between the flooring in the two rooms.

100. Mr Hall said that he had not looked at the electrics during his inspection. He would simply take visual photographs and would rely on the EICR as regards functionality and safety. He stated that the list of comments in the EICR were recommendations. The overall report was satisfactory. The lights in the Property had been working when the tenancy began and, when a problem arose, the electrician had fixed it. The electrician had not gone out on that occasion to carry out the recommendations from the EICR.

101. Mr Forsyth then drew the attention of Mr Hall to a number of Invoices for work done on the Property during the tenancy and suggested that the Applicant had referred to various issues, yet only £426 had been spent on them. Mr Hall replied that he would not have had Invoices for any work instructed by the Respondent. Mr Forsyth put it to him that the Applicant had been reporting issues to Mr Hall, who had been doing nothing about them. Mr Hall repeated that it was quite a bit into the tenancy before any matters were reported and the work to fix them was then done. He said that he would not necessarily contact a tenant on every occasion that work was done to ask whether the tenant was satisfied with it. He did not have the resources to follow up with tenants on every repair. Mr Forsyth suggested to him that the Applicant had told him he had given up on reporting small things, as he was not getting anywhere with the major items. Mr Hall did not recall any such conversation.

Closing Remarks

102. For the Applicant, Mr Forsyth invited the Tribunal to grant the Order as craved. The case turned principally on matters of reliability and credibility of the witnesses and the Tribunal should prefer the evidence given by the Applicant and his witnesses, two of whom had nothing to gain, particularly Ms Keogh, who had confirmed some of the issues as having existed during the previous tenancy, especially the flooring, on which her mother had fallen. The Respondent was aware of it. The flooring was dangerous, and the Respondent took months to repair it. The Applicant had also given evidence that one of his children had cut their foot on it and the Respondent's suggested solution had been for them to wear slippers. The witness Mr Cruickshank, a landlord himself with 40 years in the building trade, had given evidence which tied in with the money the Applicant was seeking to offset. The problem with the flooring definitely existed at the start of the tenancy, as did the problem with the leak in the sun-room and the noise above the living room. Ms Keogh had said that these problems had been reported, so the Respondent knew about them, yet the Respondent simply let the Applicant and his family move in. Mr Forsyth invited the Tribunal to hold that the evidence of the Applicant had been backed up by independent evidence.

103. The Respondent and his wife had chosen not to give oral evidence at the Hearing. This had denied the Applicant the opportunity to test that evidence and Mr Forsyth respectfully suggested that the Tribunal should draw an inference from that. His question was, what did they have to hide? He invited the Tribunal to place very little evidential weight on the written evidence provided by them, as it was untested. If the Tribunal found that the Respondent was in breach of the various clause in the lease, he would invite the Tribunal to

find that these breaches entitled the Applicant to withhold rent and merited an abatement to take account of what he had to live with and the issues the Respondent did not fix. If there had been a fire, the Applicant's children would not have been able to get out of the Property. The amount of the rent arrears sought in a separate case against the Applicant was the amount that he withheld and, if the Tribunal was with the Applicant on the merits, the rent should be reduced by that amount. The Applicant had never said that the Property was uninhabitable and reducing the rent as the Applicant was seeking would be a fair result.

104. The Applicant was also entitled to damages and the suggested figure was £5,000, although Mr Forsyth understood that it would be a matter entirely for the discretion of the Tribunal. The Applicant had given evidence of the stress and anxiety for him and his family and had stated that it had been a factor in the break-up of his marriage. He had also spent a great deal of money on legal fees in defending the action for Payment against him and the present application.

105. The Respondent told the Tribunal that this had been a long ongoing case. He and his wife had nothing to hide. Their witness Mr Hall had said that the flooring was not a problem at the beginning of the tenancy and, when the Respondent became aware that it was a problem, it was fixed. The Respondent was there to help, but if he did not know there was a problem, how could he be expected to fix it? He had gone to the Applicant's place of work to hand over unpaid utilities' bills, because he was trying to get gas delivered but had discovered that the Property had been blacklisted as the Applicant had not paid the bills.

106. The flooring had been repaired. There had been delays on the part of the Applicant in giving access, but the Respondent had agreed to offer the Applicant a month rent-free, which the Applicant was happy with and the flooring was then repaired.

107. The issue with the pump was a problem that happens every winter and it is solved simply by releasing the air from it.

108. The Applicant had not vacated the Property when his Notice to Quit expired, and in the months it took to remove him he was not retaining rent in good faith. A lot of vindictive damage had been done by him. The Respondent had statements and photographic proof, but the Applicant had never produced any hard facts as evidence. The witness Mr Cruickshank had said that the Property was not worth its value in rent, but he had also said there were no structural problems; it was just the décor that was tired.

109. The Parties then left the conference call and the Tribunal considered all the evidence, oral and written, before it.

Findings of Fact

110. The Tribunal made the following findings of fact:

(i) The Parties entered into a tenancy agreement for an initial period from 28 January 2016 until 29 July 2017.

(ii) The tenancy continued on a month-to-month basis after its initial term expired. The Applicant removed from the Property on 15 October 2018.

(iii) The tenancy agreement stated that the tenant had a period of seven days after signing the Inventory to ensure that the Inventory was correct and to tell the landlord of any discrepancies, failing which he was deemed to be fully satisfied with its terms.

(iv) In terms of the tenancy agreement, the landlord was responsible for, *inter alia,* keeping in repair the structure and exterior of the Property, including drains, gutters and external pipes and outside doors, and for keeping in repair and proper order the installations for the supply of electricity, basins, sinks, baths, toilets and showers and electrical wiring.

(v) The tenant under the tenancy agreement undertook to immediately notify the landlord (or any agent specified by the landlord for that purpose) of the need for any repair and to give the landlord access for the purpose of carrying out maintenance and repair. The landlord undertook to carry out necessary repairs within a reasonable period of time after having been notified of the need to do so.

(vi) The tenant was responsible for maintaining the garden in a tidy, orderly condition.

(vii) Throughout the tenancy, the landlord employed, as his letting agents, Premier Properties Perth.

(viii) The Applicant was credited with a one-month refund of rent in March 2017.

(ix) The Applicant did not pay any rent after 6 October 2017.

(x) At the outset of the tenancy, the letting agents prepared an Inventory and Check-in Report in respect of the Property. The Report was dated 27 January 2016, extended to 65 pages and contained 195 photographs, all but 13 of which were of the interior of the Property, the remainder showing the exterior and garden ground. The Report contained only one Observation, namely evidence of water staining on the hallway ceiling, by the sliding doors. The internal photographs showed all lights in the Property switched on. The condition of the flooring throughout the Property was stated to be "Good Overall-no obvious faults in appearance or functionality".

(xi) An Electrical Installation Condition Report in respect of the Property was prepared on 28 January 2016. It contained 9 recommendations for attention but rated the installation as Satisfactory.

(xii) In an email of 27 October 2020 to the letting agents, A&D Electrics stated that they had, as requested by the agents, gone to the Property to look at a fault in the electrics. They had been instructed to make the necessary repairs, but gaining entry was not easy as there was never a time that suited the tenant and there was never a reply to their telephone calls to him. After many attempts they finally got entry and found that there was a fault with a cable in the attic. It appeared to have been

chewed by a mouse and would have been in working order when the tenants moved in as the firm carried out the full EICR report then, and no fault was found. The firm returned shortly after and fixed the problem for the tenant.

(xiii) On 20 October 2020, a Mr Jamie Jackson emailed the Respondent regarding repairs to the flooring of the Property. He stated that after discussions with the client (the Applicant in the present case) they agreed a date to start repairs. He lifted the laminate to get access to the chipboard flooring underneath. After a clean-up and inspection, it became clear that it was a bigger job than first thought, so he agreed with the Applicant to make safe and to return the following week to repair. On arrival the next week, he was told by the Applicant that it was no longer an appropriate time and he was asked to return again the following week. The third week, Mr Jackson returned and started the repairs. The flooring was repaired and overlaid with 6mm plywood. He and the Applicant then agreed to arrange a date to re-lay the new floor covering "which I'm led to believe there were heated discussion between yourself and the client" so it was delayed for some time. After a few weeks or so it was all re-laid and completed and all parties were satisfied with the finished article.

(xiv) A snapshot of the letting agents' Maintenance Portal contains two entries dated immediately prior to the commencement of the tenancy and three during the tenancy. The first entry is an instruction relating to an EICR and smoke/heat alarms and the second is a boiler safety check. The three items during the tenancy are "Small toilet cold water tap not working. En-suite shower leaking" (18 January 2017), "EICR was carried out 1 year ago. Lounge and hallway lights keep fusing, speak to Dean Thomson for access" (18 January 2017) and "Please investigate the following issues and call Alan with your thoughts. 1) Floor in child's bedroom & Kitchen 2) Patio doors won't open." (6 November 2017). The entries indicate the companies to whom the instructions were sent and all are shown as "Closed".

(xv) An Invoice dated 21 November 2017 from Direct Home Maintenance, Perth covers a number of repairs, including the bedroom flooring and patio door lock, set out in the portal entry of 6 November 2017 and an Invoice from Paul Jackson, carpet and vinyl fitting services, of 29 November 2017 confirms the fitting of vinyl in the kitchen. There is a separate Invoice of 24 November 2017, from Almor Carpets Ltd., Dunfermline for the supply of the kitchen vinyl.

(xvi) Gas Safety Certificates for the Property are dated 5 February 2016, 6 April 2017 and 21 May 2018. No faults were noted on any of the Certificates.

(xvii) On 30 January 2018, the Applicant's solicitors, Muir Myles Lafferty, Dundee wrote to the Respondent stating that during the pertinent term of the tenancy, the Applicant had had numerous difficulties with the Property, and it would be fair to say that the Applicant at any time could only use approximately 50% of the Property "because of the damages to the Property and the dangerous condition they were let in." They said that all of these complaints had been made to the letting agents and that, although they had attended to some of them, they had taken generally

months and months to either fix them or do a temporary repair, all of which then failed. They indicated that the Applicant had a damages claim and suggested that damages should begin in a reduction of the rent by 50%, which by their calculations, would mean a rent rebate of just over £10,000. There were additional damages which they would qauntify at a later date. The Applicant had continued to work with the letting agents to have the Property brought "into good and habitable order". They understood that the Respondent was considering selling the Property and said that the Applicant might be prepared to consider buying it, but "it would have to be at a much reduced price, given the known difficulties and the cost of all the repairs that will be required to bring this property up to a reasonable standard". They stated that they had been assured by the Applicant that all things were documented by him of all the calls and meetings he had had with the letting agents and, again "most of these have went unanswered and when answered, have taken months to repair" and the repairs had been inadequate in any case.

(xviii) The Tribunal, on 11 December 2020, directed the Applicant to provide details and copies of all communication, including telephone calls, emails, texts and letters between the Parties or with the Respondent's letting agents in respect of alleged defects and repairs to the Property. The Applicant failed to comply with that Direction.

Reasons for Decision

111. In this case, there are material discrepancies between the Parties' narration of events. The Applicant said that there were serious problems with the entrance door and the flooring in the Property apparent even at his first viewing. The Respondent contended that there were no issues at the outset and that, when the Respondent and letting agents were made aware of any problems, they were fixed. The Applicant said that he had a special arrangement with the letting agents to, in effect, bypass their normal reporting procedure on their website portal and to bring to their attention by a telephone call any issues that he had with the Property. This was denied by the Respondent. The Applicant said that any repairs that were carried out took months and months. The Respondent's view was that any delays that did occur were due to the Applicant making it difficult for tradesmen to gain entry to the Property, by not replying to calls and emails from the Respondent's agents and tradesmen.

112. As the accounts given by the Parties were so completely at odds with one another, the Tribunal reviewed all the evidence before it, in order to ascertain whether it could conclude that it preferred one version of events over the other. If it could not make such a finding in favour of the Applicant, the application would fail.

113. The Tribunal considered first the initial viewing. The Applicant had stated that Mr Hall of the letting agency had had to barge the outside door with his shoulder in order to get into the Property and that the Applicant had commented to Mr Hall on the "spongy" flooring. In evidence, Mr Hall said that he had no

recollection of either event having taken place. The witness, Ms Keogh had said in evidence that that the front door of the Property had at times been very difficult to open, depending on the prevailing weather. The door would swell and would require a good shove to open. She was uncertain as to whether the issue had been brought to the landlord's attention. It was not a tremendous issue. The Tribunal noted that the Check-in Report had noted minor cosmetic damage to the door but that its functionality was not impaired.

114. As regards the flooring, Ms Keogh had said that, during her tenancy, the flooring in the living room and main corridor moved all the time and bits of laminate floor edgings would lift. Someone had come out to see it and had said that it was a floating floor and that there was nothing that could be done about it. Ms Keogh's mother had on one occasion stumbled on a gap left where the laminate pieces had moved. Ms Keogh said that she had raised the issue with the letting agents, who said the landlords were dealing with maintenance, and with the Respondent, who said he had fitted the floor himself. The Respondent, in evidence, said that he had not been aware, until Ms Keogh gave her evidence, that her mother had had a stumble. The Check-in Report made no reference to any of the flooring in the Property being "spongy" or to floorboards moving. The Tribunal accepted that, at the time of the initial viewing, the Property was unfurnished and that it was possible that any problem of the flooring moving might have been difficult to detect at that time, but the Check-in Report stated that there were "no obvious faults in appearance or functionality".

115. The Tribunal regarded the Check-in Report as very important, as it was a contemporaneous assessment of the Property at the time the tenancy began. It was extremely thorough and extended to 65 pages of text and photographs. Every element of every room was covered – doors, ceiling, lighting, walls and floors. The Report also showed all of the internal lights switched on and working. It was prepared on 27 January 2016, the day before the tenancy started and it was given to the Applicant when he took entry to the Property. The tenancy agreement clearly stated that the tenant had a period of seven days after signing the Inventory to ensure that the Inventory was correct and to tell the landlord of any discrepancies, failing which he was deemed to be fully satisfied with its terms. The Tribunal was satisfied that the Applicant had not told the letting agents of any discrepancies within the seven-day period and was not persuaded by the Applicant's apparent argument that, as he had never rented before, that somehow excused his failure to even read the Check-in Report, particularly if he had identified problems at the initial viewing. The Tribunal therefore held, on the balance of probabilities, that the Applicant had not established his claims in relation to the condition of the outside door and the flooring at the time of his initial viewing of the Property and, as there was no evidence to back up either the Applicant's or Mr Hall's version of events, made no finding in relation to whether he had mentioned either of these items to Mr Hall at that time. The Respondent and the letting agents were entitled to conclude that the Applicant had no issues to raise within the seven-day period, and the Check-in Report was, therefore, an accurate assessment of the condition of the Property, including the entrance door and the flooring.

116. The Tribunal then considered whether the Applicant had agreed a special arrangement in relation to reporting repairs issues, whereby he would telephone Mr Hall rather than use the letting agents' Maintenance Portal. Mr Hall, in evidence, did not accept that any such arrangement had been agreed. It appeared unlikely to the Tribunal that there would have been any discussion at an initial viewing, as no decision would by then have been taken by either party as to whether the tenancy would actually go ahead. When the Applicant signed the tenancy agreement, Mr Keddie gave him a "Report a Repair" factsheet and the Tribunal would have expected that that would have caused the Applicant to mention any alternative arrangement which he had agreed with Mr Hall. Accordingly, on the balance of probabilities, the Tribunal decided that no special arrangement had been made.

117. Mr Keddie had said in evidence that the portal was their preferred method of initial contact from a tenant, as it enabled them to monitor progress in relation to the repair, but both he and Mr Hall said that this did not mean that they would ignore complaints that arrived by a different means, such as a text, email or telephone call. This was backed up by the snapshot of the Maintenance Portal that had been provided to the Tribunal. It contained a number of repairs and detailed the action taken. It was a matter of agreement that the Applicant had never actually used the on-line portal, so the issues set out in the portal must have been reported by the Applicant by telephone and the letting agents had responded to them. That was in January and November 2017. The tenancy had commenced in January 2016 and the Applicant's contention was that there were problems from the very start. Mr Keddie and Mr Hall told the Tribunal that the tenancy had gone well for the best part of the first year and that no matters had been reported as repairs issues. This tied in with the fact that, after the commencement of the tenancy, there were no entries on the letting agents' Maintenance Portal before January 2017. The Tribunal noted the terms of the letter of 30 January 2018 from the Applicant's solicitors to the Respondent in which they stated that the Applicant had assured them that all things had been documented by him of all the calls and meetings he had had with the letting agents. The position of the Respondent's letting agents had been that no other reports had been received by them. The Tribunal, therefore, issued a Direction on 11 December 2020, directing the Applicant to provide details and copies of all communication, including telephone calls, emails, texts and letters between the Parties or with the Respondent's letting agents in respect of alleged defects and repairs to the Property. The Applicant failed to comply with that Direction. Accordingly, the Tribunal could not determine the date or dates on which any earlier matters were reported to the letting agents, so, with one exception, could not hold that there had been any undue delay in dealing with them.

118. The exception related to the electric lighting in the Property. The Tribunal noted the EICR which had been carried out on the day that the Applicant and his family moved into the Property. Although a number of recommendations were contained within the Report, the overall assessment was that the installation was satisfactory, and the Check-in Report photographs showed the interior lights all working. Accordingly, the Tribunal determined that there were no problems with the electric lighting at the commencement of the tenancy. The

Tribunal was unable to determine when the Applicant complained about the lighting, but it was logged on the Maintenance Portal on 18 January 2017. The Applicant said that from mid-December 2016 until March 2017, he had had no lighting in the kitchen, the living room, the hall and one of the bedrooms and that he had had to use electric lamps to have any lighting in those rooms. He also said that four or five electricians had been unable to find the source of the problem. The Tribunal noted the email from the electrician of 27 October 2020, in which he said that gaining entry had not been easy as there was never a time that suited the tenant and there was never a reply to their telephone calls to him. After many attempts they had finally got entry and had found that there was a fault with a cable in the attic. The Tribunal found no evidence to support the Applicant's contention that four or five electricians had been unable to find the source of the problem but determined that the Respondent and/or his letting agents should have taken a more pro-active part in endeavouring to procure access for the electrical contractor, as it had taken more than three months to resolve the issue.

119. For the reasons already given, the Tribunal did not uphold the Applicant's contention that the issue regarding the flooring was raised by him at the initial inspection. That it became an issue is, however, not in doubt. The Tribunal saw no evidence from the Applicant as to when he reported the matter. It is not shown on the Maintenance Portal, which suggests that he may have reported it directly to the Respondent. From Mr Cruickshank's evidence, it was clearly a matter of concern to the Applicant by the summer of 2016, when Mr Cruickshank first visited the Applicant at the Property, but the Applicant's failure to comply with the Tribunal's Direction means that it is not possible for the Tribunal to decide whether the issue was reported prior to or after the visit of Mr Cruickshank sometime in the summer of 2016. The Tribunal noted the terms of the email of 20 October 2020 from Mr Jackson, in which he stated that, after lifting the laminate and inspecting the chipboard underneath, it had become clear that it was a bigger job than first thought, so he had agreed with the Applicant to make safe and to return the following week to repair. Having travelled to the Property the next week as arranged, he had been told by the Applicant that it was no longer an appropriate time and he had been asked to return the following week. The third week, he returned and started the repairs. The flooring was repaired and overlaid with 6mm plywood. Possibly due to a dispute between the Parties, there had then been a delay, but "after a few weeks or so" the flooring had been re-laid and completed and all parties had been satisfied with the finished article. The Applicant had said in his written representations that the workman instructed to fix the floor only ever came on a Friday afternoon and the Applicant believed he was doing it as a "homer" and that, for over a year the floor was just hardboard with tacks nailed down.

120. The Tribunal could not reconcile these two accounts, but noted that, at a meeting at the Property, involving the Parties and the letting agents, in March 2017, it had been agreed that the Applicant would be given a refund of one month's rent to compensate him for the inconvenience regarding the flooring and that it appeared to be after that that the remedial work was carried out by the Respondent's joiner. The Tribunal had no reason to doubt the statement by Mr Jackson that he had laid plywood as a temporary repair and that "after a few

weeks", he had then re-laid the flooring. As the Tribunal could not determine when the problem was reported or when the work was carried out, it could not, on the evidence before it, make a finding that there had been any undue delay in completing the repair once it was reported by the Applicant. The problem existed in the summer of 2016, when Mr Cruickshank first visited the Property. The plywood had been fitted by a joiner by the time of his second visit and the flooring had been re-laid by the time of his third visit, but no timeline had been given and Mr Cruickshank himself did not recall the dates of any of his visits, other than remembering that the first one was in the summertime. In any event, however, even if there had been an unwarranted delay, it appeared to the Tribunal that the Applicant had accepted a refund of one month's rent as compensation for the inconvenience caused by the flooring issue and the Tribunal would not have awarded any further compensation in those circumstances. Specifically, the Tribunal did not accept the evidence of the Applicant that the kitchen had hardboard covering it for more than a year or to the very end of the tenancy, as the repairs had not started before the meeting in March 2017 and the Tribunal had seen an Invoice of 29 November 2017 for laying vinyl in the kitchen.

121. The Tribunal noted that the periods between each of the three Gas Safety Certificates exceeded 12 months, but the Respondent gave evidence that the Applicant made access difficult, and that, on one occasion, he and his wife called at the property, as the Applicant was not answering or returning their or the letting agents' calls and the curtains were permanently shut, and as a Gas Safety inspection was imminently required. No defects were found in any of the inspections and, on the evidence before it, the Tribunal decided, on the balance of probabilities, that the Respondent was not responsible for the fact that the Certificates were more than a year apart. Mr Forsyth had questioned Mr Keddie on whether the Respondent should have exercised his right to apply to the Tribunal for an Order entitling him to enter the Property, but the Tribunal accepted the explanation that that was a remedy they would employ only in an extreme situation.

122. In relation to the leak from the shower tray in the en-suite bathroom, the Respondent had stated in written representations that this was a regular wear and tear replacement of silicon sealant near the door on the shower base and this was repaired eventually when the plumber could gain access, the Respondent having used delaying tactics. The previous tenant had told the Tribunal that this had also occurred during her family's tenancy, and it was not something that would have been picked up at the Check-in Report, unless the leak had caused damage to the flooring or walls of the room. The Respondent did not provide specific evidence of delay on the part of the Respondent but, as with a number of the other repair items considered by the Tribunal, no evidence was led to establish when the matter was reported or when the work was carried out. Accordingly, the Tribunal could not make a finding that there had been undue delay in remedying the problem.

123. The evidence for the Respondent was that the meeting in March 2017 had been called by the letting agents because the rent had fallen into arrears and they were keen to get matters back on track. The Applicant's position was

that it was he who had called the meeting, in order to discuss repairs. It is clear that various repairs issues were raised by the Applicant at that meeting, as an agreement was reached to recompense the Applicant for the inconvenience caused by the flooring issue, but there is no evidence to indicate that he told the Respondent and the letting agents that he was exercising any right he believed he had to withhold the rent in its entirety. In the documentation lodged by the Parties by way of written representations, the first indication that he was withholding rent rather than simply failing to pay it was a statement attributed to him by the then Lettings Manager of Premier Properties Perth and relayed in an email to the Respondent's wife on 9 February 2018. The Lettings Manager said that, when she was showing a prospective purchaser round the Property, the Respondent had said that his lawyer had advised him to withhold the rental. This statement was made nearly four months after he had last made a rental payment.

124. The Applicant stated in his written representations that the leak at the sunroom was reported to the Respondent, not to the letting agents, and that the Respondent told him that the likely explanation was that the valley gutter was becoming clogged. Ms Keogh confirmed in her evidence that this had happened before, but her father had cleared the gutter and that had solved the problem. The Applicant confirmed in his written representations that the leak had stopped on his own. In these circumstances, the Respondent could not be held liable to the Respondent for not having taken steps to remedy the situation.

125. It was a matter of agreement that the Respondent told the contractor who came to fix the problem with the cold water tap in the cloakroom that he was not bothered about the fact that there was no cold water. The Tribunal noted the Applicant's evidence that he decided to give up on the little things because the important repairs were not being dealt with, but nevertheless, the view of the Tribunal was that he had accepted the situation, so was not entitled to any redress.

126. The Applicant stated that there had been a noise from a pump above the living room of the Property and that he had reported it directly to the Respondent, who said it had not previously been a problem. Ms Keogh confirmed that it had also occurred during her family's tenancy and the Respondent had fixed it. It had happened on a second occasion but had stopped by itself and had not been reported to the Respondent. The Respondent denied that the matter had been reported to him by the Applicant. The Applicant did not provide to the Tribunal any evidence to support his contention. Accordingly, the Tribunal made no finding as to whether or not the issue was reported, but noted that the Applicant had confirmed that, in any event, the noise had eventually stopped.

127. Both in written representations and at the Hearing, the Applicant expressed the view that the rent he was paying was too high for the Property, the rent of £900 being significantly above average, entitling the Applicant to a higher standard of property. Mr Cruickshank expressed his opinion as to the rental level to expect from the Property. The Respondent's letting agents stated that it was a fair market rent at the time of the tenancy. The Tribunal regarded

the rent level as irrelevant to its consideration of the present case. The Property had been advertised as available on the market at a certain rent. It appeared that the rent had been negotiated down by £50 per month to reflect the fact that the garage was unusable, and the Respondent had accepted the reduced figure. That was the sum he was contractually bound to pay and, whilst a claim for compensation and/or abatement of rent might be competent in relation to alleged failings by the Respondent to fulfil his contractual obligations, the amount of the contractual rent was of no relevance.

128. Mr Forsyth had also, at the Hearing, invited the Tribunal to draw an inference from the decision of the Respondent and his wife not to give evidence at the Hearing but to let their case rest on their written representations, as meaning that they had something to hide. He argued that it meant their evidence could not be tested and should be regarded as being of very low evidential value. The Tribunal rejected that argument and was not prepared to make any inference from the Respondent and his wife not giving oral evidence. The Respondent had submitted lengthy written representations, to which the Applicant had responded. It was for the Applicant to prove his case on the balance of probabilities and key to that was the need to provide evidence as to when and to whom items requiring repair had been reported by him by telephone or by other means. His solicitor stated in a letter to the Respondent that he was assured that the Applicant had the evidence, but the Applicant failed to produce it, even when directed by the Tribunal to do so.

129. The Check-in Report was very damaging to the Applicant's prospects of establishing that there had been issues with the Property from the very start of the tenancy, and in particular, the two matters that he said he had had noted at his initial visit, namely the front door and the flooring. He might never have rented a property before, but nevertheless the onus was on him to satisfy himself as to the contents of the tenancy agreement and the Report, particularly if he already had misgivings about some elements of the Property. There was also evidence from the Respondent, the letting agents and two tradesmen that the Applicant at times made it difficult for them to enter the property to carry out repairs. It had not been necessary for the Tribunal to determine this point, but it might have become very relevant had the Applicant complied with the Tribunal's Direction in relation to the evidence that his solicitor understood him to hold.

130. This case was based on alleged failures by the Respondent to comply with Clauses 22, 23, 24 and 27 of the tenancy agreement between the Parties, and with the Respondent's common law obligations. After very detailed consideration of all the written and oral evidence presented by the Parties, the Tribunal determined that there had been a single breach of the Respondent's obligations under Clause 24 of the tenancy agreement to keep in repair and in proper working order the installations in the Property for the supply of electricity, in that for a period of three/four months from December 2016 until March 2017, the Applicant did not have the benefit of electric lighting in the living room, the kitchen, the hall and one of the bedrooms. The Tribunal's view was that this did not justify withholding of the full rent or an abatement of rent, as the problem was overcome by the use of electric lamps, but recognised that it will have

caused inconvenience for the Applicant and his family and potentially an increase in electricity consumption and charges. Accordingly, the Tribunal decided to award compensation to the Applicant for that inconvenience and possible loss. The Tribunal determined that a fair award of compensation was £100.

131. The Tribunal did not uphold any other elements of the Applicant's complaint.

132. The Tribunal's decision was unanimous.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Legal Member/Chair: George Clark **Date: 26 March 2021**