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/18/1084

Re: Property at 53 Flat B Rose Street, Aberdeen, AB10 1UB ("the Property")

Parties:

Mr Daniel Buda, 39/6 Comely Bank, Edinburgh, EH4 1AG ("the Applicant")

Miss Oana Iosif, 49 Harehill Road, Bridge of Don, Aberdeen, AB22 8RH ("the Respondent")

Tribunal Members:

Jan Todd (Legal Member) and Melanie Booth (Ordinary Member)

Decision in absence of the Applicant

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

1. **no award of payment should be made.**
2. **that expenses should be awarded in accordance with Rule 40 of the Tribunal's rules on Procedure as taxed by the Auditor of the Court of Session against the Applicant on the basis that the Applicant through unreasonable behaviour in the conduct of the case has put the Respondent to unnecessary or unreasonable expense in terms of Rule 40 of the 2017 Rules and**
3. **The amount of expenses awarded under Rule 40 require to cover the unnecessary or unreasonable expense incurred by the Respondent namely:- preparation and attendance at the Case Management Discussions held on 15th March, 26th April and the full hearing held at Glasgow Tribunal Centre on 6th September 2019.**

Preliminary Matter

The Hearing commenced at 2pm in the Glasgow Tribunal Centre, where the Respondent was in attendance with one witness but the Applicant was not present. The Applicant had been served with a copy of the notification of the Hearing by post

recorded delivery, which was returned not called for and finally by e-mail sent on 29th May 2019. The Applicant had then been contacted by the Tribunal administration on the morning before the Hearing as the respondent had enquired if it was still going ahead. This was copied to the Applicant with the response that the hearing was still proceeding. These messages were sent by e-mail to the Applicant. The Applicant e-mailed on the morning of the Hearing to enquire what hearing was happening and when advised he stated he was working in Edinburgh all day and would not attend. He did not request a postponement.

The Tribunal considered whether in terms of Rule 29 of the Tribunal's rules of procedure it would be appropriate to proceed in the absence of the Applicant. The Tribunal was satisfied that the requirements of rule 24(1) regarding the giving of notice of a hearing have been complied with as the Applicant had been served with a copy of the notification of the hearing and the papers by recorded delivery, first class post and e-mail. The Tribunal noted that Applicant has not attended any of the CMDs in particular he has not attended the one on 15th March or 26th April and has not responded to the Direction sent on 26th April. The Applicant has not changed his address or e-mail address but has denied receiving notification of this hearing despite receiving the e-mail from Ms Hay of the Tribunal administration dated 5th September which was sent to the same e-mail address as the papers were sent to. The Tribunal was satisfied that records show that the Applicant has been e-mailed with all the relevant details and notification of this hearing and that it would be in the interests of the Parties and the overriding objective to proceed with the Hearing today and determined to proceed in the absence of the Applicant in accordance with Rule 29.

- **Background**

1. The Applicant lodged this application for a claim for damages and cleaning arising from the end of the tenancy of the Property between the Applicant and the Respondent on 30th April 2018. He is claiming the sum of £2,504.63, narrating that "the deposit was not lodged correctly and was lost, the deposit has been awarded to the former tenant by this tribunal this is a genuine counterclaim for genuine expenditure suffered at the end of the former tenant's tenancy which I require to be recovered. I am also claiming for costs regarding damage caused during the tenancy to the kitchen window."

2. Under Paragraph 5 of the Application the Applicant is claiming: - "Repayment by the former tenant of costs associated with the end of their tenancy which total £1,314.07. Also repayment of costs associated with damage caused to the kitchen window caused by misuse (the former tenant forced the window open without unlocking the child safety lock causing the hinge to break), an invoice of £100.05 to make the window safe and £1090.00 (one third of £3270) to replace the damaged window."

2. The Applicant lodged with the application the following documents:-
- Copy of the short assured tenancy between the Applicant and the Respondent dated 9th October 2016.
- Inventory
- End of tenancy correspondence
- Correspondence where the former tenant (the Respondent accepts liability for burn damage to the kitchen worktop
- Check out inspection report
- Invoices
- Picture of window damage.

3. The invoices lodged and relied on by the Applicant were:-
    a. Invoice from Moir Cleaning dated 4/01/18 for £273
    b. Invoice from GAB home improvement dated 12/01/2018 for £955
    c. Invoice from Thistle windows and conservatories dated 20/082017 for £3270
    d. Invoice from Proserv Scotland Ltd for £100.56 for "operatives removing both hinges and screwing window in place through the window frame, replacement hinges could not be sourced as they are now obsolete."
4. In addition a copy of order no 6232394031 for items collected from Sainsbury's store on 24th December 2017 was also lodged referring to
    a. Mattress protector double -£6.99
    b. 6 porcelain mugs - £4.49
    c. Colour match plain shower curtain white - £7.99
5. A screen shot of a TV remote from amazon .uk which shows a cost of £26.70.
6. After the application was accepted a case management discussion was set down for 27th August and was notified to Applicant by e-mail and by recorded delivery post and to the Respondent by sheriff officers. The applicant e-mailed to ask for a change of venue, and the respondent e-mailed to ask for a postponement due to the fact she was getting married and would be on holiday on 27th August. The postponement was granted and intimated to the Applicant and Respondent by letter dated 16th August.
7. The respondent lodged around 13th August 2018 a detailed statement in response denying all the sums claimed except that for damage to a kitchen worktop. The statement was accompanied with 23 annex attachments which are referred to below.
8. A fresh CMD was scheduled for 11th October 2018 which was arranged to take place via conference call.
9. The applicant contacted the Tribunal office to advise that he had not received paperwork for this rearranged CMD and claimed he was not aware of the

scheduled dates and the CMD was rescheduled for 1st November again by conference call.

10. Intimation of the rearranged CMD for 1st November was made by e-mail, post and recorded delivery to the Applicant on 19th October. The Applicant wrote by e-mail to the Tribunal office on 25th October requesting a postponement because he was unable to attend on this date and asking to be advised of a new date or "if the CMD can be conducted in my absence while considering the extensive evidence I have supplied".
11. The Tribunal agreed to the postponement and requested dates from the parties as to when they would be available. The Tribunal asked by e-mail dated 7th November for a response from the Applicant as to his unavailable dates beyond 1st December having first asked for this on 29th October 2018. By the 5th December the Tribunal wrote to the Applicant noting that they still had no response from him with further dates and asking for his response within 7 days (12th December). The Applicant replied on 5th December saying he was waiting for a response from another message and asking for a matter to be investigated in accordance with the complaints procedure. Ms Hay from the Tribunal office wrote back asking for clarification of which message he was awaiting a response on and directing the Applicant to the complaints section of the website. A further request for unavailability for dates was sent by email on 14th December for January and February. Further e-mails were exchanged clarifying the points the Applicant wished addressed. By e-mail of 8th January the Applicant noted that he noted Ms J Kane had not taken any responsibility for the tribunal's failures but he did not wish to waste further time on this. Re availability the Applicant said he worked full time and his availability was limited and his family had suffered a bereavement and he had jury service on 4th February. On 14th January, a legal member reviewed the case and confirmed that in light of the overriding objective, including avoiding delay a date for the CMD should be from March 2019 onwards and a letter to this effect was sent to the Applicant.
12. On 24th January 2019 a new CMD was scheduled for 15th March at 10 am in Credo Centre Aberdeen and the Applicant was advised of this by e-mail and he e-mailed back on 24th January to say he could not attend personally as he lived in Edinburgh and could this be done by conference call and the time moved to midday.
13. The tribunal advised that the time could not be moved as there was already an 11.30am case scheduled and if the time was to be changed it would be treated as a postponement request to another date.
14. The applicant responded saying he worked full time and couldn't take unpaid leave off and again asking for a paper decision.
15. The CMD conference call for 15th March was arranged and formal notification was sent by post and e-mail on 6th February. He was e-mailed on 8th, 13th and 14th March if he would attend and he e-mailed on 14th March saying he had made it clear several weeks ago he worked full time in Edinburgh and would be unable to participate unless it was scheduled for later in the day. The Applicant stated it was too late in the day to participate now and that puts him at an unfair disadvantage and mentioned that the last CMD was scheduled then abandoned because he was not informed of it at all.

16. The CMD took place on 15th March where the legal member explored with the respondent her views of what appeared to be a request for a postponement. The Respondent advised the case had been going on for a considerable time, she had missed an important meeting regarding her PHD studies and she was pregnant and due to have a baby in May and would shortly be relocating from Aberdeen. She felt the Applicant had no intention of seeing the matter to a conclusion. She had co-operated with the tribunal throughout and had asked for a postponement only once when evidence had been provided of a pre-booked holiday. She also confirmed again that she did not accept liability for any of the matters claimed by the Applicant.
17. The Tribunal after carefully considering a further postponement granted it reluctantly and the Respondent submitted a further submission and states "besides requests for rescheduling and no shows the applicant has repeatedly failed to co-operate and prolonged the process unnecessarily by not responding for example when he would be available. She points out that this is causing her distress and that only the needs of one party are being considered.
18. A rescheduled CMD was then arranged for 26th April and sent to the Applicant by first class post, recorded delivery and e-mail however the recorded delivery and post were both returned marked not called for.
19. The Tribunal notes that the applicant requested on 11th October that all correspondence be sent to him by e-mail and that all notifications of CMDs and todays hearing have been made by e-mail and letter.
20. A CMD was held again by teleconference to suit the Applicant on 26th April, the Applicant did not take part but the Respondent did and legal member took the view that there was a clear unresolved dispute between the Parties and having regard to Rule 2 (2)(e) of the Rules took the view that it was in the interests of the Applicant to have the matter resolved without further delay and declined to dismiss the Application in terms of Rule 27 as she could not be certain the Applicant was failing to co-operate in terms of that rule.
21. The CMD note of the discussion is referred to for its terms and in particular it is noted that the Respondents view is summarised as claiming that
    a. The sum claimed by the Applicant is excessive and that he has inflated the sum claimed because an award of compensation was made to the Respondent following on her application for a penalty for the landlord's failure to lodge the deposit in a tenancy deposit scheme.
    b. The Respondent admits damage to the worktop but otherwise refutes the Applicant's claim for any other damage or loss.
    c. She doubts the provenance and independence of the companies the Applicant alleges he has instructed and alleges some of the work claimed for has not been carried out.
    d. She also states that the Applicant carried out an inspection of the Property shortly before the end of the tenancy and raised no complaints in respect of the condition of the Property and its standard of cleanliness.
22. The legal member then made a direction asking the Applicant to provide:-

    a. A detailed written explanation of why the sum claimed by him rose from £825.50 as detailed in a letter to the Respondent dated 4th January

2108 to the sum of £2504.63 as specified in the Applicant dated 30th April.

b. Intimation of whether interest was claimed or not
c. Evidence that the tenancy deposit had been deducted from the sum claimed or that it had been returned to the tenant
d. A detailed written explanation with supporting evidence from the tradesmen who carried out the work as to why the window required to be replaced and couldn't be repaired and an explanation as to why the Respondent is liable for a third share of this cost
e. Documentary evidence from the tradesmen who carried out the work that all of the works invoiced as part of the claim have been carried out and that all the invoices have been paid
f. The name of the current tenant of the property
g. A copy of the any schedules of photographs prepared for any tenancies of the Property since January 2018
h. A copy of all quotes obtained by the Applicant if any before GAB Home Improvement or Moir Cleaning were instructed or employed by him
i. Written details of any personal family, ownership, employment or financial relationship between him and Crombie and Company, GAB home improvement and Moir Cleaning.
j. A list of witnesses who will give evidence at the Hearing.

The Direction of 26th April also directed the Respondent to provide:-

- Documentary evidence to support her position that there is a personal family ownership employment or financial relationship between the Applicant and Crombie and Co, GAB home improvement and Moir Cleaning.
- Photographic or other evidence that the damaged worktop has not been replaced by the Applicant
- Documentary evidence of quotes obtained by her from companies similar to those instructed by the Applicant for the works claimed in the Application to support her position that the sum sought is excessive and
- A list of witnesses who will give evidence at the hearing.

Documentation in compliance with the Direction was requested 14 working days prior to the date of the Hearing.

The hearing was fixed for 2pm at Glasgow Tribunal Centre on 6th September 2019. The hearing was intimated to the Respondent by e-mail; first class post and recorded delivery.

On the morning of 6th September the Applicant e-mailed the tribunal office to ask what hearing was being held that day. This was in response to an e-mail being sent to the Applicant the previous day advising the Respondent has enquired whether the hearing was going ahead and being advised it was. The Applicant advised he did not know of this hearing and was working all day in Edinburgh and would not be attending. He did not request any postponement.

- The Hearing

The hearing took place at 2pm on 6th September 2019. The Respondent attended and brought her husband Mr Rohan Baboolal as a witness. She had not lodged any further documentation but was relying on the previous substantial written documentation she had already lodged, including a statement from Mr Balboolal, extract showing the address of GAB Home Improvement is the same as Mr Gerard Buda, statement advising the new tenant in the Property recognised the mark on the worktop but did not wish to give evidence to the Tribunal The Applicant did not attend and was not represented. The Tribunal noted however that in terms of Rule 29 of the Tribunal's Rules a hearing could proceed in the absence of one party and at the request of the other party. The Respondent indicated she wished to proceed and in light of the history of the case where the Applicant has not attended any CMD and has not responded with any substantial averments since 15th March the tribunal agreed it was in accordance with the overriding objective to proceed with the full Hearing.

The Tribunal enquired when the tenancy had commenced and when the Respondent actually left the Property. The Respondent confirmed that it commenced on 1st November 2016 and although she had given notice of her intention to quit by letter dated 20th October 2017 indicating her last day would be 31st December 2017 she had in fact left a few days earlier around 20th December.

The Respondent advised she had requested in her notice to quit that she be present during any inspection of the premises for damages and that her security deposit be returned. She advised neither request was accepted. She advised that the landlord and Applicant inspected the Property without her and sent her a letter, attached to an e-mail dated 4th January 2018, on 4th January 2018 headed up "Statement of deposit return for 53 Rose Street, Flat B, Aberdeen AB10 1UB "setting out a list of damage he was claiming should be deducted from the deposit of £575 which left a balance due of -£250.50. The items claimed include

- End of tenancy clean £240
- Window Cleaning £30
- Damage to worktop £300
- Damage to kitchen hob £150
- Charge to replace missing glasses £8
- Charge to replace missing/broken crockery £8
- Charge to replace on lightbulb £2.50
- Charge to replace mouldy bath sealant £75
- Charge to replace mouldy shower curtain £12

This letter and the accompanying e-mail is annex 1.1 and 1.2 of the Respondent's response.

The Respondent advised that the only damage she accepted that was present at the end of her tenancy was the damage to the kitchen worktop which she had accepted was caused by placing a hot pot on the worktop which had left a burnt ring on the worktop. She had accepted this damage prior to the end of the tenancy and had corresponded with the landlord offering a quote to have it repaired by a company called the Plastic Surgeon at a cost of £365 in terms of an e-mail to the Applicant dated 4th December 2017 in which the Respondent also said she had obtained a quote from Poserv which was for £570. She advised that she had not proceeded with the repair as she was concerned the landlord would not accept the repairs and on receiving this list of damage she sought to contact the tenancy deposit company so that there could be an adjudication on the return of the deposit and the alleged damage the Applicant was claiming. The Respondent advised that she found out the deposit had not been lodged in a deposit scheme and she made a successful claim under Rule 103 for a penalty for the landlord and Applicant's failure to do so.

The Tribunal then went through each head of claim the Applicant has put in his application with the Respondent using each invoice or statement in turn.

1. The Applicant is claiming £240 for 6 hours of cleaning and has lodged an invoice from Moir Cleaning. The Respondent denies that the Property needed any further cleaning at the end of the tenancy. She made reference to a visit the Applicant had made in November 2018 when he made no adverse comment about the state of the property or need for cleaning. She also referred to three references she had lodged from previous and subsequent landlords confirming that they were very satisfied with the Respondent at the end of each of her tenancy and during her current tenancy. One landlord from whom the Respondent rented from 2015-2016 advised that "She was a very good tenant, house was always tidy during her stay and she left it very clean". Her current landlord Mr Crombie wrote a reference dated 23rd July 2018 stating "he had visited the property on several occasions and was very pleased she was looking after "my home in the manner I expect"
In addition the Respondent advised she had searched in the Register of Companies for "Moir Cleaning" and lodged a report showing there is no registered company with this name. In addition she advised there was no name of a sole trader or address on the invoice. With regard to window cleaning the Respondent advised the Applicant told her he would have the windows cleaned when she move in and this was never done. In fact it was because of this she was attempting to clean them when the kitchen window broke when she tried to open it to clean it. The Respondent denied any cleaning at all would be needed when she left the Property.
Mr Balboolal advised that he helped the Respondent (who was his girlfriend at the time leave the Property and he confirmed that in his opinion it was very clean because the Respondent was meticulous in her cleaning and he advised that on moving in to her new tenancy she cleaned it before she felt it was ready for him to move in.
2. The Respondent referred to the check-out report the Applicant had lodged in support of his claim for damage, cleaning and missing items and advised that she had not seen the check-out report until this application was raised. She also pointed out in person and in her written statement that the report is borne to be

prepared by Crombie and Company but in fact in her view was prepared only by the Applicant using software and equipment from Crombie and Company as this is the company he worked for. The Respondent lodged an e-mail from Harry Crombie Managing Director of Crombie and Company advising that the Applicant no longer worked for the company but he had been allowed to use their software and inspection application to carry out the inventory and check out report but that no other employee had been involved with this tenancy, the inventory or check out report. The Respondent also did a search and showed that the check-out report was "created on 23rd February 2018 whereas the photographs on the check-out report are dated 24th December 2017. She advised that this means the report was not created until well after 24th December and after the Applicant had sent a very different statement of damage in his letter of 4th January.

3. The Tribunal then asked the Respondent her view of the invoice lodged from GAB Home Improvement dated 12th January 2018. The invoice claims it is in respect of "Carry out works at the above property as specified below:-

To supply and replace burned section of worktop with like for like worktop – Labour and materials £570

To supply and replace kitchen glass ceramic hob with like for like hob – Labour and materials £305

To supply and install Yale lock with like for like locks with four keys Labour and materials £80

The Respondent advised that as previously mentioned she accepted liability for the damage to the worktop but the cost mentioned in this invoice is greater than that mentioned by the Applicant in his letter of 4th January when he noted the cost as "£300". This is also higher than the repair cost sourced by the Respondent and advised by her to the Applicant. She advised in addition she has visited the new tenant in the Property to ask if he recognised the damage to the worktop and he advised her and her husband that he did. The Respondent is of the view the worktop has not yet been replaced or repaired and this should be deducted from her deposit which has never been returned to her wholly or partly.

4. The Tribunal asked if she was aware of any damage to the ceramic hob. She advised it has been working throughout her period in the Property and was working on the day she left. She felt the claim for the hob was "complete fabrication". Mr Balboolal supported this advising that he had heated some beans in a pot on the day of departure and it was working fine at that point. Neither recognised the damage purportedly shown on the check-out report.

5. with regard to the statement that keys were missing and that the locks needed changed as a result the Respondent again categorically denied this and referred to her statement of 13th August and the photograph she took at the end of the tenancy where she pointed to a table where there looked like 2 sets of keys on it .She advised the Applicant had wanted her to leave the keys in the property which she did. Mr Balboobal agreed elaborating that he had had one set and that he remembered removing it from his fob before placing it on the table beside the Respondent's set.

6. the Respondent then drew attention to the report from Companies House which she had lodged as Annex 5 with her statement of 13th August which confirmed there was no company named GAB improvement. She also drew the Tribunal's attention to a print out of a page from 192.com showing the address narrated at the foot of the GAB Improvement invoice which was "6 School Lane

Banchory " belongs to a Gerard A Buda which the Respondent advised was the Applicant's father. Again the Respondent questioned whether this invoice was real and independent.
7. With regard to the remaining items claimed as missing or damaged by the Applicant namely the glasses and crockery, shower curtain and mould round the bath the Respondent refutes all of these. She admits there may have been one glass or cup broken but cannot truly remember and given the deposit has not been returned does accept this is a major issue. She also advised that she replaced the shower curtain a few weeks before she left the property so there should have been no need to replace it again. She also denied there was any serious mould round the bath that needed repaired or replaced other than normal wear and tear. Finally in respect of the TV remote control she points to another photograph lodged with her statement which she confirmed shows the remote on top of the TV.
8. The Tribunal then asked about the claim by the Applicant for the cost of making safe the kitchen window and the one third share of the cost of replacement windows. The Respondent explained that she wanted to clean the windows in the kitchen because the Applicant had not. She tried to open it and rotate to allow her to clean it and found that one of the hinges broke and the entire window frame and glass fell out leaving it in a dangerous position. She contacted the Landlord and he sent someone to make it safe, which is the first invoice referred to. He then a few months later replaced that window and 2 others. At no time she advised did the Landlord advise that he held her responsible for this repair and then replacement. Indeed she advised this does not even appear on his original claim of 4th January and was only mentioned when she was served with this application. The Respondent confirmed, supported by the evidence of her husband, that there was no child lock on the windows which the Applicant mentions. The Respondent totally denies acting in any way that put unusual or extra pressure on the window. She also confirmed the windows were replaced in August 2018 several months before this claim.

- Findings in Fact

a. The Applicant and the Respondent entered into a short assured tenancy dated 9th October 2016 whereby the Applicant let the Property to the Respondent from 1st November 2016 to 31st October 2017.
b. The monthly rental was £575 payable on 1st of every month commencing on 1st November 206.
c. The Respondent paid a deposit of £575.
d. The Deposit was not placed in a tenancy deposit scheme.
e. The Respondent gave notice that she wished to terminate the tenancy by letter dated 20th October 2017 giving more than 2 months' notice and stating the last day of the tenancy would be 31st December 2017 and asked for the return of her deposit of £575.
f. The Respondent removed from the Property on or around the 20th December 2017

g. The Deposit has not been returned to the Respondent.
h. The respondent raised a separate action against the Applicant for a penalty for failure to lodge the deposit in a tenancy deposit scheme and was awarded a sum equivalent to twice the amount of the deposit in action FTS/HPC/PR/18/0241. Said action was raised on
i. The kitchen worktop has been damaged by the Respondent's actions.
j. The Respondent obtained a quote for repairing said damage from "Plastic Surgeon Fine Finishers" for £365 on 4th December 2017.
k. The Applicant sent by e-mail a letter to the Respondent after the tenancy ended summarising a list of expenses he was claiming should be deducted from the deposit. The damages amounted to £825.50 or -£250 after the deposit was deducted.
l. In the letter of 4th January from the Applicant the amount claimed for the damaged kitchen worktop is £300.
m. In the application dated 30th April the amount claimed by the Applicant for the damaged worktop is £ 570 being the sum set out in an invoice from GAB improvement.
n. The kitchen window was damaged when the Applicant opened it attempting to clean it.
o. The window was repaired on or around 18th April 2017 at a cost of £100.56 by Proserv Ltd
p. The window was replaced on or around August 2017 by Thistle windows and conservatories along with 2 other windows in the Property at a total cost of £3270.
q. The claim by the Applicant for the cost of the repair and replacement of the kitchen window was first made when he made this application and does not appear in his statement of damage in his letter of 4th January.
r. The damage was not caused by any fault or negligence of the Respondent.
s. 2 sets of keys were left in the Property by the Respondent when she left on or around 20th December.
t. The hob was working and in reasonable condition when the Respondent left the Property.
u. One glass or cup was broken during the tenancy.
v. The shower curtain was replaced by the Respondent shortly before the tenancy ended and was not in need for further replacement.
w. That the Respondent cleaned the Property at or shortly prior to leaving the Property.
x. The remote control was left in the Property.

- **Reasons for Decision**

1 The Respondent advised that it was her opinion that in light of her successful claim the Applicant chose to raise this action and inflated the damages sought. This is supported by the Applicants own description of his claim in the Application where he states "the deposit was not lodged correctly and was lost, the deposit has been awarded to the former tenant by this tribunal this is a genuine counterclaim for genuine expenditure suffered at the end of the former tenant's tenancy which I require to be recovered. I am also claiming for costs regarding damage caused during the tenancy to the kitchen window.

2 Clause 9 of the Short Assured Tenancy states "at the end of the Period of this lease the Tenant will remove from the Property with all of the Tenant's belongings and shall leave each part of the Property in compliance with the Tenant's obligations under this Lease, declaring that without prejudice to the termination of this Lease however caused the Landlord will be entitled to all claims and remedies against the tenant in respect of any breach by the tenant of this Lease including without prejudice to the generality the right to recover from the Tenant compensation for all loss or damage caused by the Tenant and those occupying under the Tenant's authority…"

In terms of Clause 7 of the Short Assured Tenancy clause 7.1 states that the Tenant undertakes to keep the Property clean and tidy and properly aired and ventilated." Clause 7.1.4 states that the Tenant shall "keep the furnishings in good order and condition throughout the period of this lease."

3 With regard to the claim for fixing the kitchen window and replacing it the tribunal notes this was done in or around August 2018 but the Applicant does not mention that he holds the Respondent liable for this at the time it was done and replaced, nor at the time she left the property when he first set out his claim for damages in his letter of 4th January. The Applicant only mentions and seeks payment for this sum when he raises this application on 30th April.
The Applicant refers to the window being forced and the Respondent breaking the child lock after he alleges he had showed her how to open it. The Respondent and her husband both deny there was any child lock.
The Applicant has lodged a statement from a Jordan Mackay dated 30th September 2018 in which Mr Mackay states he was present when the lease was singed and that Miss Iosif was presented with an inventory which was reflective of the condition of the property and asked to review this. He advised that the

"property was in an excellent condition and cleaned to a professional standard as you would have expected." He goes on to say "Mr Buda also demonstrated to Miss IOsif how to open the large six foot windows safely, the one in the kitchen was fitted with a safety lock however this was demonstrated also. Following the end of Miss Iosif's tenancy I visited the property with Mr Buda to carry out the end of tenancy inspection. I can confirm the check out inspection is a true and accurate reflection of how we found property to be, the check out inspection was carried out on an iPad using industry recognised software package called Isurvey which includes the date and time stamped photographs as evidence. The Property was dirty throughout, in my opinion little effort had been made to clean the property during the tenancy. There was also obvious damage to the kitchen worktop which Mr Buda had expected the tenant to have repaired.
Miss Iosif was invited to attend the end of tenancy inspection and Mr Buda recommended to her to appoint a professional cleaner as per their correspondence. As a landlord myself and having nearly 20 years' experience in estate agency the condition of the property following Miss Iosif's tenancy fell far below reasonable expectations."

Neither the Applicant nor this witness attended the hearing so the tribunal was not able to judge their credibility or reliability. In addition the Tribunal notes the company fixing the window advises the hinges could not be replaced because the mechanism was obsolete this indicates that the windows were old, a conclusion also supported by the fact the Applicant chose to replace all the windows in the Property and not just the kitchen one he claims the Respondent broke.
The Applicant was directed by the Tribunal in the direction dated 26th April to provide

a. A detailed written explanation of why the sum claimed by him rose from £825.50 as detailed in a letter to the Respondent dated 4th January 2108 to the sum of £2504.63 as specified in the Applicant dated 30th April and to provide a
k. A detailed written explanation with supporting evidence from the tradesmen who carried out the work as to why the window required to be replaced and couldn't be repaired and an explanation as to why the Respondent is liable for a third share of this cost.

The Applicant has not responded to this Direction and has lodged no explanation or led or given any evidence to support why the window could not be repaired or why the Respondent was liable for a third share of the cost.

The Respondent however did give a credible explanation of why she was trying to open the window and how it came off its hinges and was hanging dangerously. Her statement both written and verbal is supported by that of Mr Balboolal in all material particulars. The Tribunal found the Respondent and her husband to be open, reliable and credible witnesses and given the window was replaced around August 2017 and the landlord did not try and claim the cost from the Respondent, or even raise this with the Respondent until 4 months after she left the property and had raised a claim against him for the not lodging the deposit in a tenancy deposit scheme, the Tribunal does not accept the broken window was caused by the negligence of the Respondent. The Tribunal therefore does not accept she is liable for this cost.

4 In relation to the other claims for cleaning, missing items, missing keys and damage to the hob all as set out in the Application and in the letter of 4th January 2018, the Tribunal prefers the evidence and written submissions of the Respondent to the Applicant. The Applicant has changed his claim from 4th January 2018 to 30th April when this application was raised...He has sought to increase the sum claimed for the damaged worktop which the respondent accepts was her responsibility, from £300 as specified in his own letter of alleged damages of 4th January to £570 with no explanation of why this higher amount should be accepted. The Applicant has not sought to minimise his loss in respect of this claim.
The Applicant has not provided any explanation of the increase in response to the Direction from the Tribunal as quoted above. The Applicant has not given any evidence from which the Tribunal can weigh up his credibility or test his statements in relation to any of the claims.
5 The Applicant has lodged in support of his claim in the Application an invoice from GAB home Improvement which narrates that they have supplied and replaced the burned section of the worktop with a like for like worktop, and that they have

supplied and replaced the kitchen glass ceramic hob for £305 and that they supplied and fitted Yale locks with 4 keys. The Respondent has lodged a statement claiming the new tenant of the Property recognised the burned worktop when shown a picture and so she submits the worktop has not actually been repaired. In addition the Respondent lodged evidence that the address given on the invoice for GAB Home Improvement is indeed an address listed in the name of Mr Gerard Buda the Applicant's father. The Applicant has not responded with any explanation of this evidence or allegation from the Respondent again ignoring the Tribunal's direction to do so. The Applicant's own check in report notes that there are no keys included and even though the Respondent only had 2 sets of keys he is seeking to recover the cost of 4 keys. The Respondent confirmed that the 2 sets she had were left in the property and she lodged a photograph she advised she took when she left the property showing 2 sets of keys on the kitchen table and some messages from the Applicant in which he asked for the keys to be left in the house. Her version was also supported by her Husband's verbal and written response. In light of the anomalies with the GAB invoice, the lack of proof that the work on the worktop has actually been done and the fact that if such a business exists it is related to the Applicant's father, and given the clear and consistent evidence of the Respondent both in writing and in person, the Tribunal on the balance of probabilities accepted the Respondent's evidence that only the worktop had been damaged accidentally by her and perhaps one glass or mug, but that she was not responsible for any other damage claimed.

6 Finally with regard to the claim for the cost of professionally cleaning the Property, the Applicant has lodged an invoice from Moir Cleaning which he advises he used and is seeking an order of payment of £240 for end of tenancy clean. 6 hours for 2 people together with £30 for window cleaning. Whilst such an organisation may exist the Respondent was unable to find any reference to one neither on the internet nor via companies house. The Applicant has not responded to the Direction in which he was asked to confirm any relationship with this organisation or give further details. He has chosen not to give any evidence verbally. In addition the Respondent noted that the Applicant had visited the Property in November 2017 and told her he found everything to be in order. She also lodged and referred to text messages on Tuesday 19th December 2017 in which she advises the Applicant "Hi Daniel I will be leaving on the 20th in the morning, Please let me know the arrangements for keys, otherwise I will leave the two sets in the flat. ..." the Applicant replies saying – Hi Iona good luck with your move tomorrow. The Respondent then says "Hi Daniel I have just left the flat now. I left the keys on the living room table. I cleaned the whole flat today. I also cleaned the fridge and left it on as the freezer hardly had any ice. I took meter readings ....and will report them to EDF. Hope everything else is okay. Merry Christmas to you too."

The Applicant as already mentioned did not present any evidence to support his claim that the Property needed professional cleaning despite the confirmation that the Respondent did clean the Property. The tenancy agreement does not mention the need to have it professionally cleaned. The Applicant has lodged a check out report that he claims shows the Property required cleaning. The check-out report was allegedly prepared by Crombie and Co, but the Respondent lodged confirmation that the firm had nothing to do with the report but only allowed the Applicant to borrow the equipment. The check-out report is not therefore an independently

prepared report. Doubt has also been cast on the date of the report. The report consists of black and white pictures only.
The Applicant has lodged 2 statements the one set out above from a Mr Mackay, the other from Ms Ailsa McWhirter again dated 30th September 2018 which states *During Miss Iosif's tenancy I visited the property approaching the end of the tenancy in order to undertake a pre-arranged viewing on behalf of the owner…In my opinion the property was poorly presented by the current tenant for the viewings …in respect of cleanliness which was noted by the viewer. My opinion on the presentation of the property is based on the viewer's feedback and also my four years previous experience working in property management."*

There is no further explanation of who the witnesses are or where they worked.

Ultimately though the Tribunal had to weigh up the competing written evidence of the Applicant with the written and oral evidence of the Respondent. The Tribunal considered that there was written evidence to show the Respondent had cleaned the Property, that the Landlord had found the tenancy to be in order in November 2017, that her references from 3 other landlords all confirmed she generally kept Properties in good order and, her detailed testimony which has been found to be supported in all other respects contradicted that of the Applicant and both referees. She also lodged pictures of the Property which she advised were taken at the end of the tenancy which shows the rooms, fridge, cooker etc looking clean and tidy.
With reference to the statement by Mr MacKay it is noted he said there was a safety lock on the kitchen window which both the Respondent and her Husband denied, he also mentioned it looked like it had not been cleaned throughout the tenancy. This is completely at odds with the Applicant's testimony and that of 3 referees from whom she has rented property. The Applicant has not led any evidence from Moir and Co to show that the cleaning he alleges was needed has actually been done. The Tribunal found the Applicant and Mr Balboolal to be open, measured and credible in their responses and their explanations were consistent.
On the balance of probabilities The Tribunal preferred the Respondent's written and oral evidence. The Applicant's credibility and veracity has not been able to be tested due to his failure to attend or respond in any detail to the Tribunal's direction. He has failed to provide as required in the Tribunal's direction of 26th April any address or contact details for Moir Cleaning; documentary evidence from the tradesmen who carried out the work that all of the works invoiced as part of the claim have been carried out ; the invoices have been paid; nor quotes if any obtained by him prior to that of Moir Cleaning and GAB Home Improvement and finally he has not responded to the request for written details of any personal family ownership employment or financial relationship between him and GAB Home Improvement and Moir Cleaning. In light of the absence of any response to this detailed direction which could have supported his written submissions and evidence and given the Tribunal accepted the Respondents honesty and credibility in her evidence the Tribunal preferred and accepted the Respondent' evidence and statements.

7 For the above reasons the Tribunal found that the Respondent was only responsible for damage to the kitchen worktop and one glass/mug. The cost of these items would be £300 plus no more than £1 for the glass/mug based on the Applicant's estimate of the cost of replacements. Given the Applicant has not

returned the Respondent's deposit of £575 this deposit would require to be deducted from any sum due to the Applicant and therefore no order for payment is due or required.

In addition due to the Applicant's unreasonable conduct in the conduct of this case, namely his failure to correspond with the tribunal to arrange suitable dates for the CMD after 1st November despite repeated requests; failure to respond to the Direction issued on 26th April and failure to attend the CMD of 15th March, 26th April and the Hearing on 6th September all causing inconvenience and distress to the Respondent the Tribunal finds the Applicant liable in expenses to the Respondent for the time spent in preparing and attending those said CMDs and the Hearing.

Right of Appeal

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

[redacted]

Legal Member/Chair

16th September 2019

Date