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 71 of the Private Housing Tenancies (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/21/0136

Re: Property at 260/12 Bonnington Road, Edinburgh, EH6 5BE ("the Property")

Parties:

Miss Chalice Melendy, C/O Flat 13, 2 North Pilrig Heights, Edinburgh, EH6 5FE ("the Applicant")

Mrs Polly Thelwall, 18 Ryehill Gardens, Edinburgh, EH6 8ES ("the Respondent")

Tribunal Members:

Ms H Forbes (Legal Member) and Mrs E Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment should be granted in favour of the Applicant in the sum of £1859.70.

Background

1. This is an application received in the period between 20th January and 26th May 2021 made in terms of Rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Rules 2017, as amended. The Applicant is seeking an order for payment in respect of alleged losses sustained during the period of a tenancy agreement between the parties. The tenancy agreement commenced on 1st September 2018 and ended on 19th October 2020.

2. The Respondent's representative lodged written representations and an inventory of productions on 16th July 2021.

3. Case Management Discussions ("CMD") took place on 6th and 29th September 2021. The following matters were discussed:

   (a) Hire car from Enterprise Car Rentals - £119.95 – in dispute

(b) Repair work to the Property - £490 – partially agreed – the Respondent will recompense the Applicant for works in relation to a radiator and a door

(c) Alternative accommodation – Travelodge – £115.97 – agreed

(d) Dry cleaning costs – £220.20 – agreed

(e) Food – £444.89 – in dispute

(f) Hoover – £139.99 – agreed

(g) TENS machine – £97.97 – agreed

(h) Mac portable drive – £58.57 – agreed

(i) Apple power adaptor – £79.00 – agreed

(j) Apple USB super drive – £79.00 – agreed

(k) Magic Trackpad – £129.00 – agreed

(l) Damages for stress, upset and mental health deterioration – £3000 – in dispute

4. A solicitor instructed by the Applicant lodged a revised statement of claim on 13th August 2021.

5. The Applicant lodged a revised statement of claim by email dated 20th September 2021.

6. By email dated 12th November 2021, the Applicant lodged an inventory of productions.

7. By email dated 17th November 2021, the Respondent's representative lodged written representations.

8. By email dated 14th January 2022, the Respondent's representative lodged a witness statement.

9. By email dated 14th January 2022, the Applicant lodged written representations.

The Hearing

10. A hearing took place on 18th January 2022 by telephone conference. The Applicant was in attendance. The Respondent was not in attendance and was represented by Ms Sarah Cooper, Solicitor.

Preliminary Matters

11. There was some discussion regarding Ms Mason, who was to be a supporter and a witness for the Applicant. It was agreed that Ms Mason would not be present as a supporter until she has given her evidence as a witness.

12. The Tribunal indicated that parties and representatives should request breaks as required.

The Applicant's position

13. The Applicant raised some issues in regard to the Respondent's credibility, stating that she had informed the tenancy deposit scheme ('TDS') that the correct certification was in place when the Property was let; however, in her written representations, she had admitted that was not the case.

14. The Applicant said the Property was let as an Airbnb property when she first stayed there. The parties reached agreement that she would take on the tenancy of the Property. The Property was shabbily furnished and the Respondent and her partner agreed to remove their furniture when the Applicant moved in. At the time of moving in, there were some shipping delays in relation to the Applicant's furniture which delayed the removal of the Respondent's furniture. It was always understood that they would remove their furniture eventually. They then delayed in removing their property. There was no inventory, despite the Respondent informing the TDS that there was one. The Respondent removed a bed from underneath a built-in bed, which the Applicant considered to be unsafe. They placed a mattress on top of the unsafe bed. Eventually, the Applicant had to pay to have the mattress removed.

15. The Applicant said she was assisted by Ian Oliver ("IO"), a building manager who she knew socially. He interacted with Duncan Wallace and managed the removal of some items. The Respondent had been unsure what she wanted to keep, so the Applicant agreed to put some of the Respondent's items into a storage unit that she rented. The Respondent was agreeable to this course of action. The Applicant referred the Tribunal to page 33/107 which was an email from IO. Page 36/107 showed text messages between the parties that indicated they were in agreement. The Applicant had been trying to have the mattress removed by the Applicant for three weeks and eventually had to dispose of it, as indicated in texts on pages 37 & 38/107. It was the Applicant's position that the mattress should have been removed at the start of the tenancy.

16. The Applicant said there had been an electrical fire in the Property on 3rd March 2020. She had a discussion with Duncan Wallace the following day. He had phoned her and tried to dominate the conversation and it was her position that he was trying to trick her in connection with the destruction of her hoover in the fire. Duncan Wallace sent a message thereafter (page 47/107) stating that a functioning hoover would be expected in a fully furnished flat. The Applicant referred to page 52/107 which showed text messages to the Respondent dated 11th March 2020 stating that the Applicant could no longer deal with Duncan

Wallace. In the messages, the Applicant stated that the Property was not furnished and that the Respondent and her partner were attempting to set the Applicant up. The Respondent did not respond to this at any time by saying the Property was furnished. It was the Applicant's position that this was absolute proof that it was an unfurnished flat.

17. Page 36/107 showed text messages between the parties. On 12th January 2021, the Respondent stated they had got everything they needed from the lock up, and the Applicant responded on 17th January 2021 to say that a charity truck was coming the following day. As it happened, the truck did not come and the Applicant had to get rid of the items herself.

Hire car from Enterprise Car Rentals - £119.95

18. The Applicant hired a van to remove some of the furniture belonging to the Respondents. The invoice dated 25th January 2021 in the sum of £119.95 had been lodged (page 86/107). The Applicant said she got rid of a sofa bed, cushions, and other things that the Respondent did not want. Responding to questions from the Tribunal as to whether she had discussed with the Respondent whether they would pay for the removal of the goods, the Applicant said she thought they would help with the costs.

Repairs

Curtains – January 2019 – £30

19. The Applicant said she paid the sum of £30 to IO to have curtains reinstalled after double glazing had been fitted. She asked for this sum from the Respondent but she did not chase it up.

Pulley System – June 2019 – £50

20. The Applicant said the pulley system in the kitchen fell on her head. She contacted Duncan Wallace and he agreed to pay for a new pulley. There was some discussion between Duncan Wallace and IO. It was agreed that the Applicant should purchase this and it would be deducted from her rent. The Applicant paid £50 to have the pulley put up by IO. The Applicant pointed out that the Respondent stated in her representations that it was the Applicant's choice to replace the pulley, whereas she directly contradicted herself in the representations to the TDS where she said the Applicant had not been authorised to replace the pulley. Responding to questions from the Tribunal, the Applicant said she had told the Respondent that she had paid £50. They were friends at the time, and she felt bad pushing the Respondent for payment. It was understood she would be paid for this.

Floor Painting – November 2019 – £110

21. The Applicant said paint had been flaking off the kitchen floor and going into her dog's food and water. She had a conversation with the Respondent, who

told her to get someone to paint the floor with the correct paint. IO carried out this work. The Applicant asked the Respondent for the money but it was never paid. She could not remember if she had reiterated her call for payment and said the matter maybe got lost in an avalanche of issues. She did not feel she was morally entitled to deduct it from the rent payment.

Removal of items – October 2018 – 2 men – ½ day – £150

22. In October 2018, the Applicant paid two men for a half day to put items in storage. Responding to questions from the Tribunal as to whether she had discussed this matter with the Respondent, the Applicant said she did not ask the Respondent to pay for the storage costs. It was her idea to put the items in storage. The invoice from IO (p85/107) stated that this cost included moving things out of the storage unit and disposing of them. The Applicant said she thought the bill was for removing the items and disposing of them. Responding to questions from the Tribunal, the Applicant said she disposed of some items of her own when the storage unit was emptied, but it was only bric a brac. She said, although the invoice from IO was dated March 2021, she had paid IO cash as they went along.

Lack of cooking facilities – Cost of food – £444.89

23. The Applicant said only two hob rings were working at the start of the tenancy and then only one. The extractor fan did not work. There was discussion about a new fan. A plumber was called out and he said the gas hob required attention, but he had not been hired to do that, or provide a gas safety certificate. He sealed off a gas fire. Eventually, one ring on the hob began to burst out flames that singed the Applicant's hair and eyebrows. The Applicant became scared to use the hob. There had been an electrical fire, and the Respondent had said she did not know her responsibilities as a landlord. The Applicant said the Respondent did not rectify the situation and stonewalled her and refused to address it. This was wilful negligence. Responding to questions from the Tribunal regarding the claim by the Respondent in her submissions that the hob only required cleaning, the Applicant said the Respondent or her partner had once come to put in grout and had taken the hob apart, but it had stopped working again. No gas safety certificate was every provided. There were three smoke alarms within one meter of each other that all went off when the gas was turned on. This made cooking impossible.

24. The Applicant said there were issues with the fridge and the hot water but she had not included these in her application.

25. The Applicant said friends sometimes brought her food. Ms Mason had brought her food amounting to around £100, as reflected in her statement on page 81/107. The Applicant had to order in food through Deliveroo. She referred to the invoices submitted on pages 82-84/107. The Applicant said one invoice was for a large amount, including fish market-type food. She said she was not cooking every day and she was very hungry.

Works to doors and radiator – £150

26. Ms Cooper took instructions and confirmed that the Respondent would recompense the Applicant for this sum.

Adjournment

27. The hearing was adjourned at this stage to a further hearing to take place on 8th March 2022.

The Hearing

28. A hearing took place on 8th March 2022 by telephone conference. The Applicant was in attendance. The Respondent was not in attendance and was represented by Ms Sarah Cooper, Solicitor. Ms Cooper said the Respondent and her partner, Mr Wallace, were both unwell and would not be in a position to give evidence that day.

Damages for stress, upset and mental health deterioration – £3000

29. The Applicant continued presenting her case. It was her position that it was entirely clear that she was psychologically impacted by her treatment at the hands of the Respondent and her partner, who had obfuscated and did not respond to request for repairs. They had left her in a dangerous situation and it was wilful negligence. She was afraid, and, even after another place was found for her, she was broken.

Witness – Lisa Mason

Examination-in-chief

30. Ms Mason is a museum curator and a community task force volunteer with Volunteer Edinburgh. She commenced volunteering in April 2020 and met the Applicant in May 2020. The Applicant was clinically vulnerable during lockdown and was shielding. Ms Mason walked her dog and collected medication and shopping. She did not initially enter the Property and would chat to the Applicant on the landing. The Applicant had made comments about issues with her landlord in passing. Ms Mason was aware that the situation was not ideal but she was not aware of the issues.

31. The first time Ms Mason entered the Property was on 8th September 2020. She arrived to find the Applicant upset. She understood that something was deeply amiss, and asked the Applicant if she would like her to come in. On entering the Property, she found a tradesman and the Respondent present. The tradesman left. The Applicant and the Respondent were in the kitchen, and Ms Mason was in the other room. She heard the Respondent raise her voice, so she went to the kitchen door. The Respondent was shouting and her behaviour was threatening. Ms Mason understood there was an issue with the kitchen tap, which could not be used, and the Applicant was trying to get a timeframe for

repairs. The Respondent said repeatedly there was water available in the bathroom. She said the Applicant was not the only one with health issues. Ms Mason could not remember the exact words, but she remembered something had been said that suggested financial difficulties on the part of the Respondent were stopping the work from going ahead. The Respondent asked Ms Mason what she thought they should do. Ms Mason said they needed a contractor and water as soon as possible. There was more fruitless discussion and aggression from the Respondent, who asked Ms Mason to leave the room. Ms Mason refused. It was her feeling that the Respondent was trying to cut off the Applicant's support. Ms Mason asked the Respondent to stop raising her voice, which she did, but her body language continued to be aggressive. Ms Mason asked how they could move the situation forward, and the Respondent stormed out of the Property.

32. Ms Mason noticed lots of things wrong with the flat. The kitchen tap had sunk into the grout, and the handles could not be operated, so there was no water in the kitchen. There were chunks of rotten wood and dampness under the sink. Only one burner on the hob worked. The extractor fan was broken. The gas fire had been shut off and there was hazard tape. There was no handle on the cupboard door. Ms Mason then learned more about the issues and the Respondent's attitude.

33. Around the end of September 2020, the Applicant was trying to fill a kettle in the kitchen. The hose to the tap snapped and water sprayed everywhere. The water had to be turned off at the mains. Ms Mason spoke to the homelessness team but it was impossible to house the Applicant on a temporary basis as she has a dog. The Applicant stayed in a Travel Lodge until the issue was fixed.

34. The Applicant and Ms Mason became more friendly. Ms Mason realised the Applicant was at crisis point. She offered to communicate with the Respondent on the Applicant's behalf as the relationship between the parties had broken down. She emailed the Respondent. Sometimes she got a response and sometimes she did not. The correspondence was strange, with the Respondent sometimes implying it was the first time she had heard about the issues.

35. In or around the first week in October 2020, the Applicant told Ms Mason she could not see a way out of the situation and she was seriously considering taking her own life. Ms Mason felt she was in over her head and called her manager to discuss matters. Her manager, Heather Yang, went to the Property to see the Applicant. They found the Property to be physically dangerous. Due to that and the bullying and abusive behaviour of the Respondent, they decided the Applicant could not continue to live there. Environmental Health suggested a repairing standard application, but this was not progressed. An ex-boss of Ms Mason was renting out a flat. The Applicant was unwell and in bed, but Ms Mason and Ms Yang told her she needed to leave and they would help. Ms Yang got a removal company to pack and move all the Applicant's belongings. The Applicant appeared to be almost paralysed with fear. She did not have the strength to take this action herself, and she had almost given up.

36. Ms Mason said she had told the Applicant she would have to inform the Respondent that she was moving, but the Applicant seemed scared of the Respondent knowing her new address. Ms Mason asked the Respondent to forward the Applicant's mail to her. The Applicant continued to appear traumatised even after moving. The situation had a long term impact upon her.

37. Asked whether she had communicated with the Respondent regarding gas certification, Ms Mason said she could not remember. She had emailed the Respondent regarding the kitchen tap, surges of power in the electrical system, the hob and the extraction fan.

Cross-examination of Ms Mason

38. Ms Mason confirmed that her statement on page 30/107 was in her own words. She had initially compiled it for the tenancy deposit scheme. Ms Mason confirmed that, although she and the Applicant had become friends, she still performed a volunteering role by walking the dog and getting medications. She would have a cup of tea with the Applicant and this was within the parameters of the volunteering relationship.

39. Ms Mason confirmed that she had stated in her statement that the Respondent gave a four week timescale on 8th September 2020, but she felt this was vague. She accepted this was given as a result of the tradesman's view about when the work could be done. She said she had brought food to the Applicant on a number of occasions. Sometimes she had brought cakes she had baked, or picked up takeaways or did grocery shopping, which was often bits and pieces like milk and eggs. This was during a period from around May 2020 to the end of the tenancy in November 2020. She understood the Applicant was eating takeaways because she couldn't cook due to the fan not working. She was unsure of the finer details of the Applicant's cooking practices but said the Applicant was struggling with preparation.

40. Ms Mason's support was ad hoc. She was initially walking the dog Monday to Friday when she was furloughed, but then it reduced to Tuesday and Thursday when she went back to work.

41. It was Ms Mason's understanding that the tradesman at the Property on 8th September was there to assess the worktop repair and water connection. The worktop was rotten and unstable. The tap couldn't be installed until the worktop was repaired. The Applicant was very upset. The tradesman looked awkward. It was her position there was in imbalance of power in that the Applicant was a vulnerable female who was shielding, had limited mobility, no water and was crying, and the Respondent, who was shouting and bullying, talking about her own health and behaving in an aggressive manner.

42. Responding to questions from the Tribunal, Ms Mason said she was aware of the kitchen tap situation from 8th September, but she suspected it had been going on before. Asked whether she had got a response from the Respondent to her emails, Ms Mason said some were responded to, others were not. Ms

Mason said the Applicant's health had improved since she moved out of the Property. She had lost weight, was exercising more and had more energy. She is working two days and can now leave the house. She is a happier person. Ms Mason has not heard her say she has had a severe arthritic flare up since she left the Property.

Witness – Heather Yang

Examination-in-chief

43. Ms Yang has been the Core Services Manager for Volunteer Edinburgh for four years, working in another role within the organisation for ten years before that. Ms Yang said the service was approached to offer assistance to the Applicant, who was vulnerable and at home. She visited on one occasion and found the Applicant to be very distressed due to issues within the Property. The issues were distressing. It was clear that the Applicant was struggling. Ms Mason had contacted Ms Yang by text message for assistance, indicating the situation was severe. Ms Yang understood the Applicant had indicated she was considering ending her life because of the issues. Ms Yang said she visited because of the extreme distress of the Applicant.

44. Ms Yang described problems with water and electrics. The Applicant was only comfortable in her bed. The Property was on the top floor of the building. It looked like the Applicant's living conditions required attention. Ms Yang said the Applicant was not in a positive frame of mind. Her health was not good.

45. After the visit, the volunteers tried to ensure that the Applicant was safe. This involved moving her into another tenancy when a property became available. They helped with the move, and the Applicant's health improved dramatically after that.

Cross-examination of Ms Yang

46. Ms Yang said she only visited the Applicant once. Asked about how vulnerability was assessed, she said the service would be approached by a person and the service provided would be based on the information given by the person. There were no personal visits for assessment purposes due to the pandemic.

47. Asked whether the remit of the volunteer included friendship, Ms Yang said no. The work of the volunteer was task orientated. All volunteers are trained to do tasks. There was an advertising campaign by the Scottish Government. All volunteers were interviewed and references were taken up. Training was provided and Disclosures sought.

48. Ms Yang said when she had stated the Applicant's living conditions required attention, she meant the condition of the Property. She was not involved in repairing issues at the Property.

49. Asked whether she had referred the Applicant to mental health services after her visit, Ms Yang said she thought she had phoned Social Care Direct but there was a backlog. It was her understanding that the Applicant was accessing health services herself.

The Applicant's position

50. Responding to questions from the Tribunal regarding her health conditions, the Applicant said everything became heightened after what she described as the electrical fire. The Respondent would not fix the door and she was sometimes trapped inside. She felt that she was living in a complete state of unsafety. The Respondent and her partner were very blasé. They chose not to address safety issues. This was criminal. She could not imagine anyone not rectifying such issues immediately.

51. The Applicant said there had been previous issues in her life that had exacerbated her health conditions, including being defrauded of her savings. She had made the Respondent aware of this and she felt the Respondent and her partner knew how to manipulate her. Her physical issues had deteriorated after moving into the Property. She was very unwell while living there.

52. Responding to questions from the Tribunal regarding the issue with the front door, the Applicant said the door needed to be sawed at the bottom. There was a document in the Property that gave instructions on opening and closing the door. It was very hard to open. The Respondent did some work to it that involved removing screws and a bit of metal, but it just delayed the problem. There were four occasions when she could not get out. She said she had contacted the Respondent about this several times. She did not know where to turn. The situation was worse after the electrical fire.

53. The Applicant said the Respondent was aware the Applicant had Occupational Therapy support. She referred to correspondence on page 65/107 where she indicated this to the Respondent. This was not responded to. Asked whether she had chased this up, the Applicant said yes, and that a pattern had emerged where she would contact the Respondent or her partner until the electrical fire on 10th March 2020. The following day she spoke to Duncan Wallace but he spoke over her and would not listen. The Applicant referred to correspondence on page 47/107 where Duncan Wallace said he was glad the Applicant was 'safe and warm'. She said this chilled her, given the electrical fire situation. There were inaccuracies in messages regarding the ownership of the hoover that was damaged. It was the Applicant's position that the Respondent and her partner were attempting to build a situation where the Applicant could be defrauded. They started to show an unhealthy interest in whether she was in or out. They ignored or 'stonewalled' her, and she began to feel very unsafe, ill and trapped.

54. The Applicant referred to page 76/107 which was correspondence from the Respondent where she stated it was unclear what had happened in relation to the electrical situation. The Applicant felt this was an attempt to mess with her

or ‘gaslight’ her. The plumber had told her that the reason given by the Respondent for the electrical fire was incorrect. There had been no gas safety certification for six years.

55. The Applicant referred to page 67/107 which was correspondence from Duncan Wallace dated 18th July 2018, which was prior to the start of the tenancy. It was the Applicant’s position that the Respondent and her partner intended to take advantage of her financially. The sum of £800 mentioned made no sense. The council tax was £104 per month, as reflected in the council tax credit note lodged with the application, and not £181 as stated on page 67. They were inflating the council tax. There was a methodology here. They had set out to take advantage of her. It was her position that this was all planned from the beginning, and that the Respondent would not have offered a discounted rent if the Property was furnished.

Cross-examination of the Applicant

56. The Applicant accepted that the tenancy agreement stated that the Property was furnished, and that she had signed the agreement. It was her position that the document was presented as a standard print-out, and that there was an oral agreement that she would use her own furniture when it arrived. It had not arrived by the start date of the tenancy. The Applicant pointed out that there was no inventory.

57. The Applicant was referred to page 67/107 which was an email dated 18th July 2018 from Duncan Wallace. Mr Wallace had mentioned a tenancy contract and referred to tenants’ rights having recently improved. The Applicant said the email gave her the illusion Mr Wallace was abreast of regulations and that she could trust him. The Applicant said the problems started a couple of days after the lease was signed with issues around an unsafe built-in bed. Asked whether she had asked the Respondents to move bedding so she could use the space on the bed, the Applicant said she asked the Respondent to move their belongings as soon as hers arrived. She brought art work and suitcases by car and the rest of her belongings were shipped up. She used the Respondent’s furniture at the start, then she stored their belongings.

58. Asked about the email which appeared to be a redacted statement from Ian Oliver on page 33/107, the Applicant said it was sent by Mr Oliver to her and from her to the Tribunal. The reason it appeared to be sent from her email address was because she may have forwarded it to herself. At this point, the Tribunal indicated that the original document would have more evidential value than a redacted statement. The Applicant agreed to consider lodging unredacted documents.

59. The Applicant accepted that she had used a shoe shelf belonging to the Respondent. It was her position that the Respondent no longer wanted to rent through Airbnb and that was why they were happy to have the furniture removed from the Property. It was put to the Applicant that the Respondent initially let a furnished property and was trying to be helpful to the Applicant later

by allowing the removal of furniture. The Applicant said there was never any discussion about keeping the Respondent's furniture and storing hers. The agreement was she would move her things in, and the Respondent would move her things out. The Applicant offered to keep the Respondent's belongings in storage to help them out. The Applicant denied that the arrangement was in respect of crockery and personal effects, stating that there was agreement that the sofa could be got rid of. She said the Respondent did not value the furniture and Mr Wallace had agreed with Ian Oliver to get rid of some of the furniture.

60. The Applicant was referred to page 85/107 which was a redacted email from Ian Oliver set out in the form of an invoice. It was put to her that the paragraph relating to the £150 claim for two men removing furniture in October 2018 was oddly worded for a tradesman. The Applicant said she helped to draw up the document.

61. Referred to page 86/107, an invoice for vehicle hire in the sum of £73.06, the Applicant said she had informed Mr Wallace that she was hiring a vehicle to move items and he had agreed to recompense her.

62. The Applicant was referred to her email to the Respondent dated 23rd May 2020 (page 70/107) which stated 'it has become impossible for me to cook'. Asked whether that was the first date on which the problem started, the Applicant said no, it was a reminder. The Applicant said she was fearful of using the hob, there was no electrical certification, and the three fire alarms prevented her cooking as they would go off whenever she tried. The Respondent had instructed repair of the kitchen extractor fan, but it stopped working again and was never repaired. She said she had informed the Respondent, who told her to make plans with the electrician. The Applicant referred to page 72/107 where she informed the Respondent that the fan was not working again, by email dated 23rd May 2020.

63. The Applicant was referred to page 73/107, an email dated 1st September 2020, where she referred to singeing her hair and eyebrows when using the hob. It was put to her that the hob only required cleaning. The Applicant said that was not the case and it was insulting. She denied exaggerating the situation by describing 'explosive bursts' from the hob.

64. Responding to questions regarding the vouching lodged for takeaway food from page 81/107 onwards, and, in particular, the £112 receipt for food, wine and lager on 18th June 2020, the Applicant said she had been living on 'bits and bobs' and needed a proper big meal. Asked what she had done for food on days other than those for which vouching was provided, the Applicant said she just would not eat. She was very unwell and would be in her bed. She said she cooked bits of food now and again. The Applicant said she had not told the Respondent she would be charging her for the cost of takeaways.

65. The Applicant was referred to page 32/107 which was a statement from Heather Yang, which stated that issues with cooking facilities commenced in April 2019. The Applicant said it was accepted that this was a mistake on the part of Ms

Yang. The Applicant said there were no other inaccuracies in the dates contained in her information as put before the Tribunal, but there were inaccuracies in the Respondent's dates.

66. The Applicant denied making any alterations in the Property without the consent of the Respondent.

67. Asked about her claim for damages in respect of stress and inconvenience, the Applicant was referred to the statement from her doctor on page 28/107. The Applicant confirmed that the statement was based on information that she had provided to the doctor. She had discussed matters with him by telephone.

68. The Applicant agreed that communication between the parties had included text messages, email, WhatsApp and Airbnb messages. The Applicant was referred to page 52/107 which was a message to the Respondent dated 11th March 2020, whereby the Applicant stated she could no longer deal with Mr Wallace. The Applicant said he would not listen or let her speak. Asked if she had legal proceedings in mind at the time of writing the message, the Applicant said no. The Applicant was referred to messages to the Respondent on pages 55-58/107. She denied they indicated that she was being demanding.

69. The Applicant said she reported that she could not use the door to the Property to the Respondent. It was unsafe. She said she told the Respondent and Mr Wallace that their repair had not worked and they stonewalled her. Asked for her response to a claim that they did not know about the severity of the issue because it had not been communicated to them, the Applicant said this would be a lie.

70. The Applicant said the kitchen fan was repaired after the electrical fire. She denied it was repaired within a reasonable timescale and said it should not have been in that state in the first place. It was clarified that the fault was reported on 21st March 2020 and the fan was repaired in April 2020. The Applicant accepted this was a reasonable timescale and reiterated that it broke again and was not fixed for the duration of the tenancy. She had tried to contact the contractor but they did not answer her calls. Lisa Mason also tried to contact the contractor.

71. The hearing was adjourned to 15th March 2022.

72. By email dated 8th March 2022 the Applicant requested a transcript of the evidence of that date, as she was concerned that she had been put at a disadvantage as she had struggled to follow the line of questioning in her cross-examination, due to her medical conditions. She was informed that transcripts of evidence were not available.

The Hearing

73. A hearing took place on 15th March 2022 by telephone conference. The Applicant was in attendance. The Respondent was not in attendance and was represented by Ms Sarah Cooper, Solicitor.

Preliminary Matters

74. The Tribunal raised the issue, as previously discussed, that certain statements had been lodged by the Applicant with information redacted, including neighbour statements, and an invoice and email from Ian Oliver. The Applicant agreed to consider the matter and submit redacted statements where appropriate.

75. The Applicant raised an issue in relation to the cross-examination of her carried out by Ms Cooper on 18th January 2022. The Applicant said she felt at a disadvantage as, due to medical conditions, she could not recall what had been asked or answered, and that was why she had asked for a transcript. The Tribunal explained that hearings are not recorded and transcripts are not available.

76. Ms Cooper said no notice had been given in advance of the need for any special adjustments to be made in respect of the Applicant's medical condition. She said she would be mindful of this matter when undertaking the remainder of her cross-examination during the hearing.

77. The Applicant referred the Tribunal to page 28/107 which was a medical letter dated 27th October 2021 which outlined her diagnoses and discussed the effect of the various issues that arose during her time at the Property on her health. The Tribunal pointed out that the letter did not mention any special adjustments that might be made to allow the Applicant to give her evidence, and that the Tribunal had been careful to allow breaks and adjournments at the last hearing, as and when the Applicant required. The Tribunal asked the Applicant whether she wished to adjourn the hearing to another date to allow her to discuss this matter with her doctor and consider what further special adjustments might be made. The Applicant said she would prefer to continue with the hearing. The Tribunal reiterated that breaks would be taken as and when required by the Applicant.

Cross-examination of the Applicant

78. The Applicant described an event that she called an electrical fire, whereby she plugged in the hoover and there was a huge cracking sound, blue/white electrical light coming from the socket, singeing and the smell of burning. There were no flames and no emergency service called. She was not aware if there was damage to anything else. Very few sockets worked. She insisted on a contractor attending, after speaking to the Respondent's partner. It was put to the Applicant that there was no fire and that the hoover blew a fuse. The Applicant said she was not an electrical professional and did not know how to answer that. There was an electrical arc and others, including two neighbours who were present, perceived it as a fire. The tradesman that attended said the electrics were not 'to code' and work was required.

79. The Applicant said the boiler had flooded after the Respondent tinkered with it. She asked the Applicant to do something to it using scissors. The Respondent had told her the plumber caused the flood, but the plumber told the Applicant this was not true and did not make sense. She said she had called the plumber to verify events. It was put to the Applicant that evidence would be heard that there was no flood, but a leak from the boiler causing a small puddle. The Applicant said that was false.

80. It was put to the Applicant that she had first notified the Respondent of issues with the kitchen tap on 25th August 2020. The Applicant said the Respondent knew about issues from early in the tenancy. The Respondent knew the tap was sinking into the worktop. She or her partner would come and put more group in around the tap. There was email discussion about this in 2020. The Applicant described the situation as ramshackle to begin with and it got worse. There were ongoing communications about the problem, which was eventually fixed. The Applicant said she was able to use the tap after temporary repairs with grout. Her therapist had told her to be more assertive, so she started to put things in writing to the Respondent. It was her position that the Respondent did not proactively send anyone to fix the problem, but kept talking about refurbishment and replacing the worktop. All the Applicant wanted was water. The Applicant agreed that someone was supposed to fix the tap on 1st September 2020 but that did not happen. She was not informed that the appointment had been cancelled. There was no communication about this, and no apology or explanation from the Respondent. There was no misunderstanding on her part. The contractor attended on 8th September 2020.

81. The Applicant accepted that the incident on 8th September 2020 took place a week after she had received notice to leave the Property. She accepted that she had considered the notice to have been retaliatory, because of her complaints about the Property, but denied that emotions were heightened that date. She accepted that she was struggling with nowhere else to go, and she was ill, but she had been given six months' notice.

Evidence of the Respondent

82. The Respondent is a psychodynamic therapist and artist. She met the Applicant as an Airbnb guest. She said it was her partner, Duncan Wallace, who had been involved initially with the Applicant in discussion about a longer term rent. This had not been their intention but the Applicant was very keen. She came to dinner with the Respondent and Mr Wallace and it was discussed, with agreement reached that the Property could be let longer term as long as the Respondent could replicate the Airbnb income. A tenancy agreement was signed in July 2019. It was signed quickly in part due to the Applicant requiring a signed tenancy agreement for some official purpose.

83. The Respondent agreed the tenancy agreement stated that the Property was let as a furnished property. It was her position that this was the understanding of both parties. She remembered the process went smoothly and there was no discussion at that point about whether it was furnished or not. After the

Applicant moved in, she began to want to move things. She had some storage and wanted to have her own furniture. The Respondent said the Applicant was told she would have to replace anything she removed at the end of the tenancy. The tenancy agreement was not changed. The Applicant asked for the respondent's help in moving things. Discussions were gradual and continuing and the Applicant began to send more and more messages. The Respondent said she would go and take smaller things out of the Property. The Applicant once asked for help with the storage facility and the Respondent helped her with bits and pieces. The Respondent was aware that the Applicant did not have many other people she could call on.

84. Asked about the allegation that the Respondent had engaged in a false friendship with the Applicant, the Respondent said her intent was to be helpful. She had lived in the Property and knew the neighbours. She had a connection to the place. She was not offering a big friendship. There had been lots of messages asking for help, some of which she was able to help with, some of which she was not. There was a lot of communication from the Applicant, not so much from the Respondent or Mr Wallace. The Applicant would often offer to help with things that the Respondent mentioned. She was very proactive in offering writing help, but the Respondent did not recall asking for the help.

85. The Respondent said that the Applicant's health became difficult over time and things became strained. She was unsure of the veracity of some of the things being said about the Property. The Applicant had asked for a reduction of rent as she had to stop working due to her health issues.

86. Asked about issues with the front door, the Respondent said there was a very blurry picture. There were so many texts it was difficult to know what was needed. The Respondent thought she attended at the Property to address an issue with the door on one occasion, but could not recall the timescale. The door could be opened and closed. The Applicant did not repeat or stress that any further action was missing. Maybe it got lost among the other issues. The Applicant said she was struggling to open the door. The Respondent did not think the Applicant was unable to get in or out.

87. The Respondent said she had been notified twice about issues with the hob and had attended twice and cleaned the hob. It was not a gas problem. She said she would have cleaned and would have shown the Applicant what she had done. Asked if she had been aware that the Applicant had mentioned sporadic flames and singeing, the Respondent said she knew statements had been made. Asked by the Tribunal whether the Respondent had been made aware of the specific issues, which appeared to be serious, the Respondent said she attended and cleaned the hob, and there were so many alarming things it was difficult to recall each event.

88. The Respondent said an electrician was called to check the alleged electrical fire. There was no evidence of a fire and it was thought the Applicant's hoover had fused.

89. The Respondent said it was not clear what had happened with the boiler leak. The plumber had to come back as the outflow pipe had been attached to the next door flat and was dripping. An urgent repair was required and the plumber described what to do and said he would do a full repair three days later. The Respondent cut the pipe as requested. The contractor took a few weeks to attend and fix this. It was impossible to be precise. It was not a flood. It was a leak.

90. The Respondent said she had been notified of the issue with the kitchen fan. It was attended to within weeks. The plumber had said there was no issue with the electrics but the Respondent wanted them seen to and upgraded, and this was done quickly. There was no evidence that there had been damage to wiring.

91. Some of the repairs were required during lockdown, and the Respondent could only do so much. The Respondent asked the electrician to contact the Applicant. The Applicant said there was no contact. The electrician said attempts at contact were made. It became difficult to arrange things. The Respondent was aware the Applicant would ask tradesmen to do things without involving her. For example, the Applicant wanted the plumber to certify that the hob was not working. The Applicant had the gas fire ripped out. The Respondent said she knew it needed fixed but it was certified as dangerous due to the state of the room and furniture. The way the Applicant lived in the flat caused issues.

92. The Respondent said she thought the issue with the kitchen tap was notified at a very late stage. She had not known it was a problem before that. It was a real emergency but it was during lockdown. A plumber was contacted immediately and the plumber said they could not repair the tap until the worktop was replaced as part of it was worn away. There was a six or eight week waiting time. The Respondent tried to get someone to do it sooner without success. Asked by the Tribunal what efforts had been made, the Respondent said, as well as asking the plumber, she had phoned various companies and made clear it was an emergency, but had not been able to get anyone to do the work sooner. It was done within the timescale of six to eight weeks. Apart from the area around the tap, the worktop was useable. The Respondent said she was surprised it was not raised earlier as a critical issue.

93. The Respondent said she asked for communication to be by email when text messages became difficult.

94. Asked whether she was told the Applicant could not cook in the kitchen, the Respondent said she was not sure. It was difficult to know what was really the case. She was not aware of, or asked to pay for, takeaway food.

95. The Respondent was asked what was meant by the phrase '*All non urgent repairs are on hold at this time due to what is possible for us'* in her email of 1st September 2020 to the Applicant. She initially said this was because of Covid,

but asked again by the Tribunal, the Respondent said personal issues, which she did not wish to specify, were also involved.

96. Referred to the incident at the Property on 8th September 2020, the Respondent said the Applicant seemed anxious to get the repair done, which was reasonable. The contractor arrived soon after, then Ms Mason. After the contractor left, the Applicant was bombarding the Respondent with requests. The Respondent said she remembered being backed into a corner. She was asked for a reduction in rent, which made no sense as the Applicant was on Housing Benefit. It was not a good situation but the Respondent could not conjure things out of thin air. Ms Mason crowded into the small space in the kitchen, and refused to leave and allow the parties to discuss matters. The Respondent left because the situation was becoming impossible and she was being harangued and things were being demanded of her that were not in her gift. The Respondent said she let the Applicant know the date the work would be carried out.

97. The Respondent said a Notice to Leave was issued because they decided they wanted to sell the Property for personal reasons. She said the relationship between the parties had broken down. She was astonished to be accused of bullying the Applicant.

98. Responding to questions from the Tribunal, the Respondent said the gas was checked on multiple occasions including when the boiler was repaired. The Respondent said she had failed to ask for a gas safety certificate. She said the gas engineer condemned the fire and it was disconnected before she knew about it. It was a matter of how the room was being used and it would have been condemned because of the mess and the bed being against the fire. Asked whether she had spoken to the Applicant about this, the Respondent said she was not sure. She said the plumber did not condemn the hob. As far as she recalled, he confirmed the rings were working.

99. Responding to questions from the Tribunal concerning the kitchen tap, the Respondent said she did not recall having attended at the Property to repair it before it was reported. It might have been done. It was a bit unclear. It might have been her husband that attended. That was more his thing. The Respondent said she paid for an EICR but it was not provided. The Property passed the inspection, following upgrade of aspects of the system. The Respondent said she had to get another electrician eventually. An EICR was provided after the tenancy ended.

100. The Respondent said she was bombarded with messages from the Applicant later in the tenancy. The Applicant became abusive about the Respondent's partner after the hoover situation. Otherwise most messages were about repairs or requests for help.

Cross-examination of the Respondent

101. The Respondent was referred to an email of 22nd May 2019 whereby she asked the Applicant to run her expert eye over an attachment, mentioned a glass of wine and an evening catch up. She accepted her tone was friendly and said it would always be so with tenants. She would not have requested the assistance without the Applicant's encouragement. The Respondent accepted she had invited the Applicant to her studio once or twice, which she was in the habit of doing as an artist. It was put to her that they had discussed psychology and trauma, and the Applicant's health and cognitive issues. The Respondent said she could not recall any discussion to a great level. She denied discussing the Applicant's issues or her own marriage.

102. The Respondent said she typically earned around £1300 per month from Airbnb lettings, which were mostly during the summer and the Edinburgh Festival period.

103. The Respondent was referred to an email from Mr Wallace to the Applicant dated 18th July 2019 (page 67/107) which mentioned council tax of £181 for the Property. The Respondent could not remember if this was the sum paid in council tax. It was put to her that the actual council tax was £104 per month, as stated in a credit note from the local authority which had been lodged by the Applicant. It was her position that her partner had put the proposal to the Applicant in good faith and there was no intention to trick the Applicant.

104. Asked about her statement that she was unsure of the veracity of the Applicant's complaints, the Respondent said the cooker hob needed cleaning. She could not recall each complaint as there had been so many.

105. The Respondent could not remember if she was present at the Property on 8th January, when Mr Wallace had used grout on the kitchen tap. She denied the plumber had attended the Property because of a smell of gas. It was her position that the plumber came to put in a new boiler and she later discovered that the Applicant had asked him to look at the fire and the hob. The first she knew was that the fire had been disconnected and the hob had not been condemned. She checked the hob later and it was working after it was cleaned. It was her position she would not have left the Applicant with a dangerous hob, and she did not think anything other than cleaning had been done. She did not recall whether the Applicant had told her that the hob was unpredictable. Referred to page 74/107, an email of 31st August 2020 from the Applicant that outlined the problems, the Respondent said she could see that a list had been emailed to her. Responding to questions from the Tribunal as to whether it remained her position that she had not been notified of issues with the hob, the Respondent said she knew the hob needed cleaned on two occasions, and that all the rings were working. The Respondent said she could not remember being asked for gas safety certification by the Applicant.

106. The Applicant referred to page 71/107, an email to the Respondent dated 23rd May 2020 mentioning that it was impossible to cook in the kitchen.

The Respondent said she knew the cooker worked and could not filter through all that was going on in the communication. The difficulties were not of her making.

107. Asked whether it was reasonable not to replace the kitchen fan until October, the Respondent said she was repeatedly trying to get it sorted. She could not get the contractors to come any more quickly. She could not remember if she had communicated this to the Applicant. Responding to questions from the Tribunal as to whether the Respondent had said the window in the kitchen provided sufficient ventilation, the Respondent said her partner may have said this.

108. Responding to questions from the Tribunal as to why the Respondent had informed the TDS that the flat was all fine with annual gas certificates at the beginning (page 96/107) the Respondent said she must be saying it was there before the tenancy started. She agreed it did not make sense but she was not trying to suggest there was certification when there was not.

Re-examination of the Respondent

109. The Respondent said it was common for her to invite people to attend her studio for self-promotion and networking purposes. It was common for her discuss her psychotherapy training. She thought the gas hob situation would be resolved by cleaning. She had provided the name and number of the electrician and did not hear anything from the Applicant about issues with contact. There was some overlap between the Respondent and her partner regarding the communication with the TDS.

110. Responding to questions from the Tribunal as to why there was no certification in place before or during the tenancy, the Respondent said she did not know and accepted it was her failing. Asked about her awareness of the repairing standard she said she was not as aware as she should have been and this was because of her route into being a landlord.

Evidence of Mr John Wilkinson

111. Mr Wilkinson accepted his evidence-in-chief was as set out in the signed Precognition dated 6th January 2022.

Cross-examination of Mr Wilkinson

112. Mr Wilkinson agreed that he and the Applicant were acquaintances rather than friends. Asked about an alleged incident where he claimed to have found the Applicant passed out, and why he was there at the time, the witness said he was not sure. It was such a long time ago. The Applicant had obviously passed out and he had put her feet on the bed. Asked if he had any medical training, the witness said he was a blood donor and not a doctor. It was his position that the Applicant was intoxicated but he had not taken her pulse and had left her to sleep it off. It was put to him that the incident had not happened.

He claimed it had happened and he and the Applicant had never discussed it again.

113. Asked if he knew Mr Wallace, the witness said they met on the street and had a conversation before he signed his precognition. Mr Wallace had told him about the dispute. He does not know the Respondent.

114. Responding to questions from the Tribunal, the witness said he could not remember why he had been in the Property. His was a main door property and he did not have to use the communal entrance except for loft access or to change light bulbs. Asked how he knew that the boiler and windows had been replaced, the witness said Mr Wallace told him. Asked why he believed the Respondent had refurbished the Property to a high standard, the witness said double glazed sash windows had been installed. He said his comments were based on the conversation he had with Mr Wallace.

115. The hearing was continued to a further hearing to take place on 1st April 2022.

The Hearing

116. A hearing took place on 1st April 2022 by telephone conference. The Applicant was in attendance. The Respondent was not in attendance and was represented by Ms Sarah Cooper, Solicitor.

Preliminary Matters

117. The Tribunal was informed that the Applicant was feeling unwell, and that cross-examination of the next witness would be carried out by Ms Mason.

118. The Applicant said she had not provided unredacted neighbour witness statements due to the conduct of the witness, Mr Wilkinson. Mr Ian Oliver's invoice had been provided unredacted.

Evidence of Mr Duncan Wallace

119. Mr Wallace is an organisational consultant who works with the voluntary and public sectors. He has a background in housing and has worked with housing organisations. He is the husband of the Respondent.

120. Mr Wallace said the Respondent was living in the Property when they met. Her mother then lived there. The Property was then rented out to a tenant for four years, then to a couple for two years. It was then used for Airbnb lettings from around 2017. That was how they came to meet the Applicant. They got on well with the Applicant at that time. She had told him she wanted to stay in Edinburgh and Mr Wallace agreed to help her find a place to live. The Applicant asked if they would consider letting the Property to her. Initially they refused, and she asked again, saying she could put her belongings in storage. It continued to be his intention to help the Applicant find somewhere else, but

then he and Respondent reconsidered. Following an email discussion with the Applicant, they reached agreement to let the Property. The Applicant stayed on two occasions as an Airbnb client, and she paid some cancellation fees for lost Airbnb bookings. The tenancy was put in place in July 2018, because the Applicant required the documentation early, and it was to commence in September 2018.

121. Mr Wallace thought the parties probably met a couple of times to put the tenancy agreement in place, and the Applicant came for dinner on one occasion. The Property was let as it was, with the understanding that the Applicant would keep her belongings in storage except for small electrical items. There was no discussion about furniture until things started to change around October or November. In September, the Applicant had offered to help Mr Wallace with an article he was writing. She came round to their house and she proofread the article and was helpful. She gave clothes to the daughters of the Respondent and Mr Wallace. Around that time, she said she wanted to move two storage units into one and asked if he could help, which he did. The Applicant had said storage was expensive and she wished to move her furniture into the Property. He and the Respondent offered to take some of the furniture from the flat to their house, including a table, bed linen, a kettle and a toaster. The Applicant did not want the chair or the sofa bed. The Respondent did not have room for the items and the sofa-bed was not worth selling. They agreed that it could be collected by a charity. Mr Wallace said there was a built-in bunk bed constructed in 2002. It was an open platform with no railing.

122. Mr Wallace said they were notified in February 2019 that the wooden frame of the front door was loose. He replaced the screws in the frame, and sanded and painted the door. It was expected that a joiner would have to redo the frame at some stage. He was not aware that there were problems opening the door until later. He was not aware that the Applicant could not get out of the Property. No further work was done to the door before the Property was sold and no issues with the door were noted in the home report.

123. Mr Wallace was aware that the Respondent had cleaned the hob when the Applicant reported issues with it. There were four rings, and one valve was clogged and had to be cleaned. A gas inspection was carried out in March 2021, but no certificate was provided. In June 2021, a different company came to do a gas safety check. No gas safety check was carried out while the Applicant was a tenant.

124. Mr Wallace was notified of the issue with the hoover. This was when the relationship went sour. He suggested taking the hoover to a repair shop, and there was some discussion about insurance. He had mistakenly thought the hoover belonged in the Property, but discovered it was the Applicant's hoover. Discussions took place by WhatsApp or text. He was told by the Applicant that there had been a fire and it was caused by water in a plug. He thought it ought to have been dealt with through the Applicant's insurance and did not think it was a matter for the landlords. It felt like the Applicant was asking for yet another thing. He and the Respondent had got used to the Applicant asking for

things. Mr Wallace said he felt he had to draw a line. It was a furnished flat and she should have the contents insured. The landlords should be responsible for the buildings insurance. The Applicant made accusations about Mr Wallace at the time and he said he could not deal with her any more. Mr Wallace said he had not been aware there was a major tragedy at the time of the hoover issue. The hoover had blown. There was no electrical fire. There was no damage to the Property and the Fire Brigade were not notified.

125. Referred to page 51/107 which was a text message from the Applicant dated 11th March 2020, Mr Wallace said his heart sank when he read it and he was disgusted to be accused of being abusive. He was aware that the Applicant contacted the Respondent to say she could no longer deal with him.

126. Mr Wallace was aware that the Respondent had dealt with a plumber regarding a boiler flood. It was his position that when the Applicant told him the boiler was not working he would probably have called and spoken to a plumber and got the available options.

127. Mr Wallace said there had been gas safety inspections when an earlier tenant lived there. She organised the inspections. He said he had not been notified that the lack of inspections had caused the Applicant stress or upset.

128. Mr Wallace was aware from his wife that, as a result of the new boiler being installed, the Applicant had asked the plumber if the fire was safe. By the time he became aware of this, action had been taken by the Applicant to cut off the fire and make it safe, and remove a box around it that Mr Wallace had built. The plumber's opinion was that the fire was too close to the bed and furniture and the box was not fireproof. There was no discussion about reinstatement of the fire as the Property was warm enough without it. Mr Wallace had not been aware of any stress caused to the Applicant by the issues with the gas fire.

129. Mr Wallace said a plumber came to the Property to deal with the boiler leak at the start of the pandemic. He said there was no need for electrical safety checks, but the Respondent decided to get an electrician. There was a list of issues that included the fan and sockets. The kitchen fan was not working at the end of the tenancy. Mr Wallace was not sure how long the repair to the kitchen fan lasted.

130. The kitchen tap, a single pipe mixer, and worktop had been installed in 2003. Some years later, silicone was applied. By 2017, the tap was sinking into the worktop. In or around December 2019 or January 2020, it was re-siliconed as there was further sinking. The Applicant may have had difficulties turning the tap, and perhaps had a broken wrist. Looking back, Mr Wallace said, it was probably not getting cleaned that much. He was not aware of any further issue until August 2020 when the Respondent mentioned that work was required. By that time, only emergency repairs were allowed to be done because of the pandemic. The Respondent made efforts to get a contractor to do the work required. It was Mr Wallace's understanding that the tap was still working at that time. There was a message received on 25th September from the Applicant

stating that the water had to be turned off the previous evening and an emergency plumber was required. A contractor had already quoted for the work by then. It took around six weeks from 8th September to get the work carried out.

131. Asked what was meant by the phrase *All non urgent repairs are on hold at this time due to what is possible for us'* in the Respondent's email of 1st September 2020 to the Applicant, Mr Wallace said there had been a period that was convivial, but after that the Applicant was putting more things on the list, including changing light bulbs and moving boxes. Mr Wallace said he and the Respondent are human and would help, but the list was getting longer. They were making judgements about what they would send people in to do during the pandemic, including what was possible and who would go in.

132. Mr Wallace said that it was decided it might be better to communicate by phone after the problems encountered by text messaging. After March 2020, the Respondent took up communications and would talk over matters with him. During the tenancy, communication had been by various different methods. The Applicant chose who to speak to and what method to use. Mr Wallace said, rather than having a relationship with the Applicant, he and the Respondent were reduced to acting as landlords trying to help the tenant within the law and what was possible. It was his job to help the Respondent.

133. Mr Wallace said he would not be surprised to be accused of bullying as that was already in writing. He had not done anything like that. It was his position that the Applicant had a lovely safe home which was well-resourced. The issues that arose were normal issues. The idea that there was a flood or a fire, rather than an item shorting or a trickle, was preposterous.

134. Mr Wallace said the seriousness of the allegations made by the Applicant meant he had to discuss matters with the Ethical Standards Commission. He takes his responsibilities seriously. This case has had a major effect on income and mental health. He has been a leader in homelessness issues. The relationship had been twisted into a mess that was damaging.

135. Responding to questions from the Tribunal regarding the responsibilities for insurance, Mr Wallace said he was not sure if the Respondent had contents insurance. Even if she had, he was not sure whether it would cover their belongings or whether it was the responsibility of the tenant.

136. Responding to questions from the Tribunal as to whether he and the Respondent had ever registered as landlords, Mr Wallace said they had not done that, and had not thought about it. He thought they had used a tenancy agreement for the couple that had rented for two years. When letting to the Applicant, they used the model agreement.

137. Asked by the Tribunal why a comment had been made that they had no experience as professional landlords, when they had previously let the Property more than once, Mr Wallace said they had let to a friend at a low rent. The

Respondent's mother paid no rent. They did not approach it like professional landlords, even with Mr Wallace's background in housing. He said they thought of the Property as the Respondent's pension.

Cross-examination of Mr Wallace

138. Mr Wallace said he was aware of the Housing (Scotland) Act 2006, and that new legislation in 2017 brought in more tenants' rights. He was not working in the area in depth at that time. He was not aware of the Housing and Property Chamber. He would have known more about housing in the 1990s as he was advising on homelessness at that time. He was aware of the Equality Act 2010 through his work with the Ethical Standards Committee. He was aware of protected characteristics, but he was not aware that the Applicant was disabled. He was referred to references to occupational therapy in a text from the Applicant to the Respondent, and he said he expected that the Respondent was aware.

139. Mr Wallace denied that the amount of requests made by the Applicant showed that there were a lot of issues that required attention. He said he did not accept an alternative viewpoint on this matter. He said the lack of an inventory at the start of the tenancy was a big oversight. He and the Respondent had not thought about it. They had photographs from Airbnb. Asked why an inventory was provided to the tenancy deposit scheme and not the Tribunal, Mr Wallace said they were faced with an empty flat at the end of the tenancy that had not been restored to anything like it was when let through Airbnb. They had to show the tenancy deposit scheme that it was a furnished flat.

140. Mr Wallace said the rent was reduced because the Applicant was on benefits. He was not aware that the benefits related to a disability.

141. Mr Wallace was referred to page 67/107, his email to the Applicant of 18th July 2018. He denied that the first paragraph of the email, which was in friendly terms, contradicted the reluctance to let that he had described earlier. He was unable to explain why the council tax figure quoted in the email was different to the figure previously put to the Tribunal. He could not remember how the council tax figure had been arrived at.

142. Asked whether it was reasonable that the kitchen fan was not working six months after the second fault was reported, Mr Wallace said they had tried to get the electrician back to carry out the work. There may have been an exchange between the parties as to who would contact the electrician but it hadn't happened. He was not aware which electrical company had been contacted for an EICR.

143. Mr Wallace was aware that the Respondent was shaken up after the incident on the 8th September 2020. It was not an easy situation.

144. Mr Wallace said he did not remember the Applicant being upset about the electrics following the hoover incident, but he picked up that it was important to her. It was a time of people having to care for each other just pre-lockdown. He did not feel it was inappropriate to use the term 'safe and warm' in his communication to the Applicant after the discussion about the hoover incident, and he did not see how it could be perceived as threatening. He said he had clearly not understood the extent of the Applicant's panic, but maybe it had not been conveyed to him. Mr Wallace said he did not think it was inappropriate to refer to the Property as fully furnished.

145. Asked to explain the comment to the tenancy deposit scheme that certification had been carried out, Mr Wallace said it happened quite frequently with the previous tenant. They used the same company for a few years. It was not carried out after they began to let through Airbnb. He had made enquiries to see if previous certificates were available but found they were not centrally retained. Responding to questions from the Tribunal, Mr Wallace accepted that it might be presumed that the information sent to the tenancy deposit scheme suggested there was certification in place from the start of the tenancy rather than from the start of the Respondent's career as a landlord.

146. Asked whether he could appreciate that the lack of documentation and the issues in the Property had caused stress and upset, Mr Wallace said he could imagine it could play on someone's mind but he was not sure that the lack of certification was the issue. Repair issues built up during lockdown. Prior to that, the Applicant had been able to go to John Lewis to choose a new fridge and had got Mr Wallace to change her lightbulb. Everything changed during the pandemic. Documentation does not give anyone safety.

147. Responding to questions from the Tribunal regarding his attitude towards certification, Mr Wallace said he and the Respondent had gone beyond what the plumber had said about the electrics and had got an electrician, taking matters very seriously and reacting immediately. It was his position that their response during the pandemic was good compared to that of other landlords. He now understands the importance of certification.

148. Responding to questions from the Tribunal regarding the claim to the tenancy deposit scheme for the cost of missing furniture, Mr Wallace said there was a range of reasons for the claim, and the missing furniture was part of that. The Applicant said she would restore the Property to how it was before. There was a clear verbal agreement that furniture would be replaced. It was expected that the sofa-bed would be replaced. It was not fully thought out, regarding actual costs and replacements costs. The Applicant left without giving notice.

149. Responding to questions from the Tribunal, Mr Wallace said he knew nothing about the pulley being moved. He was not involved in any dialogue about this. He thought the Respondent had told him that the Applicant got a friend in to move it. He was aware that the Applicant's friend had done some

jobs. Payment for the jobs had not been authorised. He did not know the details of work carried out.

Re-examination of Mr Wallace

150. Mr Wallace said he knew access was an issue in getting the contractor back to fix the kitchen fan but he did not know the exact issues. It was not an unsafe flat. The hoover had shorted and required repair. It was not raised with him by the Applicant that the lack of documentation was causing stress, and certainly not in the first year of the tenancy, or it would have been carried out. Mr Wallace confirmed the tenancy deposit was not returned because the last month's rent had not been paid. The tenancy deposit scheme did not deduct any money from the deposit for the missing furniture or any other issues raised.

Other matters

151. Following the completion of evidence for the Respondent, it was agreed that parties would submit their final submissions in writing.

152. By email dated 14th April 2022, the Respondent's representatives lodged submissions

153. By email dated 16th April 2022, the Applicant lodged submissions.

Findings in fact and law

154.

(i) The Respondent was the heritable proprietor of the Property which is registered in the Land Register for Scotland under Title Number MID25170.

(ii) In terms of a tenancy agreement between the parties which commenced on 1st September 2018 at a monthly rent of £800, the Applicant rented the Property from the Respondent.

(iii) The Property was let as a furnished property.

(iv) At some stage after the tenancy commenced, a verbal agreement was reached that the Applicant would move her own furniture into the Property and that items of the Respondent's furniture would be removed.

(v) The Respondent moved some items from the Property to her own home.

(vi) The Applicant placed some items belonging to the Respondent in a storage unit that she rented.

(vii) It was agreed between the parties that the sofa-bed could be disposed of.

(viii) The Applicant disposed of some items of furniture belonging to the Respondent.

(ix) There was no agreement between the parties regarding which party would pay for the costs of moving or storing furniture.

(x) The Applicant is not entitled to recover the cost of moving the Respondent's furniture.

(xi) The clothes pulley in the Property fell off the kitchen ceiling. The Respondent's husband authorised the Applicant to purchase a new pulley and the cost was deducted from her rent. The Applicant received authorisation from the Respondent and/or her husband to have the pulley refitted at a cost of £50. The Respondent did not reimburse the Applicant for this sum. The Applicant is entitled to be reimbursed for this sum.

(xii) Following the installation of double glazed windows to the living room of the Property, the Respondent failed to reinstall the curtains. The Applicant was required to pay the sum of £30 to have the curtains reinstalled. The Applicant is entitled to be reimbursed for this sum.

(xiii) The Applicant had the floor of the kitchen repainted at a cost of £110 following discussion with the Respondent, who agreed to pay for this. No payment was made by the Respondent. The Applicant is entitled to be reimbursed for this sum.

(xiv) The front door of the Property was, from time to time, not in good repair and in proper working order.

(xv) The gas hob in the Property was, from time to time, not in good repair and in proper working order.

(xvi) The kitchen tap was not in good repair and in proper working order for a significant period of the tenancy.

(xvii) The Applicant had no running water in the kitchen from late August 2020 due to issues with the kitchen tap and the kitchen worktop.

(xviii) On or around 24th September 2020, an emergency repair was carried out to shut off the water in the kitchen.

(xix) The kitchen fan was repaired in or around April 2020, but it broke again thereafter and was not repaired before the end of the tenancy. The kitchen fan was not in good repair and in proper working order for a significant period of the tenancy.

(xx) On 8th September 2020, at the Property, the Respondent behaved in an aggressive manner towards the Applicant.

(xxi) There was no EICR for the Property at the start of, or during, the tenancy.

(xxii) There was no Gas Safety Certificate for the Property at the start of, or during, the tenancy.

(xxiii) The Applicant's ability to prepare food was affected on occasion by the lack of a proper working hob, the lack of running water, and the lack of a working kitchen fan.

(xxiv) There was an electrical incident involving the Applicant's hoover in March 2020, whereby there was a cracking sound, and an arc of blue or white light was emitted from the electrical socket, accompanied by singeing and a smell of burning.

(xxv) An electrician informed the Applicant in or around March 2020 that the electrics in the Property were not to code, and work was required.

(xxvi) The gas fire in the Property was disconnected, pending servicing, and a non-fire-proof box was removed for safety reasons.

(xxvii) The Applicant informed the Respondent that she was suffering physical and psychological health issues by email dated 15th October 2019, also requesting a reduction in the monthly rent.

(xxviii) During an exchange of text messages on 27th March 2020, the Applicant informed the Respondent of concerns with her mental and physical health, linking them to issues at the Property, and stating that she was in fear of using half the Property due to electrical issues.

(xxix) The Applicant informed the Respondent by email on 25th May 2020 that she was unwell and that her health was affected by issues within the Property.

(xxx) The Property did not meet the repairing standard throughout the tenancy.

(xxxi) The Respondent has breached clause 18 of the tenancy agreement.in respect of the Property failing to meet the repairing standard throughout the tenancy.

(xxxii) The Respondent breached her duty to carry out necessary repairs as soon as is reasonably practicable after being notified of the need to do so.

(xxxiii) The Respondent's breach of contract caused a deterioration in the Applicant's mental health.

(xxxiv) The Applicant has suffered physical harm as a result of the Respondent's breach of contract.

(xxxv) The Respondent ought to have foreseen that a delay in attending to repairing issues and a failure to ensure that the Property met the repairing standard would lead to a deterioration in the Applicant's mental health.

(xxxvi) The Applicant left the Property on 19th October 2020.

(xxxvii) An EICR was carried out dated 16th April 2021.

(xxxviii) A Home Report was carried out dated 18th May 2021.

(xxxix) A Gas Safety Certificate was carried out dated 22nd June 2021.

Reasons for decision

155. The Tribunal considered the disputed claims put forward by the Applicant as follows:

Hire car from Enterprise Car Rentals

156. The Tribunal did not find that the Respondent was responsible for this sum. The Tribunal accepted that the Property was furnished at the start of the tenancy. Thereafter, the parties appear to have agreed verbally that the Applicant would move her furniture in, and that certain items of the Respondent's furniture would be removed. The Respondent was aware that items were being removed and disposed of. The Respondent removed items herself, and does not appear to have objected to the removal and disposal of other items, but there was no agreement between the parties that the Respondent would be responsible for the cost of moving furniture around.

Repair work to the Property

157. The Tribunal noted that £150 of this sum was agreed in respect of works in relation to a radiator and a door. The Tribunal considered that the Respondent was responsible for a further sum of £190, namely the cost of reinstalling the curtains after the living room windows were replaced by the Respondent (£30), the cost of re-fixing the pulley (£50), and the cost of painting the floor (£110). The Tribunal accepted the evidence of the Applicant that the Respondent and/or her husband had agreed to meet these costs. The Tribunal did not accept that the Respondent had agreed to the cost of two men moving items of furniture in the sum of £150. The Applicant's evidence in regard to this cost was unclear, and there seemed to have been no agreement between the parties that the Respondent would be responsible for these costs.

Food

158. The Tribunal accepted the evidence of the Applicant and Ms Mason that the Applicant's ability to prepare food was affected on occasion by the lack of a proper working hob, the lack of running water, and the lack of a working

kitchen fan. The Tribunal noted that the Applicant herself said in evidence that she could cook bits and pieces now and again, which suggested the problem was not constant. The Tribunal accepted the evidence of the Applicant that the hob did not always work as it should, and that she feared it was dangerous. It may well have been the case that the Respondent's cleaning of valves on the hob assisted on occasion, but the problem persisted, and it ought to have been attended to by a suitably qualified contractor, given the scale of the problem reported.

159. The Tribunal found, however, that there was a lack of sufficient vouching for any losses incurred. The Tribunal was not convinced that the takeaways for which vouching was provided were ordered as a result of the difficulties experienced by the Applicant. They were ordered sporadically, on 18th and 30th June, 24th July, 2nd and 5th August and 17th September 2020, which suggested occasional takeaways, rather than food that was ordered as a result of difficulties with cooking. The sums claimed in respect of individual meals were excessive, particularly the meal ordered on 18th June 2020, which appeared to include more food than one person would normally eat. The costs claimed included alcohol, which was not ordered as a result of a lack of cooking facilities, and this tended to reinforce the idea that the takeaways were ordered as a treat rather than a necessity. No vouching was provided for the food said to have been purchased by Ms Mason on behalf of the Respondent.

160. The Tribunal made no award in favour of the Applicant in this regard.

Damages for stress, upset and mental health deterioration

161. The Tribunal found that the Applicant was entitled to claim damages for the deterioration in her mental health, as spoken to by Ms Mason, and outlined in the letter from Dr Mathias.

162. The Tribunal accepted the position put forward on behalf of the Respondent that damages for breach of contract cannot usually include damages for mental distress; however, the Applicant suffered a deterioration in her mental health, which goes beyond the type of mental distress set out in the case of *Addis v Gramophone Co Ltd*. and constitutes physical harm, for which damages can be claimed.

163. The Tribunal found Ms Mason and Ms Yang to be credible and reliable witnesses. The Tribunal did not accept that Ms Mason's evidence was biased by virtue of friendship. Ms Mason spoke to the deterioration in the mental health of the Applicant to the extent that she was talking about taking her own life as a way out of the situation. While the Tribunal accepted that the serving of a Notice to Leave and the prospects of having to search for alternative accommodation could cause a tenant to worry, and probably added to the concerns of the Applicant, it did not consider that this was the main cause of the Applicant's mental health deterioration.

164. The Tribunal noted that the Respondent has diagnoses of significant mental health conditions. Dr Mathias wrote that the Applicant's living situation at the time she was in the Property contributed significantly to the deterioration in her mental health, and that the Applicant contacted the GP service at times in an extremely distressed state. Dr Mathias also stated that there has been a significant improvement in the Applicant's mental health since she moved to alternative accommodation, and this was also stated in evidence by Ms Mason.

165. The Tribunal noted that the Applicant had informed the Respondent several times of concerns with her mental health, linking those concerns to the repair issues within the Property. The Respondent could not fail to have been aware that allowing the repair issues to continue would lead to further deterioration in the Applicant's mental health.

166. The Tribunal found that the Respondent breached her obligations in terms of the tenancy agreement in respect of the Property by failing to meet the repairing standard throughout the tenancy in respect of the entrance door, the gas hob, the kitchen tap, and the kitchen fan, and by failing to have the necessary gas and electrical safety checks carried out. She also breached her duty to carry out necessary repairs as soon as was reasonably practicable after being notified of the need to do so. The Respondent's evidence, in relation to the issue with the door, was that there was 'a very blurry picture', and there were so many texts it was difficult to know what was needed. She said she thought she had attended at the Property to address an issue with the door once, but could not recall the timescale. She said repairing issues may have become lost among other issues raised by the Applicant. She did not deny that she may have been notified again about issues with the hob, stating that there were so many issues, it was hard to be clear about notification. In relation to the issue of whether she had been informed that the Applicant was having difficulty cooking, the Respondent said she was not sure if she had been informed of this, when the evidence showed that the Applicant had made the issue entirely clear, with graphic description of her safety concerns.

167. It was clear to the Tribunal that the Respondent and Mr Wallace had decided that the Applicant was being unreasonably demanding, and yet, there was no other evidence put forward to support this stance. The Respondent failed to take seriously matters of which she was notified and should have taken seriously, despite being aware of the impact of such matters on the Applicant's health.

168. The Tribunal took into account the fact that the Covid-19 pandemic impacted upon the availability of contractors, particularly in relation to the kitchen worktop and tap; however, the Respondent was able to get a contractor to deal with the kitchen fan during lockdown, albeit she failed to have it repaired again at a later stage. The Tribunal also took into account that the kitchen tap situation had been ongoing for some years before it became unusable, with the Respondent and/or Mr Wallace having to attend to it on occasion from 2017.

169. The Tribunal took into account the evidence of the Respondent that personal issues also contributed to her decision to inform the Applicant that *All non urgent repairs are on hold at this time due to what is possible for us* in her email of 1st September 2020. When Mr Wallace was asked what this phrase meant, he referred to the Applicant asking for more and more to be done, and said he and the Respondent were making judgements about what they would send people in to do during the pandemic. This evidence tends to suggest the delays could not be blamed entirely on the pandemic, but that the Respondent and Mr Wallace were choosing not to attend to some matters for personal reasons.

170. The Tribunal also noted Mr Wallace said in evidence that, when the Applicant was asking for a replacement hoover, it felt like the Applicant was asking for yet another thing, and he felt he had to draw a line. The fact that Mr Wallace took this view, when the fault with the hoover had been caused by a serious electrical issue within the Property, lends weight to the conclusion that he and the Respondent had made a decision not to address issues raised by the Applicant because they either did not believe the Applicant or considered she was being too demanding.

171. There was insufficient evidence to support the assertion that there was an electrical fire. However, the Tribunal accepted the Applicant's evidence that something serious occurred with the electrics in the Property and that the issue damaged her hoover. Taken together with the issues with the gas hob, the comments of an electrician that the electrics were not 'to code', issues with water leaking from the boiler, the lack of safety certification, and a door that did not always open, it is not surprising that the Applicant was concerned and distressed and that this contributed to a deterioration in her mental health.

172. The Tribunal did not consider there to have been a campaign of exploitation by the Respondent or Mr Wallace as alleged by the Applicant. However, the Tribunal found the attitude of the Respondent and Mr Wallace in regard to the failure to carry out safety checks concerning, to say the least. The Tribunal also found the failure to register as landlords to be concerning. Despite having previously said that they were not experienced landlords, this was not the case, as the Property had been rented more than once previously, and Mr Wallace spoke of having a background in housing.

173. The Tribunal was not persuaded of the credibility or reliability of either the Respondent or Mr Wallace in relation to the matter of the gas fire. Both were keen to attribute the condemnation of the fire to the Applicant and the way in which she lived. The Tribunal preferred the evidence of the Applicant that the gas fire was disconnected for other reasons, including the installation of a fire box that was not safe. The Tribunal noted that the Respondent's written representations stated that the fire was disconnected 'until it could be serviced', which contradicted their position in evidence.

174. The Tribunal took into account the claim made by the Respondent to the tenancy deposit scheme that *the flat was all fine with annual gas certification*

checks at the beginning. Despite alternative interpretations put forward in evidence by the Respondent and Mr Wallace, the Tribunal was not persuaded that this was not an attempt to mislead the tenancy deposit scheme into believing that gas certification checks had been carried out at the start of the tenancy. This reflected badly on the credibility of the Respondent and Mr Wallace, as did the inclusion of a sum of £300 for a sofa-bed in the sums said to be due by the Applicant at the end of the tenancy, when, in reality the sofa-bed was discarded with the agreement of the Respondent as it was not worth anything.

175. The Tribunal did not find Mr Wilkinson to be a credible or reliable witness. Indeed, it was not apparent what his evidence was intended to achieve. His precognition appeared to be little more than an attempt to disparage the Applicant. His evidence was given in a manner that showed no respect for the Tribunal. He engaged in shouting and talking over Tribunal Members, and was flippant and sarcastic during cross-examination. It appeared that the reason he considered that the Respondent and Mr Wallace had gone beyond what a normal landlord would do was because he'd been told so by Mr Wallace during a conversation that took place after the tenancy ended.

176. In all the circumstances, the Tribunal considered £600 to be a suitable sum in respect of damages.

Expenses

177. The Tribunal did not find that the Respondent had been put to unreasonable expense through unreasonable behaviour of the Applicant in the conduct of the case. The application was accepted by the Tribunal on 10th June 2021. At the Case Management Discussion on 6th September 2021, issues were raised in respect of the application, but it was not deemed not competent. The Tribunal could identify no behaviour on the part of the Applicant that it would consider unreasonable. No award of expenses was made.

Decision

178. An order for payment is granted in favour of the Applicant in the sum of £1859.70.

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.

H Forbes

Legal Member **Date 11th May 2022**