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 Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act")

Chamber Ref: FTS/HPC/CV/21/1334

The Cottage, 20 High Street, Alyth, Blairgowrie, PH11 8DW ("the Property")

Parties:

Neil Stewart, Kinballoch, Bankhead, Alyth, Perth and Kinross, PH11 8HQ ("the Applicant")

Nicholas Bauer, formerly of The Cottage, 20 High Street, Alyth, Blairgowrie, PH11 8DW and currently address unknown ("the Respondent")

Tribunal Members:

Josephine Bonnar (Legal Member)
Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment in the sum of £1843.83 should be granted against the Respondent in favour of the Applicant.

Background

1. On 2 June 2021, the Applicant lodged an application with the Tribunal seeking a payment order in relation to unpaid rent and work carried out at the property to repair damage caused by the Respondent during the tenancy. A copy tenancy agreement, rent statement and invoices for the work were lodged in support of the application.

2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer. A Case Management Discussion ("CMD") took place by telephone conference call on 29 July 2021. At the CMD the Legal Member noted that the Applicant was seeking a payment order for the sum of

£3202.27. This comprised £1930 for arrears of rent and two separate sums (£669.93 and £602.34) for remedial works at the property. The rent arrears figure was based on an assumption that the sum of £900, due to the Respondent in terms of a payment order issued by the Tribunal, would be set off against the sums due to the Applicant. The Legal Member noted that the parties were agreed that the tenancy agreement lodged by the Applicant had governed the relationship between the parties, rent had been due at the rate of £450 per month, the Respondent had vacated the property on 20 July 2021, and that the last substantial payment of rent had been the sum of £320 on 8 January 2021. The Legal Member also noted that the Respondent disputed that the sum claimed was due. He said that he had stopped paying rent because he had no heating and hot water from January 2021 until he vacated the property. He had incurred out of pocket expenses as a result and had applied his rent money to these costs. In terms of the remedial costs the Respondent disputed that he was liable for these except for the sum of £41.19 for work carried out on 9 October 2020. Lastly, the Legal Member noted that the Applicant claimed that he had been unable to get access to the property for repairs. The Respondent denied this but said that he had required a support worker with him when access was required, and the Applicant did not give enough notice for this to be arranged. He advised that he had a disability.

3. Following the CMD, the Legal Member determined that the application should proceed to an evidential hearing. She issued a direction which required parties to lodge additional information and documents prior to the hearing. The parties were notified that the hearing would take place by telephone conference call on 10 September 2021 at 10am. Prior to the hearing both parties lodged written submissions and documents. The Applicant also lodged an updated rent statement and a written request to amend the sum claimed to £4131.27.

The Hearing

Preliminary Matters

4. The Tribunal noted that the Applicant had submitted an updated rent statement and request to amend the application on 26 August 2021, seeking to amend the sum claimed to £4131.27. This comprises £2859 for rent arrears and violent profits and £1272.27 for repairs required to the property. Mr Runciman confirmed that the Applicant wished to amend the application. The Tribunal noted that the application to amend had been lodged 14 days prior to the hearing, as required by Rule 14A of the Tribunal Procedure Rules, and granted the request. The Tribunal also advised Mr Anderson that he would have to satisfy the Tribunal that there was a legal basis for violent profits and noted that a claim for unjustified enrichment might be more relevant.

5. From the submissions lodged, the Tribunal noted that the Applicant had now paid the sum of £900 to the Respondent, being the sum awarded by the

Tribunal under Chamber reference PR/20/2468. Mr Runciman confirmed that the Applicant no longer sought to offset this sum again the sums due in terms of the application. He also advised that the tenancy deposit itself is still in dispute and has not been repaid to either party by the tenancy deposit scheme.

6. The Tribunal noted that the submissions and documents lodged by the parties refer to several issues which are not relevant to the subject matter of the application. These include allegations of antisocial behaviour, stalking and damage to the property unrelated to the sums being claimed. The parties were advised that the evidence should focus on the subject matter of the application. In particular, it should address whether rent was due for period 20 January to 20 July 2021; whether the Respondent was entitled to an abatement of rent because of a lack of central heating and hot water at the property; whether the works carried out by the Applicant in October 2020 and January 2021 were necessary or whether they constituted improvements; and whether they were required as a result of actions or omissions on the part of the Respondent. The Tribunal also noted that the Respondent had not fully complied with the direction. He indicated that he had been unable to lodge documents in support of his defence because he is currently homeless and most of his possessions are in storage.

The Applicant's evidence

7. Mr Anderson advised the Tribunal that he is a gas service engineer. As a result, he deals with the practical aspects of the rented property while his wife looks after the paperwork. He stated that he obtained an eviction order against the Respondent on grounds of antisocial behaviour, including vandalism. Mr Bauer had answered a Gumtree advert for the property through his support worker. Mr Anderson was not made aware of any disabilities, and the property was not set up for that. Mr Runciman referred Mr Anderson to the copy lease which had been lodged with the application. He stated that it was Mr Bauer's tenancy agreement which includes a clause (Fourth) which states that rent of £450 per month is payable and a clause (Ninth) which states that the tenant accepts that the property is in good condition, requires the tenant to maintain the property and leave it in good condition when he vacates, and stipulates that written approval is required for internal decoration. This clause also states that the tenant must heat the property and will be responsible for the repair of burst pipes and any resultant damage. Mr Anderson then referred to clause tenth which states that the landlord has a right of access at any time for inspection and repair of the property. He advised that there was no separate agreement between the parties about access. Mr Anderson then referred to clause thirteenth, which stipulates that the tenant shall not carry out any alterations to the property and fourteenth, which states that the tenant will indemnify the landlord against all liabilities which arise out of actions or omissions of the tenant. He then referred to clause seventeenth, which states that the landlord is entitled to recover any losses from the tenant which arise out of a failure to comply with the tenancy agreement and clause twenty second, which states that the gas appliances and boiler have been checked by the landlord, a gas service engineer, and that the tenant must notify the landlord of any problems with the boiler. Lastly, Mr Anderson referred to clause eighth which states that

the tenant will take care of the contents of the property as specified in the inventory and would have to pay for any loss or damage. Mr Anderson then referred to two other documents lodged (Numbers 2/2 and 2/3 on the Applicant's list of documents ("App List"). He advised that these are the inventory documents which include the gas boiler, radiators, and heating system at the property. He stated that he had given this inventory to the Respondent on 3 April 2018. He explained that the red type related to the condition of the property at the end of the tenancy.

8. Mr Anderson advised the Tribunal that there were no issues with Mr Bauer at the beginning of the tenancy but over time it became hard to get access and he started doing things which were not permitted. Then, in October 2020, he was called out to the property for a water leak and told that there were one or two other issues. On arrival he noted that a radiator had been removed and there was a smell of gas from an open pipe where the gas fire had been removed. He also noted at the same visit the removal of the fireplace and the bath. He referred to item 3/1 on App list, saying it was a letter sent by his solicitor on his instruction to Mr Bauer on 29 October 2020, regarding the unauthorised alterations and the associated safety concerns. Following the letter, it was still difficult getting access to the property and he instructed his solicitor to start eviction proceedings. A notice to leave was served on grounds of antisocial behaviour. In due course an eviction order was granted by the Tribunal.

9. Mr Anderson next referred to item 10 on App list, two handwritten invoices. He said that these relate to work carried out by him at the property between 9 and 15 October 2020 and 13 January 2021. The October invoice related to the work carried out following the attendance at the property which was previously referred to. He received a call from Mr Bauer about a leak from a pipe which he had damaged. The pipe in question led to the kitchen radiator, which Mr Bauer had removed from the wall although he had no authority to do this. On entering the property Mr Anderson became aware of the smell of gas and noted that the gas fire had been removed and Mr Bauer had left an open-ended gas pipe which is unsafe and contrary to the legislation. He arranged to cap the gas pipe and notified the Health and Safety Executive. He returned on the following Saturday to replace the damaged pipe. While he was there the thermostatic radiator valve was found to be damaged. He spent at least 5 hours at the property replacing the pipes and valve and re-hanging the radiator. However, the boiler would not fire up due to a separate issue - a damaged valve. He sourced a replacement and got it on the Monday. He fitted it on the Thursday, and was accompanied by George Arthur on this occasion, as a witness. He needed to check that everything worked by firing up the system. He subsequently posted the invoice through the letterbox of the property. It has not been paid although Mr Bauer acknowledged at the time that he was responsible for the damage.

10. Mr Anderson then advised the Tribunal that the January invoice relates to emergency work carried out. He received several voicemail messages from Mr Bauer during the previous night stating that water was coming through the ceiling. This was during a very cold spell. George Arthur again accompanied him when he went to the property at 9.30 the following morning. Mr Bauer

refused to let him in. He contacted the police who attended and eventually persuaded Mr Bauer, at lunchtime, to allow them access. Mr Anderson carried out work to make the property safe and get it dried out. He issued an invoice to Mr Bauer. It hasn't been paid. He referred to item 13 on the App list which he explained was a schedule of the work carried out on both occasions and includes the parts which were required. As he gets parts cheaper, because he buys in bulk from suppliers, he has charged the "make up" cost which is the charge to the customer. He did this to cover the costs associated with sourcing the parts, namely his time and phone calls**.** Mr Anderson then advised that his hourly rate as gas engineer is £40, and this is what has been charged to Mr Bauer and is based on the number of hours spent. He has charged 5 hours in the October invoice. He had to drain the central heating system to remove the damaged radiator microbore pipes, replace the pipework, re-hang the radiator and source, and fit, the new radiator valve. This work was required because the radiator had been removed and the pipework damaged in the process. The gas valve had been damaged as a result of the system being run without water causing an electrical fault. He had returned on the Thursday to do this work. The Tenant caused it. In response to questions from the Tribunal Mr Anderson said that wiring in the attic had been pulled out which could have led to the blown valve. He did not think that the valve had just stopped working, the casing was damaged. The chances were that it was the Tenant, running the system without water leading to an electrical fault which led to the blown valve. The boiler would overheat if there was no water in the system.

11. Mr Anderson advised that he had to lift a hatch in the bathroom to replace the radiator pipework. The pipe had been twisted during the removal of the radiator. The Danfoss radiator valve was damaged beyond repair. The work was necessary to put things back to the way there were and to ensure the system functioned. The boiler valve work was required because of damage caused and the boiler would not have worked if the work had not been carried out. He supplied all the required parts. Mr Anderson referred to items 11/1 to 11/6 on App list. He said that these were photographs of the order form for the gas valve for the boiler and the box it came in, the damaged valve, the newly installed gas valve, and the damaged pipe. He advised that the work carried out on 15 October took one hour. He removed the damaged gas valve, installed the new one, commissioned and tested the system. The work was necessary. The work was not part of the gas safety check, this is carried out in January. He referred to the gas safety reports dated January 2020 and 2021.

12. Mr Anderson advised that there have been many occasions when he has been refused access. On 18 October 2020 he went to the property, having sent a text to say he was coming to check all was ok following the recent repairs. Access was refused. Access was also refused on 19 November 2020 and on 23 November 2020 when he was notified by text message that access would not be provided. On 14 December 2020 he arranged for another company to go and check the property, but they were refused access. On 3 January 2021 he attempted to get access for the gas safety check but there was no answer at the door. This also occurred on 6 and 8 January 2021.

13. Mr Anderson referred to items 15 on App list, being an email from Mrs Anderson to the solicitor on 18 February 2021 listing the damage to the property by Mr Bauer with several photographs. He advised that the second photograph shows that the fireplace has been removed, the third shows the gas pipe where the hearth had been which had to be capped and the fourth shows a calor gas heater sitting where the hearth had been. The heater was placed there by Mr Bauer, and he did not have permission for it or for removal of the fireplace. The tenth photograph is of the kitchen and shows where the radiator had been removed from the wall. Eleven shows the wet and damaged floor where the pipe had been damaged. Twelve is a photograph of the gas meter taken on 16 January 2021. Thirteen shows the damaged casing to the boiler and fourteen to sixteen show the damaged central heating system electric wires which had been pulled out. Nineteen shows the kitchen with flue liner for the wood burner which was not permitted and could have invalidated his insurance.

14. Mr Anderson stated that he had six voicemail messages from Mr Bauer on 10 January 2021 saying he had to come as soon as possible because of water coming through the ceiling. The police assisted him to get access after two hours waiting. He found water coming through the ceiling. The floor was soaked, and the electricity was on. Mr Bauer refused to agree to the electricity being switched off. Mr Anderson spent the rest of the day drying out the property with heaters and dehumidifiers, towels, and mops. He had to put the boiler off and removed the gas burner to prevent Mr Bauer trying to put it on as it could not be used until it was repaired and could have been dangerous. He advised Mr Bauer that he would need to source the part. He didn't think that the boiler was being used anyway as the gas meter was turned off when they arrived, and the property was cold. In response to questions from the Tribunal Mr Anderson confirmed that there is no alternative method for heating water in the property. He said that the boiler could not be used until the repair was carried out because there would not be enough water in the system. The part in question was the connection to the hot water tank. This is what had frozen. It took a while to source the part. He finally got it and sent a text on 21 February 2021 to say he would come at 9am the next day to fit it. He received a reply at 3am to say it was not suitable and that Mr Bauer was entitled to 48 hours' notice for a repair.

15. Mr Anderson advised the Tribunal that he received no communication from Mr Bauer indicating that he was withholding rent. He referred to item 13/3 on App list which indicates that the only part required for the January repair work was a 15mm comp cap with a make-up cost of £2.34. This stops water going into the cylinder. The remainder of the January invoice is for labour – 10 hours at £60 per hour because it was a Sunday, his usual hourly rate being £40. He had actually been there for 12 hours but did not charge for the 2 hours he waited for access. He also did not charge a call out charge. He drained the central heating system and capped the pipe to stop the water, dried out the whole area so that the electrics and lights could be used. The incident was caused by the property not being heated properly. It was clear that Mr Bauer was not using it as the gas meter was off. This caused frozen pipes. The work was essential.

16. Mr Anderson advised that he has not attempted to get access to the property since he was refused access on 21 February 2021. He said that he had expected Mr Bauer to move out as he had been issued with a notice to leave which stated that he had to leave by 11 December 2020. Furthermore, he was told by a police officer on 6 May 2021 that Mr Bauer had said that he would not allow any access. He drove past the property on several occasions to keep an eye on it and saw smoke billowing out of the chimney which caused concern.

17. Mr Anderson advised the Tribunal that Mr Bauer vacated the property on 20 July 2021 leaving arrears of rent of £2859. No payments were made to the rent account after 1 January 2021, except for one payment of £1. Emails and letters were sent by his solicitor to Mr Bauer regarding the arrears. No response was received. He denies the allegation that Mr Bauer was not given the inventory for the property. He stated that Mr Bauer did not look after the property, did not report issues with the boiler in October/November 2020 and did not lodge a repairing standard application with the tribunal. He was never given permission for the wood burning stove, this would have invalidated his insurance and the gas fire had been in working order.

18. In response to questions from Mr Bauer Mr Anderson said that he previously worked as a gas engineer for both Scottish and British Gas but is now self-employed. George Arthur accompanied him to the property as a witness, not a worker. He did not carry out any work. Mr Anderson does not employ anyone. George Arthur is retired and was a farm worker. Mr Anderson could not comment on what inventories usually look like as he has only used his own and he definitely gave it to Mr Bauer. He did fill in the gas safety record on the day he was at the property to deal with the leak, it only took a few minutes to complete. The reason for being at the property was to deal with the burst pipe. However, he took the opportunity to do the gas safety check which did not take long as there was no fire, and the boiler was capped. The only thing which needed to be checked was the hob. The gas had not been capped, just the boiler. He denied that a part had been needed for the boiler since the 2020 gas safety report. The boiler is about 30 years old, he installed it at the property. Older boilers can last a long time. More modern ones don't last as long. Older ones can run as efficiently as newer ones. He confirmed that when he went to the property on 10 January 2021 Mr Bauer had been prepared to allow him access, but not Mr Arthur. However, the police had told him to always take witnesses with him. If he had arranged for a company to attend, they might have sent two engineers. He denied that he had contacted Mr Bauer about having the part to do the repair on 21 February because the CMD was due to take place. That was when the part arrived. He was referred to Mr Bauer's message which said that access should be requested by email or letter. He said that he does not use email, and text messages had always been fine before. He added that Mr Bauer had not contacted him to arrange an alternative time for the part to be fitted.

19. In response to further questions from his solicitor, Mr Anderson explained that he had not contacted Mr Bauer again because he did not want to seem to be harassing him and the eviction order had been granted. The police had said that he would not allow access**.** In response to questions from the Tribunal he

confirmed that the part which was needed was an Essex flange which is the connection in the cylinder where the water feeds from. It connects the cold water into the hot water cylinder. **I**t is vital as the system cannot run without water. He had to cap the pipe until a replacement was obtained. This did not interfere with the supply of water to the property. He did not offer alternative method of heat or hot water as the tenant had his own calor heater. However, he would not have had any hot water for showering. It would have been dangerous to have left the boiler operational. He was not able to get the replacement part more quickly. In response to questions from the Tribunal, Mr Anderson said he did not offer any alternative form of heating to Mr Bauer as he believed he had his own. He had not considered communicating by putting a handwritten note through the door to try to secure access. He was juggling priorities with many customers without hot water and heating.

The evidence of Valerie Anderson

20. Mrs Anderson advised that she made up the inventory for the property. She walked Mr Bauer through the property and the inventory was left with him at the time of visiting the property to have the tenancy agreement signed. He was a good tenant to begin with and then it became difficult to get access from October 2020. She went with Mr Anderson on 10 October 2020. The living room fire had been removed and the fireplace ripped out. It had been vandalised. Mr Bauer was aggressive toward them. A radiator had been removed and the boiler casing had been bashed in. The pipe wasn't straight. Mr Bauer had caused the damage by taking the radiator off the wall although he is not qualified for that kind of work. She didn't go on the 15th when repair work was carried out. Mr Bauer was issued with invoices for the work required in October and January but hasn't paid them. On 10 January 20201, Mr Bauer left horrible, aggressive voicemails. She was at the property for some of the time that Mr Anderson spent that day. She recalls Mr Anderson sending a text to Mr Bauer when he got the part that was required. Mr Anderson didn't go to the property as he had received a response saying access would not be provided. They didn't make any further attempts but did drive past the property a few times. They were in touch with the police and one of the officers told them that Mr Bauer said that he wouldn't let anyone in. Mr Bauer had asked her about putting in a wood burner and had been told that he was not permitted to do it. They were very concerned when they saw smoke coming out of the chimney. Mrs Anderson referred to a letter addressed to Mr Bauer from the Council Environmental Services which asks for information to make sure that the installation of the wood burner complied with regulations. Mr Bauer did not provide them with that information. Mrs Anderson advised that Mr Bauer owes £2859 in rent arrears and that he did not tell them he was withholding rent. Letters and emails were sent to him about the arrears. When they recovered the property, they found some of these letters unopened at the property.

Evidence of George Arthur

21. Mr Arthur advised that he is medically retired and was a farm worker. He is a friend of Mr Anderson and first met Mr Bauer on 15 October 2020 when he went to the property as a witness when Mr Anderson went to fix up what Mr Bauer

had destroyed. Mr Anderson was fitting a gas valve to the boiler to get the radiators operational. He was in the attic with Mr Anderson and saw where wires had been ripped off. He went back to the property on 18 October 2020, but access was refused. He felt that Mr Bauer had been embarrassed by what he had done. He also attended on 10 January 2021, when there was a major flood. He did not assist with the repairs and was not paid for his attendance. The leak had been caused by lack of heat in the property. The gas meter was in the off position when they arrived. In response to questions from Mr Bauer, Mr Arthur denied that he had met him before 15 October 2020. In response to questions from the tribunal, he said that there had been a cold snap and the property was very cold. The gas meter was off. Mr Bauer had a calor gas heater, but he doesn't know if it was on as it was in another room.

Evidence of Respondent

22. Mr Bauer advised the Tribunal that he had not paid his rent because the landlord failed to provide him with heat and hot water. He had to purchase materials to provide himself with an alternative way to heat water. He has receipts for these purchases but cannot access them as they are in storage, and he is currently homeless. However, he said that he had spent the following-

(a) A hot water urn so that he could heat water - £140
(b) A garden pump and dustbin so he could wash - £65 and £20,
(c) RCD socket - £8
(d) Electric shower - £100 and £50
(e) New back door and fittings - £130
(f) Higher electricity bills – not sure how much
(g) Two new door locks as keys were missing after the visit on 10 January 2021 - £50
(h) Gas bottles - £620.39
(i) Multi fuel burner fuel (coal) - £200-£300

23. Mr Bauer stated that he had the landlord's agreement to put in the multi-fuel burner. It was agreed verbally at some point during the summer of 2020. Mr Anderson did mention his insurance, but he didn't get back to him to say there was an issue. It was purchased in October 2020 but not used until he was left with no heat and hot water. It cost £700 and the fittings were £150. The gas central heating didn't work properly because the boiler was old. However, he did use the heating and the landlord was wrong to assume that he did not. The meter was in the off position because of the leak. He had also turned off the cold water supply at the stopcock. He didn't switch off the electricity because it was the middle of the night, and he would not have been able to see what he was doing. When the police attended, they asked for lights to be switched on.

24. Mr Bauer advised the Tribunal that he had felt intimidated by Mr Anderson and had wanted his support worker with him when he came to the house. That is why he needed notice of access being required. This could be problematic due to COVID, and Mr Anderson always wanted access on a Sunday morning,

when he could not arrange for someone to be there. On 21 February he was only given a few hours' notice of access being required and it was not convenient. He told Mr Anderson that all future communications should be by letter or email. In response to questions from the Tribunal he advised that he had not contacted Mr Anderson to chase him up about the repair. His mental health was deteriorating, and he couldn't deal with it. For the same reason he did not notify Mr Anderson that he was withholding rent. He did not ask his support worker to contact Mr Anderson.

25. Mr Bauer said that when the leak happened on 10 January, he kept the electricity on so that he had light to mop up the water. He went to bed at 7am and was still asleep when the police arrived. He also advised the tribunal that he did not concede liability for the repair work required in October. He had removed the radiator to clean it. The pipe broke when he was re-hanging it on the wall. He had been unaware of any damage to the boiler and was not made aware of this by Mr Anderson when he was at the property. He did concede that Mr Anderson was entitled to £41.19 for capping the gas pipe next to fireplace (£40 for labour and £1.19 for the part). He did not accept that a new Danfoss thermostatic control for the radiator or pipework was required, or the other parts being claimed in this invoice. He had not received an estimate for the works which Mr Anderson said were required.

26. Mr Bauer said that he had recently submitted a repairing standard application, although he had not done so during his tenancy as he had other cases to deal with. He said that Mr Anderson treated him like a customer rather than a tenant when he issued the invoices. He confirmed that Mr Anderson had been at the property on 9 October for an hour, 10 October for 3 hours and 15 October for an hour or so. He denied having tampered with the boiler and said that he reminded Mr Anderson on 9 October that he, Mr Anderson, had previously indicated back in January 2020 that a part was required for the boiler. This had not been raised again until he was billed for this part in October. On 10 January 2021, Mr Anderson arrived with George Arthur, and he told them that only one of them could come in. They chose to walk away. He later allowed both in with the support of the police. The property was being heated properly and he is not responsible for the burst pipes. He generally kept the heating on all the time during the winter because the property was cold. On the day of the frozen pipes, the heating had been on, and he had run it until the early hours of Sunday morning. However, there is minimal insulation at the property and the boiler and hot water tank are old.

27. In response to questions from Mr Runciman, Mr Bauer confirmed that he had not provided receipts for the expenses which he had referred to in his evidence and had not provided any details in his written response to the Tribunal. He had given the landlord two methods of communication with him but did not contact the landlord himself due to the intimidation. He had not required authority to take the radiator off to clean it as this is a usual tenancy thing to do. He could not provide evidence of repairs issues being reported as it was always done verbally, and he had done his best to comply with the tenancy agreement. He accepted that he had signed the lease. He accepted that the lease specified rent of £450 per month and stated that access had to be provided. He conceded

that the lease said that he had to get written permission for alterations but that he was only told verbally. He confirmed that he had not paid rent. The first missed payment was because he had to pay for a new door, having reported the damage verbally to the landlord. He didn't tell the landlord he was withholding rent but wasn't asked by the landlord why he hadn't paid. After 10 January 2021, all his rent money was needed for the expenses he was incurring due to lack of heat and hot water. He denied that he had received the emails and letters from the solicitor about the arrears – the emails had been blocked and letters not received. The emails had caused a virus and that is why they were blocked. He confirmed that he had received housing benefit for his rent. He denied that he had damaged the property during the tenancy and only accepts that £41.19 is due. In response to questions from the Tribunal, Mr Bauer said that he had not chased the landlord to fix the Central heating over the period before he left the property but had accepted an offer of a free gas service from Shell and that Scottish Gas Network had subsequently capped the gas in the property.

The Applicant's submissions

28. The Applicant and his witnesses gave credible evidence and corroborated each other. The Applicant's oral evidence is also supported by his written submissions and documentary evidence. The Applicant is a responsible landlord and experienced gas engineer. He suffered severe stress as a result of the Respondent's actions but has always behaved reasonably. Mrs Anderson assists in the management of their leased properties and has also suffered immense stress. Her evidence supported the Applicant's evidence. Mr Arthur witnessed the damage to the property by the Respondent and was able to vouch for the time spent by the Applicant to deal with same. On the other hand, the Respondent was less credible and unsupported by documentary evidence. He failed to provide a full response to the direction and did not provide details of his heating of the property, permission to install a wood burner, notification of the decision to withhold rent or the legal basis for non payment of rent. His evidence lacked candour. He contradicted himself and deviated from his position at the CMD and introduced new points for which there was "no record". His responses were not genuine, and he sometimes refused to answer. His evidence was fabricated to avoid liability.

29. **Rent Arrears.** The tenancy ended on 4 July 2021, in terms of an eviction order, and the arrears of rent were £2329 on this date. The Respondent did not vacate the property until 20 July 2021. If this additional period is taken into account, the arrears due are £2619. The Respondent failed to vouch any of his alleged expenses linked to the lack of heating and hot water at the property. None of the items which he claims were purchased were left at the property and therefore remain in the Respondents possession. He failed to provide evidence of permission to instal the stove. The Respondent has not "pled or proved a case for abatement" of rent. The Applicant did not get fair notice of the Respondents position. Furthermore, the Respondent did not notify the Applicant that he was withholding rent or the reason for doing so, although he was sent correspondence about the rent arrears. The Respondent did not give the Applicant the opportunity to fix the heating, he did not place the money in a

separate account and he did not notify the Local Authority who were paying housing benefit to him. The lack of heating and hot water at the property was not “solely down” to the Applicant. The boiler was checked each year and was in good working order. The frozen pipes were due to the Respondent not heating the property adequately. The Applicant disabled the boiler to prevent possible harm to the Respondent or damage to the property. The Applicant made extensive attempts to obtain a replacement for the defective part. Once obtained, he contacted the Respondent to arrange access, but this was refused. The Respondent did not offer an alternative date and time for the repair and did not make any complaints or lodge a repairing standard application. The Respondent had a calor heater and had been issued with Notice to leave which had indicated that he should vacate the property in December 2020. The Applicant had difficulty getting access to the property. This started in October 2020. The tenancy agreement explicitly and implicitly required the Respondent to provide access to the Applicant for inspection and repair. The Respondents failure to provide access materially contributed to the requirement for additional expenditure. Clause 22 of the agreement required the Respondent to notify the Applicant of any problems with the boiler. He did not do so. The lease did not allow the Respondent to pass on costs to the Applicant for additional heating arrangements. The Respondent failed explain why he should be entitled to a full abatement of rent when he continued to occupy the property.

30. **Violent Profits.** The Respondent occupied the property for 16 days after the tenancy had been terminated. During this period the Applicant was unable to let it out to another tenant, profit from his investment or market it for sale. The Respondent was a “possessor in bad faith”. Although the eviction order was not issued until 21 July 2021, the Applicant sent an email to the Respondent stating that he considered the tenancy to be at an end on 4 June 2021. The Respondent would also have received a copy of the Tribunal’s decision and did not seek to appeal or have the decision recalled. He ought to have expected the order to be issued in early July. Reference is made to Gloag and Henderson Chapter 34 and the Bankruptcy and Diligence (Scotland) Act 2007. The rent which would have been due for the period 4 to 20 July 2021 is £240. The Applicant is entitled to twice this sum in violent profits. Alternatively, the Respondent has been unjustifiably enriched for the period in question and that the sum of £480 is a reasonable sum “in restitution of the Respondent’s use of the property.

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31. **Remedial works – Causation.** The Tribunal must determine whether the Respondents actions and omissions caused the Applicant’s losses. It was accepted by both parties that the Applicant is an experienced gas engineer, and he was responsible for gas and central heating repairs at the property. The Applicant has provided copies of the invoices, a schedule of work and quotations for the parts. He referred to these in his evidence and was able to explain what work was required. He referred to photographs of the damage. The evidence established that the work in question was essential and not improvements. The work was required due to damage and unauthorised alterations and needed to prevent water ingress and keep the property heated. The Respondent admits to removing a radiator and damaging a connecting pipe. The Tribunal heard that wiring at the property had been damaged, the

boiler had been tampered with and damaged and that the property was not being heated to prevent frozen pipes. The gas supply had been left off. The Respondent was evicted due to antisocial behaviour and vandalism.

32. **Remedial work – Liability.** The Tribunal must determine what the parties agreed on the issue of liability for damage to the property. The Respondent accepted the terms of the lease. Reference is made to various clauses of the agreement. The Applicant and witness gave evidence that the inventory referred to in clause eighth was handed over. In terms of the clauses the Respondent undertook to maintain the property, to be liable for damage, to obtain written permission for alterations, to adequately heat the property and to be liable for the repair of burst pipes. The Respondent has breached the terms and conditions of the tenancy.

33. **Remedial work – Quantum.** The Applicant has produced invoices and additional documentary evidence in support of his outlays. Little or no evidence was led by the Respondent to dispute this evidence. The Applicant's evidence should be preferred.

The Respondent's submissions

34. The Applicant and witnesses' evidence was untruthful, and they have collaborated to suit their needs. George Arthur met the Respondent on several occasions prior to 15 October 2021, contrary to the evidence he gave. The Applicant could not vouch at what point the gas had been turned off. The Respondent had turned off the gas and water to prevent further damage. He left the electricity on so that he could see to clear up. The Applicant did not provide the respondent with alternative heating or source of hot water. The Respondent used his rent money to buy necessary extra heaters and items to supply hot water which the Applicant should have provided in terms of the tenancy agreement. The Applicant sent the Respondent an email which states that the tenancy ended on 4 June 2021. The Respondent concedes the charge for capping the gas pipe because he had been given permission for the stove. The Respondent has a disability, mental health problems and is homeless and has provided as much evidence as he could in those circumstances.

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Findings in Fact

35. The Applicant is the owner and former landlord of the property.

36. The Respondent was the tenant of the property in terms of a tenancy agreement dated 3 April 2018.

37. The Respondent was due to pay rent at the rate of £450 per month.

38. The tenancy ended on 4 July 2021 in terms of an eviction order granted by the Tribunal.

39. The Respondent vacated the property on 20 July 2021. The sum of £2619 in unpaid rent was outstanding at that date.

40. The property was without central heating and hot water from 10 January 2021 until 20 July 2021.

41. The Applicant required to carry out remedial work at the property on 9 and 10 October as a result of damage to the property by the Respondent.

Reasons for Decision

42. In the submissions, the Applicant's solicitor addresses the issue of the credibility of the parties and witnesses and invites the Tribunal to prefer the evidence of the Applicant and his witnesses. The Tribunal noted that, with some exceptions, the issue of credibility is not relevant as many of the key facts are not in dispute. The Applicant's evidence was, to some extent, corroborated by his witnesses. However, neither witness has the knowledge or expertise required to comment on technical matters, so their opinions were of limited value. In relation to the rent arrears, the main facts are not in dispute. The only disputed issue relates to the question of access for repairs, but this is not because the parties' contradicted each other. The Applicant states that he was unable to get access on various occasions. The Respondent said that he wanted more notice so that he could arrange for a support worker to be present, and that access was often requested when it was not convenient. These positions are not incompatible. Furthermore, the Respondent did not dispute that he had failed to provide access on the various occasions specified by the Applicant in his evidence. The parties did give different accounts about the wood/multi fuel burner and whether the Respondent had permission to install it. As the Respondent does not dispute the charge for capping the gas at the former fireplace, the Tribunal did not have to assess the evidence on this issue. However, as the Respondent did not use the stove until January 2021 (although it was purchased in October 2020) and as the Applicant's insurance is likely to have been compromised by the installation, it seems unlikely that the Respondent was given permission for the installation. The Tribunal did not therefore find the Respondent's evidence on this point to be credible. However, there were also issues with the Applicant's evidence during the hearing. He told the Tribunal that he was refused access to the property when he attended on 10 January and had to request assistance from the police. However, when the Respondent challenged him on this point, he conceded that the Respondent had only refused to admit Mr Arthur. While the Applicant may have had good reason for bringing someone with him, his earlier evidence that he had been refused access was simply not true. His reasons for failing to make further attempts to fix the boiler after 21 February 2021 were also not convincing. He stated that he expected the Respondent to vacate the property as a Notice to leave had been served. However, the date specified in the Notice had been 11 December 2020, and the Respondent did not move out. He also referred to information provided by a police officer. However, this was not until early May 2021 and therefore cannot account for his failure to contact the Respondent

prior to that date. From their evidence, it was clear to the Tribunal that the Applicant and his wife had been very distressed because of the Respondents misuse of the property, such as the removal of the fireplace, and had been desperate to recover possession of the property. This appears to have been a motivating factor in the Applicant's decision to make no further attempts to carry out the repair. The Tribunal also noted that the Applicant is an experienced landlord who was, or ought to have been, fully aware of his obligations. The Tribunal therefore had reservations about the oral evidence given by both parties during the hearing.

Rent Arrears.

43. There are two parts to the claim for arrears of rent. The Applicant seeks the sum of £2379 for unpaid rent at the end of the tenancy on 4 July 2021. In addition, the sum of £480 is sought for the period between 4 July 2021 and 20 July 2021, when the Respondent vacated the property. The legal basis for this claim is violent profits or unjustified enrichment.

4 July 2021 – 20 July 2021

44. It is not in dispute that the Respondent did not vacate the property until 20 July 2021 or that the tenancy terminated on 4 July 2021 in terms of an eviction order granted by the Tribunal. However, the Applicant did not receive the order from the Tribunal until 21 July 2021. Usually, orders are issued after the appeal period has elapsed. In this case there seems to have been a delay. As a result of that delay, the Applicant had not instructed Sheriff Officers to arrange the eviction and did not require to do so, as the Respondent had already moved out. Although the decision with statement of reason was sent to both parties on 4 July 2021, this does not specify the date on which the tenancy came to an end. The Respondent received an email from the Applicant, but this contained incorrect information about the termination date. The Tribunal is of the view that the Respondent was entitled to remain in occupation until he was provided with appropriate evidence that the tenancy had ended. He could also have chosen to remain in the property until lawfully evicted by a Sheriff officer but did not do so. In the circumstances, the Tribunal is not persuaded that the Respondent knew that the tenancy would end on 4 July 2021. However, the Tribunal is also satisfied that, from 4 July 2021, the Respondent was no longer occupying the property as a tenant.

45. As the Applicant points out in his written submissions, a claim for violent profits arises where a person occupies a property illegally. This can include a situation where a tenant continues to occupy a property after the lease has ended. However, to establish a claim for violent profits, there must be "bad faith" on the part of the occupier. (Adrian Stalker. Evictions in Scotland. 2nd Edition page 504) The Tribunal is not persuaded that this has been established. The Respondent was the lawful tenant of the property until 4 July 2021 and was not told that this was the tenancy termination date. The Applicant's email must be disregarded. It contained false and misleading information, although that may have been due to ignorance. In the absence of any evidence that the Respondent knew he had to leave by 4 July 2021, the Tribunal is not satisfied

that the Applicant has established “bad faith” on the part of the Respondent. The claim for violent profits is therefore refused.

46. The Tribunal is satisfied that the obligation to pay rent ceased on 4 July 2021, when the tenancy had ended. However, the Respondent remained in occupation until 20 July 2021 and during this period the Applicant was unable to let the property to another tenant. The owner of a property may pursue a claim for unjustified enrichment against a person who occupies a property, without title to do so. This use attracts the obligation to pay for the use of it. In residential tenancies, this is generally understood to be the equivalent of the rent which the owner can expect to receive for the property. (Adrian Stalker Evictions in Scotland. 2nd Edition page 505). The Tribunal is therefore satisfied that the Applicant was entitled to a payment from the Respondent for the use of the property between 4 and 20 July 2021, and that this payment should have been the equivalent of the rent due for this period, had the tenancy continued.

47. The Tribunal is therefore satisfied that the total sum unpaid by the Respondent when he vacated the property was £2619.

Abatement of rent

48. The parties are agreed that the property had no central heating or hot water from 10 January 2021 until the Respondent moved out on 20 July 2020. The Applicant’s position is that the boiler had to be disabled until a replacement part was sourced and fitted and that the Respondent refused to provide access once the part was available. The Applicant did not make any further attempts to get access because the Respondent had refused access on several previous occasions (between October 2020 and early January 2021), he expected the Respondent to move out because he had been served with a Notice to leave and a police officer informed him at the beginning of May 2021 that the Respondent had said that no further access would be provided. He did not make a right of entry application to the Tribunal.

49. The Respondent referred to the copy text messages and said that access was refused because it was short notice and not convenient. He made it clear in the message that future arrangements for access were to be made by letter or email, not text. He also required more notice so that he could arrange for a support worker to be present. He did not make a repairing standard application to the Tribunal, because of mental health problems and having to deal with other pending Tribunal cases. He did not notify the Applicant that he was withholding rent or set it aside in an account but used it to pay for alternative sources of heat and hot water. He provided the Tribunal with details of these but lodged no receipts or invoices.

50. The right to seek an abatement of rent is based on the premise that a landlord is not entitled to all or part of the rent due in terms of the tenancy agreement because he has failed to meet his contractual obligations to the tenant. In some circumstances, the claim will be connected to a “rent strike” – where the tenant has withheld rent in an attempt to force the landlord to carry out repairs. That is

does not appear to be the case here. The Respondent does not claim that he set the rent aside or that he notified the Landlord of the reason for non-payment. However, the lack of a legitimate “rent strike” does not preclude a tenant from seeking an abatement of rent. As a landlord is generally able to establish a prima facie case for an order for payment in relation to unpaid rent, namely the tenancy agreement, it is for the tenant to demonstrate why the rent is not due. Often there will be a dispute about whether there has been a failure to fulfil repairing obligations and/or whether the tenant had notified the landlord the defect or damage affecting the habitability of the property. In the case of Renfrew District Council v Gray 1987 SLT (Sh Ct) 70, the parties were agreed that the property in question was uninhabitable, although the tenant continued to reside there. The Sheriff determined that the defender had been entitled to retain the rent but was obliged to pay it once the repairs had been carried out and granted decree in favour of the Pursuer. This decision was reversed on appeal by Sheriff Principal Caplan who concluded that there were three remedies available to a tenant – retention of rent, damages, and abatement of rent. He stated, “Thirdly, the tenant may claim an abatement of the rent on the basis that he has not enjoyed what he contracted to pay rent for…Abatement of rent as illustrated by the authorities is an equitable right and is essentially based on partial failure of consideration. That is to say, if the tenant does not get what he bargained to pay rent for it is inequitable that he should be contractually bound to pay such rent”. (at 72).

51. In the present case, there is no dispute about the condition of the property. There was no hot water or central heating for a period of six months. Although the Applicant seems to claim, in his evidence and submissions, that the Respondent was under a duty to notify him of the problem, this is not a viable argument. The Applicant was fully aware of the position because he had disabled the boiler to make sure it was not used. The only possible justification for his failure to fix the problem is the issue of access. In terms of the tenancy agreement, he was entitled to access for repairs. Furthermore, a landlord has a statutory right of access. (Section181(4) Housing (Scotland) Act 2006). It was also established by the Applicant that the Respondent had failed to provide access on several occasions. However, the Tribunal was not persuaded that the Applicant had been unable to get access to carry out this repair. The Respondent refused access on one occasion only. He was given less than 24 hours notice and said that it was not convenient. He also asked for future communications in relation to access to be made by email or letter. The Applicant stated that he does not use email, but it was evident that his wife does, as she sent emails to the solicitor in connection with the property. Furthermore, as she assists with the tenancies and deals with the associated paperwork, she could have sent the email on the Applicant’s behalf, or the Applicant could have sent (or delivered) a letter. The Applicant also stated that he was not made aware of the tenant’s disability prior to the tenancy starting and that there had been no agreement that he would be entitled to have a support worker present. It is difficult to see the relevance of this. The Respondent was under no obligation to disclose his disability and there appears to have been no valid reason for refusing to give the Respondent more notice of visits or allow him to arrange for a support worker to be present, particularly when the Applicant was not prepared to go to the property alone and insisted

on having a witness with him on each occasion.

52. The Tribunal is satisfied that the Applicant failed to fulfil his contractual repairing obligations to the Respondent. The Tribunal was not persuaded that the Applicant took all necessary steps to obtain the replacement part as quickly as he could. As the property was without heat and hot water, in the middle of winter, this should have been a priority. Furthermore, as a self-employed gas engineer, the Applicant should have been able to source it much more quickly. In the meantime, he ought to have provided his tenant with an alternative source of heat and hot water or offered to decant him to alternative accommodation. The Applicant should also have made further attempts to get access to carry out the repair once the part was obtained. His failure to do so did not just breach the tenancy contract but almost certainly amounted to a failure to comply with the statutory repairing standard. The Respondent ought to have been more cooperative, but it was the Applicant's responsibility to attend to the matter in a timely manner.

53. The Respondent claimed that rent is not due because he had to use the money for heat and hot water, although, no vouching was provided. This suggests that he would not have incurred costs had the central heating been in working order, which is not the case. He would have had to pay his utility bills. However, the Tribunal accepts that he must have incurred some additional and unexpected expenses, particularly to heat water. The cost of purchasing the stove (and some of the running costs) could not be validly offset against the rent as it had been purchased some months before the boiler had been disabled, and the Respondent had intended to install and use it. However, as is clear from the Gray case, the Respondent does not require to satisfy the Tribunal that he had to use his rent money for other things. The right to an abatement arises out of a failure by a landlord to provide the tenant with what was agreed. In such circumstances, the landlord is not entitled to all or part of the rent due in terms of the contract.

54. The Tribunal is satisfied that the Respondent is entitled to an abatement of rent for the relevant period. He rented the property on the basis that it had central heating and hot water. The amount of the abatement should reflect the fact that access to heat and hot water is an essential aspect of a residential property. However, it is not enough the render the property completely uninhabitable. The Tribunal is therefore of the view that some rent was still due for the relevant period. As there was no hot water throughout the 6 month period, and as the lack of central heating during the winter months must have made the property very uncomfortable, the Tribunal is satisfied that an abatement of 40% of the contractual rent should be applied both to the arrears of rent and the sum due for the period 4 to 20 July 2021. The Applicant is therefore entitled to a payment order for £1571.40 for the unpaid rent.

October Invoice

55. The Respondent does not dispute that the Applicant was asked to attend at the property to deal with a damaged pipe which occurred when he removed a radiator from the wall. However, he only concedes liability for the time spent by

the Applicant, and the part required, to cap the gas pipe which was required because of the removal of the fireplace. This is a strange position to adopt when he asked the Applicant to attend because of a water leak. His explanation is that the radiator was simply removed for cleaning, which he claims is a normal practice, and that all the other work specified in the October invoice was unnecessary. The Tribunal is not persuaded by this argument. The Respondent should not have removed the radiator and the evidence (including photographs) clearly show that a pipe was damaged in the process. The Applicant's evidence, and the schedule of work which he lodged, clearly demonstrate that the remedial work was time consuming. He had to drain the central heating system to remove the damaged radiator microbore pipes, replace the pipework, re-hang the radiator and source, and fit the new radiator valve. He spent 5 hours at the property doing the work and required to replace a Danfoss valve. He used 2 Y elbows and 2 8mm compression straights. Thereafter he re-filled and tested the system. The Tribunal is satisfied that the Applicant is entitled to be compensated for his time and for the parts he used in the repairs. As he is a qualified gas engineer, and as he would have required to instruct a contractor to do the work if this had not been the case, it seems reasonable that he be recompensed at his usual hourly rate.

56. The Tribunal proceeded to consider the work carried out on 15 October 2021, namely the replacement of the babysit gas valve. The Applicant seeks £40 for an hour of his time and £357.50 for the replacement valve. In his schedule of work, the Applicant states that the valve was damaged because of an electrical fault linked to the wiring and electrical mains boxes being tampered with and/or vandalism to the boiler. In his evidence the Applicant said that the fault may have been due to the system being run without water. He again referred to wiring being pulled out in the attic which may have been the cause. He also referred to damaged casing and referred the Tribunal to a photograph which appears to show slight damage to the boiler casing. This is all denied by the Respondent and although Mr Arthur supports the Applicant's evidence, he is unqualified to give an opinion. It appeared to the Tribunal that the Applicant was suggesting at least three possible causes of the defective valve – interference with the wiring in the attic, running the system without water and tampering/damaging the boiler itself. He said that he did not think that the valve had just failed but could not be definite about this. It was accepted that the boiler is approximately 30 years old. In the absence of conclusive evidence that the Respondent's actions caused the fault, the Tribunal is not persuaded that the Applicant has established that the Respondent should pay for the valve, or the work required to replace it. The Applicant is therefore entitled to a payment order for £272.43, being the sums due in terms of the invoice, less the cost of the boiler repair.

The January Invoice

57. The Tribunal notes that this claim is based on the clause in the tenancy agreement which states that the Respondent must heat the property and will be liable for burst pipes and the Applicants assertion that the burst pipes were caused by a failure to heat the property. Looking first at the tenancy agreement, the Tribunal noted that Clause Ninth states, somewhat unusually, that the

Tenant is obliged to leave the property at the end of the tenancy "in good tenantable condition and repair and also in good decorative order, **wear and tear not excepted".** This appears to suggest that the Respondent is liable for wear and tear, which would be very difficult to enforce, since it is generally accepted that a tenant can only be held liable for damage. The clause goes on to stipulate that the Tenant must adequately heat the property and must not leave it unoccupied. This is fairly standard. However, the clause concludes with the following "Without prejudice to the forgoing generality however, the Tenant shall be responsible for the repair of all burst water pipes, tanks, conduits and others and for the repair and re-instatement of all damage of whatever nature caused thereby". The Tribunal had some concerns about this section of the clause. Firstly, it appears to have the effect of making the Respondent responsible for burst pipes even when he played no part in the damage. For example, if the pipes had been damaged by a third party, either because of criminal activity or defective work by a contractor, he would be expected to pay for the damage. Secondly, the clause seems to be an attempt by the Applicant to "contract out" of the repairing standard obligations specified in section 13 and 14 of the Housing (Scotland) Act 2006. This is prohibited in terms of section 17 unless parties have made an application to the Tribunal in terms of Section 18 and an order has been granted. It therefore appears that this provision, insofar as it attempts to transfer repairing standard obligations to the tenant, is unenforceable However, Section 16(1)(b) specifically excludes work which is required as a result of the tenant's use of the property. The Tribunal is therefore satisfied that the Applicant can rely on this clause if the Respondent's actions or neglect haves caused burst pipes, particularly where there has been a failure to heat the property.

58. From the evidence the Tribunal noted that the burst pipes occurred in January 2021, during a cold spell. At the time of the incident, the Applicant had not been inside the property for several months. The fire in the property had been removed prior to October 2020, but the gas central heating was in working order when he left property on 15 October 2021. The Applicant entered the property at lunchtime on the 10 January 2021. He and Mr Arthur noted that the gas meter was off. The pipes had burst at some point in the middle of the night, and several voicemails had been left by the Respondent. In his evidence, the Respondent said that he had switched both the water and the gas off when he became aware of the burst. If this was the case, it would account for the property being cold on entry to the property by the Applicant some 12 or 14 hours later. The only evidence about the use of the central heating came from the Respondent, as the Applicant was only able to say that the house was cold, the gas meter was off on arrival and that failure to heat a property can cause burst pipes. The Respondent gave evidence that the central heating was not particularly effective but that he did use it. It is normal practice for householders to switch heating off at night when it is not needed and to save money, although the Respondent said he did use it at night. There was no evidence from the Applicant about the adequacy of the insulation at the property or whether the utility bills for the property demonstrate a lack of use of gas during the relevant period. In the circumstances, the Tribunal is not persuaded that the Applicant has established that the burst pipes were caused by the Respondent failing to heat the property. In the absence of this evidence, the Tribunal is not satisfied

that the Respondent is liable for the work carried out on 10 January. The Tribunal also noted that, even if this had been established, £60 per hour for ten hours seems excessive. As before, the Applicant seems to have forgotten that the Respondent was his tenant and not his customer. Furthermore, much of the work carried out that day was to dry out the property, which did not have to be carried out by a qualified gas engineer. The Tribunal refuses a payment order for the January invoice.

Decision

59. The Tribunal determines that a payment order should be granted against the Respondent for the sum of £1843.83

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.

Josephine Bonnar

3 November 2021

Josephine Bonnar, Legal Member