



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) Act 2016 (“the Act”)**

**Chamber Ref: FTS/HPC/CV/21/2072**

**Re: Property at The Bothy (and a acre of land), East Tulchan Farm, Glenalmond, Perthshire, PH1 3SG (“the Property”)**

**Parties:**

**Ms Debby Ross, Balhall Cottage, Menmuir brechin, Angus, DD9 7RW (“the Applicant”)**

**Tulchan Estates LTD, 16 Clarence street, Edinburgh, EH3 5AF (“the Respondent”)**

**Tribunal Members:**

**Petra Hennig-McFatridge (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order for damages from the Respondent to the Applicant for the amount of £ 4,703.02 should be granted for the undernoted reasons:**

**A Background**

[1] This is an application under rule 111 of the First-tier tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (the rules) made by the applicant to the First-tier tribunal (FTT) on 15 August 2021. The claim is for a total amount of £5,239. 44.

The following documents have been submitted by the applicant:

1. paper apart
2. list for claim (page 6)
3. standing order for rent £680 per month set up 10 December 2020 commencing 9 January 2021
4. email 19<sup>th</sup> December from respondent confirming receipt of deposit

5. contract of let dated 25<sup>th</sup> November 2020
6. "Application for Tenancy" document 25 November 2020
7. letter respondent to applicant dated 23 November 2020
8. email exchange between the parties dated 11<sup>th</sup> January 2021
9. email exchange between the parties dated 8 January 2021
10. photograph of tent
11. invoice dated 21 March 2021 for The Tower
12. invoices Fendoch guesthouse dated 12 January 2021
13. invoice copy Holiday Inn
14. invoice storage charges
15. invoice email Nigel Hill to applicant 25 November 2020
16. email Nigel Hill to applicant 28 October 2020
17. email to FTT dated 9 September 2021 regarding acre of land
18. correspondence from applicant to FTT regarding possibility of video evidence to be lodged 30 September 2021
19. emails 12 October 2021 17:06, 17:44 and 19:59 regarding circumstances of the refusal to let the applicant into the property
20. email 13 October 2021 21:21 hours further representations
21. email 21 October 21 at 22:26 hours further representations
22. email 22 October 2021 05:47 hours email from applicant to FTT regarding deposit and standing order
23. email 22 November 2021 explanation re Tower Crieff
24. email 25 November 2021 with screenshot from Monzie Estate 9 February 2021
25. email 7 December 2021 with pictures of pets, statement re mitigation and narrative of events by removal company
26. email 9 December 2021 re video evidence showing birthday party and text message from Applicant's mother 1 page.
27. email 10 December 2021 re fee for cat, Gumtree advertisements page. contact from RentLocally dated 24 March 2021
28. email 10 December 2021 re Hobbs Letting
29. email 19 December 2021 re additional costs
30. video evidence showing the Applicant sledging and receiving a birthday cake in Fendoch B&B

The following documents were lodged by the respondent:

1. submissions dated 8 October 2021 and received by the FTT on 11 October 2021
2. email exchange with the applicant consisting of emails dated 26 June 2021, 25 June 2021, 23 June 2021, 17 June 2021, 31 March 2021, 11 January 2021, 10 January 2021, 9 January 2021, 8 January 2021, 30 December 2020.
3. email from Respondent dated 6 December 2021 in answer to directions
4. email 17 January 2022 re hearing

The documents lodged by both parties are referred to for their terms and held to be incorporated herein. A case management discussion (CMD) had taken place on 5 November 2021 resulting in a finding of the Tribunal that it had jurisdiction over the case. The CMD note of 15 November 2021 is referred to for its terms and held to be incorporated herein. Directions dated 16 November 2021 were issued.

## **B The Hearing**

[2] Both parties attended. Both were advised of the format of the hearing. Both provided evidence regarding their own position. No other witnesses gave evidence.

Neither party provided any legal representations or references to case law to the Tribunal either in writing or at the hearing.

[3] Evidence of the Applicant:

The Applicant re-stated her position as previously set out. She stated that prior to 9 January 2021 no information had been requested from her regarding her income. There had been a viewing in November and then a long wait until the date when the tenancy started. She had completed the forms sent to her. She had arrived shortly after the removal vans and found her former landlord Mr Hill present at the Bothy in conversation with the Respondent. She eventually left her vehicle. Mr Hill left. She emphasised that the statements from Mr Hill to the Respondent were entirely untrue, which she stated was shown in the documents she had submitted. The Respondent refused her access. She told him she had paid the rent and he had to let her in. He called Hedda who came. Both looked at their telephones as the Applicant stated she had paid the rent. She did not get the impression the Respondent had checked previously. He did mention he would allow her to come back on the Monday but she could not remember exactly. He had remained at the car with her. He had told her he would not accept payment and would not let her move in. At the hearing she again stated the problem had been that the standing order had not been triggered due to the first payment date being a Saturday. She had not checked this prior to the moving date. She had advised the Respondent she had set up a standing order. She had tried to get an immediate transfer organised but required the Respondent's bank details, which she could not locate because she was flustered due to the situation and her mother, from whose account this was to come, was on her way to get her Covid vaccination. The Respondent stated to her even if she made the payment he would not let her into the property. She had been at the property about 30 minutes as the removal staff told her about the storage facility and she had to move quickly to get there before they closed.

[4] She led the Tribunal through the heads of claim, advising that she would change the amount of £550 for the tent to 1/2 the price as this had been retained and she has not tried to sell it. She stated the additional payments of £30 per month were claimed until she moved into her now final new accommodation on 15 December 2021. There had been a problem with landlords renting to tenants with pets and the cheaper flat did not allow pets. She had contacted the Council at some point but they had also stated pets would not be taken. She had been told that with pets her best option would be to contact the Estates and this had ultimately resulted in her obtaining a tenancy. She had not turned down any offers of let.

[5] Evidence of the Respondent:

The Respondent stated the removal vans and the Applicant arrived and he was there on his own. He pointed out to the Applicant the rent had not been paid. She suggested she had power to make a payment through her mother's account. She already had the details of his bank account in the lease and should have taken them from the document. If payment had been made at that point the contract would have been fulfilled and he would have let her move in but she did not pay as per clause 2 of the lease. The contract was clear, payment had to be made in advance. His bank later told him that if a payment fell on a weekend the payment would be made on the Friday by them. He then suggested the Applicant should come back on the Monday. Later on, her landlord arrived as he had followed the van from Rannoch and told the Respondent that the Applicant had rent arrears and not paid for electricity. She had tried to kill a neighbour. The Applicant then came out of the car and displayed erratic behaviour, and this worried him. She had slurred her words and he thought she was drunk or taking medication. He did not like what he saw and what he was told about her. He stated why would Mr Hill drive so far to inform him. Because of the whole picture he decided she had breached the contract. He had been a landlord since 1973 with two properties in this company for rent and she had made a good first impression. He had done holiday lets before and was in the process of starting longer lets. He was looking for a country person and she seemed to fit in. He stated he had asked her for accounts on the moving in day and she was unable to bring him any information about her means there and then. He then told her the offer for her to come back on the Monday was withdrawn and she would not get access at all. Hedda, the housekeeper, came later and tried to pacify the Applicant. He considers not to be in breach of the contract as the contract was null and void as soon as the rent had not been paid up front. She had also not provided information about her means of support. He had requested this orally but could not remember when. He had let her sign the lease without it. His position was that he had changed his mind due to 4 matters, the non payment of rent in advance, her erratic behaviour, her non production of means proof and the information from Mr Hill, whom he found more credible than the Applicant. If the Applicant had managed to pay there and then he would have been in a difficulty. He did not want her as a tenant after all that. He had a broken contract and when he received confirmation from his bank on Monday that the rent had been received he still did not wish her to move in. He had made up his mind on the Saturday that she would not be moving in. This was based on the factual information he had on the day. He stays at the estate some times and likes it there, he wanted a country person and pets were no problem. They were other suitable tenants. The Applicant, he thought, had withheld information.

[6] He accepted that given the situation the Applicant would have to move into temporary accommodation like a hotel. He thought she should have approached the Council. After the CMD he had offered her two times the rental payment to "make this go away". He had flats in Edinburgh and in January 2021 there was more of a problem to fill these.

**C Findings in Fact**

[7] Based on the documents provided and the evidence and representations from both parties the Tribunal finds the following facts proved or admitted:

1. the parties entered into a written contract of let on 25 November 2020
2. the Applicant is an individual
3. the purpose of the contract was to enter into a tenancy commencing on 9 January 2021 for a dwelling house, which would be the only residence of the Applicant
4. the property concerned was let as a separate dwelling sharing only a laundry room, gas boiler cupboard, coldwater storage and pump storage area and log store with two other properties.
5. the monthly rental was to be £670 per month payable in advance
6. a further payment of £10 per month was agreed subsequently because of the addition of the acre of land both parties had discussed
7. a deposit of £670 was due to secure the tenancy
8. this deposit was paid by the applicant before the moving in date and receipted by the respondent on 19 December 2020
9. the rental payment for January 2021 had not been received in the respondent's bank account prior to 9 January 2021
10. it was received by the respondent on the following Monday, 11 January 2021
11. a standing order had been set up by the applicant for the rental payments but was not honoured by the bank until the Monday after the moving in date of 9 January 2021
12. the first month's rent and deposit were returned to the applicant by the respondent after 11 January 2021
13. the respondent refused entry to the property for the applicant on 9 January 2021
14. the applicant had attended the property on 9 January 2021 with a furniture van transporting all her belongings and her pets
15. the applicant left with the furniture van after approximately 30 minutes on 9 January 2021 after she had been refused entry and advised the contract was cancelled
16. the former landlord of the applicant, Mr Hill, had also attended at the property on 9 January 2021 and provided to the Respondent information about alleged rent arrears of the Applicant and her conduct in her previous tenancy
17. the Applicant offered payment to the Respondent by transfer on 9 January 2021 but required his bank details for this.
18. the Respondent did not provide these at the time.
19. the Respondent's decision was based on 4 elements, namely the lack of payment received on 9 January 2021, the impression he had of the Applicant on 9 January 2021, the information from Mr Hill and the lack of evidence of means or income
20. there had been no request for the Applicant to provide proof of her income or means prior to 9 January 2021

21. the Respondent decided on 9 January 2021 not to provide the accommodation to the Applicant regardless of any future payments
22. the Applicant had to move into temporary accommodation
23. she did not seek the help of the Local Authority
24. she moved into longer term accommodation in Angus with a rental charge of £700 pcm on 15 April 2021 and remained there until 15 December 2021
25. she moved into her current permanent accommodation on 15 December 2021
26. she incurred removal costs of £710
27. she incurred hotel and B&B accommodation costs of £213.82 Holiday Inn; £180 Fendoch B& B; £3,920 The Tower which includes the £90 charge for the cat.
28. she incurred storage costs to 15 April 2021 of £580.40
29. she incurred expenses of £550 for a tent, which she still owns

## **D Reasons for Decision**

[8] The Applicant is claiming damages for breach of contract by the Respondent of £5,239.44 as per the paper apart for the period up to and including 31 August 2021. She wishes to increase this by a further claim of £105 for additional payments of £30 pcm for her Angus accommodation up to 15 December 2021.

The Respondent's position is that he was entitled to rescind the contract because of the circumstances he described, namely the funds not being in his account on 9 January 2021, the Applicant acting erratically, the Applicant not having provided proof of means and the information provided to him by her former landlord on 9 January 2021.

As stated in the CMD note, the issues to be resolved at the hearing were:

1. what were the conditions under which the contract entered into by the parties on 25th of November 2020 could be cancelled
2. were these conditions met
3. what were the reasons for the refusal to grant the applicant entry to the property
4. did the respondent's conduct in refusing the applicant entry to the property on 9 January 2021 constitute a breach of contract
5. if a breach of contract took place, which expenses and costs are attributable to the breach
6. which steps did the applicant take to minimise her losses
7. what amount, if any, is due to the applicant for the alleged breach of contract.

### **[9] a) Breach of Contract:**

The documentation submitted shows that the parties entered into a binding tenancy agreement for the property to the Applicant by the Respondent on 25 November 2020.

The Private Housing (Tenancies) (Scotland) Act 2016 defines a Private Residential Tenancy as follows:

#### 1 Meaning of private residential tenancy

(1) A tenancy is a private residential tenancy where—

- (a) the tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling,
- (b) the tenant occupies the property (or any part of it) as the tenant's only or principal home, and
- (c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

(2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

The aim of the contract was for the parties to enter into a Private Residential Tenancy. The Respondents representations regarding the property being a holiday let had already been dealt with in the CMD note, which is referred to for its terms.

[10] The obligation of the landlord in Scots Law is that "the landlord must give possession at the commencement of the lease and maintain the tenant in possession throughout the period of the lease", Rennie, *Leases* (2015) Ch 14.

[11] It is agreed between the parties that the Respondent did not meet that obligation. The Respondent in his own version of the events of 9 January 2021 sets out that he initially discovered that the rental payment had not arrived in his bank account, he had then advised the Applicant if she made payment by Monday she would be able to move in at that time and he would withhold granting her access until such payment was made and that subsequently, for additional reasons other than the mere delay in payment, decided on the start date of the tenancy that he was not willing to let the property to the Applicant even if she made payment.

[12] The Respondents position is that the rent was not paid in advance on 9 January 2021 as per clause 2 of the contract. The contract was thus null and void. On that basis he considered he was legally entitled to refuse to give possession to the Applicant. He admitted that it would have been reasonable to give the Applicant the opportunity to make subsequent payment, and that he had initially agreed that once payment was made he would allow her to move in. However, he had changed his mind when he received the additional information from Mr Hill and observed the Applicant's behaviour on the day.

The contract states in clause 2 "the rent inclusive of gas, electric, logs and Council tax/rates £670 is payable monthly in advance" and a bank account for payment is

stated in clause 4. Prior to 9 January 2021 the parties agreed that the rent should be £680 per month including some land to be included with the property. The contract itself is very short and does not include an irritancy clause. The contract does not stipulate any circumstances which would lead to either party being entitled to cancel it.

The Private Housing (Tenancies) (Scotland) Act 2016, which the Tribunal considered the tenancy would fall under, gives the late and non - payment of rent as a ground for eviction (schedule 3 ground 12). The Act does not make provision that the lease would be null and void if a payment was missed.

[13] There is no irritancy clause for non-payment of rent in the contract itself and the Act does not provide for an implied irritancy clause in Private Residential Tenancies.

The question then arises on what other basis the Respondent may have been entitled to terminate the contract.

[14] The Tribunal considered whether the Respondent may have had a right to rescind the contract for a previous breach of said contract by the Applicant. "Where there has been a material breach of contract either party may rescind the contract. Whether or not a material breach of contract has occurred will depend on the individual circumstances of each case" Robson and Combe, *Residential Tenancies: Private and Social Renting in Scotland* 4th ed. 4-21. In general contract law, a party can only rescind a contract if there is a material breach of the contract. Gloag and Henderson, *The law of Scotland*, at 10-22 states "In other commercial contracts, where the element of fluctuation in price is absent, performance on the actual day is not generally material but a lengthy delay will justify rescission". At 10.23 the issue of degrees of materiality is addressed as follows: "a failure may not be sufficiently material to justify the rescission of the contract, yet may justify the party aggrieved in withholding performance of the obligations incumbent on him."

[15] The Tribunal was satisfied that the Applicant had put in place payment arrangements for the rent in good time prior to 9 January 2021. The bank printout regarding the standing order shows that on 10 December 2020 the Applicant had instructed her bank to start monthly payments of £680 commencing on 9 January 2021 for the rental payments. The Respondent confirmed that this had in fact been received on 11 January 2021. The Tribunal accepted from the evidence of both parties that the Applicant had advised the Respondent of said arrangement on 9 January 2021. The Tribunal considered that although the rent did not actually arrive in the Respondent's account until 11 January 2021, the Applicant had in fact arranged payment and there was no suggestion that payment would not be made. There was no refusal by the Applicant to make rental payments. The delay was due to the bank's procedures.

[16] Both parties described that the Respondent initially did offer the Applicant the opportunity to make payment and to come back on Monday once this had been done. The Tribunal accepted further that the Applicant tried to arrange a cover payment from



her mother's account. The Tribunal did accept that this was offered as this was also supported by the text message provided from the Applicant's mother. The Applicant explained that this attempt failed due to her not being able to locate the bank details of the Respondent because she was flustered and that the Respondent did not provide them when asked. Although the Respondent stated that the Applicant would have had the details, the Tribunal saw no good reason for him not to provide these again to facilitate an immediate payment.

[17] The Tribunal accepted the narrative of the Respondent with regard to the time line of events on 9 January 2021. It appears unlikely that, as the Applicant stated, the Respondent refused her entry, mentioned a potential for her to move in on Monday, then refuse to give his bank details and then, without any further intervention of events, changed his mind and stated he would not grant her access to the property under any circumstances. The Tribunal found it on balance more likely that the Respondent had, as stated by him, initially offered the Applicant to move in once payment had been made and had then, after a conversation with the Applicant's former landlord Mr Hill and observing the Applicant's reaction to events, made up his mind that he did not wish to have the Applicant as a tenant and would not give possession of the property to her even if she paid the rent.

[18] This shows that the Respondent himself initially clearly did not consider that the reasonable and appropriate reaction to the late payment would be to refuse outright to give the Applicant possession of the property even if she made payment.

[19] The Applicant had paid a deposit of £670 and the Respondent was in receipt of this payment. The Applicant did not refuse to pay rent and in fact offered to try to arrange another cover payment on the day. The deposit would have covered any rent accruing if there was, as the Applicant explained, at most a short delay in payment due to the way the bank had carried out the standing order instructions.

[20] The Tribunal concludes from the events as described by the Respondent that the Respondent himself initially did not consider the late payment of rent a sufficiently grave and thus material reason to rescind the contract there and then. It was by his own explanation the cumulative effect of various circumstances which led him to conclude that he was not prepared to give possession of the property to the Applicant.

[21] The Tribunal thus finds that the late payment of the rent in the circumstances described was not a sufficiently material breach of the contract to allow the Respondent to rescind the contract.

[22] The other factors he based his decision on were not breaches of the contract at all and thus could not justify rescission of the contract by the Respondent for the following reasons:

The information provided by Mr Hill cannot constitute a breach of contract by the Applicant as Mr Hill had no part in the contractual arrangements between the parties.

[23] The Respondent stated non provision of means as another reason influencing his actions. However, even he admitted that he allowed the contract to be signed without references and without information about the means of the Applicant to pay rent having been provided. The Tribunal did not believe the Respondent when he stated he had requested this prior to the start date of the tenancy. The documentation which consists of the cover letter sending the contract to the Applicant, the contract itself and the Application for Tenancy form does not include reference to the contract being dependent on the Applicant providing such information or for such information having been provided as part of the Applicant's obligations as a tenant. Had this been a material consideration for the Respondent previously he would likely have asked for this in writing in the course of other correspondence, such as the discussion about the land to be included in the lease. The Tribunal preferred the Applicant's evidence that this was asked for the first time on 9 January 2021 and that she was unable to provide this there and then immediately. The request for proof of means and ability to pay rent was not part of the contractual arrangements between the parties. It can thus not lead to a material breach of contract by the Applicant which would allow the Respondent to rescind the contract.

[24] Finally, although the Respondent repeatedly referred to the demeanour of the Applicant influencing his decision, this was not actually described in a coherent way. The Respondent mentioned her sending of numerous emails and the language used in said emails after he had refused her access, however, these by definition had arisen after he had made the decision and could not have been a reason for the decision. The Tribunal did not consider that the Respondent had provided any evidence of the Applicant behaving in an abusive or antisocial manner to him on 9 January 2021. The Tribunal did not find it had sufficient evidence to make any findings of any type of behaviour based on the evidence submitted and that there was certainly no evidence of behaviour which could possibly constitute breach of the Applicant's obligations under the contract.

[25] The Tribunal thus overall concludes that the Respondent had no right to rescind the contract. Therefore, he continued to be under the contractual obligation to grant possession of the property to the Applicant.

[26] The Tribunal further was satisfied that the Respondent refused performance of his obligation to grant possession to the Applicant outright on 9 January 2021. The Respondent had stated in evidence that his decision on that day not to allow the Applicant to obtain possession of the property had been final and that he had conveyed that to the Applicant. He was clear in his own mind that no matter whether payment was to be made he would not be prepared to have the Applicant as tenant of his property. His evidence made it clear that this had to do with his perception of the Applicant as unsuitable as a tenant because he thought she would not fit in. The Respondent came across as a person who had very clear ideas about the type of tenant he wished to let the property to and that although the Applicant initially

appeared to be a "country" person, he had come to the irrevocable conclusion on 9 January 2021 that she would not suit him as a tenant.

This, however, cannot justify the Respondent refusing to grant the Applicant possession.

[27] The question then arises whether the Respondent's actions amount to a breach of contract, which would entitle the Applicant to claim damages. In *Forslind v Becherly-Crundall*, 1922, S.C. (HL) at 179 Viscount Haldane found that repudiation can be constituted by conduct. "If the defender has behaved in such a way that a reasonable person would properly conclude that he does not intend to perform the obligations he has undertaken, that is sufficient". The Tribunal is satisfied that the refusal to allow the Applicant to move in and the explicit statement that this decision would not change even if payment was offered constitutes such conduct.

[28] The Tribunal is satisfied that the conduct of the Respondent in a final decision to refuse to perform his contractual obligation then allows the Applicant to claim damages, as he made it clear that the contract would not be fulfilled by the Respondent. The evidence of the Respondent was that he had made up his mind on the Saturday 9 January 2021 that come what may, he would not let the Applicant move in. He reiterated this in his email to the Applicant on 10 January 2021 stating "I cannot and will not change my mind. The contract is cancelled.... I appreciate my decision will cause you some problems and significant losses for our company. However following your failures and the statements by your ex landlord I have no alternative. I understand there was no proof provided by Mr Hill for his statements but on balance I believed his version rather than yours." and again on 11 January 2021 "Dear Debby I refer to your emails and I must reiterate THE CONTRACT IS CANCELLED and your rent plus earlier deposit will be returned as soon as you provide your bank details."

[29] The Applicant is then entitled to damages.

#### b: Quantum

[30] The question then arises as to the amount of damages. Damages must reflect the loss arising from the breach of contract. In the case *Hadley v Baxendale* (1854) 9 Ex. 341 the formula expressed for remoteness of loss was expressed as "Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, i.e. according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as the probable result of the breach of it." The Applicant acknowledges that any damages for accommodation have to be calculated under deduction of the equivalent rent, which would have fallen due for the period for which accommodation is awarded as the loss is to be quantified by the additional costs arising from not being

able to move into the property. The rental charge for the property was stated as £680 pcm.

[31] i. The accommodation cost in Holiday Inn, £213.62. The Applicant had to find immediate accommodation after having been refused entry to the property. The Respondent did acknowledge at the hearing that not letting the Applicant move into the property would result in her having to find short term alternative accommodation. The Tribunal is satisfied that the hotel costs from 9 - 12 January 2021 are costs arising directly out of the breach of contract.

ii. The accommodation costs at Fendoch Guesthouse, £180 from 12 -16 January 2021. Again, given the close proximity in time to the refusal to let the Applicant move in the Tribunal is satisfied that these costs arose immediately out of the breach of contract. The further invoice of £18 from Fendoch Guesthouse refers to dry cleaning cost of a quilt and the Tribunal did not consider there was any evidence to link this to the breach of contract.

iii. The Tower invoices for the stay of the Applicant from 16 January to 31 March 2021, £3,920.00. The Applicant had set out the steps she had taken to obtain accommodation and had credibly stated that due to the lockdown and the need to accommodate her pets, she had been unsuccessful to find a flat to move into by 31 March 2021. The Applicant had submitted information from RentLocally and Hobbs Letting confirming she had tried to find a rental rather than hospitality accommodation but had been unsuccessful. The Tribunal considered a 3 months period to be still within a time scale of a reasonable period to look for accommodation. The Respondent had made representations that the Applicant should have contacted the Council to obtain assistance if she was homeless. The Applicant stated that she had done so, although not immediately on 9 January 2021, but that the Council had been unable to assist her given she was looking for accommodation to which she could bring her pets. The Tribunal considered that even if the Applicant had been provided with emergency homeless accommodation there was no evidence that this would have in fact reduced the loss.

iv. The cost of the tent. Initially the Applicant had stated that the tent she had purchased to bridge the time when accommodation in The Tower was no longer available and 15 April 2021 when she moved into the longer term property in Angus was £550. The Applicant then stated that she considered that this should be charged at 50% as she still had the tent. She had not tried to sell it. The Applicant could have tried to recover some of the funds by selling the tent and would have been obliged to do so as a reasonable step to mitigate her loss. The Tribunal agreed that the sale price of a second-hand tent would not likely equate to the purchase price. There were no submissions by the Respondent regarding a different calculation. The Tribunal thus considered that a sum of £275 was appropriate.

v. For Accommodation the Tribunal thus calculates the loss as follows: costs for hotel, B&B and tent accommodation from 9 January 2021 to 15 April 2021 minus 3 months and 6 days pro rata rent for the property at the rate of £680 pcm:

	£3,920.00
	£ 180.00
	£ 275.00
	<u>£ 213.62</u>
	£ 4,588.62
<u>less</u>	<u>£ 2,176.00</u>
total:	£2,412.62

[32] vi The storage costs of £580.40. The Applicant had to store her belongings immediately after she left the scene after she had been refused entry and given the type of accommodation available to her until 15 April 2021 had to ensure this was safely stored. The storage costs arose directly out of the breach of contract. The Tribunal considers that these constitute a relevant loss.

vii. The additional claim of £30 per month in the Angus accommodation from 15 April to 15 December 2021 totalling £240. The Tribunal considered that accommodation costs for long term accommodation once the Applicant had made a deliberate choice of property rather than booking into hotel accommodation in a sudden and unexpected emergency situation constituted a cost which was too remote from the original breach of contract and was based not on immediate necessity to house herself and her pets but on a conscious choice to enter into a long term arrangements which reflected her preferences of location and accommodation type. The Tribunal did not consider that this was an ongoing expense which would have been reasonably expected by parties entering into a lease contract.

[33] viii. The removal costs of £710. The Applicant did require to remove from her previous tenancy and this necessitated arranging for her belongings to be moved by a removal firm. The actual costs of £710 are not disputed. The Tribunal considered that the removal costs although not incurred necessitated by the breach of contract but by the end of the Applicant's previous tenancy still would be considered a loss arising directly from the breach of contract as the Applicant would have to duplicate the costs once she moved into long term accommodation and that the necessity to duplicate the removal process reflected a loss to be attributed as a direct consequence of the breach of contract which would reasonably be expected by parties entering into a tenancy contract.

[34] ix. The claim for emotional distress stated as £1000 in the application. The Applicant had provided video evidence of her birthday party in Fendoch B&B and of her sledging in the snow. She stated that this would support her claim for emotional stress. The video evidence showed her making a wish blowing out a birthday candle. The Tribunal did not consider that the video evidence was relevant. However, the Applicant had also described her distress at having to find emergency accommodation

for herself and her pets as well as a safe place to store her belongings on a Saturday afternoon in winter during a pandemic. She had described her ongoing insecurity given the lockdown, which affected the availability of short term accommodation. The Respondent made no representations regarding the issue. The Tribunal considered that although there is a general rule that contract normally concern commercial matters and that mental suffering on breach is not in the contemplation of the parties as part of the business risk of the transaction, as expressed in *Diesen and Samson* 1971 SLT (Sh Ct) 49 at 50 "If, however, the contract is not primarily a commercial one, in the sense that it affects not the plaintiff's business interests, but his personal, social and family interests, the door is not closed to awarding damages for mental suffering should the court think that in the particular circumstances the parties to the contract had such damage in their contemplation.". In a lease the implementation of the landlord's obligation to give possession to the tenant goes to the heart of the safety and wellbeing of the tenant. The Tribunal considered that there are few circumstances which are closer linked to a person's personal interest than having a roof over their head and safety from the elements. Given the particular circumstances of Applicant as a single female in mid winter in a cold country during a pandemic, the Tribunal considers that it is possible to award damages for emotional distress. As there were no representations by the Respondent in the matter the Tribunal accepts the amount claimed as reasonable in all the circumstances.

[35] x. Calculation: The Tribunal finds that damages due in this case amount to :

£ 2,412.62	for accommodation
£ 710.00	for removal costs
£ 580.40	for storage costs
£ 1,000.00	for emotional distress
<b>£ 4,703.02</b>	<b>in total</b>

## **E Decision**

**The Tribunal makes an order for payment of the amount of £4,703.02 damages for breach of contract by the Respondent to the Applicant. The decision of the Tribunal is unanimous.**

## **Right of Appeal**

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a**

point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

P. M

Petra Hennig McFatridge  
Legal Member/Chair

25 January 2022  
Date