



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/CV/20/0136

Re: Property at Flat 1, 76 Regent Quay, Aberdeen, AB11 5AR (“the Property”)

Parties:

**Mr Ricky McCombie, 57 Rosemount Place, TFR, Flat 2, Aberdeen, AB25 2XL
 (“the Applicant”)**

**St. Andrews Estates (Scotland) Ltd, Stonehouse Lettings, 302 St Vincent
Street, Glasgow, G2 5RZ; Osborne House, TFR, Flat 2, 27 - 30 Carden Place,
Aberdeen, AB10 1UP (“the Respondent”)**

Tribunal Members:

Yvonne McKenna (Legal Member) and Melanie Booth (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the First-Named Respondent St. Andrews Estates
(Scotland)Ltd. pay to the Applicant the sum of £1466 (ONE THOUSAND FOUR
HUNDRED AND SIXTY-SIX POUNDS)**

Background

1. This is an application to the Tribunal lodged by the Applicant on 14th January 2020 and accepted by the Tribunal on 11th February 2020 relating to a claim for an order for payment under section 16 of the Housing (Scotland) Act 2014 and Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
2. There are various aspects to the Applicant’s claim against the two Respondents. The First Respondent is the Landlord and owner of the Property. The Second Respondent is the Letting Agent for the Property during the period covered by the claim. The Applicant’s claim consists of the following elements: -

- (i) He claims an abatement of rent in relation to not having the full use of the Property between 23rd July 2017 and the date the tenancy was terminated on 1st July 2019. This relates to the use of the lounge within the Property. The Applicant stated in his submissions to the Tribunal that the Property consists of a bedroom, a lounge, a kitchen and a bathroom. He said that the lounge was substantially bigger than the other rooms. He said that the first that he had brought the issue to the attention of the Respondents was his e-mail of 23rd July 2017 and that it took until July 2019 for issues to be rectified. The Applicant has quantified the abatement sought at £3186.
- (ii) He seeks the sum of £251.53 to represent various ancillary costs being the posting of the application to the Tribunal-£6.04, the printing of documents for the application- £14.55, purchase of 2 space heaters - £19.99 and £20.00, several meters of draft proofing tape- 5 x £1.99 for the lounge windows totalling £9.95, thermal blackout blinds- £22.50 x 2 pairs, totalling £45.00 and 2 curtain rails £20, instructing a solicitor -£96 obtaining a medical report from his GP-£20.
- (iii) He seeks a sum by way of compensation to represent the fraudulent conduct of the Letting Agent/ Landlord in having him sign an extension agreement at the end of the initial tenancy term. The Applicant has not quantified this aspect of his claim and wishes to leave this at the Tribunal's discretion.
- (iv) He seeks a sum to represent the Landlord refusing to provide him with a reference. He has not quantified this aspect of his claim and wishes to leave this at the Tribunal's discretion.
- (v) He seeks a sum to represent his loss of time and inconvenience in relation to making this application. He has not quantified this aspect of his claim and wishes to leave this at the Tribunal's discretion.
- (vi) He seeks the return of his deposit of £400 which has been allocated against his rent arrears.
- (vii) He seeks a sum to reflect the resultant impact on his health. He has not quantified this aspect of his claim.
- (viii) He seeks all "Late Fees" to be voided

Procedural History

3. An initial Case Management Discussion (CMD) which had been scheduled for 31st March 2020 to take place at Aberdeen was cancelled in view of the COVID-19 pandemic restrictions.
4. A CMD then took place by teleconference on 21st July 2020. That took place by teleconference hearing in view of the restrictions imposed by the COVID-19 pandemic. The CMD was adjourned to allow the paperwork and the date of the CMD to be intimated on the First Respondents.
5. A further CMD took place on 9th September 2020 by teleconference hearing following which various Directions were made by the Tribunal in relation to outstanding productions which were required to be lodged by the Applicant to allow the Tribunal to consider this application. The Respondent was also ordered to lodge any evidence relating to the deposit and communications with Lettings Protection Service Scotland regarding the adjudication process

6. A Final CMD took place on 30th October 2020 when it was confirmed that all paperwork was properly served and the parties present agreed certain facts. The following facts were agreed between the parties; -
- The parties agree that the tenancy agreement produced is the tenancy agreement for the Property.
 - The parties agree that the deposit was £400, and this was paid by the Applicant. This was in turn paid into a deposit protection scheme with Letting Protection Service Scotland. At the conclusion of the Lease the deposit was returned to the Respondent Landlord.
 - The Applicant commenced the tenancy on 16TH June 2017 and terminated the tenancy on 1st July 2019.
 - The rent arrears as at 30th October 2020 amount to £2223.56. This is under deduction of the £400 deposit which has already been applied to the rent account. The rent arrears represent the period 15th December 2018 to 1st July 2019.
 - The late fees have been withdrawn by the Respondent as not being due by the Applicant.
7. In addition, Further Directions were issued by the Tribunal seeking the First Respondent to lodge any written representations within the then following 14 days as the First Respondent was not present at the CMD although it's representative had been in contact with the Tribunal beforehand.

The Hearing 14th December 2020

8. The Hearing was scheduled to commence at 10am on 14th December 2020 by teleconference. The Applicant was not present on the line and there was a delay in starting the Hearing until 10.15am when the Tribunal Clerk contacted the Applicant who seemed to have forgotten that the Hearing was taking place that date.
9. The Applicant then dialled in personally to the Hearing.
10. The First Respondent was present represented by Mr. Roger Craig of Lotus Property. Mr. Craig explained that he is the Asset Manager for the Lotus Group who manage the portfolio of properties for the First Respondent.
11. The Second Respondent was present represented by Ms Lauren Cowling who is a Senior Portfolio Manager with Stonehouse Lettings.
12. The Tribunal explained the purpose of the Hearing and ran through the various papers received.

This consisted of the following from the Applicant; -

- The initial application (accompanied by a 24-page addendum), 13 pictures and 6 emails and an energy performance certificate dated 15th June 2019 for the Property. This included
 - a claim for posting the application to the Tribunal of £4.55
 - a receipt for printing documents to accompany the application of £14.55
 - a medical report from Denburn Medical Practice dated 21st May 2019 and receipt for £20 for invoice re same dated 24th May 2019
 - Invoice from DJP Solicitors to the Applicant for £96 dated 24th April 2019
- Written submissions dated 7th September 2020

- Form AT5 dated 16th June 2017
- Explanatory Notes re Chapter 4 of the Housing (Scotland) Act 2006
- Short Assured Tenancy Agreement dated 16th June 2017
- Email to Susan Falconer from the Applicant dated 23rd July 2020
- E-mail to the Second-Named Respondent dated 6th December 2018
- Letter to Stonehouse Lettings from the Applicant dated 7th December 2018.
- E-mail to the Tribunal dated 25th November 2020 regarding representations from the First Respondent Landlord

The First-Named Respondent had lodged; -

- Written Submissions dated 13th November 2020

The Second-Named Respondent had lodged; -

- Written submission dated 17th March 2020 together with 11 numbered documents
- Written submissions dated 23rd September 2020 together with check-out report for the Property, finalised deposit claim, Letting Protection Service Scotland ("LPSS") Repayment Advice and LPSS Claim Response Notification.
- Written submissions to the Tribunal dated 4th November 2020 including 4 photographs of the lounge in the Property dated 1st May 2018(2 photographs), 14th December 2017 and 11th December 2017.

All parties agreed that these were the papers submitted and received by them from the Tribunal in advance of the Hearing.

13. The Title Deed obtained by the Tribunal confirmed that the Property is owned by St. Andrews Estates (Scotland) Ltd.

Preliminary Matters

14. The Tribunal enquired about the position of parties in relation to an offer to settle the application which was referred to in the submissions of the Applicant dated 25th November 2020. Mr Craig said that an offer to settle the application had been made by his agent Mr. Chris Minchin at Winchester Lettings – the new letting agents instructed by the First Respondent for the Property. The offer was
 - (i) to forego the rent arrears of £2223.56 i.e., that these arrears would be waived by the Landlord
 - (ii) The deposit of £400 would be returned to the Applicant
 - (iii) a sum of £200 would be paid by the Landlord to the Applicant to represent any inconvenience / effect on health / ancillary expenses incurred by him in making this application.
 Mr. Craig said that no definitive answer had been received from the Applicant in relation to this offer.

The Applicant confirmed to the Tribunal that this offer was rejected by him. He said that it represented the bare minimum of what he would accept and that it did not justify the application made by him.

All parties agreed that the "Late Fees" were no longer being sought from the Applicant.

Given the parties' position the application required to proceed by way of oral evidence.

Further Documentary Evidence lodged during the Hearing

15. It became clear during the early part of the Hearing that the extension of the Lease document had not been lodged with the substantial paperwork to date. The Tribunal had been provided as detailed above with the Short Assured Tenancy Agreement but not the Extension of the Lease. A brief 15-minute adjournment was permitted to allow the Applicant to upload this and for this to be circulated to the parties and to the Tribunal Members. The one-page extension is headed up as "Minute of Lease" and is dated 18th May 2018. In addition, a further e-mail was lodged by the Applicant dated 18th December 2018 setting out that he had requested to terminate the tenancy at that time, and this had been refused. There was no objection to these documents being lodged at this late stage. The Applicant had been under the mistaken belief that given that these had been lodged with the Tribunal in the context of an earlier Repairing Standard Application that these would automatically form part of this application.

The Oral Evidence

The Applicant

16. The Tribunal heard evidence from the Applicant in support of his application. In relation to the abatement of rent he relied on his written submissions. He maintained that the lounge is the largest room in the Property and that the heating was not working in that room. Neither he nor his young son could use the room for the purpose which it was meant to be used. He maintained that this was for the whole period that he was occupying the Property. He said that he was entitled to a rent abatement for the whole period that he occupied the Property as he had brought the issue of the storage heater in the lounge not working properly on 23rd July 2017 to the attention of the Respondent. The storage heater in the lounge did not function he said for the whole period that he was in the Property. He said that it was the first time that he had used storage heaters and that he could not get the heater to work. After several attempts he said that he gave up using the lounge altogether. He referred to a prior repairing standard application made to the Tribunal under Reference FTS/HPC/RP/19/0105. In that repairing standard case a Repairing Standard Enforcement Notice was made on 11th April 2019. This was discharged on 30th October 2019 by the Tribunal. It was determined in the repairing standard case that the Property failed to meet the repairing standards in relation to inter alia the windows in the lounge. The Tribunal had required the Landlord to repair or replace the lounge windows so as to make them wind and watertight. The position regarding the heater was that the Tribunal ordered the Landlord to repair or replace the existing electrical storage heater in the lounge of the

Property, such as to provide a heater in the lounge which was in a reasonable state of repair and in proper working order. The Applicant said that the lounge was used purely to store belongings, his son's toys, dry clothes with space heater/sunlight and occasionally play music from via the TV. His position was that he accepted that during the period he leased the Property that there were times when the lounge was warm. However, he said that "the weather changes all the time" and that for the most part that he was sitting there in the lounge with a blanket. He accepted that the photographs lodged by Stonehouse Lettings showed the room being used for drying clothes and playing music. He was asked about the position of his usage of the lounge during the summer months and responded that at those times he was working nights and was sleeping during the day.

17. He agreed that the rent arrears remained at the date of the Hearing £2223.56.
18. In relation to his ancillary costs, he said that these were all the costs that he incurred in relation to his attempts to use the room as a lounge – such as buying additional heaters (which he took with him when he left the Property), putting several metres of draft proofing tape around the lounge windows and fitting thermal curtains and rails. He said that all these attempts failed. He also said that the costs of £20 were necessary to obtain a doctor's certificate to verify the effects on his health and his claim, therefore. Further he required to pay a solicitor £96 for advice to proceed with the application after already exhausting advice from free advice agencies.
19. In relation to his claim for fraudulent conduct of the Respondents in respect of the extension to the Lease, he said that he was led to believe that this was the only way that he could stay in the Property. He did not accept that he had been phoned by the Letting Agent at any stage to go through the various options that were available to him including staying on the short, assured tenancy which would continue on a month-to-month basis and which allowed for him to terminate the lease on 2 months' notice being provided. He said that he felt pressurised into signing the extension. His grievance with the extension to the Lease was that it bound him to a further full 12-month period and did not allow him to terminate the Lease on the original 2-month notice period.
20. In relation to his claim for not being provided with a reference he said that he accepted that there was no contractual obligation on either Respondent to provide a reference but said that not providing a reference kept him in the Property and he referred to the e-mail which was lodged today dated 18th December 2018 adding that this proved that he had asked to be released from the tenancy at that time and had been refused. He accepted that this was when he asked to be released from the Lease and could not recall whether he had enquired at an earlier stage than that or not. He accepted that he had no direct dealings with the First Respondent regarding the Lease extension.
21. In relation to his claim for loss of time he said that the time taken in typing up the application to the Tribunal had been extensive as well as his researching.

22. With regard to the deposit, he said that he believed this should be returned. He disagreed with the fact that he should have been charged cleaning expenses of £55 when he left the Property.
23. With regards to the impact on his own health he said that he was now medicated for anxiety and had been self-managing his anxiety prior to making this application. He had nothing further to add to this and stated he was prepared to leave this claim at the Tribunal's discretion.

The First Respondent's Position

24. Evidence was given by Mr. Roger Craig. He gave some background information and said that his involvement with St. Andrews Estates (Scotland) Ltd. was when he purchased the company as part of a portfolio of properties in October 2018. The previous owner had always dealt with Stonehouse Lettings and he continued to do so. They dealt with all discussions with tenants. He said that the first thing which was highlighted to him as an issue was when the Applicant wanted to leave. He asked Stonehouse Lettings how long the Applicant had resided there and when he had signed the Lease. He did not flatly refuse the Applicant's request to leave and said that if another tenant could be found he would have no objection to the tenant leaving.
25. With regard to the rent abatement, he said that he had offered to settle the abatement issue by writing off the arrears and this had been refused by the tenant Applicant. He said that it was disappointing that this offer had not been taken up and that the reason that it had been put forward was to reduce the further time that everyone had to spend on this application including the Tribunal and all parties. No written communication had ever been received prior to this application from the Applicant stating that rent for the Property should be reduced due to him being unable to have full use of the Property.
26. With regards to ancillary costs, he said that it was clear from the Repairing Standards Case that the storage heater in the lounge was not used due to operator error by the Applicant himself and failed to see why the company should be responsible for the ancillary costs claimed by the Applicant.
27. He said that Stonehouse Lettings are reputable letting agents who in his experience had acted in a proper and professional manner. Regarding the extension he said that the Applicant could clearly have taken a 6-month lease extension option as opposed to a 12-month extension or indeed remained on the short assured tenancy. It was the Applicant's own choice to sign a 12-month extension option. He refuted any fraudulent conduct either by his company or by the Second Named Respondent.
28. He did recall having a conversation with Stonehouse Lettings regarding the request for a reference. From the landlord's point of view, he said that any reference would require to state that there were significant arrears of rent and therefore not of much use to the Applicant.

29. Regarding the time taken to make the application, Mr. Craig said that he had attempted to resolve matters and had made an offer to resolve matters with the Applicant which had been refused. He failed to see why he should be further penalised.
30. As a gesture of goodwill, he had offered to return the deposit to avoid this Hearing taking place. Mr. Craig said that it would be unequitable for the Applicant to have all his rent arrears written off and still claim for a further sum regarding abatement of rent for the Property and for his deposit to be returned. Regarding the cleaning costs of £55 which were also attributed to the rent account he said that if there had only been one complaint in the check-out report then these may have been waived. The check-out report however showed numerous issues to be resolved and the minimum cleaning time chargeable had been made which amounted to the £55.
31. With regards to the Applicant's health Mr. Craig said that he had been unaware of the Applicant's symptoms and again pointed to the fact that the Landlord had reached out to resolve matters before today. He said that the Landlord had been left with substantial rent arrears for the Property and that their solicitors had "picked this up" and that no response had been received. If the Applicant had contacted the Landlord, the issues could have been spoken about and saved a great deal of time.

The Second Respondent's Position

32. Evidence was provided by Ms Lauren Cowling. In relation to the claim for an abatement of rent in relation to not having the full benefit of the lounge Ms Cowling said that she had been involved in the earlier tribunal procedure regarding the repairing standard application. She said that during that application to the Tribunal that the Applicant had made comments that he could use the lounge during the summer and that the heater was not required at those times. She said that the lounge heater was inspected and was usable. The reason that it required to be replaced was that it was not of a significant size as to heat the room sufficiently. She also said that from her own visits to the Property that the room was being used. She referred to the photographs that she had lodged which showed that the lounge was warm enough to be used to dry clothes. She also referred to the fact that it was clear that the lounge was being used for game consoles as these could be seen wired up to the television.
33. Regarding ancillary costs she refuted that anything was due. She said that it was clear that the Applicant could make use of the lounge and the Respondents should not be responsible for user error.
34. In so far as the claim for fraudulent conduct is concerned, she said that the initial lease was a short- assured tenancy which was for an initial 12-month

period and allowed for the continuation of the lease by tacit relocation and for the tenant to end the Lease on providing 2 months' notice. She said that it was standard practice when first approaching the end date specified in the short- assured tenancy for Stonehouse Letting to contact both the landlord and the tenant to see if they would agree to a 6-month extension which she said gave both parties the security of knowing that the lease would continue for whatever further period was required. She said that this benefited both parties and both would have the security of knowing that the lease would continue for the period agreed to in the extension. She agreed that an e-mail had been sent on 26th April 2018 by Stonehouse Lettings to the Applicant which was in the following terms: -

"Lease of-Flat1, 76 Regent Quay, Aberdeen

We refer to the Lease at the above-mentioned property, the termination date of the present agreement being the 16/06/2018.

If you wish to continue leasing the property, an Addendum to the existing Lease Agreement will need to be drawn up. In order to ensure that such an extension is available, and acceptable to the Landlord, we would ask that you contact our Office by return in order to discuss your requirements for the future.

Similarly, if you are planning on vacating the property, notice in writing is required from all parties listed on the lease agreement, an email is acceptable. The notice period is stated in your current Tenancy Agreement

We look forward to hearing from you
With Kind Regards
Lisa Campbell Property Manager"

35. Ms Cowling said that no response was received to this email and this was chased up by Stonehouse Lettings by a telephone call to the Applicant. He was telephoned by Erin Sadler the Second Respondent's Property Manager's Assistant on 15th May 2018 to discuss the options available to him. If he did not want an extension the lease could continue on a rolling basis month to month. Alternatively, an Addendum to the Lease could be drawn up either for a 6 -month or a 12-month period which would tie both parties into that further period and would not allow either party to terminate the lease during the extension period. Her records confirmed that these three options were discussed with the Applicant. She said that the Applicant agreed to a 12-month extension and on mutual agreement with the landlord the extension was drawn up in these terms. The Applicant signed the hard copy of the extension in the offices of Stonehouse Letting on 18th May 2018. She said that no pressure was applied to the Applicant to sign the lease extension. She did not accept that the terms of the initial e-mail were somewhat misleading in that the email did not indicate that the Lease could continue in its original terms. Her position was that this was covered in the telephone call prior to the extension being signed. The Notes in her internal paperwork specifically stated that options were discussed with the Applicant in the telephone call on 15th May 2018 before the extension was drawn up.

36. Regarding the application for a reference Ms Cowling said that she personally dealt with the Applicant in relation to this. When the request was made for a reference the Applicant was in significant rental arrears. She said that it was not her policy to provide a bad reference. She telephoned the Applicant on his mobile and told the Applicant that the reference would need to include the fact that there were substantial arrears of rent due. She asked if he still wanted the reference and he declined the request.
37. With regard to the Applicant's position that the application had taken a lot of time she agreed that this has been an extensive process and that many tenants might not know how to go through with the application to the Tribunal and the process that followed. She said that as letting agents they would always be available to guide tenants through different practices and procedures and that had she been asked she would have spoken to the Applicant about the various issues that he has raised with the Tribunal. She said that in December 2018 when the Applicant wanted to be released from the tenancy early that this request was put forward to the landlord and that as a gesture of goodwill that they agreed to re-market the Property early. Unfortunately, another tenant did not materialise. She said that unfortunately when the tenant vacated the Property, he did not make any further contact. The landlord wanted the arrears settled via solicitors. This application to the Tribunal was the first intimation of the Applicant's position regarding the various matters claimed for.
38. In so far as the deposit return is concerned, Ms Cowling said that the Applicant was provided with an outgoing Inventory which identified several cleaning issues. The Applicant was sent a copy of that along with a copy of the cleaning bill of £55. A claim was made by the Respondent to the company who held the deposit Letting Protection Service (Scotland) in respect of the rent arrears and the cleaning costs in the full amount of £400 which was the deposit held. Letting Protection Service (Scotland) then dealt with the adjudication process. The Applicant had logged on online to the claim with Letting Protection Service (Scotland) and said that he disputed the claim in full. He was directed to contact the independent adjudicators or to contact Stonehouse Lettings direct. He did neither. Accordingly, the deposit was returned to Stonehouse Lettings and applied against the outstanding arrears balance.
39. Ms Cowling said that the Applicant's health was a personal issue and that at no point had he made Stonehouse aware of any problems that he was experiencing. She said that if they were unaware of this then there was nothing they could do. They sympathise with the Applicant, but he has made it clear that he has a history of anxiety which has been exacerbated by the situation.

Findings in Fact

- 40. (1) The Applicant entered into a Short Assured Tenancy for the Property with a start date of 16th June 2017.**

- (2) The landlords and owners of the Property are St Andrew Estates (Scotland) Ltd who are the First Respondents.**
- (3) Stonehouse Lettings the Second Respondents were the Letting Agents for the Property during the period the Applicant occupied the Property.**
- (4) The Applicant physically occupied the Property from 16th June 2017 until the 18th June 2019 when he returned the keys.**
- (5) The tenancy was terminated on the termination date of 1st July 2019.**
- (6) An extension Minute of Lease was entered into between the Applicant and the First Respondent on 18th May 2018.**
- (7) A deposit of £400 had been paid by the Applicant.**
- (8) Rent of £400 was payable per month, monthly and in advance.**
- (9) The deposit of £400 was applied to the outstanding rent account.**
- (10) The Applicant did not engage in the adjudication process regarding the return of the deposit and the addition of cleaning dues for the Property after he vacated the Property.**
- (11) Cleaning dues of £55 were properly added to the outstanding rent account. These were in relation to rectifying the minor matters raised in the Check-Out Report for the Property dated 3rd July 2019.**
- (12) There are £2223.56 of rental arrears outstanding as at the date of the Hearing. This sum includes the cleaning dues of £55.**
- (13) The Applicant made a previous application to the Tribunal regarding the Repairing Standard for the Property under Reference FTS/HPC/RP/19/0105.**
- (14) A Repairing Standards Enforcement Order for the Property was granted by the Tribunal on 11th April 2019.**
- (15) The issues in the Repairing Standards Enforcement Order were addressed by the Respondent and a Certificate of Completion was granted by the Tribunal on 30th October 2019.**
- (16) At the time the repairing standards issues and complaints in relation to the lounge arose the Applicant did not make any claim that rent for the Property should be abated or retained.**
- (17) The first time the claim for rent abatement was made by the Applicant was when this application was lodged with the Tribunal.**
- (18) There was no fraudulent misrepresentation by the Respondent when the extended lease was signed in May 2018.**
- (19) The Applicant had a reduced use of the lounge of the Property during his occupancy in periods of cold weather.**
- (20) There was no contractual obligation on the Respondent to provide a reference**
- (21) Late fees for payment of rent on the Property charged to the Applicant were withdrawn by the Respondent**
- (22) The Applicant paid £96 to his solicitors regarding advice prior to making this application.**
- (23) The Applicant paid £20 to his medical practice for a GP report.**
- (24) The Applicant had spent time and energy and had been inconvenienced to a minor degree in making this application to the Tribunal.**

Reasons for Decision

41. The Tribunal makes the decision based on the written evidence lodged by the Applicant and the Respondent and the oral evidence given at the Hearing by parties.
42. Neither party referred the Tribunal to any case law.
43. The Tribunal grant an order for payment by the First Respondent Landlord to the Applicant Tenant in the sum of £1466. This is built up of the sum of £1200 to represent abatement of rent. The Tribunal also award the sum of £20 with regard to the Applicant's vouched costs in relation to providing a medical certificate and £96 in relation to his vouched costs incurred in consulting with a solicitor. In addition, the Tribunal have awarded the sum of £150 to represent the aspects of the impact of time/inconvenience/ impact on the Applicants health. The total sum awarded is £1466.
44. The questions which the Tribunal first had to look at was the issue of the rent abatement. The leading authority in Scotland in relation to rent abatement is the case of *Muir v McIntyre (1887)*, in which Lord President Inglis said: "It is quite settled in law that an abatement is to be allowed if a tenant loses the beneficial enjoyment of any part of the subject let to him either through the fault of the landlord or through some unforeseen calamity which the tenant was not able to prevent".
45. The Tribunal was not entirely impressed with the Applicant's evidence in relation to this aspect of his claim. He claimed that he had not been able to use the lounge for the entire period that he was in the Property. He had however stated in his earlier application to the Tribunal under the Repairing Standard that the lounge could not be heated only in the cold weather times which was spoken to by Ms Cowling and is clearly stated by the Tribunal in the Repairing Standard decision. There was a clear contradiction in his evidence to the Tribunal. On the one hand he suggested to this Tribunal that he could not use the lounge throughout the entire period he occupied the Property and in the earlier Repairing Standards Case he conceded that the issue of heating the lounge related only to the cold weather times. The Applicant occupied the Property for 24 months. The rent payable for that 24-month period in total is £9600 being 24 months at £400. The lounge is only one of four rooms in the Property. A quarter share of the total rent for the period is £2400. Whilst we accept that the lounge was the biggest room in the Property the photographs lodged by the Letting Agent clearly showed the lounge being used at least to some extent even in December 2017 and December 2018. The Tribunal were not impressed with and did not find the Applicant's position to be a credible one when he was asked about his use of the lounge during the summer months and he indicated that he was working nightshifts and sleeping during the day suggesting he could not use the lounge then. If that was the case that is hardly the fault of the Respondent and does not make the room unusable during those months. It was however also clear to the Tribunal that the Applicant sought to leave the Property in December 2018 and stated that the various issues by way of repairs covered in the repairing standards enforcement notice were still outstanding. These

included making the lounge windows wind and watertight and replacing the lounge heaters. The Tribunal have accordingly arrived at the figure awarded by calculating a figure to represent an abatement of rent for the lounge for half of the period of occupancy taking the above factors into account which we assess as being £1200.

46. The second question which the tribunal required to determine is whether any ancillary costs should be paid as claimed by the Applicant. The costs of posting the application and printing form part of the procedure of making an application to the Tribunal. The application process is free-no lodging dues are payable and the administrative costs incurred by tribunal users be they Applicants or Respondents are part of the process. The Tribunal does not accept it would be in any way fair or equitable that applicants are entitled to seek postage and printing costs from respondents in bringing this type of application. They are part of the costs incurred by all applicants in making an application to the Tribunal. With regard to the ancillary costs of new heaters / tape/blackout blinds/ curtain rail there is no vouching for the same and at least some items have in any event been retained by the Applicant. The Tribunal do accept that the Applicant's costs of consulting with a solicitor of £96 in order to make this application which is a complicated case have been vouched and should be paid by the First Respondents as reasonable in the circumstances. Similarly, it is not unreasonable for the Applicant to be re-imbursed by the First Respondent for his brief medical certificate.
47. The third issue for the Tribunal to consider is that of fraudulent conduct. In Scots Law the remedies available to the victim of a misrepresentation are dependent upon a number of factors in particular whether the misrepresentation is innocent, negligent or fraudulent. The test for proving fraud with regard to fraudulent statements is as set out by Lord Herschell in *Derry V Peek*; HL 1 July 1889 where the court set out the requirements for fraud,
- ‘I think the authorities establish the following propositions: First, in order to sustain an action of deceit, there must be proof of fraud, and nothing short of that will suffice. Secondly, fraud is proved when it is shown that a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false. Although I have treated the second and third as distinct cases, I think the third is but an instance of the second, for one who makes a statement under such circumstances can have no real belief in the truth of what he states. To prevent a false statement being fraudulent, there must, I think, always be an honest belief in its truth. And this probably covers the whole ground, for one who knowingly alleges that which is false, has obviously no such honest belief. Thirdly, if fraud be proved, the motive of the person guilty of it is immaterial. It matters not that there was no intention to cheat or injure the person to whom the statement was made.’
- Lord Herschell continued: ‘In my opinion making a false

statement through want of care falls far short of, and is a very different thing from, fraud, and the same may be said of a false representation honestly believed though on insufficient grounds. Indeed Cotton LJ. himself indicated, in the words I have already quoted, that he should not call it fraud. But the whole current of authorities, with which I have so long detained your Lordships, shews to my mind conclusively that fraud is essential to found an action of deceit, and that it cannot be maintained where the acts proved cannot properly be so termed.'

48. This test has been adopted into Scots Law in the case of *Boyd & Forrest V Glasgow & South Western Railway Co.* 1912 SC (HL)93. At common law, damages are only available where the misrepresentation was fraudulent.
49. The Tribunal do not accept that there has been any fraudulent conduct. Whilst we do accept that the content of the initial e-mail dated 26th April 2018 and referred to in paragraph 34 above was misleading, we do not accept that there was any conduct amounting to fraudulent misrepresentation. We accept the evidence of Ms Cowling where she referred to the telephone call with the Applicant when the options were fully discussed with him before he signed the extension of the Lease. The Tribunal does not accept that the Respondent took dishonest advantage of the Applicant and induced him to enter into a disadvantageous contract. The Applicant may well have been better placed to claim against the Second Respondent in relation to a breach of the Letting Agent Code of Conduct in respect of that part of his claim given that the Code of Practice came into effect on 31st January 2018. In his own representations to the Tribunal the Applicant states that "I understand intent may likely be difficult to prove....". The onus is on the Applicant to prove that there has been fraudulent conduct and the Tribunal does not find that this has been proved by him against the Respondent.
50. The Tribunal do not accept that there is any contractual obligation on the Respondent to provide the Applicant with a Reference. In any event we accept the evidence of the Respondent that this was offered and declined by the Applicant as it would require to include a reference to rent arrears.
51. Regarding the Applicant's claim for loss of time / inconvenience and impact on his health, the Tribunal have linked these aspects together. Only a very brief medical report was provided to the Tribunal which stated on 21st May 2019 "the above-named patient was started on Sertraline tablets for anxiety on 19/12/18. At the time he reported that he felt that the development of his anxiety was to do with a number of issues he was having with his accommodation". This report does not state in terms, that in the opinion of the medical practitioner who compiled the report, that any medical issues can be directly attributable to the matters complained of in this application. It is accepted by the Tribunal that the process would have impacted on the Applicant's time / inconvenience. The Applicant did not provide any further evidence to us regarding the impact on his health other than to say he had previously self-managed his anxiety which was evidently an issue before the matters giving rise to this application. Taking all matters into consideration and exercising its discretion in this matter the Tribunal accept that a fair sum to cover these aspects of the Applicant's claim would be £150.

52. The Applicant sought the return of his £400 deposit. There was no justification presented to the Tribunal for this request. He had also not engaged in the adjudication process and the £400 deposit had been credited to the rent arrears account already. Similarly, the cleaning dues of £55 had been added to the rent account and properly vouched by the Respondent as being due in respect of minor cleaning issues brought out in the leaving report. The Applicant had not engaged in the adjudication process in respect of these either.
53. The issue of late fees did not require to be determined as the late fees had been withdrawn by the Respondent.
54. Whilst the Tribunal can make no order in relation to the enforcement of the payment order imposed the Tribunal did state to parties that they envisaged that the payment due to the Applicant would be offset against the sums still due by him in his outstanding rent account with the First Respondent.

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.

Yvonne McKenna

14th December 2020

Legal Member/Chair

Date