



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

**Chamber Ref: FTS/HPC/CV/18/1318**

**Re: Property at Parkside Farmhouse, Oldmeldrum, Aberdeenshire, AB51 0AD  
("the Property")**

**Parties:**

**Ms Allison Downie, Mr Thomas Downie, 536 Great Western Road, Aberdeen,  
AB10 6PG ("the Applicants")**

**Mr George Burnett, Ms Jacqui Skene, Thistle Sports, 29-31 Rose Street,  
Aberdeen, AB10 1UB ("the Respondents")**

**Tribunal Members:**

**Graham Harding (Legal Member) and Melanie Booth (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the  
Tribunal") determined that the Applicants were entitled to an order for payment  
by the Respondents to the Applicants in the sum of £3,463.67.**

**Background**

1. By application dated 23 May 2018 the Applicants applied to the Tribunal for an order for payment by the Respondents in respect of a claim for damages arising from the Respondents' tenancy of the property. The Applicants submitted a copy of the tenancy agreement, photographs, check-in and check-out reports, and copy emails in support of the application.
2. Following acceptance of the application a Case Management Discussion assigned to take place on 20 August 2018 was postponed at the request of the Respondent's then Raeburn Christie, Clark and Wallace who by letter dated 10 August 2018 submitted written representations to the Tribunal representatives. The applicants also submitted further written representations by email dated 6 August 2018.

3. A CMD was held by teleconference on 13 May 2019 at which the Applicants attended in person and the Respondents were represented by Mr Smith from the Respondents' representatives. Following discussion, the CMD was continued to 27 June 2019 and the Tribunal issued directions to the Applicants.
4. By emails dated 19, 20, 21 and 22 May 2019 the Applicants submitted further written representations.
5. By email dated 13 June 2019 the Respondents' representatives submitted further written representations.
6. By email dated 13 June 2019 the Applicants submitted further written representations.
7. By email dated 23 June 2019 the Applicants submitted further written representations rejecting the Respondents' offer of 13 June 2019.
8. A further CMD was held by teleconference on 27 June 2019 and was again attended by the Applicants and Mr Smith. Mr Smith confirmed that the Applicants had complied with the terms of the Tribunal's direction and also submitted that the Applicants' claim should be restricted to those items contained in the out-go inventory. This was disputed by the Applicants. The Tribunal continued consideration of the Respondents' motion to a further CMD and directed Mr Smith to submit written submissions within 21 days.
9. A further CMD was held by teleconference on 20 August 2019 and was again attended by the Applicants and Mr Smith. The Tribunal was informed that the Respondents were no longer insisting on their submission that the parties should be bound by the terms of the out-go inventory. The Tribunal continued the application to a hearing and directed that the Applicants lodge an indexed and paginated Inventory of Productions in advance of the hearing. The Applicants complied with the Tribunal's direction.
10. Due to the Covid pandemic and then subsequently Mr Burnett's ill health an in-person hearing was delayed. The Applicants submitted further written representations by email dated 1 May 2022. In order to progress matters the Tribunal assigned a further CMD to be held on 29 July 2022.
11. The Respondents submitted further written representations by email dated 20 July 2022.
12. The Applicants submitted further written representations by email dated 22 July 2022.
13. The Respondents submitted further written representations by post received on 25 July 2022.

14. By email dated 8 August 2022 the Applicants requested that their two witnesses be permitted to give their evidence by video link. The Applicants' request was refused partly because no such facilities were available to the Tribunal at the venue and partly because the Tribunal was not satisfied that the witnesses were unable to attend in person.
15. By email dated 4 October 2022 the Applicants submitted further written representations.
16. By correspondence received on 10 October 2022 the Respondents submitted further photographs and submissions.

### **The Hearing**

17. A hearing was held at Aberdeen Sheriff Court on 12 and 13 October 2022. The Applicants attended in person as did Mrs Skene. Mr Burnett did not attend due to ill health.
18. By way of preliminary matters, the Tribunal considered the Applicants application to amend the sum claimed by increasing the sum claimed in respect of the cost of replacing the yellow bedroom window frame by £183.70 and also an additional charge of £54.00 for the cost charged by Alistair R Mowat for re-commissioning the boiler. After hearing from the parties and there being no opposition from Mrs Skene the Tribunal allowed the respective claims to be amended. The Tribunal also noted that the photographs submitted by the Respondents were undated and unindexed. After some discussion Mrs Skene agreed to try to have the photographs re-submitted by the following day.
19. Mrs Downie then read a prepared opening statement in which she set out in some detail the history of the property and the renovations undertaken by the Applicants during their ownership. She made reference to the issues that had arisen with the Respondents during the tenancy, difficulties experienced by her tradesmen and concerns regarding the property being left unheated. Mrs Downie also expressed concerns about the standard of the outgoing inventory prepared by Mr Milne and that the Applicants' case was much more reliant on the Applicants own photographs.

### **The Applicants Claims**

20. 1. Oil Tank Replenishment: Mr Downie confirmed that this had been dealt with in the adjudication by My Deposits Scotland with the Respondents conceding £330.00 of their deposit. The balance of £7.87 was no longer being claimed.
21. 2. New Boiler Damage. The Applicants position was as detailed at pages 64 - 72 of their Inventory of Productions. Due to the lack of fuel in the tank it was said that sludge was drawn into the oil line and filter resulting in the contractor charging £156.00 to clean the system and test it (doc. 67). Mrs Downie also referred the Tribunal to a further invoice from Alastair Mowat addressed to Mrs

Skene in the sum of £54.00 and dated 26 March 2013 (Doc 320). The Tribunal queried on what basis the Applicants would have had any liability to pay this invoice when it was obviously addressed to Mrs Skene at her address in Aberdeen. Mrs Downie said that she felt it had been the right thing to do. The Tribunal also noted that the invoice was dated 26 March 2013 and queried if any obligation to pay the debt would have prescribed in terms of Section 6 of the Prescription and Limitation (Scotland) Act 1973. The Applicants indicated that at the time of raising the application they had been unaware of the terms of the Act. For the Respondents, Mrs Skene said that during the tenancy she had struggled for money and could not afford the 800 - 1000 litres of fuel per month so took the minimum amount that was necessary. She said she felt there had been a breach of confidentiality on the part of Turriff Fuels by disclosing to the Applicants her fuel usage over the tenancy. She thought that at the end of the tenancy there would have been about two inches of fuel left in the tank. Mr Downie explained that two inches would have been below the off-take from the tank and the fuel would be mixed with the sludge at the bottom of the tank. Mrs Downie confirmed it was a large property and would need a reasonable amount of fuel every month.

22.5. Removal of TV Roof Cables: Mrs Skene confirmed that it had been agreed by Mr Burnett that the cables would be removed at the end of the tenancy and they had not. She agreed the Applicants' claim of £34.99.

23.6. Patch Painting of the Study Ceiling: The Applicants referred the Tribunal to documents 80-83 in support of their claim. Mrs Skene accepted that her son had left grease marks on the ceiling after a party at the property and also accepted that some attempt to cover the marks may have been made but that the marks were still apparent. She did not dispute the charge made by Westhall Decorating Ltd or the cost of the materials.

24.8. Kitchen Light Fitting: The Applicants' position was as stated in Docs 84-85. It was accepted by Mrs Skene that the original light fitting was damaged and replaced by the Respondents with a light fitting that was similar in style in 2011. She said that the Applicants were aware of the replacement in 2011 and had not asked them to remove it until the end of the tenancy. She did not think it was reasonable to meet the cost of a new light fitting.

25.9. Key Cutting: The Applicants position was as stated in 86-93. For the Respondents Mrs Skene accepted that there were two keys missing and that it was reasonable that the Applicants be reimbursed for the cost of replacing the keys. The Tribunal queried why it had been necessary for Mr Downie to make two separate trips from Oldmeldrum to Inverurie for the sole purpose of having two keys cut rather than combine this on a day when he was going to Inverurie anyway. Mr Downie was unable to say that there had been an urgent reason for going to get the keys cut but that he did not like not having a spare key. The Tribunal also noted that on the same day Mrs Downie had been in Aberdeen and suggested she could have had the keys cut there.

26. 10a Ikea Desk Rebuild: The Applicants position is as stated at doc 94. Mrs Skene agreed this charge was reasonable.
27. 10b Clean and Rebuild Bed: The Applicants position is as stated in doc 95. Mrs Skene agreed this charge was reasonable.
28. 10c Coffee Table Write-off: The Applicants position is as stated in doc 96. Mrs Skene agreed that the table had been damaged whilst being stored in the garage although she said she had asked the Applicants to remove any items that they were concerned about. She thought a figure of £12.50 was reasonable. Mrs Downie advised the Tribunal that the table had been purchased in 2008 at a cost of £130.00.
29. 10d Study Settee: The Applicants position is as stated in doc 97. For the Respondents, Mrs Skene submitted that the damage to the cushion should be considered as wear and tear and no award should be made.
30. 10e Garden Dining Chairs Repair: The Applicants position is as stated in doc 98. Mrs Skene disputed that the Respondents or her children had deliberately damaged the chairs. She said that she would not stand for behaviour like that. It was accepted that the chairs had been left outside.
31. 10g Items "Removed by Landlord": The Applicants position is as stated in docs 100-103. Mr Downie agreed that the exercise bike which had been purchased in the Philippines in 2005 for an unknown cost had been removed by the Applicants from the property in 2011 at the request of the Respondents. He explained it could not be used because the stabilising feet were missing. He confirmed he had not tried to find replacement feet. Mrs Downie said that the missing speakers would have had some value and were certainly in working order at the commencement of the tenancy. She did not know how old they were nor the make only that they had been purchased from a shop in Holburn Street in Aberdeen. She said the wicker Asian basket had been purchased at a market in Thailand for £50.00. She described it as "vintage" and of good quality. She referred the Tribunal to the photographs of the other missing items. For the Respondents Mrs Skene accepted that some items may have accidentally been disposed of although she could not be certain.
32. 10h Chimney Pot: The Applicants position is as stated in docs 104-105. The Tribunal noted that the Applicants became aware that the chimney pot was broken during the first year of the tenancy. Mrs Skene confirmed that the Applicants had not asked the Respondents to replace the chimney pot during the tenancy nor had the Respondents offered to replace it.
33. 10i Thai Wall Hangings: The Applicants position is as stated in doc 106. Mrs Skene agreed that £20.00 was a reasonable amount to pay.
34. 10j Recycling Boxes: Mr Downie confirmed this claim was no longer being insisted upon.

35. 11 Black Revolving Chair: The Applicants position is as stated in doc 108. Mrs Skene agreed the sum of £20.00 was reasonable.
36. 12 Freezer Drawer: The Applicants position was that although the Adjudicator had provided for the return of £20.00 to the Applicants in respect of this amount being conceded by the Respondents in the My Deposits adjudication, they remained entitled to the balance of their claim amounting to £19.73. The Tribunal queried whether it had jurisdiction to consider the claim if it had already been the subject of adjudication. The Applicants position was that the Adjudicator had only adjudicated up to the level of the deposit and that anything over that amount could still be claimed. It was the Applicants position that the Adjudicator had not specifically ruled on the freezer drawer merely given the amount offered by the Respondents. Mrs Skene referred to the need to take account of wear and tear.
37. 13. Garden Gate Write-off: The Applicants position is as stated in doc 109-111. The Tribunal noted that the garden gate had been replaced by the Applicants in August 2012. The Applicants had not indicated at that time that they were holding the Respondents liable for damage to the gate. Although the Applicants made reference in their written submissions to a witness who had seen one of the Respondents damaging the gate, no witness was called to give evidence at the hearing. The Tribunal queried with the Applicants if the claim for the cost of replacement of the gate might be time barred as a result of the terms of the Prescription and Limitation (Scotland) Act 1973. The Applicants again indicated that they had previously been unaware of the terms of the Act when making their application. For the Respondents, Mrs Skene said that Mr Burnett had advised the Applicants that the gate had been damaged because of the bad weather. He had removed the broken bits of the gate post in case they caused injury or damage.
38. 14. Strimmer and Equipment Loss: The Applicants position is as stated in docs 112-117. Mrs Skene acknowledged that her son had lent the strimmer to his father and that it had subsequently been stolen. She said that the Respondents had purchased a replacement but that it had not been acceptable to the Applicants and it had been returned to the store. The Applicants acknowledged that they had been aware of the loss of the strimmer in July 2012. The Tribunal again queried if the claim therefore might be time barred and the Applicants reiterated their previous reply in this regard.
39. 15. Redecoration of Blue Bedroom: The Applicants position is as stated in docs 118 -124. The Tribunal noted that the Respondent had accepted that the sum of £200.00 should be withheld from their deposit and this had been acknowledged by the adjudicator in the adjudication. It was the Applicants position that this did not prevent them claiming the balance of the cost of decorating the room in the current application as it had not been adjudicated upon. The Tribunal also noted that the Respondents had following on from the adjudication through their then representative Mr Smith in an email to the Tribunal dated 13 June 2019 offered a further £250.00 towards the cost of decoration. Mrs Skene said she had no recollection of this offer and referred to

it being reasonable to take account of wear and tear and that she had teenage boys living in the property. She agreed that the Respondents had offered to redecorate the room at the end of the tenancy but said that the Applicants had put so many conditions on them that they decided not to go ahead.

40. 16c. Blue Bedroom Basket: The Applicants position is as stated in doc 125 and 103. Mrs Skene accepted that the basket may not have been in the property at the end of the tenancy but could not say what had happened to it. The Applicants had no receipt for the purchase of the basket but estimated the cost to replace to be about £30.00.
41. 16d. Blue Bedroom Bedside Chest: The Applicants position is as stated in doc 126. Mrs Skene agreed the sum claimed was reasonable.
42. 17. Cleaning Kitchen: The Applicants position is as stated in doc 127. Mrs Skene disputed that the kitchen had been left in a dirty condition or that there had been mould. She also said that she and her youngest son had remained living in the property until the last day of the tenancy as her son was still attending the local primary school. She agreed that her older sons had moved to their new property two weeks prior to the end of the tenancy. She did not accept that £40.00 was reasonable for cleaning the kitchen.
43. 18. Study Carpet: The Applicants position is as stated in docs 128 -132. Mrs Skene accepted that despite attempts to clean it, there were stains that could not be removed. She agreed that it was reasonable for the Applicants to remove the carpet and replace it however she did not consider that it was reasonable to assume the carpet would have had a lifespan of ten years particularly given its colour and the amount of usage it would have had with a family of six and this being the main room her teenage children used. She thought five years was more reasonable. The Applicants referred the Tribunal to the schedule on doc 129 which they said had been produced from guidance from Safe Deposits Scotland.
44. 20 Blue Bedroom Carpet: The Applicants position is as stated in docs 133 -137. Mrs Skene's position for the Respondents was very much as stated in her argument as regards the study carpet. She accepted there was a blue stain that could not be removed and that it was reasonable to replace it but that account should be taken of fair wear and tear and that it was a cream-coloured carpet.
45. 21. Blue Bedroom Door: The Applicants position is as stated in doc 138. Mrs Skene accepted the door had been written on and that the Respondents were liable for the cost of repair but submitted that the hourly rate charged by the Applicants was excessive and that £10.00 per hour would be reasonable.
46. 22. Peach Bedroom Light Fitting: The Applicants position is as stated in doc 139 -140. This was agreed by Mrs Skene.
47. 23 Boxroom Shelving: The Applicants position is as stated in doc 141. This was agreed by Mrs Skene.

- 48.24. Kitchen Painting: The Applicants position is as stated by the Applicants in doc 142-143. Mrs Skene agreed that the Respondents should meet the cost of repainting the wall but disputed the hourly charge of £20.00 per hour and submitted that a charge of £10.00 per hour was reasonable. For the Applicants, Mr Downie explained that the Applicants had charged £10.00 an hour for cleaning work but £20.00 an hour for trade type work. Mrs Downie said she thought £20.00 an hour was a reasonable rate for non-professionals to charge for labour.
- 49.25. Ensuite Cleaning: The Applicants position is as stated in docs 144-146. Mrs Skene did not comment on the claim. The Tribunal queried with the Applicants how old the toilet handle was and whether it could be said that the Respondents were liable to meet the cost of repair. Mrs Downie confirmed the handle had been installed in 1995 when the property had been renovated. She suggested that the Respondents ought to have had accidental damage insurance to meet the cost of repair. She also pointed out that the replacement handle had cost much less than the original.
- 50.26. Replace Damaged Floor Tiles: The Applicants position is as stated in docs 147-150. Mrs Skene said that the tiles had not been deliberately damaged by the Respondents. She was unable to say how they had been broken.
- 51.28. Garage Light Fitting: The Applicants position is as stated in doc 151-153. Mrs Skene suggested that perhaps someone else could have tampered with the wiring to make it unsafe but was unable to say who this might have been.
- 52.29. Ensuite Window Damage: The Applicants position is as stated in docs 154-155. Mrs Skene accepted that the Respondents had been told about a problem with mould and mildew in the ensuite in 2011. She said that the window was opened every time the shower was used, weather permitting. She said it was not opened all day but was open for a period of time. Mrs Downie explained that following the end of the tenancy she had used bleach to try to remove the mould from the window frame but this had not been successful. She had arranged for the frame to be removed, stripped of its ironmongery and sanded down by her joiner to remove the mould and then stained and varnished and reinstated. In response to a query from the Tribunal, Mrs Downie confirmed she had not used a proprietary mould remover before sending the window to the joiner. Mrs Downie confirmed she charged £20.00 per hour for her labour for varnishing and staining the frame.
- 53.30. Damage to Ensuite Blind: Mrs Downie explained that she stripped down the blind and took it to the dry cleaners to remove the mould. She said she then reassembled it. She charged 1 hour of time at £20.00 plus £10.00 for the dry cleaning. For the Respondents Mrs Skene said the blind had fallen down. She left it to the Tribunal to determine a fair award.



- 54.31. Driveway and Garage Area: The Applicants position is as stated in docs 156-160. The Tribunal noted that the Applicants were charging £20.00 per hour for their time.
- 55.32. Hallway Light Fitting: The Applicants position is as stated in docs 161-162. Mrs Downie explained that when she attended at the property for another matter in 2010, she noticed the light fitting was hanging off. She said she removed it and provided a substitute fitting for the rest of the tenancy and then arranged to have the original fitting reinstalled following the end of the tenancy. The Tribunal noted the claim included Mrs Downie's travel and labour costs from 2010 as well as mileage charges at that time in addition to the electrician's charge for refitting the light after the end of the tenancy. Mrs Skene said that it had never been suggested that the Applicants were going to charge for the cost of replacing the light fitting in 2010 and they had never been made aware the Applicants had been taking pictures at that time.
- 56.33a. Peach Bedroom Decoration: The Applicants position is as stated in docs 163-167. For the Respondents Mrs Skene accepted that the carpet was stained but that the Applicants were not making a reasonable allowance for wear and tear. Mrs Downie advised the Tribunal that the room had been decorated in about 2003 or 2004 and that the Applicants had been mainly living in the Philippines. The Tribunal queried if it had been necessary to redecorate the whole room if the burn marks on the wallpaper had been restricted to one wall. Mrs Downie explained that the Respondents had said that they would decorate the room at the end of the tenancy but had not done so and therefore the Applicants had carried out the redecoration instead.
- 57.33b. Peach Bedroom Carpet: The Applicants position is as stated in docs 168-172. Mrs Skene confirmed the carpet had been shampooed at the end of the tenancy but could not remember if it still had stains. After looking at the Applicants photos of the carpet she agreed there were still stains. She suggested that account should be taken of wear and tear in calculating any award.
- 58.33d. Peach Bedroom Low Bookshelf: The Applicants position is as stated in docs 173-175. Mrs Skene accepted that the bookshelf had been put in the garage but she did not know what had happened to it thereafter. She left it to the Tribunal to determine a fair award for its loss.
- 59.33e. Peach Bedroom wall shelf: The Applicants position is as stated in doc 176. Mrs Skene agreed to an award of £10.00.
- 60.33f. Peach Bedroom Duvet: The Applicants position is as stated in docs 177-180. The Tribunal noted that the Applicants were made aware of the disposal of the duvet on 4 June 2012 but took no steps to hold the Respondents liable for the loss until they submitted this application. The Tribunal queried with the Applicants if their claim might be time barred by virtue of the terms of the Prescription and Limitation (Scotland) Act 1973. The Applicants indicated they had been unaware of the possible time bar issue.

- 61.33g. Peach Bedroom TV Cable damage: The Applicants position is as stated in doc 181. Mrs Skene accepted it had been agreed the Respondents would remove the TV cables at the end of the tenancy and had not done so but disagreed with the hourly rate charged by the Applicants and submitted that £10.00 per hour would be reasonable.
- 62.34.Patch Painting Mrs Downie explained that the Respondents had carried out some patch painting to the lower hallway ceiling that was inadequate she repainted the ceiling and was charging 2.5 hours labour at £20.00 per hour. She explained the hallway was on three levels and she had just painted all of it. Mrs Skene had no recollection of the patch painting. She again considered the labour charge to be excessive.
- 63.35. Damage to Porch Window Sill: Mrs Downie explained that it had been necessary to sand down the sill and stain and varnish it. The materials had cost £27.98. Sanding pads had cost £10.18 and her labour was two hours at £20.00 per hour. Mrs Skene submitted that labour should be charged at £10.00 per hour.
- 64.36. Re-seeding Grass: Mr Downie explained that the Respondents trampoline had left the grass beneath it bare. He said he had purchased Patch Magic from Homebase at a cost of £14.39 and charged £20.00 for one hour's labour. Mrs Skene acknowledged that the grass had been damaged but submitted that a labour charge of £10.00 would be reasonable.
- 65.37. Disposal of Tenants Items. The Applicants position is as stated in docs 183-184. Mrs Skene accepted that the Respondents had left some items but disputed the length of time it would have taken to travel to the refuse site to dispose of them.
- 66.38. Mice Infestation: The Applicants position is as stated in docs 185-187. Mrs Skene submitted that she had informed Mrs Downie of an issue with mice early in the tenancy and in any event the Applicants were already aware of mice in the property as they had provided electric mice devices. Mrs Skene said that Mrs Downie had told her to plug these in in different rooms about the house and they would keep the mice away. The Tribunal noted that the invoice being claimed was in respect of mice damage incurred in 2011 (doc 258). The Tribunal queried with the Applicants if their claim might be time barred. The applicants again indicated that they had previously been unaware of any possible time bar issues.
- 67.39a Master Bedroom Soiled Duvet: The Applicants position is as stated in docs 188-189. Mrs Skene agreed to an award of £44.00.
- 68.39b. Master Bedroom Carpet Write-off: The Applicants position is as stated in docs 190-193. Mrs Skene agreed to an award of £50.00.

- 69.39c Master Bedroom Door and Hinge. The Applicants position is as stated in document 194. Mrs Skene advised the Tribunal that the property had been inspected in 2011 and 2012 by the Applicants son Gavin Downie and he would have been aware of the issue with the door being misaligned but nothing was done at that time. For the Applicants Mrs Downie explained that by that time the Applicants were experiencing issues getting tradesmen into the property to carry out repairs.
- 70.40a. Yellow Bedroom Window Frame: The Applicants position is as stated in docs 195-198. Mrs Downie confirmed that she had noticed issues with mould around the window frame during an inspection in August 2011 (Photos 123 and 124). In response to a query from the Tribunal Mrs Downie said she had not provided the Respondents with a report following on from the inspection but there had been a long narrative in which the condition of the window had been raised. Mrs Downie went on to say that she had gone to the Environmental Health Department at Aberdeenshire Council but they would not come out to inspect the property as she was a landlord not a tenant. She said they did look at the photographs and told her the problem was caused by condensation. They did not provide any written confirmation. Mrs Downie confirmed that another window at the property had been replaced nine months into the tenancy due to rot but the cause was a design fault and water had got in to the wood. Mrs Downie said that following the end of the tenancy she had used bleach to try to remove the mould from the frame without success. She said the mould was a hazard to health. It had been the Respondents responsibility to keep the window frame clean. For the Respondents, Mrs Skene said that the window had been opened every day. She said the window did not need to be replaced. Whilst there was mould on the frame there was no rot. She said she had wiped down the window frame. She had not used mould remover.
- 71.40c. Yellow Bedroom Curtains: The Applicants position is as stated in docs 204-209. Mrs Skene agreed to an award of £55.28.
- 72.40d. Yellow Bedroom door: The Applicants position is as stated in doc 210. Mrs Skene agreed to award of £40.00.
- 73.41. Ensuite Condensation: The Applicants position is as stated in docs 211-218. The Tribunal noted that part of the claim related to work carried out in 2011 and therefore once again raised the issue of time bar. The Applicants again commented that at the time of making the application they had been unaware of time bar being an issue. With regards to the cost of moving the transformer the Tribunal queried why this should be charged to the Respondents if it had been located in the wrong place by the Applicants contractor. Mrs Downie submitted it was reasonable to allow this charge when the Applicants agent had not been permitted access to the property prior to paying the bill. For the Respondents, Mrs Skene said that she let the contractor fit the transformer where he thought it should be fitted. She explained that around this time she had suffered a bereavement but had after some time allowed access.

- 74.42. Hall Stairs and Landing Carpet: The Applicants position is as stated in docs 219-222. For the Respondents Mrs Skene accepted that there was an Iron-Bru stain that could not be removed after shampooing. She submitted that given the light colour of the carpet and the amount of wear it would receive that it would only be expected to have a lifespan of five years. She confirmed that in addition to being cleaned at the end of the tenancy it had been cleaned once during the tenancy.
- 75.43. Garden contract: The Applicants position is as stated in docs 223-239. For the Respondents, Mrs Skene said that they had paid the Applicants gardener about £200.00 towards the end of the tenancy to cut the grass and tidy the borders. She referred the Tribunal to the photographs submitted and suggested that the garden was in a good condition at the end of the tenancy. She said that nothing was due to the Applicants. For the Applicants, Mrs Downie referred the Tribunal to Photos 305 and 306. She submitted this showed the effect of weedkiller on the grass and border and the impact on perennials. The Tribunal queried how the Respondents could be expected to cut the grass if they were not provided with a lawnmower when that was part of the tenancy agreement. The Tribunal also queried if some of the Applicants claim for reimbursement of the gardener's costs might be time barred. Mrs Downie explained the Applicants had been unwilling to pay for a replacement lawnmower given what had happened to the previous one. She again said that the Applicants had previously been unaware of time bar issues.
76. In conclusion Mrs Downie submitted that mould was endemic in the property and the lack of fuel in the tank suggested that the property had not been kept properly heated and ventilated. The boiler failure had resulted in the shampooed carpets being left wet and liable to mould. For the Respondents, Mrs Skene suggested that if the Applicants had not waited 4 years and 51 weeks before raising proceedings matters could have been resolved much more easily.

## **Findings in Fact and Law**

77. The parties entered into a Short Assured tenancy that commenced on 1 June 2009 and endured until 31 May 2011 at a rent of £1,200.00 per calendar month. The tenancy was extended from 1 June 2011 by virtue of a further agreement until 31 May 2013 at the lower rent of £1,100.00 per month.
78. The Respondents paid a deposit of £1,200.00 to the Applicants at the commencement of the tenancy. Following the coming into force of the Tenancy Deposit Schemes (Scotland) Regulations 2011 the deposit then amounting to £1,216.53 was placed in a scheme with My Deposits Scotland in 2013.
79. In submissions to My Deposits Adjudicator in 2018 the Respondents agreed to the Applicants retaining £852.00 of the deposit. The Adjudicator awarded the balance of the deposit to the Applicants in an adjudication dated 24 August 2018.

80. During the course of the tenancy, the Respondents moved items from the house and stored them in the garage. Some items were not returned to the house at the end of the tenancy. Some that were returned were damaged. Some disappeared entirely from the property.
81. There was insufficient oil left in the tank at the property by the Respondents at the end of the tenancy resulting in sludge being drawn into the oil line and filter.
82. The Respondents agreed to remove TV cables they had fitted at the end of the tenancy.
83. The property was not in the same decorative order at the end of the tenancy as it was at the commencement of the tenancy.
84. The Respondents offered to redecorate some rooms at the property prior to vacating the property but did not do so.
85. The Respondents did not return two keys to the property.
86. The coffee table stored in the garage was damaged on its return to the property.
87. The study settee was damaged during the course of the tenancy.
88. Other items were damaged during the course of the tenancy.
89. The garden gate was replaced in August 2012.
90. The strimmer and other associated equipment went missing and was stolen in about July 2012.
91. The kitchen required to be cleaned at the end of the tenancy.
92. The Respondents shampooed the carpets at the property at the end of the tenancy but there were stains that could not be removed and the study, peach bedroom, blue bedroom, master bedroom and hall, stairs and landing carpets required to be replaced.
93. There was damage to the blue bedroom door that required to be treated.
94. A kitchen wall required to be painted.
95. The ensuite required to be cleaned.
96. Tile on the kitchen floor and ensuite required to be replaced.
97. The blind in the ensuite required to be cleaned and reassembled.

98. The Driveway required to be cleaned to remove oil stains and the oil tank cleaned to remove sludge.
99. The grass under the Respondents trampoline required to be reseeded.
100. The Respondents left some items at the property that the Applicants had to dispose of.
101. The ensuite window and the yellow bedroom window were affected by mould. The Applicants were aware of this issue from 2011.
102. The yellow bedroom curtains were affected by mould and replaced with a blind.
103. The yellow bedroom door was damaged during the tenancy and repaired by the Applicants after the end of the tenancy.
104. The walls in the ensuite were replastered at the end of the tenancy.
105. Following the extension of the tenancy in 2011 the Respondents were to share responsibility for maintaining the garden with the Applicants.
106. The Applicants have sought to claim for costs incurred or damage to items which were either incurred or they became aware of more than five years prior to the date of this application. Such claims may be time barred by virtue of Section 6 of the Prescription and Limitation (Scotland) Act 2016.

### **Reasons for Decision**

107. During the course of the hearing the Respondents conceded a number of the Applicants claims. Specifically, Mrs Skene agreed number 5 (£34.99), 10a (£20.00), 10b (£20.00), 11 (£20.00), 16d (£10.00) 22 (£29.99), 23 (£20.00), 33e (£10.00), 39a (£44.00), 39b (£50.00), 40c (£55.28), 40d (£40.00). A total of £354.26.
108. The Tribunal was satisfied that the Applicants were justified from their written submissions and oral evidence in their claims for numbers 2 (in the sum of £156.00), 6 (£151.48), 10c (£25.00), 10d (£25.00), 10e (£17.50), 10i (£20.00), 17 (£40.00), 26 (£74.00), 28 (£24.00), 33d (£60.00), 37 (£20.00). A total of £612.98. The Tribunal preferred the evidence of the Applicants to the written and oral evidence of the Respondents.
109. The Applicants delayed submitting their application until almost five years after the end of the tenancy. Their reason for doing so is not clear but as a result, a number of the Applicants claims have become time barred by virtue of Section 6 of the Prescription and Limitation (Scotland) Act 1973. Section 6 provides that an obligation is extinguished after a period of 5 years without any claim being made and Section 11 provides that the obligation commences on the date when the loss, injury or damage occurred or when the creditor became

aware of it. The Applicants sought to claim an additional £54.00 in respect of claim number 2 for an invoice dated 26 March 2013. The last date for submitting this claim would have been 26 March 2018. In claim 8 the Applicants are seeking to claim for a kitchen light fitting that they knew was damaged in August 2011. Once again, the claim is time barred. Similarly, are the claims for the exercise bike (10f), the ornamental chimney pot (10h), the garden gate (13), the missing strimmer and other associated equipment (14), the hallway light fitting (32), the peach bedroom duvet (33f), the mice infestation (38) and the master bedroom door and hinge (39c). In the foregoing the Applicants were aware of the damage long before the end of the tenancy and took no steps to make a claim or carry out their own repairs.

110. The Tribunal is also of the view that part of claim number 41 is time barred as the electrician's costs from 2012 are not recoverable. The Tribunal does however accept that it was reasonable that the Respondents should meet the plasterer's costs of £312.00. The Tribunal was not persuaded that fault could be attributed to the Respondents for a contractor placing the humidistat transformer in a location not acceptable to the Applicants and did not consider that they should meet the cost of having it moved. The Tribunal did not accept that the Applicants agent could not have contacted the original contractor once he had inspected the property.

111. The Tribunal is also of the view that the Applicants were aware from 2011 of issues with mould on the window frames of the yellow bedroom and the ensuite. The clock would therefore have started running from that time. In any event with regards to both claim number 29 and 40 and the Tribunal was not satisfied that the Applicants had presented sufficient evidence to prove their case on the balance of probabilities. Mrs Downie confirmed she had only used bleach on the frames to try to remove the mould rather than specialist mould remover. The Applicants did not produce any written reports from a mould or timber specialist to say that the yellow bedroom window was beyond repair or was suffering from rot or that the ensuite window had to be removed and sanded down. There were no expert witnesses to speak to the Applicants position. The Tribunal was also not satisfied that it had been shown that the fault lay with the actions of the Respondent who had flagged up their concerns with the Applicants as regards the condensation. The Tribunal is therefore not prepared to make any award in respect of claims 29 and 40a.

112. The Tribunal noted that the Applicants chose to charge different rates for their labour depending whether the work was cleaning or more specialised trade. Mrs Skene suggested that a flat rate of £10.00 per hour would be an appropriate rate for the Applicants to charge for their time. Bearing in mind that the national minimum wage in 2013 was £6.31 per hour and the National average wage was about £500.00 per week and given that the Applicants are not qualified tradespersons, the Tribunal is of the view that a reasonable labour charge is £10.00 per hour. The Tribunal therefore finds that the Applicants are entitled to an award of £10.00 for claim number 21, £51.50 for claim 24, £32.99 for claim 25 as it was not satisfied that the Respondents should meet the cost of the replacement handle, £20.00 for claim 30, £44.50 for claim 31, £30.00 for

claim 33g, £25.00 for Claim 34, £58.15 for claim 35 and £24.39 for claim 36. The total award for these claims amounts to £296.53.

113. The Tribunal was satisfied that the Applicants should be awarded £12.00 for the cost of replacement keys but did not accept that there should be any award for two trips from Oldmeldrum to Inverurie as it would have been perfectly possible to have had the keys cut when out on another occasion either in Inverurie or Aberdeen and there was no particular urgency.
114. With regards to the various remaining items in claim 10g The Tribunal considered that a global award of £40.00 was reasonable compensation for these missing items.
115. With regards to item 12 The Tribunal accepted that the Adjudication decision was not a model of clarity however it seemed to the Tribunal that the items detailed in the Adjudication and not amended by the Adjudicator should be treated as having been adjudicated upon and therefore not open to the Tribunal to further consider unless it could be shown that either the Respondents agreed or that the adjudicator had definitely not included the item in his adjudication. In this instance the Tribunal was satisfied that the Adjudicator was in agreement with the amount offered by the Respondents and had considered the amount suggested by the Inventor.
116. With regards to the redecoration of the blue bedroom the Adjudicator had allowed the Respondents original offer of £200.00. The Applicants were seeking a further £499.95. In correspondence to the Tribunal the Respondents then representative offered a further £250.00. This offer was never withdrawn. The Tribunal considers that as the Respondents made a further offer in respect of this claim it is open to the Tribunal notwithstanding the terms of the adjudication to further consider the Applicants claim. Although the Respondents previously offered to redecorate the room themselves at the end of the tenancy they decided not to as they were concerned it may not meet the Applicants exacting standards. After a period of four years there would no doubt be some wear and tear and therefore the Tribunal consider that the Applicants should not recover the whole cost of redecoration. Taking everything into account an award of £300.00 is reasonable.
117. The Tribunal considered that after taking account of likely wear and tear an appropriate figure for the missing laundry basket from the blue bedroom (number 16) is £15.00. This being approximately 50% of the cost of a replacement.
118. With regards to claim 18 for the study carpet, the Tribunal was not satisfied that the Applicants could justify the carpets in the property having a lifespan of ten years. Although the Applicants produced a schedule to support their claim there was no supporting evidence or witnesses. The Tribunal was also not convinced that Mrs Skene's suggestion that the carpets might be expected to have a lifespan of five years was reasonable. The Tribunal took the view that the carpets were likely to have a lifespan of somewhere between five



and ten years and whilst it may be a somewhat arbitrary figure was of the view that eight years was appropriate. On that basis as the carpet had been down for 55 months, it would have had 41 months life left. It follows therefore that the Respondents should meet 41/96 of the cost of the replacement carpet of £697.27 namely £297.79.

119. With regards to claim 20 – the blue bedroom carpet for the same reasons as above the tribunal was of the view that the Respondents should meet 41/96 of the cost of replacement of £459.20 namely £196.12.

120. With regards to claim 33a the redecoration of the peach bedroom the Tribunal accepts that the allowance of £10.00 by the adjudicator for the marks on the wall was unlikely to be in respect of the whole redecoration costs. The tribunal does not agree with Mrs Skene's submission that there is no allowance for wear and tear as the contractor's charges have been discounted by 50% and the Applicants have not charged for their own time. The only remaining issue for the Tribunal to consider is whether it was necessary for the Applicants to redecorate the whole room if only one wall was affected. After taking everything into account the Tribunal does not consider that the Applicants can justify redecorating the whole room and restricts the award to £225.00.

121. With regards to claim 33b for the reasons given above the Tribunal finds the Applicants entitled to 41/96 of the cost of the replacement carpet of £371.13 amounting to £158.50.

122. With regards to claim 42 for the reasons given above, the Tribunal finds the Applicants entitled to 41/96 of the cost of the replacement carpet of £1506.00 amounting to £643.19.

123. The Tribunal considered the Applicants claim for garden maintenance. Although the Respondents had agreed to share the responsibility for grass cutting and border maintenance they could only do so if provided with the appropriate equipment. As the Applicants declined to provide the Respondents with a lawnmower despite being obliged to do so in terms of the tenancy agreement, they could not reasonably expect them to cut the grass. Furthermore, there was no agreed variation between the parties that the Respondents would reimburse the Applicants for the cost of cutting the grass. Although the Applicants provided photographs of some areas of the garden in 2012 and 2013 there were no photos showing the condition in 2011 when the Respondents assumed responsibility. The Tribunal also concluded that whilst the garden may not have been left by the Respondents to the standard the Applicants would have liked, overall, it had been maintained to a reasonable standard as could be seen from the photographs supplied by the Respondents. The Tribunal accepted the Respondents had employed the Applicants gardener shortly before the end of the tenancy to carry out work on the garden. The Tribunal was not satisfied that the Respondents could be held liable for the cost of grass cutting some of which would be time barred of for 40 hours of the Applicants time which by any standards was excessive. The Tribunal makes no award in respect of this claim.

## **Decision**

124. After having carefully considered all of the written submissions and documents together with the oral evidence the Tribunal finds the Applicants entitled to an order for payment by the Respondents to the Applicants in the sum of £3,463.37.
125. The Tribunal's decision 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.**

# G Harding

**Graham Harding  
Legal Member/Chair**

**17 October 2022  
Date**