



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014 (“the 2014 Act”) and Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/CV/20/0418

**Re: Property at 21 Stoneybank Gardens, Musselburgh, EH21 6TA
 (“the Property”)**

Parties:

**Ms Victoria Jackson, c/o DJ Alexander Lettings Limited, 1 Wemyss Place,
Edinburgh, EH3 6DH
 (“the Applicant”)**

**DJ Alexander Lettings Limited, 1 Wemyss Place, Edinburgh, EH3 6DH
 (“the Applicant’s Representative”)**

**Mr Paul Gardiner and Ms Laura Donaldson, 215 Cameron Crescent, Bonnyrigg,
EH19 2PJ
 (“the Respondents”)**

Tribunal Members:

**Ms. Susanne L. M. Tanner Q.C. (Legal Member)
Ms. Mary Lyden, Ordinary Member**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that the Respondents should pay to the Applicant the sum of FOUR THOUSAND ONE HUNDRED AND TWENTY SEVEN POUNDS AND EIGHT SEVEN PENCE (£4,127.87) STERLING; and made an Order for Payment in respect of the said sum

Procedural background

1. The Applicants' Representative made an Application to the tribunal on 7 February 2020 in terms of Section 16 of the 2014 Act and Rule 111 of the 2017 Rules, seeking an order for payment against the Respondent in the sum of £5149.82 in respect of rent arrears from 16 January to 19 April 2019 and the costs of cleaning issues/property damage, less the £500.00 deposit received from the tenancy deposit protection scheme.
2. The Application documentation submitted by the Applicants' Representative comprised:
 - 2.1. A copy of a Private Residential Tenancy Agreement between the Applicant and the Respondents for the Property dated 16 April 2018;
 - 2.2. An invoice to the Respondents dated 5 February 2020, including a statement of rent arrears from 16 January 2019 to 19 April 2019 and a sum for end of tenancy damages and cleaning; and
 - 2.3. A letter of authority from the Applicant for the Applicant's Representative to act as her representative.
 - 2.4. A note that the Checkout Report would be sent in hard copy.
3. The tribunal made requests for provision of additional information and documents from the Applicant's representative.
4. The tribunal's administration confirmed with Landlord Registration Scotland that the Applicant and another are the registered landlords for the Property and the Applicant's Representative is the registered agent.
5. The tribunal's administration obtained the Title Sheet for the Property which shows that the Applicant is registered as the co-proprietor of the Property.
6. On 11 March 2020, the Application was accepted for determination by the tribunal and the Applicant's Representative was notified that a Case Management Discussion ("CMD") would be fixed and notified to parties.
7. On 24 June 2020, parties were notified of the date, time and arrangements for a CMD on by teleconference on 6 August 2020 at 10.00. The Respondents were invited to submit written representations to the Application by 15 July 2020. On 26 June 2020, both Respondents were personally served by Sheriff Officers with the

Application documentation and notice of the date, time and arrangements for the CMD.

8. On 26 June 2020, the Respondents submitted written representations in advance of the CMD.
9. On 10 July 2020, the Applicant's Representative sent an email which contained links to documents, which were said to be an Inventory Link and a Checkout Report. As the tribunal's administration are unable to accept links to documents, the Applicant's Representative was asked to submit copies of the documents themselves. The Applicant's Representative also submitted written representations in response to those submitted by the Respondents.
10. On 6 August 2020 at 1000h a CMD teleconference took place.
11. Ms Gill Cartwright from the Applicant's Representative attended the CMD on behalf of the Applicant.
12. Both Respondents attended the CMD.
13. Reference is made to the Notes of the CMD which are taken as repeated herein.
14. Thereafter the tribunal issued Directions to both parties.
15. A hearing teleconference was fixed for 14 September 2020 at 1000h and both parties were notified of the date, time and details. Intimation was made by email on 18 August to the Respondents with a hearing notification letter.

Documents and representations produced by parties prior to the hearing

16. On 6 August 2020, the Applicant's Representative submitted the following:
 - 16.1. Inventory and Checkout Report;
 - 16.2. Invoice showing rent arrears and charges;
 - 16.3. Written submissions (1 page).
17. On 6 August 2020, the Respondents submitted a copy of the written representations submitted on 26 June 2020, in advance of the Case Management Discussion.
18. On 4 September 2020, the Applicant's Representative submitted written representations and documents.

Hearing: 14 September, 12 October 2020 and Tuesday 24 November - teleconference

19. A hearing took place over 14 September, 12 October and 24 November 2020. Miss Gill Cartwright attended the hearing on behalf of the Applicant on each occasion. On 12 October 2020, Mr Nicholas Hammond, the end of tenancy property manager attended as a witness for the Applicant and on 24 November 2020 Mr David Gibb attended as a witness for the Applicant.
20. The Respondents did not attend the hearing on 14 September 2020 and the hearing was adjourned by the tribunal on its own initiative to a date to be fixed and notified to parties. Both Respondents attended the hearing on 12 October and 24 November 2020, and the Second Respondent indicated on each occasion that she authorised the First Respondent to represent her and then left the hearing.
21. Reference is made to the Notes on the Hearings on 14 September and 12 October 2020.

Additional information from Applicant's Representative after 12 October 2020

22. On 16 October 2020, the Applicant's Representative produced additional information and evidence relative to the dispute over the end date of the tenancy, which had been discussed at the 12 October hearing, and the information was crossed over to the Respondents.

Agreed heads of claim

23. Liability by the Respondents for the following heads of claim with the corresponding sums were agreed between the parties at the CMD and during the hearing on 12 October 2020:
- 23.1. **Cleaning** (Benaird Invoice) – agreed amended figure **£302.80**;
 - 23.2. **Deep cleaning** (Central Deep Cleaning invoice) **£45.00**;
 - 23.3. **Redecoration** (Newton Décor invoice) – agreed reduced sum **£686.40**
 - 23.4. **Gardening** (gardening invoice) **£210.00**.
 - 23.5. **Property clearance** (Advanced Removals Scotland invoice) **£300.00**

23.6. **Replace blinds in bedroom 1** (Floor coverings invoice) (half of sum of £115.00) **£57.00**.

23.7. The total for the agreed sums is **£1659.20**.

Withdrawn heads of claim

24. The following head of claim were withdrawn by the Applicant's Representative at the CMD:

24.1. **Changing locks** (Red Circle Locksmiths invoice).

Disputed heads of claim

25. The following heads of claim were contested the tribunal heard parties' evidence and submissions:

25.1. **Rent arrears** for the period 22 January 2019 to 16 April 2019 in the amended sum of **£2781.45**. It is not disputed by the Respondents that there are rent arrears from 22 January 2019 but the period over which rent arrears is claimed is disputed by the Respondents, who allege that the tenancy ended on 6 February 2019, which would result in a lower amount of rent arrears. The Respondent's **deposit** of £500.00 was also paid to the Applicant.

25.2. **Replace smoke and heat alarms** (Benaird smoke and heat alarm invoice) £409.44.

26. Rent arrears head of claim

26.1. Applicant's Representative's submissions regarding rent arrears

26.2. The invoice produced by the Applicant's Representative dated 4 September 2020 confirms that rent arrears are being sought in the sum of **£2821.45** for the period from 22 January 2019 to 16 April 2019 (comprising £798.74 for the period from 22 January to 15 February 2019; £995.00 for the period from 16 February to 15 March 2019; £995 for the period from 15 April 2019 and £32.71 for 16 April 2019).

26.3. Ms Cartwright's position is that the tenancy ended on 16 April 2019 and the amended sum claimed for rent arrears has been calculated to that date. She stated that the Applicant's Representative initially gave notice to leave in

January 2019 but the Respondents failed to vacate the Property. She stated that her former manager, Mr David Gibb, was dealing with this case. She stated that she does not know whether the Respondents left of their own accord on or before 16 April 2019 but that even if they did, the Respondents' liability for rent lasted until that date. The final inventory check was carried out on 25 April 2019.

26.4. It was noted that there had been a previous civil claim for arrears for the period from 16 October 2018 to 21 January 2019 (FTS/HPC/CV/18/3070) in which an order for payment had been made for £3193.26 and that an earnings arrestment had been served on the Second Respondent in respect of the same.

26.5. Miss Cartwright relied on documentary evidence lodged in support of her contention that the tenancy ended on 16 April 2019 and on the oral evidence of Mr David Gibb (on 16 April 2019). Mr Gibb's attendance was requested by the First Respondent at the 2 October 2020 hearing, and Ms Cartwright contacted Mr Gibb and ask to make himself available. She stated that she had not originally intended to call him as she had not foreseen that the Respondent would make a claim that the Applicant's Representative had fraudulently made up an email of 12 April 2019 which had been lodged (Document 1).

26.6. In response to the Respondent's contention that they had vacated the property on 6 February 2019, Ms Cartwright referred to an email [Document 1] dated 12 April 2019 in which sent Mr Gardiner stated that he would vacate the Property "for the 16th". She invited the tribunal to infer that the tenancy ended on 16 April 2019. Prior to the 24 November 2020 adjourned hearing, Ms Cartwright produced the email chain of which this formed part, as well as an email chain between the First Respondent and Mr Gibb between 13 and 20 March 2020. In response to an allegation made by the First Respondent at the 12 October hearing that the email of 12 April 2019 had been fabricated by the Applicant's Representative / David Gibb, she stated that she had spoken to her IT department and as they use office 365 we are unable to obtain a forensic email report as was suggested she has however attached a copy of the email, directly from outlook, which shows the email from the Respondent to David Gibb. She submitted that she believes this is sufficient evidence and takes umbrage to the fact the respondent is accusing a former employee of the business of tampering with an email.

26.7. The email correspondence between the First Respondent and David Gibb dated 12 April 2019, is in the following terms:

"Hi, I said the 16th that hasn't changed. Laura was confused we were supposed to get removals in there to gut the place and we still have cleaners etc to go in. Stop phoning everyone its not an emergency as you have my last instruction. Keys will be posted by recorded delivery to you for the 16th!"

26.8. The First Respondent's auto signature with contact and business email are included in the footer of the email.

26.9. The said email was a reply to an email sent by Mr Gibb to the First Respondent in response to a query from David Gibb on 13 March 2020, in which he asked:

"Hi Paul,

Happy to communicate by e-mail going forward and really just need you to confirm if you have moved out of the property?

If yes, can you let us know where the keys are."

26.10. The Applicant's Representative also referred to earlier email correspondence between the First Respondent and David Gibb from 20 March 2020, in which the First Respondent clearly stated that have not abandoned the property but are in the process of moving out. The email trail also states that on 13 March 2019 the Respondents were in the process of moving out. Miss Cartwright submitted that even if the Respondents were no longer residing in the Property it does not mean that their legal obligations under the tenancy, including rent payments, do not still exist until the end of the tenancy.

26.11. Mr David Gibb gave evidence on 24 November 2020. He is aged 47 and is currently a manager at Mydeposits Scotland. He worked at DJ Alexander for 13 years. In his role as head of accounts he was responsible for managing arrears cases. Once arrears reached a significant level he would get involved. He was involved in issues related to the management of the Property when the Respondents were the tenants.

26.12. Mr Gibb previously raised a tribunal case against the Respondents for rent arrears until January 2019, for which the Applicant was granted a payment order. Mr Gibb then had several dealings with Mr Gardiner regarding vacating of the Property. Mr Gibb sent and received emails to and from Mr Gardiner, sometimes with Mr Robbins, head of customer service copied in. Mr Gibb has a recollection of the emails where Mr Gardiner stated that he was still in the Property, albeit he had found a new place to live. Mr Gibb and Steve Robbins were dealing with the matter due to the size of the arrears and the lack of response from Mr Gardiner regarding handing over the keys and removal of himself and his belongings from the Property. Mr Gibb received a number of items of correspondence from Mr Gardiner after the earlier hearing. Mr Gibb

tried to trace Mr Gardiner to enforce payment. In an effort to trace Mr Gardiner, Mr Gibb contacted Mr Gardiner's next of kin from details held.

26.13. Mr Gibb stated that at no point did he receive notice from the Respondents regarding a fixed end of tenancy date.

26.14. In response to the suggestion that he fabricated the email of 12 April 2019 which bore to be from the First Respondent to him, he responded that having been a qualified letting agent for 13 years, he would never fabricate an email. It would not be in his interests to do so. He wanted to recover the Property for the owners. There would be no way he would ever do that.

26.15. In response to a suggestion from the First Respondent in cross examination about Mr Gibb had told Mr Gardiner to put the keys through the front door on 6 February 2019 he stated that he has no recollection at all of that conversation. Mr Gibb stated that he was keen to get the keys back and that the company procedure was quite clear, as tenants would be asked to post them at one of their offices in Edinburgh.

26.16. In response to a question from the First Respondent, as to whether Mr Gibb recalled speaking to the Respondents' new landlord, Mr Gibb confirmed that he recalled trying to trace Mr Gardiner to serve the earnings arrestment. They did manage to trace the Respondents through debt recovery agents to an address in Dalkeith. Mr Gibb managed to trace and contact the new landlord. The Respondents were in situ at the Property. The new landlord asked why they were trying to trace the Respondents and Mr Gibb informed him that it was in respect of an unpaid bill.

26.17. Mr Gibb stated that the Respondents had not provided any notice and had not handed over keys. At any time Mr Gibb emailed Mr Gardiner, he was specific in saying that they were not leaving, that they were going to arrange cleaners and then hand the keys over. Mr Gibb stated that he seemed to remember an issue where Mr Gardiner became upset that Mr Gibb had contacted Laura's (Second Respondent's) mother through next of kin details to resolve the matter.

26.18. Mr Gibb stated in response to a question from the ordinary member that in terms of end of tenancy procedures, he would only ask a tenant to put the keys through the door of the property if there was an amicable end of tenancy and they knew that they held a functioning set of keys, on occasion in few and far between cases. However, specifically if there were rent arrears or an issue of abandonment DJ Alexander would never ask for keys to be left in the property. They had a key drop system in their offices in Dundas Street where

they would ask for keys to be returned and at Wemyss Place. The procedure was to get the keys back to their office so that they could do the end of tenancy checkout.

26.19. In response to a question from the chair, Mr Gibb stated that if they had been made aware by the Respondents, or agreed with them, that keys had been put through the Property door on 6 February 2019, they would definitely not have waited until April 2019 to carry out an end of tenancy inspection.

26.20. There were no further questions and Mr Gibb's evidence concluded.

26.21. Ms Cartwright stated that the Respondents' deposit of £500.00 was claimed and received on behalf of the Applicant after the tenancy ended. That was claimed in respect of rent arrears. She stated that she wished to amend the claim to seek the sum of £2281.45 to reflect a deduction of £500.00 [however, as noted below, the tribunal is of the view that there was an arithmetical error of £40.00 and the figures should be £2321.45]. She confirmed that on the invoice dated 4 September 2020, referred to above, she had shown the £500.00 as being taken off the total claimed to provide an overall balance.

26.22. The Respondent's submissions regarding rent arrears

26.23. The Respondents' position is that the tenancy ended on 6 February 2019, as stated in the written submissions and discussed at the CMD.

26.24. Mr Gardiner explained that there had been a previous claim against them in respect of rent arrears. He stated that there was an arrestment on Ms Donaldson's wages as a result.

26.25. The Respondents dispute part of the claim for rent arrears. The end date of the tenancy is disputed. He stated that they moved out of the Property and into the house they are in now on 6 February 2019. Mr Gardiner accepted that the end date of the tenancy might be different from the date upon which they moved out but he stated that he had agreed with David Gibb that the tenancy would end on 6 February 2019.

26.26. Mr Gardiner stated that they posted the keys through door on 6 February 2019, as they were told to do by the Property Manager, David Gibb in a telephone call.

- 26.27. Mr Gardiner stated that they did leave stuff in the Property on 6 February 2019 and there are some elements of the cleaning claim which they admit to.
- 26.28. Mr Gardiner stated that they found Mr Gibb who was dealing with this to be unhelpful. He stated that they still have the emails which are relevant to the matters in dispute and can send them on.
- 26.29. In summary, Mr Gardiner accepted that there are some rent arrears for which they are liable but only until what they say was the end of the tenancy on 6 February 2019.
- 26.30. He stated that the reason that they have not already paid those arrears to the Applicant's Representative is that they were speaking to David Gibb and he stated that he would handle everything in relation to the end of the tenancy but a situation arose where the Respondents moved out and the Applicant's Representative had £5,000 of the Respondent's business equipment which was meant to be available to be collected. Because of the problems that arose with that, the Respondents did not pay the rent arrears. The Applicant's Representative did an earnings of arrestment schedule on Ms Donaldson's earnings for the previous arrears. The Applicant's Representative did not return the Respondent's stuff and said that they had misplaced it. The recovery of his items is still outstanding.
- 26.31. In relation to questions from the chair about possible evidence, other than that of the Respondents, in relation to the end of the tenancy, Mr Gardiner stated that he verbally agreed the date and arrangements with David Gibb that the official end date of the tenancy would be 6 February 2019 and that the keys would be posted through the door. Mr Gardiner stated that that was all done on phone calls and that Mr Gibb never responded on email. The emails his partner has retained are about the arrestment. Mr Gardiner has changed email accounts.
- 26.32. Mr Gardiner disputed that the tenancy did not end until 16 April 2019 and that the Respondents were liable for rent until that date.
- 26.33. He accepted that there were emails to DJ Alexander asking for a delay until they had to leave the Property. However, he stated that he had made a phone call to Mr Gibb on 6 February 2019 to state that he had put the keys through the door.
- 26.34. The chair asked Mr Gardiner whether he wished to provide any explanation or response to the emails lodged by the Applicant's Representative from March and April 2019 from which it might be inferred that

the Respondents and or their possessions remained in the Property and that it still required to be emptied, cleaned and handed back.

26.35. Mr Gardiner stated that he did ask for an extension. They found the place they are in now and moved in under a week. He stated that he said to Mr Gibb that they would move out no later than 16 April 2019. Mr Gardiner stated that there was a conversation at the beginning of February 2019 about them extending. Mr Gardiner said in relation to the 12 April 2019 email that he thinks that it is time stamped with a totally different date from the date that it was sent.

26.36. When asked to explain this further, Mr Gardiner said that he was not suggesting that anyone has fabricated a document but that he would like to have that investigated, as the keys were posted through the box on 6 February 2019 and it would have made no sense to send the 12 April 2019 email.

26.37. Mr Gardiner then stated that he remembered that email being sent about the beginning of February and changed his position to say that it is fabricated. He stated that he had no motive to keep the Property for that length of time. Mr Gardiner clarified and stated that he was saying that James Gibb changed the email which is time stamped two months after he sent it. At the hearing on 24 November 2020, he confirmed that it is still his position that an email of 12 April 2019 was fabricated. He has no recollection of sending it. He said that he has gone through his emails and it is not there. He said that the only other option is that it has been changed. He stated that he works in the security sector so he knows how easy it is to be done. He stated that this whole scenario has bewildered him. He stated that it makes no sense for him to send an email after he was out of the Property. His position stands that it is fabricated. He stated that shortly after moving in to his new house, David Gibb phoned his landlord and asked if he could throw out the Respondents. The landlord asked Mr Gardiner if he could explain this. Mr Gardiner stated that he told the landlord the truth and the Landlord was happy with that.

26.38. Mr Gardiner re-stated that he posted the keys through the front door at the Property. In response to a question from the ordinary member, he stated that as he was advised to post the keys through the door he did not actually notify the agents. He said that he had spoken to Mr Gibb on the phone on 6 February 2019 at which time Mr Gibb told him to post the keys through the door of the Property. He stated that he believes the phone call was one or two days before 6 February 2019.

26.39. Mr Gardiner stated that the only other thing he would like to say is that he has no problem paying this tomorrow if he loses the case today. He stated that he is not arguing just to waste everyone's time. He stated that he does

genuinely object to the claim and he was advised to put the keys through the door in the conversation David Gibb. He stated that he was “willing to forgive the email”. He stated that he knows how to forensically check emails and that it was not in his sent emails. He accepted that there was similar language in other emails around about the time of that email but that he knows it has not been his side that has fabricated it or sent it. He stated that from 6 February 2019 onwards he told DJ Alexander that he had left and that is what he did.

26.40. The chair asked Mr Gardiner if he wished to offer an explanation for the emails in March 2019 in relation to access and personal belongings. Mr Gardiner stated that he would not have used that language as he did not have a solicitor. He stated that it is not the way he speaks and that he would have been “very monotone”. He stated that after 6 February 2019 the only communication he had with David Gibb was about arrestment. He stated that there were effectively two months to remove property. Mr Gardiner stated that he would have done it in the first week. He had a van and would have removed the rest of the stuff. He fully understands that he could be liable if the tenancy continued until 16 April 2019 but he knows that he verbally gave notice that he was out on the evening of 6 February 2019. He stated that Mr Gibb had called him when he was moving out and that he had said to Mr Gibb that he could take recovery of it; and that Mr Gibb said can you please post the keys through the property door when you have finished and you can pick up your belongings from us later on.

26.41. The ordinary member asked why, if he ended the tenancy on 6 February 2019, he left belongings in the property which appeared to have a considerable value. Mr Gardiner replied that he had said that he might not be able to be finished that day and would have to leave stuff and come back the following day. He said that Mr Gibb told him that he would get them all removed and that Mr Gardiner could arrange a pick up. Mr Gardiner stated that he is taking that matter to court soon.

26.42. The ordinary member asked Mr Gardiner, from what she has seen in the evidence submitted, why when Mr Gardiner had told the agent that he would prefer to have a communication with the letting agent in writing, he had wanted to do such an important task by telephone when that would provide a poor audit trail. Mr Gardiner replied, stating that Ms Lyden was absolutely right and that he should have followed that up by email but he got busy and forgot and that is the only excuse he has for that.

26.43. Smoke alarms

26.44. The Applicant is seeking the cost of replacing all damaged or missing smoke alarms in the property at a cost of £409.44.

26.45. An invoice was lodged in support of this head of claim and witness evidence was led from Mr Nicholas Hammond, of the Applicant's Representative, who was responsible for the end of tenancy inspection.

26.46. Mr Hammond stated that he did not carry out the initial inspection but the Check in Inventory had been lodged in this regard. His first dealings with the property were in relation to the checkout report on 25.4.19. It was booked in one of the property manager's diaries. It comes to the end of tenancy team and in this case was randomly assigned to him. The team initially tried to do it but the tenancy was ongoing with items in the property. It is normal practice for an end of tenancy the very last working day after the lease ends. If the lease ended on 6 February 2019 it would be abnormal for an inspection not to take place until 25 April 2019.

26.47. Mr Hammond stated that smoke alarms had been removed from several places in the Property. On 8 July 2019, there was discussion where Mr Gardiner disputed being charged for the smoke detectors. From Mr Hammond's understanding, in 2018 a leak had been reported by the Respondent. It was from the upstairs bathroom that affected areas of the kitchen ceiling. The smoke alarm was beeping. The contractor attended out of hours and then on 8 November 2019. They sent the contractor out and they could not see any signs of an ongoing leak. They did notice staining on the ceiling. From review of the notes, a contractor had arranged for remedial redecoration. There were a few chasers. Colleagues were unable to get a response from tenants. On 4 December 2018, a maintenance coordinator tried to contact the tenants to get in to decorate but the contractor had not received a response. At no point was he aware that any other detectors were any issue or had to be reinstated.

26.48. The invoice includes the heat detector in kitchen, dining room smoke alarm and smoke alarm upstairs hall, which had been removed from their fitting. The base units were there but the heads had been removed. Page 11 of Inventory Notes. Page 12 shows the indicated alarms and page 13. They were all present at the start of the tenancy. The leak from upstairs only affected the kitchen area. When a plumber was sent there was no active ongoing leak and remedial redecoration looking to be arranged.

- 26.49. Mr Hammond stated that there was an EICR covering the smoke alarms. Which were installed in 2017/18 and that they expire in 2027/28.
- 26.50. The independent contractor did not report a leak from the bathroom into the kitchen. They sent out contractors to check for issues with safety and faults. Even if one was affected although they are interlinked, it is by radio. That would not cause the other alarms to beep.
- 26.51. Mr Hammond confirmed that the amount claimed was only for replacement of the damaged/missing alarms, for labour of the sourcing and fitting. Any safety checks would be the responsibility of the landlord.
- 26.52. Mr Gardiner had no cross examination for the witness.

Respondent's evidence and submissions regarding smoke alarms

- 26.53. Mr Gardiner referred to the photographic evidence he had submitted of water damage to the kitchen ceiling and his submissions on this point at the CMD, in which he stated that he had to remove all of the alarms. He accepted that he had removed them but said that this arose out of the instruction of the out of hours plumber. He heard the alarms going in the background. He said safely try to remove all of the alarms, it was 2am. That was on the occasion of the water leak on the kitchen ceiling. The water ran underneath and formed a patch.
- 26.54. He thinks that the situation has got out of control with this one. The plumber came out to look at this. Mr Gardiner reported a lack of pressure and a leak from underneath the bath. This continuously went on and Mr Gardiner stated that he kept reporting it. The fire alarm was screaming at him. When he phoned the plumber, Mr Gardiner was advised to remove the smoke alarms that were ringing. The one in the kitchen was removed by force. The others were removed gently. The ones he took out he removed the batteries and left them in the rooms taken off. The one downstairs, he reported. He stated that for the remainder of the tenancy they were living without the fire alarms.
- 26.55. He did remember a company trying to get access to decorate in December 2018. He wanted an electrician to put the fire alarms back on. He thinks that he "lost the rag" and stopped speaking to them. He stated that he did speak to the decorators to say that they could come and they never turned up.

- 26.56. Mr Gardiner stated that he removed the batteries first but it was still going. Then he came to the conclusion that it was electric. There was no panel under the stairs. He stated that he is an engineer, not an electrician.
- 26.57. They lived without smoke alarms for the remainder of the tenancy. He stated that when the plumber came, after the emergency, he phoned DJ Alexander. They said they would send someone out. Then somebody came out and said that they would just need a decorator. He always phoned the support desk and thinks that they logged something there.
- 26.58. He was cross examined by Ms. Cartwright. She noted that he had stated that all the smoke alarms were beeping and he confirmed that.
- 26.59. She noted that on the checkout report it claims that the one in the lounge was still intact. Mr Gardiner responded that he never put any of them back on at all.
- 26.60. She asked about Page 12 of the checkout report which shows a picture of the smoke alarm on the ceiling in the lounge. He stated that he definitely never put anything back on. He had no idea how it got put on. He did not touch them. Ms Donaldson did not do it. To his knowledge there was no engineer between the leak and the end of the tenancy.
- 26.61. There was no further cross examination.
- 26.62. In submissions, Mr Gardiner maintained that the Respondents should not be required to meet any of the costs of the replacement smoke alarms.

Findings in Fact

- 26.63. The tribunal made the following findings-in-fact:-
- 26.64. The Applicant is the registered proprietor of the Property.
- 26.65. The Applicant's Representative managed the Property on their behalf.
- 26.66. The Respondents were the tenants of the Applicant for the period of 16 April 2018 to 16 April 2019.
- 26.67. At the end of the tenancy, there were rent arrears outstanding of £2821.45 for the period from 16 January 2019 to 16 April 2019.

- 26.68. The Applicant recovered the Respondents' deposit of £500.00 from the tenancy deposit protection scheme in respect of rent arrears.
- 26.69. The Applicant incurred a number of charges for issues which arose at the end of the Respondents' tenancy, as follows:
- 26.70. The Applicant incurred costs for replacement smoke alarms in the sum of £409.44.
- 26.71. The Applicant incurred costs for Cleaning in the sum of £302.80;
- 26.72. The Applicant incurred costs for deep cleaning of £45.00;
- 26.73. The Applicant incurred costs for redecoration in the sum of £686.40
- 26.74. The Applicant incurred costs for gardening in the sum of £210.00.
- 26.75. The Applicant incurred costs for property clearance in the sum of £300.00
- 26.76. The Applicant incurred costs for replacing the blinds in bedroom 1 in the sum of £115.00.
- 26.77. The tribunal made the following findings in fact and law:
- 26.78. The Respondents are liable for rent arrears of £2821.45, less deposit of £500.00, totalling the sum of £2321.45.
- 26.79. The Respondents are liable for replacement of smoke alarms in the sum of £204.72.
- 26.80. The Respondents are liable for cleaning in the sum of £302.80.
- 26.81. The Respondents are liable for deep cleaning in the sum of £45.00;
- 26.82. The Respondents are liable for redecoration in the sum of £686.40.
- 26.83. The Respondents are liable for Gardening in the sum of £210.00.
- 26.84. The Respondents are liable for property clearance costs in the sum of £300.00.

26.85. The Respondents are liable for the cost of replacing the blinds in bedroom 1 in the sum of £57.50.

27. Discussion

28. The only two heads of claim which were latterly in dispute were those in relation to rent arrears (specifically the end date of the tenancy) and the cost of replacement of a number of damaged or missing smoke/heat alarms.

29. The tribunal was satisfied on the balance of probabilities that the tenancy ended on 16 April 2019. The tribunal preferred the evidence of the Applicant's Representative to the First Respondent's evidence on this matter. The Applicant's Representative's evidence was supported by contemporaneous documentary evidence, principally email chains between Mr Gardiner and Mr David Gibb and on some occasions the customer services manager. The tribunal did not accept the First Respondent's claims that the email of 12 April 2019 from him to Mr David Gibb was fabricated by Mr Gibb or anyone else in the Applicant's Representative's organisation. In particular, the tribunal had regard to the email correspondence in March 2019, which was not challenged by the First Respondent, from which the tribunal inferred that the Respondents continued to have access to the property at that time, continued to have belongings in the Property and intended to arrange cleaners, after which they intended to post keys to the agents by recorded delivery. The Respondents offered no explanation for how these emails fitted with their contention that the tenancy had ended on 6 February 2019 as a result of a phone call with David Gibb. The tribunal also took account of the evidence that if the agents had in fact agreed, or even known, that the tenancy had ended on 6 February 2019, they would not have delayed until 25 April 2019 to carry out the end of tenancy inspection as they had duties to their client and it was in their client's interest to re-let the Property if it was vacant. The tribunal also took account of the fact that business and electronic items belonging to the Respondents, of some considerable value, remained in the Property, as at 16 April 2019.

30. The tribunal therefore determined that the Respondents were liable to pay rent until the end of the tenancy on 16 April 2019, in the sum of £2821.45. From that sum requires to be deducted the sum of £500.00 in respect of the deposit which was claimed by the Applicant, giving a total for rent arrears of £2381.45.

31. In relation to the replacement of smoke alarms, the tribunal was satisfied on the balance of probabilities that the Respondents were responsible for damaging or removing smoke alarms which were in place at the start of the tenancy and that they were partly liable for the cost of repairing or replacing those to ensure that they were in working order. The tribunal accepted that one alarm may have been

removed or damaged during removal or disablement at the suggestion of an emergency plumber when there was a response to a leak through the kitchen ceiling which had triggered the alarm. However, there was no supporting evidence that the Respondents required to remove or disable any other alarms, nor did they notify the Applicant's Representative about the alarms being non-functional at that time or for the remainder of the tenancy. Allowing for a 50 per cent deduction for the cost of the kitchen alarm supply and fitting, the tribunal determined that the Respondents should meet half of the total cost claimed, namely the sum of £204.72.

32. The tribunal determined on the basis of the parties' written and oral submissions that the Applicant had proved that the Respondents owe the Applicant the sum of £4127.87 and made an order for payment by the Respondents to the Applicant for the said sum.

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.

24 November 2020

Ms Susanne L M Tanner QC
Legal Member/Chair