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

Re: Property at 4 Broadford Terrace, Greenock, PA16 0UQ ("the Property")

Chamber Ref: FTS/HPC/CV/20/0724

The Parties:

George Mitchell, 104 Forsyth Street, Greenock, PA16 8RE (the Applicant: herein referred to as "the Landlord")

Kirsty Stewart, Flat 1/1, 23 Shore Street, Gourock, PA19 1RQ (the Respondent: herein referred to as "the Tenant")

Chamber Ref: FTS/HPC/CV/20/2206

The Parties:

Kirsty Stewart, 23D Shore Street, Gourock, PA19 1RQ (the Applicant: herein referred to as "the Tenant")

George Mitchell, 104 Forsyth Street, Greenock, PA16 8RE (the Respondent: herein referred to as "the Landlord")

Tribunal Members:

Joel Conn (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined the following:

Background

1) This decision is in relation to two opposing applications for civil proceedings in relation to the same assured tenancy under the 1988 Act, both in terms of rule

70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended ("the Rules"). The applications were conjoined from the first case management discussion ("CMD") in CV/20/2206 onwards.

2) Application CV/20/0724 was raised by the Landlord initially seeking an order for payment of rent arrears against the Tenant. Application CV/20/2206 was raised by the Tenant seeking an order for damages further to alleged breaches of the lease by the Landlord (regarding the condition of the Property). The Landlord then amended CV/20/0724, materially increasing the sum in the order sought, to include a claim for damages against the Tenant regarding the condition that the Property was left on her vacating (sometimes termed a claim for dilapidations).

3) The tenancy in question was an Assured Tenancy of the Property by the Landlord to the Tenant commencing on 1 September 2012 (though parties seemed in agreement that the Tenant had been allowed access a few weeks earlier to carry out some redecoration). The Tenancy terminated in or around late Spring 2019, by agreement, after a collapse of the ceiling in the kitchen at the Property related to an internal flood. The collapse occurred on or about 10 April 2019. The Tenant removed belongings from the Property in the period following the collapse, and keys were handed over (the details of the handover being disputed) sometime in May 2019 or early July 2019. The specific end date of the Lease was not a matter at issue as the Landlord did not seek rent after the rent due on 1 March 2019, and the last payment against the rent (from Housing Benefit) was on 25 March 2019.

4) The parties' final claims upon which they sought our determination were as follows:
   a) The Landlord sought rent arears of £4,111.54, and damages for repairs to the Property after the Tenant vacated (a "dilapidations" claim) of £16,453.60; and
   b) The Tenant sought £12,997 in damages under various heads of claim, being:
      i) Items damaged due to repairs issues at the Property, which further split into four categories of items said to have been damaged due to:
         (1) Issues with the electrical system "surging";
         (2) Items damaged when there was a ceiling collapse in the kitchen around 2013;
         (3) Items damaged in the ceiling collapse in the kitchen in 2019; and
         (4) Items damaged by water from the ceiling collapse and/or dampness in the Property around the same time.
      ii) Stress and inconvenience due to the Property's disrepair (over the years), which further had an effect on her health and that of her children.

5) All these claims were disputed:
   a) The Tenant did not accept the rent arrears. A minor dispute was the arithmetic as the Tenant held the date of prescription to be more recent than the Landlord's calculation. The Tenant also claimed a number of

payments by her and her partner in cash to the Landlord over the years, for which she said no credit had been given. Further, the Tenant claimed agreements had been reached with the Landlord on credits that should have been applied for items she had purchased to undertake repairs at the Property. Further she claimed a large credit of £2,000 in regard to sums that she said she had been overcharged due to problems with the electricity account (whereby she said she had inadvertently paid around £2,000 of arrears due by a previous tenant, and said the Landlord had agreed to credit her rent by this amount). None of this was accepted by the Landlord.

b) The Tenant disputed that any of the disrepair at the Property was due to her actions. In some cases, she disputed that the disrepair was caused by her or her family (some issues said to have been present when she moved in, and a suggestion that some may have occurred after she left). In other cases, she disputed that the disrepair was a damage caused due to her fault (such as blaming it on the issues related to the ceiling collapse or other dampness).

c) The Landlord disputed any historic problem with the electrical system (though it was not disputed that the 2019 ceiling collapse/flood affected the electrics). The Landlord further disputed there was any problem with damp at the Property arising from the condition of the Property, and attributed any potential dampness in the Property to it being poorly heated by the Tenant as a result of her relying on her own portable electric heaters. (This in turn was an issue of the disrepair that the Tenant claimed, as she said that none of the storage heaters at the Property ever worked, and she had to purchase her own electric heaters instead.)

d) The Landlord attributed the 2019 ceiling collapse/flood to the actions of the Tenant, claiming she repeated overfilled the bath but also that there was a persistent drip from a shower that the Tenant had installed.

The above significantly abbreviates the many aspects of the disputed issues, and there were further disputes on matters which – on consideration – we do not think are material to the claims and do not record in this Decision.

6) We have issued detailed Notes in regard to all CMDs. We have issued briefer notes, covering procedural issues, for all days of the Hearing. In matters of doubt as to the background of procedural matters, we would refer parties to our Notes on those Hearings.

The Hearing

7) The matter called for a Hearing of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote videoconference by Webex over a protracted period. Witnesses were heard across 10 days: on 25 August, 26 October, 28 October, and 2 December 2021, and 24 to 26 January, 27 and 28 April, and 6 July 2022, all days starting at 10:00 as best we were able (though with a number of lost hours, and a lost half day, due to connection and witness issues). We heard from twelve witnesses in total, eight for the Landlord and four for the Tenant. For scheduling reasons, witnesses were interspersed and so the Tenant's witnesses being heard together but in the middle (from the second to

sixth days). We then requested written submissions and concluded with a final half-day of Hearing, by telephone conference call, at 10:00 on 13 October 2022.

8) Parties were represented throughout the days of evidence by Charlene Duncan, solicitor, Neill Clark & Murray, for the Landlord and Helen McHugh, solicitor, Brown & Co Legal LLP, for the Tenant. As Ms McHugh had left Brown & Co between the completion of the submissions and the Hearing on submissions (a problem we attempted to avoid, but an earlier date could not be scheduled), the Tenant was represented by Luisa Fidelo, solicitor, also of Brown & Co, at the final Hearing on submissions.

Witnesses

Alexander Millar

9) Mr Millar is a surveyor, instructed by the Landlord to prepare a report on the condition of the Property after the Tenant vacated. His detailed report was accompanied by a schedule of photographs taken by him, all dated 20 August 2019 when he visited the Property for the first time. Mr Millar is a fellow of the Royal Institution of Chartered Surveyors (FRICS).

10) We found Mr Millar's evidence generally credible and reliable. We did not doubt that he saw what he stated within his report, and that those were all wants of repair, but at times he proposed reasons why those wants of repair were attributable to the Tenant or her family which were clearly hypotheses for which we needed to assess the evidence ourselves. For instance, he believed that – rather than caused by wear and tear - damage to fittings on the door were from children swinging on them; and that a missing threshold bar at the front door had been removed in an act of vandalism. We were thus not satisfied that his evidence was reliable in regard to the mechanism that he believed caused each and every point of disrepair. Further, he was very certain that a "fire pit" in the front garden (essentially a circle of bricks) was constructed from the type of bricks that were usually within a storage heater, and not standard building bricks. The photographic evidence did not appear to us to support this very specific view.

11) Further, Mr Millar's evidence was limited by him visiting long after the Tenant had departed, and after some repairs and redecoration work had commenced. He gave evidence that he believed the water damage that had caused the 2019 ceiling collapse/floor arose from the shower, but that the shower had been removed before he visited. Further, he gave his views on staining to flooring as being caused by dog urine. He attributed all the staining on the flooring (except at the kitchen) to be from dog urine (and not human urine), and also not to be from dampness, flooding or condensation. He reported smelling "urine in the chipboard" and stained patches still being damp. The date of his visit left it difficult to determine whether the staining had been there since the Tenant vacated. (The Tenant claimed that there was a potential for vandals to have broken into the Property after she left.) Further, Mr Millar referred to debris seen in a broken floor panel as "not workmen's debris" but generally his evidence was that there was

no evidence of a break-in since the Tenant left, and he doubted that the urine staining was from vandals or burglars.

12) In regard to the two holes seen in the floors, we found Mr Millar's evidence credible that neither of the holes showed evidence of being caused by water damage. He said that chipboard flooring becomes soft if wet and that there was no evidence of that. He said the holes that were seen would therefore have required force to have formed them and the debris within them suggested they were recently formed (with the debris then falling into the holes after). He did not think they had been formed as part of the works to the Property as they were not near any area where electrical or plumbing work was taking place. We accepted this evidence and found it well founded on the basis of the photographic evidence provided, which we were satisfied showed dry chipboard without evidence of previous water damage.

13) Mr Millar's evidence in general was of a large amount of work needed to remedy issues arising from the ceiling collapse/floor but also repair a property that had not been well-cared for. On some points, such as the holes in the floor (which the Tenant's evidence accepted had been having formed before she left but she said due to the floor being water logged), Mr Millar's evidence supported the Landlord's position that these holes were caused by the actions of the Tenant or her family. On other points, especially where it was not clear if the problem had existed in April 2019, his hypotheses on the cause were harder to assess. It was similarly hard to assess from his evidence whether the magnitude of some items (such as damage to plasterwork or the metalwork on the doors) arose from routine wear and tear, or actions that would be a breach of the Tenant's duties under the Tenancy. In regard to his view on the staining on floors being caused by dog urine during the course of the Tenancy (rather than dampness, floor, or intervening vandalism after April 2019), we were satisfied that his evidence that it was dog urine – though based on hypothesis – was credible and reliable when considered with other evidence we heard.

14) He gave evidence that in his opinion the sums charged by the Landlord's contractor to undertake the works were reasonable and we accepted this as credible and reliable given his experience as a surveyor.

Marianne Cunningham

15) Mrs Cunningham is the Landlord's sister but also a friend and colleague of the Tenant's mother. She gave evidence relating to her time at the Property both prior to the Tenancy and during. Prior to the Tenancy, due to her connection between the parties, she conducted the viewing of the Property for the Tenant. During the Tenancy, she attended to see the Tenant, and she specifically recalled such as a visit after the birth of the Tenant's second child.

16) Mrs Cunningham gave evidence that she had never previously carried out viewings for the Landlord. She described the Property as being in good condition except for a storage heater in the living room "hanging off the wall a little". She recalled advising the Tenant to contact the Landlord about it and saying to the

Tenant that "he will fix that for you". She recalled no other issues of damage with any of the radiators, or cosmetic damage or staining, except a stain above the cooker which she thought was from cooking. She recalled a conversation with the Tenant about the storage heaters, explaining to the Tenant how they work, and saying to the Tenant that she (Mrs Cunningham) believed they could "run away with electricity" (that is, become costly).

17) She said that the previous tenant's boyfriend, Dale McCall, was a friend of her nephew and she had been in the Property for a party during the previous tenant's occupation. She said there was no smell in the Property at that time.

18) In regard to the condition during the Tenancy, she gave evidence of a "bit of a smell" starting to develop over a "couple of months", which she variously described as: "a fusty smell, like if you would leave a damp cloth lying around"; and as a "stale smell" "right into the carpets" of "dog pee and food". She said the smell was "mostly when you walked into her living room, and halfway upstairs" but not so present upstairs or in the bathroom. She described the Property as becoming a "mess", looking like the Tenant "had had a house party" and becoming "a neglected house".

19) Mrs Cunningham further gave evidence of things told to her by her husband Raymond Cunningham, whom she said was a former builder and was her father's "side-kick". (Her father was the father of her and of the Landlord.) Her evidence was that Mr Cunningham, along with her father (and sometimes the Landlord), undertook repairs for the Landlord. She said that her father had carried out redecorating at the Property prior to the Tenant moving in. Mr Cunningham had reported back to her about his personal experience when at the Property on occasions. Mrs Cunningham said that her husband stopped being willing to work at the Property due to the dog as he "couldn't stand the smell" which was described as "a dirty dog smell".

20) We found Mrs Cunningham to be credible, and generally reliable. In regard to her evidence of the viewing, which was being provided to us around nine years after it occurred, we were satisfied that it was reliable as it was not materially in conflict with the Tenant's evidence (that the Property was in a generally good condition at the start of the Tenancy). In regard to a development of a smell at the Property, again this was not in conflict with the Tenant's evidence and we found it reliable. As for her characterisation of the smell as being from poor care of the Property, and food and animal smells, we accepted her evidence as credible and reliable though it was evidence of her impression. In regard to her evidence of the Property showing signs of being poorly cared for as the Tenancy went on, we accepted her evidence as credible and reliable though it was evidence of her experience from infrequent visits.

Raymond Cunningham

21) Mr Cunningham is the Landlord's brother-in-law (being Marianne Cunningham's husband). He is currently a bus driver and gave evidence that his route takes

him past the Property on 10 to 15 runs a day. In regard to his evidence, it was principally regarding his visits to the Property on behalf of the Landlord, and with the Landlord's father, to do work.

22) He gave evidence of some decorating before the Tenancy commenced, saying it "just needed decorated a wee bit" before the Tenant moved in. He said that the Tenant chose what she wanted and he and his father-in-law carried out the work at the Landlord's expense. He recalled that one storage heater had a cover loose and he and his father-in-law secured "as best we could" and told the Landlord. He gave evidence of checking the heating at the start of the Tenancy and finding that it all worked. He did not recall noticing any issues with the Property when first decorating it and thought it was tenanted in "good condition" and that he would have been happy to live in it.

23) During the course of the Tenancy, he said that he was there to carry out further work, recalling being there five or six times during the Tenancy. (He believed that his wife visited the Property more times during the Tenancy than he had.) He described some of the visits being instigated by calls by the Tenant to Marianne Cunningham about "wee things, stupid wee things" like a door. He said that the Tenant did call to say that she had been unable to have the Landlord carry out repairs but these were not regular calls. He said that none of the calls during the Tenancy were ever complaints about the heating or the shower. He found that when his wife then called the Landlord about the issues on which the Tenant had called her, the Landlord always answered Mrs Cunningham's calls straight away.

24) The principal issue in dispute on which Mr Cunningham provided evidence was the condition of the Property during the Tenancy. He said that he experienced it "starting to get worse" with a "wet dog smell" and a smell of "dog urine" which he attributed to a failure by the Tenant to clean up. By the end of the Tenancy he said that he "couldn't go in" as it "made me physically sick" as the "smell was over-powering". He described the smell at that point as "damp dog and as if she never put any heating on". He said that his visits to the Property during the Tenancy were never in the Winter and that he never saw evidence of damp or water ingress.

25) Mr Cunningham said that he developed the habit of looking at the Property each time he passed when driving the bus. After the end of the Tenancy, he did see a broken window, alerted the Landlord, and went after work with his father-in-law to board it up. In regard to a cherry tree that had been in the front garden, and was removed (damaged, according to the Landlord, or died and the stump eventually pulled up, according to the Tenant), he had no knowledge of what had occurred to it, though he did recall seeing the "fire pit" surrounded by bricks, which was built where the tree had stood.

26) We found Mr Cunningham's evidence to be credible and reliable, and he provided it in a straight-forward fashion.

Nicola McCall

27) Mrs McCall was the tenant at the Property and gave evidence of being there for around two years, from late 2010 until before December 2012 (recalling that latter date in reference to her son's first birthday). She described the Property as being in good condition, without any dampness issue. She said that she had asthma and that she would have contacted the Landlord if she had encountered any problems with condensation or damp at the Property.

28) She gave evidence of the Landlord being a responsive landlord, attending to any repairs she requested without the need for being chased. She recalled a problem with the oven which was fixed by the Landlord.

29) In regard to the electricity meter, she gave evidence of it being a pre-payment meter and that she would put in £20 at a time. She said that she did not leave any arrears on it, and gave no evidence of any issues with the electrics or the costs. She thought that she probably would have reported to the supplier when she left but did not recall giving any meter readings.

30) In regard to payment, she could not recall if she paid by standing order or whether the Landlord turned up to collect payment. She said that when she first moved in, it was a joint tenancy with her sister and there was Housing Benefit covering rent. She gave evidence that the Landlord did not turn up to demand payments in cash at any time.

31) We found Mrs McCall's evidence to be credible and reliable, acknowledging that she was providing evidence on matters a decade or more ago. She was thus understandably vague on some of the specifics (as she was being asked about points that would likely have seemed inconsequential to her at the time).

Professor Timothy (Tim) Sharpe

32) For scheduling reasons, from the beginning of the second day we commenced hearing the Tenant's witnesses, starting with Prof Tim Sharpe. Prof Sharpe is an architect and head of the Department of Architecture at the University of Strathclyde. He holds a BSc, BArch, PhD and a number of professional qualifications.

33) He spoke to a report on issues which he described in his oral evidence as being "dampness and disrepair" at the Property. The report was dated 13 May 2019, further to his visit to the Property on 11 May 2019. Like Mr Millar's report, the report was accompanied by a schedule of photographs. With respect to Prof Sharpe's expertise, significant parts of his report were focused not on what we would regard as "disrepair" but rather the construction of the Property (such as what vents and fans were in place for ventilation, and the nature of the heating system). He described, in his report, as identifying "defects [which] will result in the dwelling being susceptible to condensation, dampness and associated mould growth". He provided in his report suggested remediation works to improve the situation. His view was that the absence of vents and fans, meant that the

occupants of the Property would require to open and close windows in order to obtain the appropriate ventilation in the Property, as a home needs "constant ventilation". He accepted that the vents that he recommended were not mandatory in a house prior to 2006, and we did not note him giving evidence that any of the construction issues he identified were matters which the Landlord would have been legally required to install retrospectively. He did give evidence that the bathroom window, if it failed to close, may contribute to problems. This, and repairing the heating if defective, were the only points that we noted from his report and evidence as potentially being breaches of the Landlord's duties (if they were, indeed, broken).

34) During his visit, Prof Sharpe did note dampness within the Property, and in places (such as floor junctions, external corners, and windows) where there would be "thermal bridging" between the inside and outside conditions. He gave evidence that what he saw was consistent with condensation during occupation over a period of time. He used a damp meter to test all areas where he expected to find condensation. He reported the "floor was soggy to walk on" when he visited. In regard to alternative potential causes, he was asked about whether the dampness he witnessed could have been caused by dog urine. He said it was theoretically possible that urine could result in dampness in a specific location, but he did not think that the locations where he saw dampness were being caused by urine. He did not see any areas of dampness that he held attributable to water penetration, and all locations were "consistent with condensation". (In cross-examination he accepted that one of his photographs – photograph 36 – did show a "relatively small occurrence of water penetration", just above a skirting board in one of the rooms.) In regard to the ceiling collapse, the hole in the kitchen ceiling was still visible when he visited, and was shown in his photograph 30. He said that the steel beam visible through the hole in the photograph was rusted and he thought that was indicative of water over a period of time.

35) In regard to a possible cause of that water ingress from the bathroom into the kitchen, he commented that it was "amazingly common" for it to be caused by poor sealing around a bath, though it could also be caused by a leaking shower. He accepted that episodes of flooding at the Property could have contributed to the level of moisture that he found.

36) Regarding the smell, he said the "smell of the overall moisture was so overpowering", it was hard to notice anything else, and thus his evidence was that he did not note any smell of dog urine, etc.

37) In regard to heating, he could give no evidence on the heating, as the electricity was turned off, but acknowledged that storage heaters could be difficult to use and that it was possible for 'user-error' to result in them not being used effectively.

38) We were conscious that Prof Sharpe visited the Property around a month after the ceiling collapse/flood, with the electricity turned off during this time (so no heating), and with the weather commensurate with a Scottish Spring on the Inverclyde coast. We found his evidence credible and reliable, but we did not find

that it materially contributed to our understanding of what the Property was like prior to the ceiling collapse on 10 April 2019, and to what extent the Landlord's or Tenant's actions or inactions (such as regarding heating the Property) may have contributed.

Kirsty Stewart (the Tenant)

39) The Tenant provided evidence for just over 2.5 days of the Hearing, from the afternoon of day 2 until the morning of day 5. The evidence, even in chief, was difficult to follow at times, as it crossed such a long period. The Tenant had a tendency to provide answers thematically that covered multiple issues or events, providing additional examples on the matter on which she had been asked about. The overall effect was that we did not find her evidence reliable and, on some issues, we also did not find it credible.

40) A comprehensive summary of all the points of evidence from the Tenant would include a number of issues that we do not find as relevant to the material disputes. The following concentrates on those issues which were either core to the parties' respectively claims, or material in our consideration of credibility or reliability in any of the witnesses.

41) On the arrears, the Tenant gave evidence that she received few demands for payment, and never received bank details from the Landlord. Though the Landlord had lodged purported demand letters (addressed from "GEM Property Management") dated between 2013 and 2019, the Tenant's evidence was that they had not all been received (though it did seem that she accepted some demand letters had been received, as both sides relied on an email of 15 May 2013 in which the Tenant refers to having received a letter from the Landlord dated 10 May 2013).

42) In regard to payment, she gave evidence of sporadic cash payments totalling £2,032, made to the Landlord when he would turn up unannounced seeking payment. These payments, for which the Tenant provided – in written submissions –specific dates and amounts, were said by her principally to be payments following wins at bingo. Her evidence was that her recollection of these wins allowed her to be so certain of the payments she made and when she made them, though she also said in evidence that the dates of payment listed in the Submission may not be exact (but instead may be around the dates listed). She further gave evidence of £3,270 of payments that her partner Graeme Haughton had paid to the Landlord (again with specific dates and amounts given for these alleged payments).

43) In regard to deductions against the rent, she gave evidence of six small deductions that she said the Landlord had agreed (between 2012 and 2018) for items for the Property that she had purchased or repaired at her own cost, totalling £445.99, all to remedy repairs issues. She further sought to deduct £20 which she said was a debit on the pre-payment meter left by the previous tenant at the commencement of the Tenancy. Most significantly, she gave evidence that the Landlord had agreed a £2,000 deduction on the rent as she had been told by

the electricity supplier that she had been paying a supplement on the pre-payment meter to cover arrears left on it by a previous tenant. She only found this out after months of payments, when she became suspicious as to how much her electricity was costing and made enquiries with the utility provider. The utility provider confirmed that she had paid £2,000 of the debt by then, and that she should speak to the Landlord about it. She claimed to have done so and the Landlord agreed to credit her rent by that much. No documentation from the utility provider was lodged to vouch this issue.

44) On the condition of the Property when she left, the Tenant's evidence can be distilled to three points:
   a) She removed what she could, but some of the floors had become dangerously soft due to dampness/flooding (such as a hole in the floor of her son's room, meaning she needed to leave his bed in situ). Further what was left in the attic space was from the previous tenant or left there at the outset of the Tenancy with the Landlord's permission (such as an old carpet).
   b) She cleaned and tidied as she could, but there had just been the ceiling collapse/floor, and there was no electricity or water.
   c) There were no issues with the condition of the Property (such as damage to walls, etc.) when she left it, except those: arising from the ceiling collapse; already intimated to the Landlord which he had not addressed, such as problems with damp; and that were pre-existing at the commencement of the Tenancy (such as damage inside a cupboard). Further there may have been intruders who caused damage after she left, as evidenced by a smashed front window.

   The Tenant's own view was that she had kept the Property in good condition, and that Mr Haughton's dog was well-looked after, so had not caused damaged through urine staining, etc. She did accept that there was a dog cage in the corner of the living room, next to a sofa, that the dog was sometimes placed inside.

45) One specific issue as to the condition at the conclusion of the Tenancy was the missing cherry tree. Each house in the block had a mature cherry tree in the front garden but, at some point after the commencement of the Tenancy, the Property's cherry tree was removed. (Later the "fire pit" was built in the space where it used to grow.) The Tenant's position was that it gradually died, due to local children playing on it and possibly because the garden was "like a marsh" (possibly due to problems with guttering and downpipes), and then Mr Haughton removed the remaining stump to avoid it being a hazard.

46) On the condition of the Property during the Tenancy, and thus her claims against the Landlord, the Tenant's evidence was of a neglectful Landlord whom she was unable to have attend to carry out repairs, and whom she eventually gave up contacting. For instance, she referred to a list of issues with the Property being provided to the Landlord from the start. Her email of 15 May 2013 (lodged by the Landlord) stated: "When you first came to the property back in September I gave you a list of issues that had to be sorted out" followed by a list of nine items, of which eight were still listed as "still not resolved to date" in the email. (We note

that this list refers to “broken adjusters” on the “heaters in the living room” but no other issue with heating, or mould, damp or condensation. It further refers to “water damage underneath [the bathroom lino] and damp”. Both of these were said to be items from September 2012 still unresolved at 15 May 2013.)

47) The Tenant gave evidence of asking Mr Haughton to make contact with the Landlord instead of her, and also of directing all matters through the local authority’s Environmental Health department (at their request). The date of these alternative forms of communication with the Landlord being instigated was difficult to ascertain from the Tenant’s evidence however. At points she appeared to accept that she continued to have direct contact with the Landlord throughout the Tenancy. Some other direct contact was attributed to his alleged visits to collect rent.

48) In regard to the Tenant’s evidence of contacting Environmental Health, some records were provided from Environmental Health as to contact by her. The Tenant’s evidence was that she had complained to them from an early stage of the Tenancy, and repeatedly thereafter, but that Environmental Health only preserved the last five years of communication so she did not have the full records to lodge. (What was lodged with the Tribunal, however, covered only from 16 February 2017, and was lodged around December 2020. We were not addressed on the discrepancy in dates, or whether the Tenant thus accepted that there were no complaints made in 2015 or 2016. We heard no witnesses from the Environmental Health department.)

49) The Tenant’s evidence was of repeated problems with the electricity, of the storage heaters never working (and one being removed due to having “smoked” when it was turned on), and of a gathering issue with dampness and condensation, with a connected smell of damp, arising over the course of the Tenancy. She said she relied on portable electric heaters that had been purchased by or for her. She said that she first started to wipe away visible mould from 2014. (She also gave evidence of rat infestation, though this issue appeared to be an endemic problem with the block and area, due to various external problems with rubbish being left and a nearby derelict building. Much of the Environmental Health documentation lodged regarded pest control.)

50) The Tenant also reported problems with the ceiling of the kitchen before, with an earlier collapse in 2014, which resulted in a new bathroom suite being installed. The previous suite was said to have had a scalloped edge to the bath which the Tenant believed caused a poor seal on the edge of the bath against any shower screen but the Tenant also gave evidence that she believed there was an underlying issue with a pipe, or some other source of a leak, which was never addressed in 2014. She gave evidence that the contractors at that time told her that they were instructed by the Landlord not to investigate an area of pipework and just to replace the bathroom suite.

51) When asked why she resided at the Property for so long, when there were alleged major issues from the outset – such as no heating – she gave evidence

of being told by Environmental Health that if she left then they would be unable to take matters further with the Landlord. She explained that she wanted to stay and deal with the issues (out of "sheer principle"), rather than leave the next tenant to have to deal with them. She gave evidence (referred to briefly in the Environmental Health documentation) of seeking to apply to this Tribunal's predecessor three times on Repairs Standard cases, encouraged to do so by the Council. She could not explain why none of these applications proceeded. (Our investigations have located no applications ever having been logged as received from the Tenant to this Chamber or its predecessor Tribunal.)

52) In regard to the stress and inconvenience, she gave evidence regarding ill-health of her and her children due to the damp conditions. She described the Property as so cold that, at times, she put her children to bed in dressing gowns. No medical reports or records were lodged. She gave evidence regarding the lead up to the ceiling collapse of 10 April 2019, and that she could see the ceiling bowing and contacted the Landlord and Environmental Health with her concerns. She gave evidence of being in the Property (with one of her children) when the ceiling came down on 10 April 2019, and then dealing with Environmental Health, and her period of trying to be rehoused. As some of her children were in schools convenient to the Property, she gave evidence of difficulty obtaining alternative housing that was both suitable and in the area.

53) In regard to damage to her personal property due to the condition of the Property, a list of assets were provided in the written submissions, along with vouching for their estimated new-for-old costs (as no vouching was available in regard to their original purchase price). Where the item was originally purchased second-hand, the Tenant gave evidence of what she recalled paying for the item. There were four categories of items:
    a) Electrical items said to have been damaged by "surging". The Tenant gave evidence of a microwave, washing machine, and fridge freezer being "burnt out" in 2014. This was part of a general issue with the electrics at the Property, which the Tenant connected with problems that the Landlord only addressed by the full rewiring after the 2019 ceiling collapse/flood.
    b) A cupboard coming off the wall in 2013 in the kitchen, damaging three items. The Tenant described the cupboard as coming down when the wall itself collapsed and that the cause was never identified. She said that the "neighbours who shared the wall had water coming in". (No photographs were provided regarding the cupboards coming down.)
    c) Items damaged when the ceiling collapsed in April 2019 (a kettle, tumble dryer, microwave, washing machine, and fridge freezer).
    d) Items damaged by dampness, or directly from water damage, from the connected flooding in 2019 (including clothing).

54) As we say, we found the Tenant unreliable, and potentially incredible, on a number of items:
    a) The chronology of matters was difficult to follow, not aided by the apparently inconsistent position that she stopped communicating directly with the Landlord (but then not having any material vouching of communication through Mr Haughton or the Council's Environmental Health department).

Further, though she said she communicated little with the Landlord after the initial period of the Tenancy, she also relied on specific agreements that she said she made with the Landlord on deductions from rent on repairs issues (items she said she purchased due to wants of repairs). This included alleged discussions in 2015 (two alleged agreed deductions) and 2018 (a further two). In that same latter half of the Tenancy, she relied on six cash payments allegedly having been made by her to him personally (two in 2015, one in 2016, two in 2017, and one in 2018). She thus relied on significant personal interaction with a Landlord whom she said she had limited to no contact with. It was thus hard for us to reconcile her evidence except to find it, at least, unreliable.

b) She insisted on the heating never working from the commencement of the Tenancy but the one written communication from the Tenant to the Landlord lodged (the email of 15 May 2013) made no mention of the heating other than broken dials on a single storage heater. We struggled to reconcile this with the Tenant's evidence that this email was written after the first of seven winters at the Property relying solely on portable electric heaters. What correspondence was lodged did not support the Tenant's position that she was complaining about a lack of heating from the outset, or support that she complained about mould, etc. (An email from Environmental Heath to her of 22 February 2019, following a site visit, makes no reference to mould or condensation, but does refer to some issues of water ingress.) We do note, however, that the email of 15 May 2013 does list a number of repairs issues and expresses a dissatisfaction with the Landlord's failure to address these. The Environmental Health email of 22 February 2019 refers to work that had been resolved, with some still to be resolved. Thus, the Tenant's evidence along with (to a degree) the Environmental Health correspondence of 2017 to 2019, did satisfy us that the Tenant gave credible evidence that the Landlord failed promptly to address all repairs issues. The question arose whether the Tenant's evidence was reliable on what she complained of, when, how frequently, by what means, how long it took to be resolved, and what was left unresolved.

c) The Tenant's evidence as to what cash payments she and Mr Haughton made, and when, was hard to accept as reliable. She gave evidence that she did not seek receipts, or document these payments herself. Her evidence that the Landlord did not provide his bank details, and she had no way to obtain them, was hard to accept when there was no evidence of her asking for the bank details (such as emailing the Landlord).

d) Her evidence regarding the £2,000 overpaid on electricity, and then the Landlord agreeing to credit it against her rent, was unvouched by any potential documentary evidence. It was also, in our view, incredible that the utility provider would both overcharge in this way, and then leave the customer with no avenue to remedy an error, instead directing the customer to take the issue up with their landlord. Even if it was possible for the pre-paid meter to have a £2,000 surcharge applied to it from a previous tenant, it was not her electricity to pay for, and the Tenant could have sought to challenge the matter. Even if we are incorrect that it was challengeable, no aspect of it was vouched by correspondence to or from the utility provider.

55) Generally, we were left with an impression of the Tenant having constructed an image of herself as a good, house-proud tenant; of the Landlord as bad, neglectful and bullying landlord; and of her seeking to do right by bringing the Landlord to justice. In our view, the evidence followed this construction, rather than being a credible and reliable account of events. (To an extent, the Landlord's evidence was similar, but a mirror image, as we shall review below.) We were left with a clear impression of a Property with wants of repair, some of which were not promptly addressed, but we were not satisfied that it was to the magnitude that the Tenant sought to portray in her evidence.

Pamela Stewart

56) We heard the Tenant's mother, Pamela Stewart, on day 5. Her evidence was predominantly about the condition of the Property, as she said she was at the Property daily to see her grandchildren.

57) Her evidence spoke to specific areas of mould that she saw within the Property such as in the bathroom and around the windows in the children's rooms. She described the mould in one room – which she said was also discolouring a carpet – being at a part of a room next to a gutter that was over-flowing. She also referred to damp patches in the upstairs hallway, but no visible mould. In regard to a smell at the Property, she referred to a "musty smell" that was "noticeable right away" in one of bedrooms, and that latterly the living room "felt damp". She said that if she knelt on the carpet, her knees were damp when she stood up. When asked if there was a dog urine smell, she said that she "couldn't distinguish" such a smell and "in my presence, I never saw the dog wet or foul".

58) After the replacement bathroom (around 2014), she gave evidence that "water was still coming in", of the floor in the Tenant's son's room being "spongy" and a "musty smell everywhere". She said that a sofa bed (part of the Tenant's claim for damaged items) was "damp" when opened. She also gave evidence of needing to open windows, due to the smell, but also appeared to attribute that to the Tenant's overuse of bleach-based cleaners at time. She described her daughter as having "a habit of using bleach until your eyes water" when washing mould spots off the windows.

59) Mrs Stewart gave evidence of speaking with her daughter about repairs and that she should contact the Council if the Landlord did not fix things. She said that the heating never worked at the Property (but she did not explain how she concluded this). She referred to delivering light-bulbs to the Tenant throughout the Tenancy, due to bulbs blowing frequently.

60) A major dispute that her evidence addressed related to photographs she said she had taken when the Tenant first had keys and was working on the Property prior to 1 September 2012. These were not lodged until after the commencement of the Hearing on day 5 (24 January 2022). (Their lodging was initially opposed by the Landlord, but this objection was then withdrawn in final submissions and we allowed their late lodging.) The photographs were discussed in regard to three disputes:

a) One image appeared to show the stair bannister lying in the living room (which room appears to be being decorated). Replacement of the bannister is part of the Landlord's claim.
b) In that same image, an apparently healthy cherry tree can be seen through the window, and parties were split as to whether this was the same tree that was removed by the end of the Tenancy or the next tree along (and so, if the same tree, whether the photo showed it was healthy at the start of the Tenancy).
c) Six were date stamped 03:40 on Sunday 19 August 2012, of which a number and appeared to show water or dampness under a bath, with an attempt to mop it up with toilet paper or kitchen roll.

Mrs Stewart's evidence was that all the photographs lodged were of the Property and that she remembered the issue of the bathroom at the time and alerted the Tenant to the apparent leak. Mrs Stewart gave evidence, however, that at the commencement of the Tenancy she had an occasional role preparing Inventories of Condition for other let properties. The photographs which showed the Tenant working in the Property, or were easily identifiable as the Property, were all time-stamped around 18:00 on Tuesday 14 August 2012. Those which showed the underside of the bath (as well as a few photographs of the lower part of an inside wall and skirting board, which was not possible to identify) were all time-stamped around 03:35 on Sunday 19 August 2012.

61) We were not satisfied as to the reliability of Mrs Stewart's evidence on all matters. We did not think that the photographs taken around 03:35 on 19 August 2012 were of the Property. She was not asked to explain the early hour on the time-stamp but, in any case, when considered against other evidence (such as the photographs of the bathroom in Mr Millar's report), the flooring of the Property's bathroom seemed different (as the flooring in the bathroom in the photographs of 19 August 2012 is clearly tiled).

62) Generally, her evidence did not assist us in considering any material issues. Even if we accepted her evidence in full regarding water from the bathroom causing damage to the kitchen, it is not in dispute that this occurred. The dispute is the cause of the water ingress. Further, even if we accepted her evidence in full regarding mould and condensation, she attributed the worst of it to an overflowing downpipe (on which Prof Sharpe did not comment) and her evidence was consistent with the storage heaters not being used (which the Tenant accepts). It did not assist us in determining whether the storage heaters were not used because they were broken.

Graeme Haughton

63) Graeme Haughton is the Tenant's long-term partner and was heard on the morning of day 6. He was the final witness for the Tenant.

64) His evidence was generally in line with the Tenant's evidence on a development of a smell of damp in the Property as the Tenancy progressed, and an appearance of dampness on the kitchen ceiling (below where the bath was). He said that "I am pretty sure every time Kirsty had a shower or bath there was

pooling at the exact same spot", though he did not suggest what he thought was the reason for the water coming from the bathroom into the kitchen (eg whether it was a leak under the bath, or a problem with sealant around the bath). Regarding the kitchen cabinets coming down in 2013, Mr Haughton gave evidence that the wall behind them was "completely soaking".

65) In regard to dealing with the Landlord, he gave evidence that it was difficult to make contact with him but that he tried to email him "a few times", and tried to call him. He also gave evidence of difficulties emailing the Landlord at the start of the Tenancy, due to a wrong email address being held. Similar to the Tenant's evidence, he gave evidence on problems with the electrics and on having difficulties in having the Landlord carry out repairs. He recalled that a new shower was installed but said he believed it was installed by the Landlord, though he did refer to carrying out minor works himself (like removing a storage heater).

66) He said that he was over at the Property 4 or 5 times a week, and stayed a couple of nights a week. He accepted that his dog would be at the Property but denied that it ever urinated in the Property.

67) Regarding payments towards the rent, his evidence was less certain on dates than that of the Tenant. He was only willing to say that the amounts listed in the submissions were "pretty much" the amounts and that the dates of payment were "rough estimates". In regard to the payments said to have been made by him, he referred to having considered his business accounts when coming to the amounts and dates in the Submissions. He said he would note in his business records "cash" taken out of his business. (He operated his own business attending to mis-fuelled cars, so was frequently holding cash paid to him by his customers.) He thought that – apart from a potential discrepancy of £10 or so which he may have used to pay for "lunch or cigarettes" – the sums marked as "cash" were payments that he had taken from his business funds to pay towards rent. Therefore, he deduced that where he saw a large payment taken out marked "cash" in his records, that must have been him paying a similar amount to the Landlord in rent within that week.

68) Mr Haughton gave evidence of demand letters being hand-delivered through the letterbox from "GM Maintenance or something". He thought there was a letter asking to discuss arrears which arrived after the Tenant had started to refer matters to the Council. He recalled that in the letter the Landlord said that he had carried out some repairs ("3 out of 20 repairs") and was "working with the Council on the rest". He said that the remaining repairs were not then done. (We were not referred to a copy of the letter that Mr Haughton was recalling.)

69) Regarding the removal of the cherry tree, Mr Haughton's evidence was that he had asked the Landlord's permission to remove it, and that it was removed "2 or 3 weeks" into the Tenancy.

70) Mr Haughton gave his evidence in a straight-forward fashion but aspects of it (such as the kitchen wall being soaking after the cabinets came down) were

significantly at odds with other witnesses whose evidence we regarded as credible and reliable. His evidence in regard to calculating the payments he believed he paid towards rent was internally consistent and coherent but completely unvouched. We did not see copies of his business records. He gave evidence that he requested receipts from the Landlord but these never being provided, yet his evidence was that he continued to provide payments and not seek to document them in any way. Ultimately, we did not find his evidence on the specific payments made, or how he calculated them, to be a reliable source of evidence as to what payments may have been made.

71) Further, we believed Mr Haughton was seeking to minimise the time he was at the Property (where his partner, and children, lived). We thought it likely he lived there with his dog much of the time. Overall, we were not satisfied as to his credibility, and assessed his evidence as having been fashioned to assist the Tenant's position.

Dale McCall

72) Later on day 6 we returned to the remaining witnesses for the Landlord starting with Dale McCall. He was now the husband of Nicola McCall but at the time of her tenancy at the Property had been her boyfriend. He gave evidence of being at the Property frequently and staying over on a few nights.

73) His evidence was of a well-maintained property, with the Landlord responsive on any repairs. Specific issues that the Tenant said were pre-existing (such as holes within a cupboard, and dials missing on a storage heater) were not issues that he recalled being present during Mrs McCall's tenancy.

74) He recalled no issue with the heaters, all of which he recalled were "working fine". He described the Property as "warm enough". He recalled no issues with mould or dampness and was certain that any such problems would have been reported by Nicola McCall to the Landlord at the time, as she had a new-born child at the Property.

75) He said that he was certain there were no arrears on the electricity meter, and that he ensured start and end meter readings were taken. He referred to having worked for E-on and gave evidence as to his understanding of how pre-payment meters operated and how he thought it was easy to check, through pressing the meter's buttons to change the display, what the balance is on the meter.

76) In regard to the cherry tree in the front garden, his evidence was that it was "perfect" and "blooming", and he never saw any children playing on it.

77) We found Mr McCall to be credible and reliable, giving his evidence in a straight-forward fashion.

David Shambach

78) We heard evidence only on the afternoon of day 7, due to connection issues with a witness whom had been scheduled for the morning. On the afternoon, we heard from Mr Shambach who was a property maintenance contractor. He gave evidence of having carried out work for the Landlord "for years".

79) Mr Shambach described himself as a "roofer to trade" and had carried out work to the Property's fascias and gutters but also having attended to tiling and leaks in the kitchen. He recalled having met the Tenant "once or twice" but mostly meeting Mr Haughton at the Property. He recalled visits to the Property around 5 or 6 years prior to his evidence (so by our calculation 2016 or 2017), and having last visited 2.5 to 3 years before his evidence (so by our calculation close to the end of the Tenancy).

80) He gave evidence of a visit to the Property to attend to a gap in a row of tiles and issues with gutters front and back, but that the Tenant complained that the work should not be done as it would disturb a bird that was nesting in the loft space. He agreed to go away and return a few weeks later, when he attended to fitting fascias and guttering. He recalled another visit to deal with a blocked downpipe which he believed had been blocked by roughcasting work on a neighbouring property. He recalled saying to the Landlord that he should not need to pay for fixing a problem which was not his fault. He recalled another issue with a downpipe that was not connecting into the drain.

81) He recalled being called back to the Property as the Tenant was blaming a leak in the kitchen on a piece of missing tiling. During that visit he recalled removing the panel from the bath and finding it was dry underneath the bath, but he did think there was evidence of water on the floor of the bathroom, perhaps water coming when the shower was being used and the shower not being properly blocked by a screen. His recollection was that there was no shower screen or curtain at all. His evidence was that he believed the water ingress in the kitchen was from "water coming over the bath from someone having a shower".

82) Mr Shambach's evidence was that he would usually arrange a time to attend at the Property "within a day" of the Landlord instructing him, but normally he would need to attend "2 or 3 times to get in" due to no one being in when he attended. He recalled only obtaining entry on the first visit "one or two times".

83) He described a smell in the Property ("the hoose was stinking"), and it being "untidy with bags of rubbish lying around". His belief was that there was probably dog faeces in the kitchen, amongst the rubbish. He said that one person who came with him to carry out work refused to attend a later job there because of the smell. He did not see any mould and said that the "property was alright but it was the cleanliness of the property" that was the problem.

84) He gave specific evidence of seeing a shower at the Property which had the "pipe and cable surface mounted" and that the cable was not "heavy enough for the

shower on the wall". The cable "came down along the wall into the shower" from "a cupboard, down from the loft space". The cupboard was "the other side of the wall". He did not recall there being a shower at the Property before the Tenancy commenced. He recalled speaking with Mr Haughton and being told that "he or a mate had fitted" the shower. He reported this to the Landlord. (We noted no pictures of a shower in such a state and pressed Mr Shambach on whether he was certain he was recalling the Property, as opposed to another home he worked on. He was adamant that he was recalling an issue with the Property.)

85) We generally found Mr Shambach to be credible and reliable but, despite his insistence that he was recalling solely visits to the Property and no other home that he may have worked in over the years, we doubted his reliability in regard to the issues with the shower. At the very least, no photographs were provided of a shower at the Property with the cables installed in the way he described. (Any other witness who was asked to comment on the photographs of the electric shower unit was unable to direct us to any such problem visible in the photographs.) This further brought into question his certainty that the bath at the Property possessed no shower screen at the time of leak into the kitchen. We noted that Mr Millar's report referred to a shower screen lying in the bath, as if it had been recently removed. At best, we felt Mr Shambach's chronology of problems with the shower was, at best, incorrectly recalled and it may have been a recollection of a different house.

George Mitchell (the Landlord)

86) We heard the Landlord across days 8, 9 and much of day 10. Parties were agreed that his evidence on the arrears would be heard first, with him cross-examined and then re-examined on this subject, before moving onto the issues regarding the condition of the Property.

87) Mr Mitchell's evidence was that he was a landlord of eight properties and had a clear procedure with any new tenant of providing them with an information sheet with his contact details and bank account details. He gave evidence to entries on his bank statements which he said showed other tenants paying to him direct into this bank account, but – apart from a single payment of £230 of May 2013 which he believed "must have been paid into" his bank account by the Tenant – he said no payments were received from the Tenant apart through Housing Benefit. In cross-examination he then accepted that the first payment in rent of £525 was also received, and in cash, from the Tenant. In regard to whether the Tenant held his bank details, the Landlord said that the Tenant must have had them so as to pass them to the Council for the Housing Benefit payments which were received direct into his bank account. He did not lodge a copy of the information sheet that he said he provided to all tenants, nor lodge any bank statement showing that the £230 was received by bank transfer. (We were told that the bank statement was requested but the bank were slow in responding. A deadline for late lodging of it expired without it being lodged.) The Landlord also conceded that he did not actually recall the £230 being paid (on which we shall return further).

88) When asked about attending unannounced to the Property to seek payment, he said that he "categorically den[ied]" ever doing that. He provided documents that he said showed him working away from home at the dates of the payments that the Tenant said she had paid him personally. He spoke to the demand letters he lodged, but did not dispute that there were not many and that none was lodged for 2017-2018. He explained that at the end of each financial year, for each tenant whom was in arrears, he would send a "to try and bring the arrears up to date". This was his explanation as to why the letters lodged by him to the Tenant were infrequent.

89) In regard to a deposit, it was accepted by the parties that a separate Tenancy Deposit application had been successfully advanced by the Tenant against the Landlord (application reference PR/19/2447). The Landlord explained in his evidence that there was a dispute on whether a deposit was paid, or whether it was agreed that the Tenant could keep the deposit money and buy carpets with it for the Property. (We take it as settled that credit was a deposit was made– in some fashion - given the previous decision of the Tribunal.)

90) Generally, the Landlord disputed all other evidence of the Tenant and Mr Haughton about payments being made, or agreements with him regarding deductions against the rent. (In submissions, the Landlord accepted that the Tenant would have needed to pay £20 to start using the pre-payment meter but that this was a standard payment and not for him to reimburse.) He did, however, give evidence as to repeated discussions with the Tenant and Mr Haughton on payment, and being provided reasons why payment would be made soon to clear the arrears. He said there was "always [being given] a story about the claim [for back-dated benefits] or her boyfriend selling a van" as to why arrears were about to be cleared. He said that he "sympathised for quite a while with her". He said that he did not intend to take action against the Tenant for the arrears until a damages claim came in from the Tenant (which claim then became the subject of CV/20/2206).

91) During his evidence, the Landlord was very clear as to the sum in arrears and its arithmetic, following his interpretation of the rent statements he had lodged. His evidence was significantly at odds with his actual claim and we adjourned for him to review his own documents. After the adjournment he conceded that he had miscalculated the rent due to him as he had overlooked that he was entitled to 12 months' rent but that, generally, each year there will be 13 four-weekly housing benefit payments. He accepted that had also been giving credit for Housing Benefit on a 12-monthly basis prior to the adjournment. (We also noted that, at an early stage of the application, there was no reference to the £230 credit of May 2013. The Tribunal raised with the Landlord's agents that such a payment was mentioned in a letter that the Landlord wrote to the Tenant (of 5 February 2015 which the Landlord had lodged). The credit was then applied and the claim amended in those terms.)

92) Regarding the condition of the Property and his knowledge of its condition, the Landlord gave evidence of attending after taking possession at the end of May

2019 and that he "wandered about and took a couple of pictures" (but not a complete set of photographs of the condition at that time). He said he saw "holes in the floor at the kitchen", "holes in the walls", "stuff hanging out of the loft as if things had been dragged out". He said the holes in the floors and walls were "as if" they were hammer holes. In regard to the cause of the ceiling collapse, he said he found "only one small leaking pipe from the shower". His evidence was that the condition of the Property seen by him at that time was the same as that seen in Mr Millar's report. When asked about the photographs he took, he could only identify photographs of 11 July 2019, and nothing closer to the end of May. He accepted there was no further visit by him between 11 July 2019 and Mr Millar's visit of 20 August 2019 and claimed there were no contractors in during that time. He then altered his position and said he changed the locks at the end of June, walked around and took no photographs because it was dark at the time. He said he then returned on 11 July and it looked the same as his visit in June. His evidence was that had not been in the Property since the ceiling collapse in April and changing the locks in June. He then accepted that he had taken photographs (which he lodged) date stamped 29 April 2019, so had been in the Property at that time. In all, his evidence on when he was in the Property between the ceiling collapse and Mr Millar's report changed at least twice, but throughout it all he was adamant that there had been "no break-in to the property that I know of" and that the condition of the Property in the report by Mr Millar was all thus attributable to the Tenant. (The discrepancy with Mr Millar's report – which accepted that rewiring work had commenced prior to his inspection, with some change to the condition of the Property as a result – was not addressed by the Landlord.)

93) In regard to specific issues with the condition of the Property, the Landlord gave evidence of the shower, when he saw it on 29 April 2019, hanging on with one screw and the cabling not connecting. The Landlord confidently identified a photograph which showed the shower with a gap behind part of this, proud of the wall. When it was pointed out to the Landlord that this photograph was date stamped 4 December 2017 the Landlord then said that this must be the "original shower". He said that it was then replaced by the Tenant with one that looked identical but with a higher ampage so it would run hotter and faster. He then said he must not have photographed that second shower, but that he had spoken with Mr Haughton about the problem with the shower and Mr Haughton had undertaken to fix it as "he had fitted it". In regard to a photograph of the shower lodged by the Tenant, said to date from the period when she was vacating, the Landlord said that it also showed the shower not properly fitted in place. When pressed by the Legal Member that the photograph showed the shower apparently fitted flush to the wall, the Landlord replied that photographs "can be deceptive".

94) Regarding damage to the living room window, he gave evidence of being told that an extension cable had been fed out of it and then pulled on by "dogs or kids" and that Mr Haughton had said he would fix it. (A repair to this window was part of the Landlord's claim, separate to the main dilapidation contractor's invoice.)

95) Regarding the electrical system, he said he was not aware of any faults but an EICR of 2013/2014 had "a couple of funnies" where there was scorching that suggested an attempt to bypass the meter. (No copy of an EICR from 2013/2014 was lodged.) He referred to a (very small and low resolution) photograph of an EICR (dated from 18 December 2017) in which the electrician referred to: "Fixed wiring". The Landlord's evidence was that "horseshoe wiring" had been "banged in" under the meter to try and stop it going round. He said that the Tenant had never reported to him issues with "surging".

96) Regarding the heating, he said that the system worked prior to the Tenancy and that it was used for the first couple of months by the Tenant. He described then receiving contact with the Tenant when she complained that the storage heaters were too expensive and she asked about alternative means of heating, for which the Landlord said there was none. He recalled instructing switches to be replaced on a storage heater as they were said to have been chewed by a dog but his understanding was that the Tenant did not use the storage heaters as she "had a different way of heating". He gave evidence that the electrician reported that two of the storage heaters were not giving out full heat and replaced these, but that those – along with another storage heater – were "ripped out" by Mr Haughton around two months later. The Landlord believed this was to make more space for a double bed and cot in one of the rooms.

97) On replacement of cookers and hobs, he gave evidence of replacing two and the electrician telling him that the first replacement was "burnt out" due to some mis-use, and in the Landlord's view, a lack of cleaning. The Landlord also referred to one of his contractors sent to fit replacement cookers/hobs refused to attend because of the "dogs" (plural). He said that the contractor attended once the dogs were removed, but said to the Landlord that the kitchen was piled up with pots and pans.

98) As for evidence of these matters, the Landlord spoke to an invoice of 12 December 2017 from West Coast Electrical which referred to fitting a new oven, hob, repairing damaged wiring in the lounge, repairing damaged heaters, carrying out an EICR, and fitting 6 hard-wired smoke alarms. When asked about the said replacement of two heaters - which was not referred to in that invoice - the Landlord said that he thought that had happened around the same time. (The chronology was thus not clear. The reference to "fixed wiring" in the December 2017 EICR seemed to us likely to refer to the lounge wiring in the 12 December 2017 invoice, and not the alleged "horseshoe wiring". Also, we note that the Tenant's email of 15 May 2013 referred to issues with the heater "broken adjusters" but the Landlord refers to a repair to chewed dials on 12 December 2017.)

99) Regarding mould or damp, the Landlord said none had ever been pointed out by the Tenant during any of his visits to the Property (though he accepted, at another section of evidence, that he did not keep formal inspection reports for any visits so there was no documentary evidence as to what may have been discussed on any inspections). The only related issue that he accepted was a damaged downpipe, that he said was dislodged by work to an adjoining property by its

owners, and fixed within three months of being noted. He said he had never heard any reports from the Tenant of the family requiring to sleep in dressing gowns, due to the cold, or having health issues. He suggested that any issues there were with moisture may have come from the Tenant not opening the windows, but having the tumble dryer running, running baths, and having "dogs running around".

100) Regarding other repairs and issues of disrepair, the Landlord's evidence was effectively the opposite of the Tenant's:
   a) Regarding being given a list of work to remedy at the start of the Tenancy, the Landlord said he remembered there were items, but he did not remember being given a list. He thought the work mentioned at the time may have been the work in the Tenant's email of 15 May 2013. He said that contractors were sent but could not gain access.
   b) He denied that the cherry tree was in anyway unhealthy, and denied he ever gave permission to take it down. He said that "I was told that the tree was an invasion of her [the Tenant's] privacy because she wanted a view." (The Landlord did not say from whom he was allegedly told this.)
   c) On the cupboards in the kitchen coming down, the Landlord disputed that these were caused by a leak, and said that the area of the ceiling subsequently effected by the leak in 2014 was some distance from the cupboards. He said that the cupboards are fitted on metal plates on the wall, which would not be able to be fitted if the wall was water damaged. He reported that the joiner, Mickey Morrison, told him that Mr Haughton had said: "Kirsty had a bad night and ripped it off the wall". The Landlord said that his impression was that the right-hand cupboard had perhaps been pulled down, which took down the extractor fan for the cooker, and damaged the left-hand cupboard. (He said that the Tenant did not wish the extractor replaced.) The Landlord also thought the cupboards had probably been overloaded with pots and pans and was told by Mr Morrison, that what he told Mr Haughton that the cupboards should not be overloaded, that Mr Haughton replied: "Oh well, she got two new units out of it." The Landlord also gave evidence of Mr Morrison attending but twice not carrying out the work to fit the cupboards. On the first occasion he was "abused on the doorstep". On the second, he could not work in the area because of the dog and the general untidiness, and so he left the units, and came back once more when the dog was able to be kept out of the kitchen.
   d) On the ceiling collapse, the Landlord said the only leak found and repaired after the collapse was a drip from the shower, and he believed the water was coming from the Tenant overflowing the bath (which he said was the cause of the previous ceiling collapse). He disputed that the photographs taken by Mrs Stewart of the underside of a bath on 19 August 2012 were of the same property as it showed a tiled floor, and the Property had vinyl in the bathroom. He said that he believed the new occupants had no difficulties with leaks from the bathroom. In regard to the lead up to the April 2019 collapse, he said he was out of the country when it was first reported to him that there was water leaking into the kitchen, and he sent a plumber who reported to him about Mr Haughton having fitted his own replacement shower. He then attended at the Property and Mr Haughton said he would

replace the shower. Then, on the day of the collapse, he attended when called by Lesley Ellis of the Council. He went and saw Mr Haughton leaving the Property, and punch in the air, saying: "That's the ceiling down." He was told that the Tenant said to Maggie Osborne, a neighbour, that: "If I can't stay in it, no one can stay in it". (He did not say whether Ms Osborne had said this to him direct, and she was not called as a witness.) He believed that the Tenant was eager to be rehoused at that time. He was advised by Lesley Ellis to close the door and call the insurers. He knew the Council had electricians turn off the electricity, and the water was shut off. His view of the leak was that something had been "leaking for some time" as the ceiling was down in the kitchen and the back of the ceiling material was damp. The Landlord believed that the shower, that he said had been fitted by the Tenant, had been leaking for "3 to 4 weeks".

e) He accepted some contact from the Council but only after the ceiling collapse in April 2019. He was of the view that "some of the problems [reported to the Council] which arose were fabricated by the Tenant" (such as a heater reported to be smoking, referred to in correspondence between the Tenant and Council of 22 February 2019).

f) He regarded a number of issues as caused by the Tenant, such as:
   i) lifting the flooring in the kitchen but not then replacing it, so the flooring was damaged by the dog being kept in it and eating in there;
   ii) damage to a wall in a cupboard caused – in his opinion – by bikes and Mr Haughton's "heavy equipment" being pushed into it;
   iii) a light-fitting damaged by Mr Haughton in the bathroom;
   iv) damage to the walls and the floors. He thought there was "no chance" that the hole in the floor in the bedroom could have been caused by a child jumping off the bed and having their foot go through the floor, as the floor was "solid and bone dry"; and
   v) removal of the balustrade from the hallway.

g) The Landlord said that most work was carried out within two weeks of any issue being reported but some work took longer, such as the replacement of the kitchen cupboards due to the need for Mr Morrison to arrange return visits.

h) He had never been informed of a break-in at the Property. He only knew of a broken pane of glass being reported after the Tenant had left. He did not think you could reach through the broken glass to open the door, and did not think it possible to climb in and out through the jagged broken glass that was remaining in the window before it was boarded up.

i) In regard to the costs of the work, he spoke to an invoice from Burnbank Flat Roofing Ltd of 2 November 2019 for £13,118 plus VAT which was the majority of the renovation work, covering rewiring and redecorating as well as repairs. He further spoke to an invoice from Inverclyde Windows Manufacturing Ltd of 31 July 2019 for £595.33 plus VAT for replacement of the front window said to have been damaged by the cable being pulled through it.

101) On the arrears, we found the Landlord's evidence as difficult to parse as the Tenant's. At first he was adamant that no payments were made at all, but we noted that he had required to amend his case when his own productions showed

at least one payment of £230. On that, he insisted the £230 must have been into his bank account (because his evidence was that he never received cash except for the initial rent payment) but could not vouch that with a bank statement. He denied attending "unannounced" but clearly claimed to have had other contact with the Tenant, as he gave evidence of promises being made on rent. He said that he had not entered any agreements on setting off rent against other sums, yet that was precisely the sort of agreement he claimed was made on the deposit (ie that the deposit money was to be retained by the Tenant and used for carpets). Finally, even as an experienced landlord of eight properties, he seemed unable to calculate the arrears or be cognisant of the sum he was seeking, giving forceful evidence that the arrears were to be calculated in one fashion which he then, after an adjournment, had to accept was a miscalculation on his part. Finally, we have the award against him in regard to the separate Tenancy Deposit application. All the evidence together was of a landlord with poor record keeping and/or a poor grasp on any rent arrears. We thought his evidence incredible when he claimed that no other payments or small deductions were ever made, but we also had no reliable evidence as to what other payments were made or credits agreed. (We address how we thus determined the rent arrears claim below.)

102) On the issues of the condition of the Property, we did not find the Landlord reliable on all matters as to the chronology or causation of all elements, but we did accept that he carried out repairs on some items throughout the Tenancy. To this extent, his evidence was not in dispute with the Tenant, as she accepted that some things were done (but she said that major issues, like the heating, went unresolved).

103) In regard to issues on which we did not find his reliable, we could not follow his evidence on the shower, which seems defective in different ways at different times, none of which appeared consistent with the photographs lodged. Further he appeared both to seek to convince us that the April 2019 ceiling collapse was caused by a leaking shower (which Mr Haughton had undertaken to fix) as well as the Tenant overflowing the bath. We did not understand why it was the responsibility of the Tenant to fix the shower at all, and the evidence that the shower in situ at the time of the ceiling collapse was somehow defectively fitted was not supported by any material evidence or photographs.

104) We would also state our view on three specific issues:
   a) We did find the Landlord credible that the storage heaters had been tested (and partly fixed by new dials in 2017) and that no material unresolved defects were reported to him that he failed to address.
   b) We did find the Landlord credible regarding the flooring and bath in the photographs taken by Mrs Stewart did not match the flooring and bath installed in the Property as at 2012.
   c) We did find the Landlord credible that the Property was not well-maintained by the Tenant and that certain damage was not fair wear and tear (such as to the floors and the front window that needed replaced due to the alleged cable damage). This is not to say that we accepted all the repairs carried out as being recoverable, as we set out below.

105) Generally, there was a mirror of the Tenant in the Landlord. He sought to portray an image of himself as a good Landlord, who managed the Property well despite a bad Tenant who kept the Property in a poor state, did not allow in his contractors timeously, and never paid the balance of her rent. The Landlord's evidence followed his construction of their roles, rather than being a fully credible and reliable account of events, but – just as with our assessment of the Tenant's evidence - we were left with a clear impression of a Property with wants of repair, some of which were not promptly addressed.

Michael Morrison

106) On the afternoon of day 10, we heard Michael (Mickey) Morrison who gave evidence of being the contracts manager of Burnbank Roofing by 2019, but who knew the Landlord through other work as well. He explained that he had attended at the Property on behalf of Burnbank. He said that he left Burnbank in Summer 2019.

107) He recalled the first visit to the Property to patch the kitchen ceiling and meeting a young boy who said "it kept happening because his Mum keeps overflowing the bath". Water had been coming into the kitchen, and Mr Morrison believed it was coming in due to the bath being filled over the overflow. He told the occupants that it needed to stop, or the ceiling would come down. He said that, from memory, everything was otherwise fine with the bathroom floor and he probed it by sticking in a screwdriver and thought that everything above the kitchen ceiling was fine. He said that he did not smell any damp in the bathroom. He said that damp is a "very distinctive smell".

108) He then recalled visiting to fit two kitchen units. He said he was first refused access because the Tenant was abusive but came another time and found he could not work in the conditions, because the Tenant had "dogs" (plural). He left the units and returned a few weeks later. He found the Property "dirty, messy" and with a "smell of dog urine". He explained that he did not like dogs "at the best of times" and did not like working when they were around, so asked them to be kept in a different room.

109) He said that he arranged the visits through the Landlord and only spoke with the Tenants when at the Property, speaking to a male when there to fit the units. The man said that he was the partner of the Tenant and "she had ripped them off the wall in a rage the night before to try and get new ones". Mr Morrison gave evidence that he believed it would have required tools to rip them down. He said he never saw water damage at the time of fitting and, though he was not looking for it, he would not have been able to fit the cupboards had the wall behind them been damp. He explained that when water hits plasterboard it turns to mush, and you can see a yellow mark where water had come in contact with it. He saw no evidence of that.

110) He recalled being at the Property 4 or 5 times but only entered it on these occasions of the plastering and the visits on the cupboards.

111) We found Mr Morrison credible and, as far as he was recalling events some time in the past, reliable.

Submissions

112) We do not intend to record at length the submissions for the Landlord and Tenant. We received a full review of the evidence from each, inviting us to prefer the Landlord's witnesses over the Tenant's and *vice versa*. We record only material points of concession or clarification, and any legal arguments.

113) In submissions on the evidence, the Landlord accepted Mr Millar's evidence that "I believe the sockets would not have been replaced if not damaged" and "I believe the rewiring needed done due to water in the system as well as damage to sockets here and there", and a reference in Mr Millar's report to the damage to wiring "which in any case would likely have been affected by water damage from the flooding". The Landlord conceded that the need for re-wiring (which Burnbank carried out and was included in their November 2019 invoice) was "at least in part… due to the flood".

114) The Tenant relied on *Renfrew DC v Gray, 1987 SLT (Sh Ct) 70* as setting out available remedies to a tenant who was claiming regarding disrepair. The Tenant sought damages for breach of contract, being one of the available remedies set out in that case. The Tenant further made reference to the repairing standard within the *Housing (Scotland) Act 2006*, submitting that the Property failed to reach that standard. In regard to quantification, reliance was made on *Quinn v Monklands DC, 1996 Hous LR 86* where £2,500 was awarded for three years of inconvenience. The Tenant's representative submitted that this adjusted to £1,546.52 per annum in 2019, and thus £10,439 for the period of inconvenience suffered by the Tenant.

115) We sought submissions on prescription on both claims. In regard to the Landlord's claim for rent, the claim as originally raised sought back-dated rent to near the commencement of the Tenancy, thus far more than five years from the application being submitted. The Landlord conceded that prescription was relevant (having raised, and then dropped, an argument that part of the historic correspondence amounted to a "relevant acknowledgement" under the *Prescription & Limitation (Scotland) Act 1973*). The Landlord made submissions that the delays in raising and advancing an application in 2020 (due to the pandemic) should be taken into account, but provided no authority or statutory basis to support this argument. Otherwise, in regard to the relevant date of the claim, the Landlord submitted it should be the date that the application was lodged with the Tribunal, being 26 February 2020. This, by the Landlord's calculation, meant that £4,111.54 of arrears were unprescribed (being arrears from 27 February 2015 until the end of the Tenancy).

116) The Tenant's position on prescription as affecting the Landlord's claim was that the date of prescription should be the date the intimation of the first CMD (with the application and papers) was served on the Tenant by the Sheriff Officer

instructed by the Tribunal. This was 2 September 2020. In developing this argument, the Tenant considered whether the date of acceptance of the application, being 20 August 2020, was the date of the relevant claim but relied on authority which was said to support only the date of service as being the relevant claim. *Link Housing Association Ltd v PBL Construction Ltd, [2009] CSIH 54* related to a new claim being introduced by Minute of Amendment, with the Inner House holding that the relevant claim was introduced on lodging of the Minute and its intimation, stating at paragraph 17:

> *What is required is fair notice to the defenders that a claim is being made on behalf of the pursuers. In our opinion, the lodging and intimation of a minute of amendment serves to give fair notice. We cannot see that it does anything less than is done by the lodging of a summons for calling. In either case the formality of the procedure, in the context of a judicial process, leaves the defenders in no doubt about the pursuers' intentions. There is no requirement that there be a judicial decision: it is the act of the pursuers in stating the claim in a formal document intimated to the defenders that is relevant.*

117) For completeness, both parties were asked to consider an alternative view, proposed by the Tribunal, that the relevant date may be the date that the complete application was lodged with the Tribunal, even if the Notice of Acceptance did not follow until some time after. According to the Notice of Acceptance in CV/20/0724, the complete papers were received on 27 July 2020 (and therefore 27 July 2020 was the earliest date that a Notice of Acceptance was possible). Neither party adopted this view.

118) In regard to prescription as it may apply to the Tenant's claim, the Landlord made no material submissions, leaving the matter to the Tribunal. The Tenant relied on s11(2) of the 1973 Act, in that any inconvenience was ongoing until the Tenant vacated, and the different disrepair issues constitute a single ongoing breach of the repairing standard. In regard to the claims for damaged items, these arose from the continuing breach of the repairing standard.

Findings in Fact

119) The Landlord made a relevant claim to the Tribunal for recovery of rent from the Tenant on 27 July 2020.

120) On or around 1 September 2012, the Landlord let the Property to the Tenant under an Assured Tenancy with commencement on 1 September 2012 ("the Tenancy").

121) Under the Tenancy Agreement, in terms of clause 1, the Tenant was to make payment of £525 per month in rent to the Applicant in advance, being a payment by the 1st of each month to cover the month to follow.

122) Under the Tenancy Agreement, in terms of clause 5(a), interest is be charged on late payment of rent at "four per centum per annum above the base rate from time to time of the Bank of Scotland".

123) The Tenant was in receipt of Housing Benefit during the entire duration of the Tenancy, which benefit covered much but not all of the passing rent.

124) On or around 10 April 2019, the ceiling in the kitchen collapsed due to water from the bathroom above compromising the integrity of the kitchen ceiling.

125) By mutual consent, the Tenancy was terminated in or around late May 2019.

126) The Landlord opted to seek no payments of rent after the rental payment due on 1 March 2019.

127) The Tenant received Housing Benefit in arrears on a four-weekly cycle at the rate of:
   a) £101.54 per week throughout 2015 until 28 March 2016;
   b) £101.26 per week from 4 April 2016 until 27 March 2017; and
   c) £101.54 per week from 3 April 2017 until 25 March 2019.

128) The total sums due in rent by the Tenant from 27 July 2015 until the termination of the Tenancy was:
   a) In 2015, £2,625 (being the sums due from the rent payment date of 1 August 2020) against which Housing Benefit of £2,233.88 was received up to 31 December 2015;
   b) In 2016, £6,300 against which Housing Benefit of £5,269.16 was received up to 31 December 2016;
   c) In 2017, £6,300 against which Housing Benefit of £5,276.44 was received up to 31 December 2017;
   d) In 2018, £6,300 against which Housing Benefit of £5,381.62 was received up to 31 December 2017; and
   e) In 2019, £1,575 against which Housing Benefit of £1,218.48 was received up to 25 March 2019;

   leaving cumulated arrears of £3,720.42.

129) In terms of clause 5(b) of the Tenancy Agreement, the Tenant was obligated to "keep the dwellinghouse… clean and in good order and the fixtures, fittings and furniture therein in good condition, and to give them up at the end of my occupancy in the same order and condition as my entry, ordinary wear and tear expected".

130) The Property was not properly ventilated or heated throughout the Tenancy.

131) A failure properly to ventilate or heat a residential property can give rise to the growth of mould, to condensation, and to other conditions of dampness, though there may be other causes of such issues in a residential property.

132) The Property was capable of properly heated and ventilated, through use of the storage heaters and windows installed in the Property, at the commencement of the Tenancy.

133) Any failure to ventilate or heat the Property by the Tenant was not attributable to any material breach of the Tenancy by the Landlord.

134) On the Tenant's vacating of the Property, the Property was in a poor condition as a result of a combination of factors including: the ceiling collapse and water ingress into the kitchen; normal wear and tear after a seven-year period of occupation by the Tenant and her young family; and damage by the Tenant (and those for which she was responsible) for which the Tenant was responsible under the Tenancy under clause 5(b).

135) The Tenant (or those for which she was responsible) caused or allowed to be caused the following damage to the Property as at the termination of the Tenancy:
   a) Damage to the front window for which the Landlord incurred reasonable costs of £593.33 plus VAT to repair;
   b) Damage to flooring for which the Landlord incurred reasonable costs of £1,175 plus VAT to repair;
   c) Removal of a balustrade for which the Landlord incurred reasonable costs of £150 plus VAT to replace;
   d) Decorative damage to the Property beyond that of normal wear and tear for which the Landlord incurred reasonable costs of £675 plus VAT to repair; and
   e) Removal of two storage heaters for which the Landlord incurred reasonable costs of £460 plus VAT to replace.

136) The Landlord incurred reasonable professional fees from a surveyor in advising on the said damage in the amount of £309 plus VAT.

137) Various belongings of the Tenant were damaged as a result of the ceiling collapse of April 2019 and the resultant water ingress and moisture levels within the Property. The second-hand value of such damaged items is reasonably estimated at £500.

138) The Landlord undertook repairs to the Property during the Tenancy, but neglected to undertake all necessary repairs in a reasonable time after being notified of the want of repair by the Tenant (or those on her behalf).

139) The Tenant suffered inconvenience in dealing with wants of repair at the Property, in particular requiring to vacate the Property and spend a period of time without permanent accommodation following the ceiling collapse of April 2019.

140) The Tenant's reasonable loss for all such inconvenience was £1,000.

Reasons for Decision

The Landlord's claim

Replacement window

141) We were satisfied that this was not normal wear and tear. The Landlord proposed that it was damaged due to a cable being fed out through it, and then caught, causing the cable to pull on the window mechanism and break it. The Tenant gave no alternative explanation but did not give evidence why this was either not damaged as the landlord claimed, or was normal wear and tear.

142) We do not make a decision on how it occurred, but we are satisfied that it was damaged, that it was not normal wear and tear, and that it falls to be a claim against the tenant. Vouching for a repair costing £712 (£593.33 plus VAT) was provided, which we award in full.

Internal repairs

143) It is a matter of agreement that there was a ceiling collapse in the kitchen in April 2019 and that it caused damage. The Tenant seems to regard it as evidence of a long-ignored leak (perhaps dating back to 2013). The Landlord gave two theories (a leak from a shower that the Tenant had installed herself, or the Tenant overflowing the bath). We were satisfied that the Landlord accepted that prior to the collapse there was intimation to him of a reappearance of water ingress in the kitchen ceiling (which had collapsed before in 2014). He referred to sending out Mr Shambach and also visiting himself later when he said he spoke to Mr Haughton about the shower.

144) The Environmental Health correspondence contains an email of 22 February 2019 which records that the Tenant informed them that day of "Plaster patch repair on roof is showing evidence of further water" in the kitchen. Therefore, whatever the cause of the ceiling collapse, it appears it was caused by water ingress from some source, and that it was noted to be worsening before it eventually collapsed.

145) We cannot, however, determine the cause on the balance of probabilities. A long-standing leak – potentially dating from 2013 – does not appear plausible. It is further contrary to Mr Morrison's evidence of checking the bathroom floor after repairing the ceiling from an earlier period of water ingress, and to detecting no smell of damp when in the bathroom. Some more recent leak is entirely plausible. The Landlord's evidence on the shower was confused and confusing, and we have explained why we doubted Mr Shambach's evidence about the shower (in that he describes it being wired in a distinctive fashion for which there is no photographic evidence). There may have been a shower leak but we cannot determine that, and we are not satisfied on the balance of probabilities that, even if there was a shower leak, this was something the Tenant was responsible for. This leaves the overflowing bath theory which could explain matters if it was repeated and the floor was regularly becoming saturated. Prof Sharpe's evidence

that poor sealant round a bath can cause water ingress was an equally strong but unproven theory, and could have contributed to water ingress under the floor if the Tenant was overflowing the bath (meaning the responsibility for the water ingress into the floor space somewhat fell on both the Tenant overflowing the bath and Landlord failing to ensure good sealant around the bath). For all these reasons, we accept that there was water ingress leading to the ceiling collapse, that the ceiling collapse caused damage and needed repaired. The Landlord has not however satisfied us that the Tenant was responsible for it on the balance of probabilities. Therefore we find that all costs of repair and redecoration from the ceiling collapse (and any bathroom work) do not fall upon the Tenant. We will return below to the implications of this on the Landlord's claim.

146) Excluding the kitchen and bathroom, which we consider separately, much of the Burnbank Flat Roofing Ltd invoice covers four types of work in different rooms:
   a) Plastering;
   b) Rehanging internal doors (include cupboards and wardrobe) and repairs to them;
   c) Repairing and replacing flooring; and
   d) Clearing out debris and other cleaning.

147) On these, we took the view in general that we were awarding the costs for the flooring only (but excluding flooring damaged by any ceiling collapse or in the bathroom). We accepted the evidence from multiple witnesses (particularly the two contractors Mr Morrison and Mr Shambach) that there was a strong smell of dog urine in the Property and some of the photographs which were said to illustrate urine staining (such as in a corner of the Living Room in Mr Millar's report) were consistent with evidence of where the dog was kept during the day.

148) Further, there were two holes in the floor (one in the Living Room and one in the South-West Front Bedroom). The Tenant's evidence was that these arose due to dampness in the flooring, but this was disputed by the Landlord and Mr Millar. From the photographs provided, we preferred the evidence of the Landlord and Mr Millar as the photographs were consistent in our view with the holes being formed by impact damage, and not water damage. We thus award £1,175 plus VAT for replacement and repairs to flooring per the sums in the Burnbank invoice.
   a) Entrance hall: £30 flooring
   b) Lounge/Dining:
      i) £20 remove debris below hole
      ii) £495 flooring
   c) North-East Front Bedroom: £150 flooring
   d) South-West Front Bedroom:
      i) £15 remove debris below hole
      ii) £185 replace flooring
   e) Rear Bedroom: £280 flooring

149) The reasons we do not award on the other three types of common work are as follows:
   a) Plastering would be required following the rewiring, and any other repairs would be consistent with repairs to normal wear & tear damage to

plasterwork. None of the plastering costs were significant in any of the rooms in any case.

b) There were photographs of damaged doors, which Mr Millar attributed to children swinging on them, but whatever the cause, we were not satisfied that any of the damage to the doors or door fittings went beyond normal wear and tear after seven years.

c) In regard to cleaning, it was accepted that the Tenant left after the water ingress to the kitchen, so the electricity and water were both turned off. There was a limit to the cleaning that she could do, and also an urgency to her vacating.

150) We shall now consider all items other than those in the four general categories (of flooring, plastering, doors, and cleaning) as they arise in each room, broken down in the order and categories within the Burnbank invoice:

151) Entrance Hall:

a) Service door entry system £50: This was not a flat, so it was likely to be no more than a doorbell. We think any repair to the doorbell is normal wear and tear and do not make an award.

b) Restore balustrade to front staircase £150: There was evidence of the balustrade being in place before letting, and then being removed by the Tenant in her initial decoration works (as it is seen lying on the Living Room floor in a photograph taken by the Tenant's mother). There was photographic evidence that it was not in place when the Tenant left and there was no evidence that the Landlord consented to its removal. We award the full £150 plus VAT sought.

c) Take down and rehang entrance door and fit replacement weather strip £75: There was evidence of damage to a glass pane next to the door but this does not appear to be related to this claim. Mr Millar referred to removal of the weather strip. We were not satisfied that any of the damage or repairs went beyond normal wear and tear, in the circumstances of the coming and going after the ceiling collapse. We make no award for these items.

d) Repair stained and vandalised wall and ceiling in cupboard £30: We think any repairs are normal wear and tear and do not make an award.

152) "Lounge/Dining": All items within the invoice are covered within the four main categories.

153) Kitchen: There were various works including replacing ceiling, patching walls, replacing flooring, replacing kitchen units, repairs to plumbing totalling £1,665. Mr Millar's report acknowledges that material repairs and replacement was needed as a result of the ceiling collapse. There is an entry for £60 for repairs to plumbing when the washing machine was removed, and this may be seen as a separate element of the work, but it is clear to us that material work was undertaken to the kitchen and that the material part of that work was necessitated by the ceiling collapse. We are not satisfied that any part of these costs fall due as a result of the Tenant's actions for the reasons we separately give on the cause of the ceiling collapse. We are also conscious that after seven years, there will be an element of wear and tear to a 'high traffic' room such as a kitchen, and

some of the decorative works and replacement cabinets may be needed in any case. We award £nil for works to the kitchen.

154) Upper Floor Landing:
   a) £75 was sought to replace flooring said to be damaged by flooding. We make no award against the Tenant for flood damage as we cannot determine the cause of the flooding.
   b) £475 is sought in regard to replacing a "stripped out hot water cylinder in landing cupboard". We were not satisfied that this was removed by the Tenant. We make no decision on how it came to be removed, but note that there was a significant period of time between the Tenant leaving and Mr Millar's report (which notes that it is missing) and further that work had commenced by that time, partly to resolve matters on the water ingress. We are therefore not satisfied on the balance of probabilities that this is a cost to be applied against the Tenant.

155) North East Front Bedroom: All items within the invoice are covered within the four main categories.

156) South-West Front Bedroom: There was a claim for £100 to reinstate a vandalised telephone system. Mr Millar's report refers to the system being "stripped" by the Tenant but little further evidence was heard. Like the hot water cylinder, we were not satisfied that this was removed by the Tenant and make no decision on how it came to be removed, beyond noting the same issues of passage of time between the Tenant vacating and Mr Millar's report, and the commencement of works by the date of the report. We are therefore not satisfied on the balance of probabilities that this is a cost to be applied against the Tenant.

157) Rear Bedroom: All items within the invoice are covered within the four main categories.

158) Bathroom: There were various works including replacing flooring and bathroom suite totalling £685. These works include "replace scraped bath" for £275. Parties were clear that there had been a new bath fitted in around 2014. We heard no evidence as to any material damage to the bath. The work undertaken to the bathroom arose due principally to the water damage and a full replacement of the bathroom would have included a new bath to match other bathroom suite items. We are not satisfied that any part of these costs fall due as a result of the Tenant's actions for the reasons we separately give on the cause of the water ingress and ceiling collapse. We award £nil for the works to the bathroom.

159) Roof void: The only charge is for clearance of debris which is covered within the four main categories.

160) Electrical installation:
   a) £2,750 was sought for rewiring the Property. We heard competing evidence on the state of the wiring, and the implications for the Tenant. The Tenant gave evidence of bulbs and electrical items blowing (and Mrs Stewart also giving evidence on bulbs blowing), and of the electrics being turned off after

the water ingress. An EICR report, commissioned by the local authority and dated 10 April 2019, was part of the Environmental Health documents that the Tenant spoke to. We noted that it referred to a need for a full rewiring and provided details as to a lack of "main protective bonding conductors to the gas or water services" and that the "conductor for the installation is undersized". The Landlord's position, however, was that the electrics were fine and he made a reference to an earlier EICR report (19 December 2017) but only a small blurry photograph was provided (though we could see the word "SATISFACTORY" circled on it). The Landlord stated that if there was any issue with the electrical system it was caused by interference by the Tenant (perhaps in an attempt to bypass the meter) and he also appeared to rely on the alleged unauthorised replacement of the shower with too powerful a model. Mr Millar's report refers to the rewiring due to "vandalism caused by Tenant" but he only inspects after the rewiring commenced, so his report is not evidence for any such alleged "vandalism". No material evidence was thus provided for the major accusation against the Tenant. We were not satisfied that any interference by the Tenant was proven on the balance of probabilities. In any case, we note that Landlord's concession that some rewiring, at least, was necessitated by the water ingress. We award £nil for the rewiring works.

b) Two replacement storage heaters were charged at £460. There was no dispute that storage heaters were removed. The Tenant's evidence was that all the heaters at the Property were faulty, and that one in particular was "smoking" and removed for that reason. The Tenant also gave evidence that she informed the Landlord of her intention to remove them, and left them outside for collection (and she believed the Landlord did collect them, though she gave no evidence as to why she believed he took them – rather than an opportunist thief). The Landlord's evidence was that none were faulty and the Tenant removed at least one storage heater (in a bedroom) for extra space. The Landlord further gave evidence that the previous tenant had no issues with the heaters and that the same system remained in place and, to his understanding, the new owner's tenant had no issue. The evidence from the previous tenant, Nicola McCall, and her then boyfriend, Dale McCall, supported the Landlord's evidence that the heating system was operating. In all, whether or not the heating system operated, there was no need for these heaters to be removed. They could simply have been turned off by the Tenant in anticipation of repair. We were not satisfied that the Landlord had consented to their removal. We award the £460 plus VAT sought in full.

161) Front Garden: The evidence on the fate of the cherry tree was not conclusive. There were differences in evidence as to: when it was removed; whether it was climbed on by children; whether it was visibly unhealthy before it was removed; and whether it become so unhealthy that it was reduced to a stump (that Mr Haughton was able to pull out of the ground). The competing theories for its demise were: that it was damaged by the Tenant's children and then cut down to make way for a fire pit, or that the Tenant preferred the view out the window to be unobstructed (the Landlord's suggested theories); and that it failed to flourish due to water saturation in the soil, possibly due to the downpipe not being

connected properly (the Tenant's suggested theory). What we can say is that there was no evidence of an Inventory prior to the tenancy that mentioned the cherry tree, that trees can die, and that under the terms of the Tenancy the Tenant was not expressly required to ensure that it thrived. Therefore, we require to be satisfied on the balance of probabilities that the Tenant (or those she was responsible for) took steps to damage or cut down the tree, or somehow negligently caused it to die. We were not satisfied that the evidence supported a claim against the Tenant on such grounds. Further, we were not satisfied that the Landlord suffered had any loss from the tree being absent. We heard no evidence to suggest that the value of the Property (whether retained by the Landlord for re-letting, or sold by him) would be materially altered by a tree being in the garden.

162) Interior Decoration: £2,700 was sought. We have taken the view that the Tenant did cause damage to the Property that went beyond normal wear and tear when making our award on the flooring. We thus accept that there would likely have been decorative damage that went beyond normal wear and tear as well, but it is impossible to determine the extent given seven years of occupancy and the ceiling collapse. We thus award 25% of the decoration costs as a nominal award for what we think was a likely deterioration in the decorative condition of the Property over and above normal wear and tear. We thus award £675 plus VAT.

163) Contingencies: £100 was sought but we are not clear the basis for a contingency fee in a final invoice (as opposed to in an estimate). We did not hear evidence as to what "unforeseen repairs" took place, so cannot determine whether any of the contingency fee is properly due by the Tenant. We make no award under this heading.

164) Professional fees for survey: A fee of £1,465 was sought. As we award 21.1% of the Burnbank invoice against the Tenant, as a nominal award we apply this same percentage against the professional fees, and make an award of £309 plus VAT.

165) Thus, of the Landlord's claim of £15,741.60 (£13,118 plus VAT) for internal repairs we award £3,322.80 (£2,769 plus VAT) in total.

Rent

166) We were not satisfied that we heard evidence from either the Tenant or Mr Haughton that allowed us to make a decision on the balance of probabilities that any single payment was made to the Landlord, other than those which the Landlord had already given credit for. We found it stretched credibility for the Tenant to say with certainty as to the amounts of payments made years earlier on random "unannounced" visits, which funds were held by her from bingo winnings. As for Mr Haughton, his evidence was that the figures were calculated on the basis of an assumption that entries for "cash" in his business records must have been payments made to the Landlord. On that, he accepted the dates would be approximate, and that he did take "cash" out of his business funds for other reasons. Also, none of his records were lodged as evidence as to the basis of his calculations.

167) This is not to say that we accept entirely the Landlord's evidence that no further payments had been made. The Landlord's administration was clearly poor and, after the application was lodged, he accepted a further credit against the sums sought when his own productions supported that the Tenant had made an early payment for which he had failed to give credit. We think it likely that the Landlord was simply satisfied with the level of payment from Housing Benefit and did not make any material attempts to collect further rent but, if offered any cash, would likely have taken it and may then have failed to account for it accurately. Though we think it likely that the Landlord received some payments in cash at times, he failed to note them as did the Tenant and Mr Haughton. No one wrote anything down contemporaneously, and no one emailed or texted the other to record payments made. We were not satisfied on the balance of probabilities that any of the claimed cash payments were made.

168) Even if we had felt that the evidence was sufficient to allow us to consider some nominal credit against rent, on the basis that something was probably paid at some point, a further difficulty is one of prescription. The Tenant sought to prove eight payments made by her, and eight by Mr Haughton. 50% of each of those categories were payments prior to the five-year period that we have determined as the unprescribed debt (so only £710 of alleged payments by the Tenant and £1,710 by Mr Haughton could ever be applied against the unprescribed debt). If we had taken the view to allow a nominal credit against rent, we would have needed to consider whether it occurred before or after prescription fell. We take the view that it is not appropriate for us to consider whether some nominal credit is applied where we have not been satisfied as to the dates and amounts of payments alleged made.

169) In regard to sums that the Tenant sought to apply against the rent:
   a) £20 debit on the electricity meter would need to be applied against the prescribed rent amount. We thus decline to consider this further.
   b) The £70 for the thermostat/emersion switch; £70 for shower door; and £125 new shower would need to be applied against the prescribed amount. We decline to consider these further.
   c) We were not satisfied that the flooring in the kitchen and living room arose because of a failure by the Landlord and do not apply those. Similarly, we heard little evidence as to why £15.99 was incurred regarding a plug socket in the living room, beyond the Tenant's general evidence of the Landlord's poor maintenance. We are not satisfied to hold there were sums to be applied against rent and therefore do not consider whether or not we accept the Tenant incurred these costs.
   d) In regard to the £2,000 which the Tenant said was left by a previous tenant on the Pre-Payment meter and which she paid off before realising, we do not accept the Tenant's evidence. We had no written evidence of this problem with the account. If it had occurred, we hold that it was for her to resolve it with the electricity company. We accepted the Landlord's evidence that he did not agree to such an *ex gratia* credit as he had no need to (leaving aside the lack of evidence of such arrears).

170) Thus, as we apply no credits against the rental sums due (except the Housing Benefit payments on which the arithmetic was not disputed), the remaining issue is one of prescription of the rental claim. The Landlord sought us to accept a five-year period running back from 26 February 2020 (lodging of the application) and the Tenant from 2 September 2020 (Sheriff Officer's service). We reject both arguments, though the Tenant's argument is the more attractive of the two as it appears consistent with existing court practice that the "relevant claim" only occurs on service of the action on the defending party. That is, however, in our view a misleading comparison as it overlooks the inquisitorial nature of the Tribunal's procedure.

171) The relevant statutory provision is in section 4 of the 1973 Act:

> *2) In this section "appropriate proceedings" means—*
>
> *(a) any proceedings in a court of competent jurisdiction in Scotland or elsewhere, except proceedings in the Court of Session initiated by a summons which is not subsequently called;*
>
> *(b) any arbitration in Scotland in respect of which an arbitrator (or panel of arbitrators) has been appointed;*
>
> *(c) any arbitration in a country other than Scotland, being an arbitration an award in which would be enforceable in Scotland.*
>
> *(3) The date of a judicial interruption shall be taken to be—*
>
> *(a) where the claim has been made in an arbitration the date when the arbitration begins;*
>
> *(b) in any other case, the date when the claim was made.*

172) Once a Rule 70 application is accepted by the Tribunal, the Tribunal commences with the application. A CMD is set and there is then intimation of the CMD date on the Respondent. This is intimation of an application that is already in process. The intimation is not a step that is needed to complete the commencement of the Tribunal process. This is different to the equivalent payment actions in the Sheriff Court and Court of Session. A Sheriff Court action that is warranted but not served will eventually fall, as will a Court of Session action that is warranted and not served, or warranted, served, but not lodged for calling. This is not the case with the application before the Tribunal which has no expiry date once competently raised. The Tribunal will not hold a hearing without the Respondent having been competently served, but the intimation does not halt the application from expiring. The application, and thus the "claim", is "made" fully prior to any intimation on the opponent.

173) This leaves the question as to the date that the "claim was made" and "appropriate proceedings" commenced. It occurs to us it can be only one of two dates: the date of the Notice of Acceptance when the Legal Member accepted the application as complete, or 27 July 2020 being the date when the complete application papers were held by the Tribunal (as noted within the Notice of Acceptance). We hold that it is 27 July 2020, as on that date "a claim was made" with the Tribunal, in that all the necessary papers making up that claim were with the Tribunal and nothing more was needed to be done by the Landlord to see the application proceed. It was – we assume - a matter of pressure of business that meant it was around a further month until a Legal Member scrutinised the

papers and issued the Notice of Acceptance but from 27 July 2020 the "claim was made" and was inevitably going to proceed to the next stage (unless withdrawn – which it was not). Our findings in fact set out the arithmetic of the arrears that follow from this legal determination.

174) We can thus distinguish *Link Housing Association Ltd* as, first, it examines a very specific issue of raising a claim in an amendment which is not the case here, and second relates to adversarial court procedure and not the inquisitorial procedure of this Chamber. Notwithstanding, the Inner House's analysis in *Link Housing Association Ltd* is consistent with the approach we adopt.
    a) The Inner House held that "the lodging and intimation of a minute of amendment" [paragraph 17] is required. A Minute of Amendment that is not lodged (with a motion to amend) is not advanced in any form. The Inner House focuses on both lodging and intimation, as it is dealing with adversarial procedure, but prior to lodging with the court, the "claim" in the Minute of Amendment is not "made". We too hold the significant issue of when a "claim is made" is when it is lodged with the Tribunal.
    b) Further, the Inner House rejected the argument that the claim was only made once the pleadings were amended in terms of the Minute of Amendment ("there is no requirement that there be a judicial decision" [paragraph 17]). In finding that the Notice of Acceptance is not required for the claim to be made, we too found that a "judicial decision" was not necessary to make a claim to this Chamber in terms of the 1973 Act.

175) Finally, we note the 1973 Act refers to claims before a "court of competent jurisdiction in Scotland". A strict view may be that relevant claims cannot be made before this Tribunal as it is not a "court". We take the view that such an overly strict interpretation is not in-keeping with a natural reading of the 1973 Act in light of the 2014 Act providing jurisdiction over these claims to the Tribunal. There is no other court with "competent jurisdiction in Scotland" empowered to determine civil claims under Assured Tenancies, and this Tribunal is thus clearly a "court" within the meaning of the 1973 Act in regard to Rule 70 applications.

The Tenant's claims

176) Surging: We were not satisfied on the balance of probabilities as to whether items were damaged by surging in 2014. No technical evidence was led, and no explanation offered as to why it caused damage to items in 2014 only. We make no award for the three items said to have been damaged from this: Microwave (claim of £69.99); Washing machine (claim of £200 as it was purchased second hand); and Fridge Freezer (claim of £390). Had we not taken this view, the Tenant's application was not raised until 2020 and we hold that any damage to specific items from alleged surging in 2014 would be prescribed. The terms of section 11(2) are as follows:

> *(2) Where as a result of a continuing act or omission loss, injury or damage has occurred before the cessation of the act or omission the loss, injury or damage shall be deemed for the purposes of subsection (1) above to have occurred on the date when the act or omission ceased.*

The evidence on the electrical issues was that it continued throughout the Tenancy but the "surging" allegedly caused damage only in 2014 so we do not see grounds for the Tenant's argument that this claim arose from a continuing act or omission.

177) 2013 wall collapse: We accepted the evidence of Mr Morrison that the wall was not wet or showing evidence of water damage when he refitted the cabinets, and we hold that the cabinets did not collapse for reason of any water ingress. We were not able to determine whether the cabinets came down for a reason which the Landlord would be responsible for, or due to damage or over-loading by the Tenant (as the Landlord claimed). We therefore are not able to determine on a balance of probabilities whether the Landlord is responsible for damage said to have been caused to a toaster (£45), kettle (£25), and crockpot (£30). Had we not taken this view, the Tenant's application was not raised until 2020 and we hold that any damage to specific items from the collapse of the cabinets in 2013 would be prescribed and s11(2) not relevant for as this was a one-off event and not a continuing matter.

178) 2019 wall collapse: The remaining items are said to have been damaged by the 2019 ceiling collapse or the dampness in the Property following it (all prices based on "new-for-old" unless specified): kettle (£12); tumble dryer (£199.99); microwave (£39.99); washing machine (bought second-hand for £180); fridge freezer (£179.99); coffee table (£59); sideboard (£84.99); nest of tables (£52.99); sofa bed (£1169); and clothing (estimated at £200). Some items were said to be damaged within the kitchen, and others by the dampness then suffered in the Living Room. We also took that the Tenant claimed a general problem with damp and mould prior to the ceiling collapse. It was not clear whether the Tenant saw the damage by the dampness as entirely related to the water (and thus moisture) that eventually caused the ceiling collapse. In regard to the clothes, she gave evidence of some being damages by rats nesting in cupboards during the period the Property was vacant after the ceiling collapse.

179) The Tenant's claim totalled £2,178. She held no contents insurance. She said that the items (excluding clothing) were purchased between 2013 and 2014, and was thus at least over 4 years old at the time of the ceiling collapse. The clothing was said to have been purchased at various times.

180) As we say elsewhere, we hold that there is insufficient evidence that the ceiling collapse was caused by the Tenant's actions. Further, there is evidence of an increasing problem with the ceiling in the kitchen being reported to Environmental Health at least on 22 February 2019 (and known about by the Landlord prior to the ceiling collapse). In the circumstances, we do hold that damage to the Tenant's moveable property arising from the ceiling collapse and any subsequent damp is a claim against the Landlord as he failed to have work "completed within a reasonable time of the landlord being notified by the tenant, or otherwise becoming aware, that the work is required" (section 14(4) of the *Housing (Scotland) Act 2006*). What we struggle to determine is whether the full list of items were all damaged in this way but we would not be awarding on a "new for old" basis in any event. Taking into account the age of the items, on a 20%

reduction for each year of depreciation, this would reduce the "new for old" cost to £435.60. We determine that the Tenant's reasonable losses are £500 to take into account the variety of items and ages.

181) Inconvenience and suffering: In regard to the Tenant's inconvenience and suffering, this was not raised as a personal injury claim. We heard evidence from Prof Sharpe on his views of the dampness in the Property but, excluding the damaged items (which we have separately considered), the only relevance of Prof Sharpe's evidence is a claim by the Tenant for her own suffering and inconvenience. On this, we heard no evidence on ill-health apart from Tenant. She gave evidence of multiple poor health episodes that she and her children suffered, but we had no medical records nor evidence from eye-witnesses. We could not make a determination of any award in regard to historic health issues in the circumstances due to the lack of material evidence. In any event, we do not find that there was an historic issue with dampness and cold arising from a breach by the Landlord. We accept the evidence of Mr and Mrs McCall that the heating system worked when they were there. We note the lack of documentary evidence of a persistent problem with the heaters not working. For instance, the Tenant's email of 15 May 2013 refers only to an issue with broken adjusters on a single heater. Reference to broken heating in the Environmental Health correspondence is sparse. There are two references to site visits in correspondence of 29 November 2017 and 22 February 2019 when the broken storage heaters are mentioned, but there is no detailed information in the Environmental Health records as to what they did to test the storage heaters at the site visits. Such heaters take time to warm up and so two site visits 18 months apart would not be a suitable way to check their operation. We further noted (though only the covering page was provided) that the EICR of December 2017 stated the electrical system to be satisfactory, and West Coast Electrical carried out work to repair a heater at that time (which implies that the heaters were capable of being repaired).

182) We were therefore not satisfied, on the balance of probabilities, that the Tenant succeeded in proving there to be a persistent issue with the storage heaters over many years, of which the Landlord was informed but had still failed to remedy by April 2019. Even if we were incorrect on this, the Tenant never mitigated her loss by seeking – in all her years there, and with all her alleged requests for repairs to the heaters – an electrician to come and check the storage heaters. The Tenant made reference in her submissions to suffering "the embarrassment of having to host visitors in a house which was affected by water penetration and the smell of dampness" and that such "defects detrimentally affected the Tenant's enjoyment of the subjects". We have accepted the evidence of Mr Shambach and Mr Morrison that the Tenant did not keep the Property in good condition, so we would not in any case be minded to make any award to the Tenant for any diminution in enjoyment that arose from being embarrassed about the condition of the Property when hosting visitors (which visitors she still then hosted).

183) In regard to ventilation, we accept Prof Sharpe's comments that it could have been improved but we do not hold that the Landlord was liable, or in breach of

the Repairing Standard, for not retro-fitting mechanical ventilation or additional vents into an existing property that was of standard construction for its type and age.

184) We were however satisfied that the ceiling collapse was an avoidable issue and that the Tenant suffered inconvenience as a result of this. We were further satisfied that the Landlord was not as diligent as he wished to portray himself. There was clearly a history of references to Environmental Health and Mr Cunningham referred to occasions when the Tenant would contact him because the Landlord was not responding. Further, the Tenant's email to the Landlord of 15 May 2013 and the Landlord's letter to the Tenant of 5 February 2015 both included reference to lists of work that the Tenant sought carried out. The 2013 email specifically makes clear that the Tenant held there was a delay in some being completed. What little correspondence there was did support the Tenant's position that the Landlord did not immediately address intimation of problems at the Property and resolve them "within a reasonable time" (per the 2006 Act). Whether the Landlord's conduct was as poor as the Tenant sought to portray was not something that we held to be firmly proven, but we do think that on the balance of probabilities the Tenant was inconvenienced by slow repairs or non-repairs during the course of the Tenancy and very much inconvenienced by the ceiling collapse. Whether a quicker response to queries about the ceiling could have resolved matters, we are unable to determine fully as we are unable to determine the cause of the ceiling collapse. We award the Tenant £1,500 in regard to periods of inconvenience in regard to slow repairs but principally to the ceiling collapse (as some earlier periods would have prescribed). In coming to this figure, we are conscious that no rent was due for the period from 1 April 2019 onwards, so there is already £157.50 discounted against rent for 1 to 9 April 2019 when the Tenant was living with the bulging ceiling, but prior to the collapse.

Conclusion

185) We thus make a decision to award the sum of £5,755.22 against the Tenant, being the rent arrears of £3,720.42 plus the damages claimed by the Landlord of £4,034.80, less the sums that the Tenant is entitled to in damages of £500 (damage to belongings after the ceiling collapse) and £1,500 (inconvenience) which we set off against the sums due to the Landlord.

186) In regard to interest, we heard no material submissions on this, but will award at the contractual rate from the date of this decision.

187) No motion on expenses has been made. We make no finding in regard to expenses at this time, but will entertain any motion submitted within 28 days of the date of this Decision.

Decision

188) In all the circumstances, we were satisfied to make the decision to grant an order in CV/20/0724 in favour of the Landlord against the Tenant for payment of

£5,755.22 with interest at 4% above the base rate from time to time of Bank of Scotland from the date of this decision until payment.

189) We formally refuse the orders sought in CV/20/2206 as we have treated any sums due under the claims in that application as sufficiently compensated by the sums applied against the Landlord's claim in CV/20/0724.

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.

J. Conn

6 February 2023

Legal Member/Chair **Date**