Housing and Property Chamber
First-tier Tribunal for Scotland

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

Chamber Ref: FTS/HPC/CV/22/4356

Re: Property at 20 Earn Gardens, Larkhall, ML9 1QG ("the Property")

Parties:

Mr James Doherty, 12 St Bryde Street, The Village, East Kilbride ("the Applicant")

Ms Becka Preston, Lesley Bell, 20 Earn Gardens, Larkhall, ML9 1QG ("the Respondent")

Tribunal Members:

Petra Hennig-McFatridge (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that a payment order for the amount of £ £2,144.28 by the Respondents to the Applicant together with interest thereon at the rate of 8 % from the date of the decision of the First-tier Tribunal should be granted.

A: BACKGROUND:

[1] The application for an order for payment of rent arrears under S 71 of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act) arising from a Private Residential Tenancy Agreement between the parties was made by the Applicant on 7.12.2022. The amount claimed in the application was £1,275. The application was amended initially on 30.1.2023.

[2] The following documents were lodged in support of the application:

- The documents lodged as narrated in the note of the Case Management Discussion (CMD) on 27 March 2023.

- The documents contained in the Applicant's bundle lodged on 8 May 2023 paginated and indexed.
- The documents contained in the Applicant's bundle lodged on 18 April 2023, which regrettably, despite clear instructions from the Tribunal at the CMD, was not marked with page numbers and which did not contain an index.
- Letter from South Lanarkshire Council (SLC) dated 2 June 2023 and witness details lodged by the Respondents under the wrong reference number prior to the hearing. These were identified as relevant to the case on 19 June 2023 and crossed to the Applicant.
- 2 emails from Applicant in response, both dated 19 June 2023.

[3] Documents which were discussed at the hearing and which have clearly been brought to the attention of the Tribunal in regard to their relevance and content are all referred to for their terms and held to be incorporated herein. Photographs referred to by the witnesses, which were referred to at the hearing, were duly taken into account.

Photographs which were not referenced at the hearing could not be taken into account by the Tribunal due to the poor quality of said black and white photographs and the lack of any explanation as to what they relate to. Their meaning remains unclear. Thus these photographs have been accorded no weight in reaching the decision. It was the responsibility of the Respondents to lodge the productions in accordance with the clear direction issued at the CMD. They did not do so. They did not produce an index or page numbers on productions.

B: THE HEARING

[4] The Applicant attended the hearing. He confirmed that there were no witnesses to give evidence on his behalf. Both Respondents attended together with Mr Bird from Hamilton CAB. Ms Bell stated she did not wish to speak at the hearing. The father of Ms Preston, Mr Lee Fleming, gave evidence on behalf of the Respondents during the hearing.

1. Preliminary Matters:

[5] The legal member explained the purpose and format of the hearing.

a) The amount sought in the payment action was reduced by Mr Doherty to £1,819.28 rent arrears, reflecting the payments which had been made towards the arrears via direct Local Housing Allowance payments to the landlord. The amount of unpaid rent was not disputed by the Respondent. The Tribunal allowed the amendment.
b) Mr Doherty clarified that the amount sought for 44 reminder letters issued to the Respondents was £1,100. Mr Doherty subsequently agreed that the two first reminder letters of 3 January 2020 and 5 October 2020 contained in the application should be disregarded. The amount was updated to £1,050.
c) Mr Bird stated that Ms Preston would speak mainly to the problems with the property and the withholding of the rent. Mr Fleming would speak mainly to the issues of LHA payments and the discussion about the repairs.

2. Representations from Mr Bird on behalf of the Respondents:

[6] Mr Bird stated that the charges for reminder letters were an illegal premium. There was not provision in the Scottish Government Model Tenancy Agreement for such charges and the only additional allowed charge was the deposit of up to 2x the rent amount. If the Tribunal was not of that view, then the Tribunal should consider it was an administration fee which was not permitted as per the case he had lodged. Apart from that the amount of 44 letters for the period from October 2022 to the present day was excessive.

The relevancy of the LHA situation was contained in his written submissions. The interval of LHA payments was 4 weekly, the interval for the rent payments monthly. There was a theoretical shortfall each month but this would ultimately be made up by the 13th LHA payment during the year and the discrepancy in the relevant payment intervals explains the difference in the amount of £507.68 LHA and £550 rent.

The reasons for withholding the rent were the issues with the boiler system and the door. The most recent letter from SLC showed clearly that there were issues with the door. Mr Fleming's solicitors had advised the Respondents to withhold rent for these serious issues. This had been correctly intimated. Mr Fleming was acting as the Guarantor for the lease and in his capacity as a father to Ms Preston.

Mr Bird confirmed that after Mr Doherty had responded to requests for urgent repairs in December the only outstanding matters were and are the door and the boiler programmer. Although the CAB does not recommend withholding rent, it is the tenant's right to chose to do so although he as a lay representative cannot express an opinion on the matter as the choice predated his involvement.

With regard to the intimation of the necessary repairs Mr Bird stated these were made in the emails of 10 December 2020 in an email to A Campbell at 11:23 hours mentioning "replacement of front door", 12 December 2021 from Mr Fleming to Eric regarding work to be done before the cold weather. On 13 December 2021 Mr Reid had then stated there was no obligation, it was a functional door." but as a gesture of goodwill they would try to obtain one", not giving a timescale.

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3. Oral Evidence

[7] The Tribunal heard oral evidence from Ms Preston, Mr Fleming and Mr Doherty. No other witnesses were presented by either party. Both parties had been given the opportunity to cross examine the witnesses giving evidence on behalf of the respective other party. The evidence is dealt with under the headings below.

C: FINDINGS IN FACT:

[8] Based on the written and oral evidence the Tribunal makes the following findings in fact:

1. The parties entered into a Private Residential Tenancy over the property which commenced on 25.9.2019.
2. The monthly rental charge is £550 payable in advance on the 25th day of the month.

3. The tenancy is ongoing.
4. The last rental payment made by the Respondents was made on 25.9.2022.
5. The rent statements show the payments made accurately.
6. The amount of unpaid rent as of the date of the hearing was £1,819.28. This takes into account the Local Housing Allowance (LHA) payments received directly by the Applicant.
7. Following the decision dated 7.2.23 of South Lanarkshire Council (SLC) to pay LHA directly to the landlord, payments are made on a 4 weekly basis by the Council to the Applicant.
8. The Private Residential Tenancy agreement contains in Section 4 clause.8 (4/8) a provision stating that "Interest on late payment of Rent may be charged by the Landlord at eight per cent per year from the date on which the Rent is due until payment. In the event the Tenant fails to pay the Rent (or any part thereof) within seven days of the date on which it fell due and the Landlord or the Letting Agent requires to issue a reminder or reminders, then the Tenant shall pay £25 plus VAT per reminder, representing the cost of issuing said reminder or reminders."
9. The Applicant wrote 42 reminder letters to the Respondents in the period of 1.11.22 until 2.5.23. These were dated 1.11.22, 8.11.22, 22.11.22, 29.11.22, 6.12.22, 13.12.22, 20.12.22, 27.12.22, 1.1.23, 3.1.23, 6.1.23, 10.1.23, 14.1.23, 18.1.23, 21.1.23, 25.1.23, 28.1.23, 4.2.23 x 2, 7.2.23, 10.2.23, 14.2.23, 17.2.23, 20.2.23, 24.2.23, 28.2.23, 3.3.23, 7.3.23, 10.3.23, 14.3.23, 17.3.23, 21.3.23, 24.3.23, 28.3.23, 31.3.23, 4.4.23, 7.4.23, 11.4.23, 14.4.23, 17.4.23, 21.4.23, 25.4.23, 2.5.23,
10. For each such letter a charge of £25 was made. No VAT was charged. The Applicant's Letting Agent (LA) Concept Property Ltd is not VAT registered.
11. The letters of 18.1.23, 21.1.23, 23.1.23 and 25.1.23 were all sent together in one envelope.
12. The letter on 1.11.22 was sent on the 7th day of rent falling due.
13. At some point in December 22 the Respondents paid an unspecified sum of money into a bank account with Santander. The Account number and name were not provided to the Applicant and the Tribunal.
14. On 6.3.23 said account held a positive balance of £2,244.36.
15. The property is heated by gas central heating. Each radiator has a thermostatic valve to control the temperature. The boiler can be turned on and off at the boiler control on the boiler.
16. The boiler did not come with a wireless programmer. A wireless programmer is an optional function for the gas central heating system.
17. No wireless programmer for the boiler was provided to the Respondents.
18. The Respondents repeatedly and consistently over the period of about 2 years requested provision of a programming unit for the gas central heating system.
19. The gas central heating functions without a programmer. It can be turned on and off and temperature control is achieved through the individual thermostatic valves.
20. The thermostat for the 3 upstairs radiators had become stuck due to lack of use at some time in the winter of 2022/2023. This was repaired by the landlord by using a lubricant on the valve mechanism around 27.12.22.

21. On 27.12.22 and 29.12.22 the landlord carried out various further emergency repairs in the property relating to a faulty shower and tap. He and his wife had access to the property on these occasions.
22. A wireless programming unit for the boiler costs approximately £187. A cheaper generic alternative costs approximately £40.
23. The Applicant had agreed to a goodwill gesture of providing a programming unit and then advised the Respondents he would no longer be prepared to provide this.
24. The external front door is a wooden door with a single glass pane.
25. When the tenancy commenced the external front door was already present.
26. There is a visible gap between the bottom of the door and the floor.
27. The paintwork of the door is cracked in places.
28. The door is equipped with a lock. There is excessive play in the door handle.
29. The corridor leading away from the front door is equipped with a radiator.
30. On 11.4.23 David Forbes from South Lanarkshire Council Community and Enterprise Resources visited the property and observed that the external door paintwork was worn and cracked around the timber panels of the lower half of the door and there was excessive play in the door handle indicating that the door has not been installed properly or requires repair/maintenance to allow it to close properly.
31. Condensation appears at times during cold spells on the inside of the external door caused by the temperature difference between the heated space in the hallway and the cold temperature outside meeting at the single glass pane area of the external door.
32. The gap under the external door allows a draft to enter the house when weather conditions are particularly windy.
33. If a fabric draft excluder is used moisture from under the door and from the condensation on the inside of the door leads to this becoming wet and ultimately becoming mouldy. There are specs of mould on the door.
34. The Respondents repeatedly and consistently over the period of 2 years requested replacement of the external door.
35. The Applicant had initially agreed to provide a reconditioned front door once one became available.
36. Following other work carried out on the property, such as roughcasting the outside of the building, the Applicant no longer agreed to provide a reconditioned door.
37. A repair costing approximately £100 is required to address the repair issues for the external front door raised in the letter by SLC dated 2.6.23.
38. This repair is still outstanding.
39. On 6.11.22 Mr Fleming intimated to the LA that no further rent would be paid.
40. On 17.11.22 Mr Fleming stated this was due to a replacement programming unit for the boiler not being provided and the front door not having been replaced.
41. On 1.12.22 Mr Doherty advised the Respondents he was seeking access to investigate the matter.
42. He received no reply to this request.
43. On 19.12.22 the solicitor for Mr Fleming wrote to the LA intimating the property was not wind and watertight.

44. During Mr Doherty's attendance at the property for emergency repairs on 27th and 29th December 22 the matters of the boiler or the front door were not discussed between the parties.

D: Reasons for Decision:

[9] Both parties in this case would have benefitted from legal representation. The Respondents unfortunately did not comply with the very detailed request and explanation at and after the CMD for compiling the bundle of their documents and photographs with page numbers and an index. These circumstances made it difficult at the hearing to establish which productions the Respondents referred to and what the photographs in particular were meant to show. The representations of both parties were vague and with regard to the issue of withholding rent neither party had prepared any researched legal submissions underpinning their general representations.

The following matters were considered by the Tribunal as relevant to the application:

I: Does the provision allowing the charge of £25 plus VAT for reminder letters in clause 8 of the PRT agreement constitute a prohibited premium or administration fee?

[10] Applicable law:

Rent (Scotland) Act 1984 S 82 Prohibition of premiums and loans on grant of protected tenancies.

(1) Any person who, as a condition of the grant, renewal or continuance of a protected tenancy, requires the payment of any premium or the making of any loan (whether secured or unsecured) shall be guilty of an offence under this section.

(2)Any person who, in connection with the grant, renewal or continuance of a protected tenancy, receives any premium **F2**... shall be guilty of an offence under this section.

(3)A person guilty of an offence under this section shall be liable to a fine not exceeding level 3 on the standard scale.

(4)The court by which a person is convicted of an offence under this section relating to requiring or receiving any premium may order the amount of the premium to be repaid to the person by whom it was paid.

Rent (Scotland) Act 1984 S 90 Interpretation of Part VIII.

(1)In this Part of this Act, unless the context otherwise requires—

- “furniture” includes fittings and other articles;

- “premium” means any fine, sum or pecuniary consideration, other than the rent, and includes any service or administration fee or charge;
- “registered rent” means the rent registered under Part V of this Act; and
- “rental period” means a period in respect of which a payment of rent falls to be made.

(2)For the avoidance of doubt it is hereby declared that nothing in this Part of this Act shall render any amount recoverable more than once.

(3)For the avoidance of doubt, it is hereby declared that a deposit returnable at the termination of a tenancy or of a Part VII contract given as security for the tenant’s obligations [F2for rent,] for accounts for supplies of gas, electricity, telephone or other domestic supplies and for damage to the dwelling-house or contents is not a premium for the purposes of this Part of this Act provided that it does not exceed the amount of two months’ rent payable under the tenancy or under the Part VII contract, as the case may be.

Private Housing (Tenancies) (Scotland) Act 2016 S 20 No premiums, advance payments, etc.

(1)Sections 82, 83 and 86 to 90 of the Rent (Scotland) Act 1984 apply in relation to a private residential tenancy as they apply in relation to a tenancy of the kind to which those sections refer.

(2)But—

(a)section 83(5) of that Act is to be ignored,

(b)the date mentioned in section 88(1) of that Act is to be read as if it were the date on which this section comes into force.

Discussion:

[11] Mr Bird referred the Tribunal to the case of Michael Cross and others v Aberdeen Property Leasing, by Sheriff Lewis, Sheriffdom of Grampian Highland and Islands at Aberdeen, SA431/13. He argued that the provision is either a premium or in any event a forbidden administration fee as it requires payment of amounts other than rent and a deposit.

Mr Doherty stated that he considered the clause to be a contractual clause agreed by both parties and had no knowledge about what a premium or administration fee meant in the context of Mr Bird's representations.

[12] The Tribunal considered that the charge in terms of clause 8 of the tenancy agreement was not a prohibited premium or administration fee in terms of S 82 of the Rent (Scotland) Act 1984 as this required the payment of said premium to be charged ***as a condition of the grant, renewal or continuance of a protected tenancy.*** It is clear that no payment was required as a condition of the grant, renewal or continuance of the tenancy. The provision in clause 8 only would become relevant is after the tenancy had been granted payments of rent were made more than 7 days late. The reference to administration fees in the case referred to by Mr Bird related to fees charged prior to the tenancy starting and essentially constituted an additional charge that had to be paid if the tenant wished to enter into a lease. The provision in clause 8, however, could not possibly lead to charges prior to the tenancy commencing. As a PRT is a

continuing contract there is no renewal of a PRT. The £25 charge stipulated in clause 8 is also clearly not a matter that determines the continuation of the tenancy. Thus the provisions of S 82 and 90 of the Rent (Scotland) Act 1984 do not cover the provision of a charge for rent reminders as set out in clause 8 of the PRT between the parties.

II: Was the Applicant entitled to charge 42 reminder letters in terms of clause 8 of the PRT in the relevant time period?

[13] Mr Doherty stated that his view was that the payment frequency and the fact that payment was due monthly in advance on a certain date in the tenancy agreement put the onus on the tenant to ensure the payments were made accordingly regardless of the LHA payment frequency. Mr Doherty stated that the text for the tenancy agreement was taken from the Scottish Letting Professionals website. This included the wording of clause 8 regarding 8% interest being charged on late rent and the reference to "In the event the Tenant fails to pay the Rent (or any part thereof) within seven days of the date on which it fell due and the Landlord or the Letting Agent requires to issue a reminder or reminders, then the Tenant shall pay £25 plus VAT per reminder, representing the cost of issuing said reminder or reminders." He stated he was undercharging as he did not charge for the VAT because he was not VAT registered. However, he also stated that he agreed that the frequency with which the letter were issued may have been somewhat overzealous although he did not agree the frequency may cause someone distress. He would leave it in the hands of the Tribunal what the Tribunal considered a reasonable frequency. He thought that 2 letters per month may be appropriate. The problem was that there was no response to these letters from the tenants.
He also would not be seeking the 8% interest from the time the arrears arose but only the interest which the Tribunal is able to award in terms of rule 41A at the rate of 8% per annum.

[14] With regard to the reminder letters Ms Preston stated she has mental health issues and sometimes 4 to 5 of these reminder letters per month would arrive in the same envelope and be dated about 3 days apart, each asking for a further £25. The lease did not say how frequently these could be sent. She considered 1 letter per month would be appropriate if the rent was not paid on time.

[15] Both parties actually agreed at the hearing that the issuing of letters in 3 day intervals was excessive. Mr Doherty stated that the frequency of the reminder letters was not stipulated in clause 8 and that he would leave it to the Tribunal to say what this should be whilst stressing that there was no reply to such letters by the Respondent. He was prepared to accept a frequency limit of 2 letters per month.

[16] Ms Preston pointed out that several letters would frequently arrive in one envelope. This was evidenced by the photograph of the envelope and letters attached to the email to her father dated 8.2.23 at 14:05 hours. The the Tribunal accepted that at least on that occasion 4 letters were sent in one envelope. Generally the letters appear to be dated in 3-5 day intervals and these continued after the Applicant raised the proceedings with the Tribunal and the acceptance of the application had been intimated to Mr Doherty on 31.1.23.

[17] The wording of clause 4/8 contains the reference to circumstances in which "the Landlord or Letting Agent requires to issue a reminder or reminders". The Tribunal's understanding of this wording is that the term "required" indicates that letters require a purpose, namely to remind the tenant of the outstanding rent and the need for payment of same. If 4 of these letters arrive in one envelope, as was the case in early February 2023, then the first 3 of these letters could not have been "required" because they did not reach the Respondents until the Respondents received the 4th letter and thus clearly did not serve any purpose other than adding further charges for the tenant. Similarly, letters sent in 2-3 day intervals even in the absence of a reply would not serve a purpose other than to create further charges as they would not give the tenant sufficient opportunity to actually reply to the letter.

[18] The Tribunal considered that once the Applicant had raised proceedings with the Tribunal demanding payment for outstanding rent this would also limit the requirement for frequent rent reminder letters at the rate of 5 letters per month as the pending payment action served both as a reminder for the Respondent of the alleged outstanding arrears and as an incentive to pay said arrears to avoid an order for payment being granted. Letters in 2 or 3 day intervals at that stage of the dispute were not required.

[19] In light of this the Tribunal considered that whilst the clause itself was not either excessive or prohibited, the charge of a total of £1,050 was not covered by said clause. The Tribunal accepted that, as put forward by the Applicant, reminder letters at a frequency of 2 per month would be meaningfully required in terms of clause 4/8 to keep the tenant up to date with the relevant arrears figure and emphasise the need for payment. The Tribunal noted that the letter dated 1.11.22 was sent on the 7th day after rent due date on 25.10.22 and thus before the Letting Agent could know whether payment would be made within 7 days because the 7th day had not expired.

[20] The Tribunal thus outright disregarded the letter of 1.11.22 as sent too early and the letters of 18.1.22, 21.1.23 and 25.1.23 as these were clearly sent together with the letter of 28.1.23.

[21] The Tribunal allowed the charge for letters under clause 4/8 of the PRT agreement for the remaining period limited to the requested frequency by the Applicant, namely 2 per month up to and including letter on 2.5.23, which was the last letter provided in evidence and thus arrived at a chargeable amount of 13 letters at the rate of £25 amounting to a total chargeable amount of £325.

III: Are the Respondents obliged to make payment of the currently unpaid rent amount of £1,819.28 as at the date of the hearing?

[22] There is no dispute that the amount of £1,819.28 rent currently remains unpaid. The Applicant has discharged the initial burden of proof that the amount is due and outstanding.

[23] The Respondents claim that the amount is not due because they legally were entitled to withhold that amount of rent due to the Applicant not having fulfilled the contractual obligations of keeping the property wind and water tight.

Ms Preston stated that at present she and her partner pay the difference between the 4 weekly housing benefit payments and the monthly rent into the separate bank account they had opened for the withheld rent. The account at present has currently £2,374.96 plus some small interest amount in it.

She stated she had a good rapport with Eric and Jim. It was her father who decided rent should be withheld and that caused a lot of aggravation. Her partner does not deal with that kind of thing. Ms Preston stated she has 4 children, one of them autistic, and her mental health was not good so her father became a strong part of the communication. She cannot speak for her Dad. There was her father on one side and the LA and LL on the other and she felt she was in the middle and had no control over the situation. Kevin represented her until January but could not act for her in this case and so she tried to find other lawyers and contacted the CAB.

Ms Preston stated lawyers intimated in early November 2022 to Concept Properties that the rent would be paid upon conclusion of the wireless programmer being provided and the door. It was never about the value of the repairs. She was told to withhold rent and pay it into a separate account and she did that. The withholding was only for the door and the boiler, none of the other repairs. When there was a problem with the hot water Mr Doherty and his wife came on 27th and 28th December 2022 and this was dealt with. At that time she did not speak to Mr Doherty about the door because this was not her priority at the time. She said she had asked him before but he had just referred her to Eric.

[24] Mr Doherty was very firmly of the opinion that there was no right for tenants to withhold rent regardless of the circumstances. He provided no legal basis for this assertion and confirmed he had not obtained any legal advice on the matter. He had only found a reference to this on the CAB website and lodged a copy of that screenshot.

Mr Doherty stated he is a qualified surveyor and Letting Agent and owns Concept Properties Letting and also has a maintenance business. Mahmood is a self employed gas engineer who did some work for Concept Lettings. Mr and Mrs Reid and Eric Fraser are employees of Concept Lettings. Mr Doherty stated he sometimes does repairs himself and does not introduce himself as the landlord to avoid abuse from tenants. In this instance he did not state he was the handyman, the tenants just assumed that.

Mr Doherty queried the amount withheld having any relation to the amounts of potential repairs involved. Before the LHA payment rent of £3,300 had been withheld. This was excessive in light of the issues. It was a huge financial loss to him and would have gone on indefinitely had he not raised the application because the tenants would not have the matter resolved by the Tribunal. Mr Doherty stated he did not obtain legal advice but he thinks that there is no legal principle allowing withholding rent and the Tribunal is the path to take for tenants. If they had a disagreement they could have gone to the Tribunal and he had advised them repeatedly that they could and should do that if they disagreed. He gave them the correct advice but Mr Fleming then wrote to his solicitor and said to ignore the Tribunal. The tenants and Mr Fleming went everywhere, to solicitors, to the Council but did

not follow the correct process to bring this as a repairs case to the Tribunal, which would quickly have resolved the issues.

[25] The Tribunal would direct the parties to the case Stobbs v Hislop 1948 SC 216 in which Lord Russell said that in a case concerning a residential tenancy: " It was, in my judgement, an implied condition of the contract that the landlord should, during the tenancy, maintain the house in tenantable condition, i.e. reasonably fit for human habitation and wind and water tight. On a breach by the landlord of that implied condition the tenant might resort to an equitable remedy recognised by the general law - for the purpose of compelling the landlord to make the house habitable and as a security for satisfaction of any claims for damages to be proffered by the tenant - by withholding payment of the rent and continuing the occupation. ... Its exercise is, however, always controlled by the Court and regulated by reference to equitable considerations in the light of the circumstances of each case. " Because the tenant's retention of rent is an equitable remedy, which is controlled by the court, it has to be satisfied that the remedy is being exercised in good faith.

[26] Adrian Stalker in Evictions in Scotland, 2nd edition on p 282-283 addresses the issue of whether this general equitable remedy survives the introduction of the remedy for breach of repairing standards under sections 13 and 14 of the Housing (Scotland) Act 2006 with its own procedure before the First - tier Tribunal which may result in a rent relief order. He concludes "However, the 2006 Act does not displace the contractual repairing obligations that are implied at common law, or any such obligations that are expressly set out in the parties' contract. Where the landlord is in breach of those oblations, there seems to be no reason why the tenant cannot insist on the right to withhold rent and thereafter to claim an abatement and damages as described in Chapter 5, subject to the tribunal's equitable jurisdiction already described."

[27] The application of the equitable remedy of withholding rent thus is not excluded by the existence of statutory procedures and remedies, which would also be open to the tenant.

Thus the matter is not as open and shut as stated by Mr Doherty. Whilst the Tribunal acknowledges that he had encouraged and signposted the Respondents at various stages of the correspondence to the option of involving the Tribunal in terms of an application under the repairing standards provisions, this alone is not sufficient to extinguish the equitable right of the tenants arising out of mutual contractual obligations in the tenancy agreement.

[28] As this is a defence put forward by the Respondents, however, the burden of proof of any matters relating to that defence then rests on the Respondents.

Unfortunately the presentation of said arguments were, due to the lack of legal representation of the parties, rather unstructured. The Tribunal concluded from the documents lodged that the reason why the Respondents considered they were entitled to withhold rent was that the solicitor employed by Mr Fleming, Mr Hughes, had told them that this was his advice.

[29] Mr Fleming stated he advised Concept Lettings about the issues regarding withholding rent on 6 November 2022 after the consultation with his solicitor. Because the initial LHA

decision was in their favour he thought then that it was not necessary to go to the Tribunal for a repairs case. After that Mr Doherty had raised his application. The solicitor had said to keep the rent in a separate account and this is being done. There is no question that the rent has to be paid once the repairs are done.

[30] The Respondents lodged the email of 6.11.22 from Mr Fleming to the LA advising no further rent would be paid. The LA then queried what the reason for this was and the Respondents lodged the email of 17.11.22 at 14:25 hours stating this was with regard to the thermostat requiring replacement and replacement of sub- standard front door. The Respondents further produced the email of Messrs Goldsmith & Hughes Solicitors dated 19.12.22 at 10:49 hours which stated Our client has been advised that the property is not wind and watertight and that the tenant is currently withholding her/their rent until essential work is carried out by your company. The email advises that all further correspondence is to be directed to the solicitors. The reply email on 19.12.22 at 13:09 hours then advises the solicitors that "We wish to record the fact that we have requested access to investigate the alleged repairs but we have had no response to this request. Furthermore we are not aware of the property not being wind and watertight and we obviously cannot rectify any alleged issues when we are denied access."

[31] It is clear from the written representations of Mr Bird and from the statements above that the issue of abatement of rent is not being contemplated and that the only matters for which the Respondents thought rent could be withheld are the boiler and the door.

b) Was the boiler in proper working order?

<u>i. Representations and evidence:</u>

[32] Ms Preston stated in evidence she needs to be able to programme the boiler as it is costing them a lot extra without that. Her father had asked someone to telephone or email but that was never taken up. With regard to the boiler, the gas engineer had told them that there should be a mobile programmer for the boiler Mahmood, the gas engineer, told them to say there is a thermostat option which costs £30 to £40.. There was no manual for the boiler. A few months after the start of the tenancy they informed Eric about the missing manual and programmer. Eric said the LL would not like that. Eric said it was there and the previous tenants may have taken it. Ms Preston explained that whilst she can turn the boiler on and off at the boiler she cannot programme the heating and hot water coming on and off at intervals. They don't have a handheld thermostat. At the gas safety inspections they were told 3 times that the programmer was missing and thus the boiler was incomplete and not fully functioning. Her solicitor Kevin said the certificate said mobile control missing. She confirmed that she has not provided a letter from a gas engineer and has not called Eric as a witness.

[33] Mr Fleming's evidence was His main issue was not the door but the boiler.
2 gas service reports raised the issue of the central heating programmer. He had an independent gas engineer come to the property who gave a negative report because without the programmer it is impossible to set heating timings. The pre programmed timings could be overridden by a qualified engineer but then the boiler would be on all the

time. You can set temperature on the boiler but it is inefficient. The state of the boiler and the door contravene clauses 18 para 3.3 and 18.9 para 1 of the tenancy agreement. When he then asked his solicitor the solicitor read the correspondence and advised them to withhold rent. Mr Fleming confirmed that no gas engineer report was lodged in evidence but his email of 5 June 2022 at 13:39 to Concept Lettings states what the gas engineer had told him. He then advised Concept Lettings about the issues regarding withholding rent on 6 November 2022 after the consultation with his solicitor. Because the initial LHA decision was in their favour he thought then that it was not necessary to go to the Tribunal for a repairs case. After that Mr Doherty had raised his application.

[34] Mr Fleming stated that he had sought a telephone call or meeting but this was never done. He stated he became embroiled in sending emails. They could have spoken and agreed and this would not have become necessary. When Mr Doherty asked him why they disregarded the tenancy agreement's clause stating to have disputes resolved by the Tribunal Mr Fleming stated he was naive enough to think Mr Doherty would agree. When asked by Mr Doherty why there was no reply to the LA's email on 1 December 2022 requesting access, which is when he was trying to resolve matters, Mr Fleming stated this should have come from his solicitor. He had seen the email. He never meant not to grant Mr Doherty entry. As far as he could see there was a piece of equipment missing from the boiler, which would not be a repair. Had this been dealt with 2 years ago there would not have been a problem. Without the programmer it was expensive to heat the house and the landlord should cover the power bill. He never had to get involved before for his daughter. If Mr Doherty had access to the property in late December for other repairs, why would he then not look at the boiler issue.

The programmer was a fundamental piece of kit. Without that it is either on or off and it is not modern central heating. The Gas Service Engineer said it was needed. Mr Fleming stated there had been an email to Concept Lettings on 1 June 2022 with a link to the Woolsey Thermostat website and on 21 November 2022 Kevin Hughes had written to Concept Lettings to explain the issue.

[35] Mr Fleming referred to the requirements in the tenancy agreement at 18 paragraph 3 bullet point 3 and 4 that "Installations for supplying water, gas and electricity and for sanitation, space heating and heating water must be in a reasonable state of repair and in proper working order. Any fixtures, fittings and appliances that the landlord provides under the tenancy must be in a reasonable state of repair and in proper working order." and 18.9 "The Tenant undertakes to notify the Landlord as soon as is reasonably practicable of the need for any repair or emergency. The Landlord is responsible for carrying out necessary repairs as soon as is reasonably practicable after having been notified of the need to do so." His argument was that Eric, the employee of Mr Doherty, had stated that a programming unit existed and may have been taken away by previous tenant. The Tribunal notes that Mr Eric Fraser, the person referred to, was not called as a witness by the Respondents and there is no documentary evidence that such a programming unit either was ever present in the property and/or was required for the proper use of the gas central heating system.

[36] Mr Doherty stated he would still be willing to discuss a goodwill gesture of providing a wireless remote for the boiler, which might cost around £187. His goodwill offers before had been withdrawn because the goodwill disappeared fast in the circumstances.

His evidence regarding the boiler was that there are thermostatic valves on every radiator and the temperature can be controlled in the whole house with these. When he attended the property around Christmas 2022 he was told by the tenants that the radiators upstairs did not work but when he lubricated the valves these had just been stuck due to lack of use. The tenants had told him they never use the upstairs radiators because it is too hot otherwise. He stated the individual temperature controls on the radiators are far superior to a central thermostat and a programmer is not necessary. It may be for more recent types of boilers after 2019. Ms Preston operated the hearing fine for years herself. The boiler was an Alpha Intec 28X, the manual was on the internet. He had the house for 20 years and there has never been a thermostat. All previous tenants used it easily. There never was a handheld programmer and it is not a legal requirement. Tradesmen say things to make a profit. Despite this he had offered on 1 December 2022 to go and to look at repairs issues but had not received a reply to allow him access. He could not understand why rent was still being withheld. If repairs are required he will do them but he stated these were not necessary.

[37] The landlord clearly states that there was no additional programming unit and that none ever existed for this boiler. In emails between the parties such as on 13 May 2022 at 16:41 hours the LA had advised that the boiler never had a wireless programmer and that it can be controlled from the controls on the front of the boiler. The manual would be available online and could be provided if this was a problem. On 6 June 2022 at 14:23 the LA wrote to Mr Fleming "On reading the manual your daughter will see that it clearly states that a wireless remote programmer is optional, that means it is not mandatory and therefore not necessary or required to operate the boiler. "

[38] References in the email exchanges to goodwill gestures to provide such a programming unit contemplated by the Landlord, which were referred to by the Respondents, show the position of the Applicant that such a unit was not required or ever provided.

ii: Discussion:

[39] The evidence from Ms Preston and Mr Doherty is that the boiler is working and that the house is warm in winter. It is not disputed that thermostatic valves are fitted to each radiator allowing temperature control and that the radiators are sufficient to heat the property. Indeed the upstairs radiators had not been used due to the property otherwise becoming too warm even in the winter, which had been described by Ms Preston as a very hard winter. The boiler can be switched on an off if required and the only matter they criticise is that there is no unit available to programme on and off times.

[40] Neither Ms Preston nor Mr Fleming provided any documentary evidence to show that either to meet a repairing standard or as an integral necessary part of the specific boiler type a programming unit was required and that without this the boiler would not be in

proper working order. Although both referred to several visits from gas engineers, no report from a gas engineer regarding the boiler function was submitted.

[41] In an email to the LA on 15.5.22 at 15:45 Ms Preston wrote: "I have personally contacted the boiler manufacturer for replacement parts and have been informed by them that the boiler is supplied with a wireless programming thermostat. There is no option to manually programme the boiler as it is a optional installation at this point." No documentation was produced from the manufacturer to confirm this. In the same email she referred to Mahmood, the gar engineer, advising her that a replacement wireless programming thermostat would cost £180 plus VAT and that Mahmood had contacted Eric about this and Eric had asked Mahmood to seek a cheaper option and he would speak to the Landlord. Neither Eric nor Mahmood were called as witnesses by the Respondents and neither provided written evidence to confirm these statements.

[42] Even considering the statements in said email, neither the activities of Mahmood as described nor the information from the manufacturer as described actually evidence that the boiler without such a programming unit is not in proper working order. It may be desirable for the Respondents to have a mechanism of programming the boiler times but the evidence provided does not show that such a programming unit is an essential part of the heating system without which it would be considered faulty or deficient.

[43] A further email from Mr Fleming to the LA of 5 .6.22 at 13:32 quotes the Gas engineer as having made certain findings. However, again, none of these were produced as a document to the Tribunal.

[44] In the absence of any documentary evidence from either a gas engineer or the manufacturer that the boiler is not in proper working order without a programmer the Tribunal is faced with the clear statement from Mr Doherty and the LA that the boiler neither requires nor ever had a wireless programmer and the statements from Ms Preston and Mr Fleming that this programmer was mentioned by Eric Fraser as having been taken by previous tenants when Ms Preston moved in and the manufacturer and several gas engineers having advised them of the necessity of such a programmer. The evidence of Ms Preston and Mr Fleming regarding the wireless programmer being required is based at best on hearsay from third parties who may have given them their view on what constituted the correct functioning of the boiler. Despite better evidence allegedly being available, such as the gas engineer report and direct evidence from either Mr Fraser or the gas engineers, these had not been introduced in the proceedings. The Tribunal considered that the evidence from Mr Fleming and Ms Preston alone with regard to the boiler issue was insufficient to evidence that the condition of the boiler, due to the alleged missing programming unit, was such that it would be not in proper working order. Neither has specialist knowledge in that area and neither would know with which parts the original boiler was delivered. The statements from the gas engineer and from Mr Fraser as well as from the boiler manufacturer are hearsay. Without being able to ask Mr Fraser, the Tribunal does not know whether he actually made the statement that the programmer was missing and had been removed and how, if at all, he had been made aware of such a circumstance.

[45] On the other hand Mr Doherty has been renting the property out for many years and is fully familiar with the boiler's operation. His evidence from his own direct observation is that the boiler was not equipped with a wireless unit and that such a unit would have been optional. The Tribunal preferred his first hand evidence.

[46] The burden of proof for any defect rests on the Respondents. The Respondents had the option of providing clear expert and first hand evidence about the requirements for the proper functioning of the boiler and did not do so. On balance the Tribunal considered their evidence was insufficiently reliable to find that the boiler was not in proper working order and that rent could be withheld on that basis.

c: Was the door in proper working order?

i: evidence and representations:

[47] Whilst Mr Fleming stated in his evidence that he was primarily concerned about the missing programmer for the boiler and less so with the issue of the external door, Ms Preston stated that her main concern had been the state of the external door.

[48] Her evidence was that she had spoken to Eric when they moved in that the door needed painted and had only a single pane of glass. He had said that someone had been employed to undertake work and to source a 2nd hand door in 2019. They were told it would be changed once it came into stock. The person would also paint the house. Something happened and that never took place. Painting and roughcasting work was done in 2020. The tenants were aware of a handyman, Jim, who now turned out to actually be the landlord Mr Doherty. He had never disclosed that information to the tenants. Jim had used WD40 to "un-stick" the lock mechanism, which had previously led to problems of the tenant becoming locked out. When asked about the door, Jim (Mr Doherty) had told the tenants he would have to contact Eric and the landlord and it was not up to him if a replacement door was to be delivered. He did measure up the door. Mr and Mrs Campbell from the LA then advised the tenants that no replacement door would be provided. She said the tenants tried to get the door fixed since 2019. They had been promised a replacement door. They never expected a new door but a second hand one. That would have been ok. She said they signed the lease on that basis. The LL and LA did not stick to their word. Water is running down the front door and icicles form on the door. There are cracks in the wood and on hot days these expand. The inspector from SLC was totally different with her than in his letter of 2 June 2023. He had told her the door was in a state of disrepair but that was now not in the letter.

The photographs of 22 March at 14:56 show the state of the wood panel around the glass. In the winter there is condensation due to the age of the door. Last winter was a bad winter and frost formed under the door. There is a bit of mould due to the constant damp from the condensation. The photo timed 14:52 shows the gaps forming and the black bits are mould. Under the gold bar at the bottom there is a piece of wood and under that there is still a 1 cm gap. There were icicles and cracked paint and a draught and her father had sent pictures they had to the rent officer during the bad winter in December 2022. That should have been sent to Concept Lettings. There should be a photograph. There were 3 rough winters but this last one was the worst with frost under the door. She spoke to Eric about it but most of

her contact was over the telephone so there is no correspondence. Her Dad sent more emails. She thought that was sent to Mr Doherty on 14 December at 10:48 about the icicles when Mr Hughes got involved. Concept Lettings were made aware the door was not wind and watertight before then. It had been an issue the previous winters. Ms Preston stated she wanted it fixed before the next winter but Mr and Mrs Reid said it will not be fixed although this had been agreed when the lease was signed. She had spoken to Jim about it who directed her to speak to Eric. There is a clear draft when it is windy and although Mr Doherty said he did not notice that when he was there at Christmas 2022 for emergency repairs this was maybe because at that time there was no wind. The layout of the property is that there is a hallway with a small heater downstairs and the stairs to the upstairs bedrooms are just to the right of the door. The condensation is from the temperature difference from the heated hallway and the single glass pane in the door. The draft comes from under the door. Eric told her to use a draft excluder but if it rained they got wet and got mouldy. She had never asked for a new door. Mr Doherty had been out 2 or 3 times to measure up the door. She understood a reconditioned door with thicker glass that was more functional was being offered. With the problems they felt the door needed replaced."

[49] Mr Fleming stated: There were two main issues, the boiler and the door. These had been discussed in emails since 2021. The door is a door but very old and newer doors do a better job regarding heating etc. The problem is the movement in the door and it is not a well fitted wooden door. There is condensation. His main issue was not the door but the boiler.
There had been dozens of emails over the years even before 6 November 2022 and in 2021 there had been an email that a second hand door would be sourced.

[50] Mr Doherty stated:
He stated he never agreed to replace the door. A second hand wooden door would be in the region of £250-300, a PVC one £600. He only agreed at one point to provide a reconditioned door for aesthetic purposes but could not find one. The tenants then were advised it would not be replaced. He was not aware of a draught coming through the door. This could be easily resolved.

The dispute was not over a loose door handle or draught but because the tenants insisted they wanted a new PVC door and there is no need for that. SLC did not state there was a need for a replacement PVC door. The reference to a repair to the door only came in form of the letter of 2 June 2023 from SLC which was lodged the day before the hearing. Any previous discussion had been about the look of the door, not the functionality. In December 2022 he had been told the rent was being withheld because the house was not wind and watertight. This had never been mentioned to him before. The letter from Goldman & Hughes was the first time this was mentioned as covered in pages 14 and 15 of his bundle. When he visited the property on 27th and 29th December 2022 the tenants did not mention it and he thought maybe it was no longer pursued. He did not mention it because he wanted to avoid causing the tenant stress and an argument. That would have not been appropriate with the 2 women as tenants. Mr Doherty stated he preferred things to be in writing and because it was around Christmas he just tried to get things done quickly. He did not know what the wind and watertight reference was about until the day before the hearing when that letter referred to repairs to the door. He had spoken to Eric and as far as he knows

there were never any emails asking for a meeting to discuss repairs. He also had searched the emails and there was only one email from Messrs Goldman & Hughes.

[51] Mr David Forbes from South Lanarkshire Council in his letter of 2.6.23 observed that paintwork was worn and cracked around the timber panels of the lower half of the door. It was also noted that there was excessive play in the door handle. He further referred to having since seen photographs "apparently taken during the winter which show condensation and ice forming on the inside of the same door. This may indicate that the external door has not been installed correctly or that the door requires repair/maintenance to allow it to close properly. "

This was not disputed by Mr Doherty. In his email to the Tribunal on 19.6.23 Mr Doherty stated "the letter from SLC clearly confirms that approx. a couple of hours of work would be required to fit a new draft excluder, tighten the handle and paint the door. This would amount to approx. £100 of work and yet the front door seems to be one of the reasons cited by the tenants for withholding approx. £3,300 of my rent."

ii: Discussion

[52] The Tribunal considered that the examination of the door by an external third party, corroborated the evidence of Ms Preston that the door paint work required to be maintained and that there was a problem with the way the door closed, which would lead to condensation and potentially ice forming on the inside of the door.

The photographs of the inside and outside of the external door referred to by Ms Preston in her evidence further confirm the gap underneath the front door, the defective paintwork of the wood panels and the forming of condensation and related mould on the inside of the door.

[53] The Tribunal was thus satisfied on the basis of the evidence from Ms Preston, the photographs and the comments in Mr Fraser's letter that there were indeed at least at present some repairs issues regarding the door. These repair issues would in principle be constitute a potential ground of withholding rent as the external door was currently not in a reasonable state of repair as required in terms of item 18 para 3 bullet point 4 of the tenancy agreement.

d: Was rent correctly withheld ?

[54] As set out above, the requirement for the correct use of the equitable remedy of withholding rent, however, does not solely consist of there being a contractual obligation not having been fully complied with.

The requirement for proper exercise of such a remedy is that it is done in good faith. Historically it had been considered necessary for a tenant exercising such a remedy to show said good faith through a number of steps taken by the tenant:

- that they had properly intimated their intention to withhold rent prior to starting to withhold rent,

- intimating the reason for withholding rent so the landlord had the opportunity to remedy this and thus avoid a situation where rent would be withheld and
- retaining the funds from the withheld rent in a separate account

Peter Robson and Malcolm M Combe in Residential Tenancies, Private and Social Renting in Scotland 4 Edition at 7-71 further refer to: "The level of rent withholding must be proportionate to the inadequacy being claimed as where a tenant of a flat with shared facilities withheld £960 because a leakage over the side of a bath led to him taking his baths elsewhere. His defence to an action for repossession and for the rent arrears of £960 did not meet with any success. While it was accepted that the premises were "not in excellent condition", they could be occupied "without risk of personal injury to life and limb or injury to health". The Sheriff Principal in Taghi v Reville, 2003 Hous LR 110 at 113 suggested that "the appropriate remedy in less serious disrepair cases is to seek a modest abatement of rent, in other words argue that because the landlord is in breach of contract a reasonable proportion of rent should be deducted."

[55] The Respondents stopped paying rent on 25 October 2022 without intimating that they would be withholding rent. The earliest indication that rent was actually being withheld was an email from Mr Fleming to the LA on 6.11.22. Only on 17.11.22 in an email at 14:25 did Mr Fleming confirm that the outstanding issues considered relevant by him were the (missing) thermostat requiring replacement/fitting and replacement of sub-standard front door. By their own admission the Respondents did not pay the funds of the withheld rent allegedly set aside into a separate bank account until some unspecified date in December 2022. The formal intimation that rent was being withheld was sent by Messrs Goldsmith & Hughes Solicitors on 19.12.22 and contained the first reference to the property not being wind and watertight, however without any further explanation what this statement was based on.

These undisputed facts show clearly that the recognised pathway for withholding rent was not followed by the Respondents.

[56] Indeed, Mr Doherty further explained that until he saw the letter of 2.6.23 from SLC he continued to be unaware of what particular issues the reference to the property not being wind and water tight actually related to. Until that letter the Respondents and Mr Fleming in all correspondence including reference to the door appear to have only demanded a replacement of the external door. Indeed the emails from Mr Fleming and Ms Preston to the LA refer to a replacement of a door, not to repairs for specific faults of the door.

[57] The Tribunal noted that at the hearing Mr Doherty stated that he had not been prepared to provide a new PVC door, which he had understood the Respondents expected. Ms Preston had answered that she and her partner never expected a new PVC door but a reconditioned door, which had been promised to them when they moved in. The Tribunal formed the view from the evidence of both parties that due to the involvement of various persons in the lines of communication and continued references to previous correspondence and conversations there appeared to be a misunderstanding between the parties. The Respondents clearly expected a reconditioned door or at least a proper repair to the door, the Applicant resisted the provision of a new PVC door but appeared to be amenable to provide a repair to the door as set out in the letter of SLC of 2.6.23.

[58] The Tribunal, having considered above evidence, found that the Respondents had not followed the correct pathway of withholding rent. They started withholding rent without intimation of said intention prior to stopping rent payments, they did not specifically set out in their intimation what exactly was the basis of their intention to withhold rent and they did not pay the funds into a separate bank account when the rent first was withheld.

[59] The Tribunal considers that because of these actions and because of a lack of clarification of what was meant by wind and watertight at the time rent was first withheld the Respondents were not entitled to rely on the equitable remedy of withholding rent. Had they followed the correct pathway the Tribunal may have arrived at a different conclusion.

e: Conclusion:
[60] The Tribunal thus finds that the Applicant is entitled to payment of the outstanding rent of £1,819.28.

[61] The Applicant had initially requested interest payments of 8% per annum as set out in clause 4/8 of the tenancy agreement but had not provided a calculation of the sum to the date of the hearing. The Tribunal thus makes an order for interest to be paid under the provision of rule 41A (2) a) of the rules of procedure at the rate of 8% per annum from the date of the order for payment.

E: Decision:

The Tribunal grants the order for payment of the amount of £2,144,28 by the Respondents to the Applicant together with interest thereon at the rate of 8 % from the date of the decision of the First-tier Tribunal. The decision was unanimous. The sum reflects a sum of £325 for charges under clause 4/8 of the tenancy agreement and £1,819.28 for unpaid outstanding rent.

F: Observations:

[61] For the benefit of the parties going forward the Tribunal makes the following observations, which have no bearing on the outcome of the case but which may be of assistance in further discussions between the parties.

It was clear from the evidence of Ms Preston that one of her concerns was the ongoing issue of her receiving LHA at a 4 weekly interval in arrears but rent falling due monthly on the 25th day of each month in advance. This may, as it had in the past, lead to a situation where there may be a shortfall of rent unless the tenants ensure this is covered from their own funds. Although Mr Doherty stated the provisions in the tenancy agreement were clear, the Tribunal would encourage parties to discuss the matter of the payment frequency and the arising discrepancies again. A contract between parties can be varied with the mutual consent of the parties.

[62] The Tribunal noted that one reason why the Respondents were keen to obtain a programmer for the boiler was the potential cost benefit in energy savings which might be achievable with such an option. The Tribunal notes that the cost for a manual generic alternative to the wireless programmer at some point was quoted as around £40. Mr Doherty stated at the hearing that he would carry out any necessary repairs and that he would be prepared to consider again a goodwill gesture regarding provision of a programmer for the boiler. The Tribunal would encourage the parties to come to an agreement on the provision of such an item.

[63] Finally, the Tribunal found in fact that the door does have faults which require intervention. Whilst the Tribunal for the reasons stated above did not consider that rent had been properly withheld, the matter may have been decided differently if the Respondents had brought this matter into issue before the Tribunal in a repairs case or raised proceedings for abatement of rent whilst these defects are ongoing. It may well be in the best interest of the landlord in safeguarding his own property to take to heart the comments of Mr Forbes from SLC in the letter of 2.6.23 and to either provide a replacement door or to carry out repairs to ensure the door will not let in draft and will keep the property wind and watertight.

G: Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

P Hennig-McFatridge

20 June 2023

Legal Member/Chair **Date**