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 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/21/2681

Re: Property at Drum of Carron Farmhouse, Aberlour, Banffshire, AB38 9NT ("the Property")

Parties:

Michael Woodock T/A Carron Bridge Estate, The Estate Office, Inkersall Farm, Bilsthorpe, Newark, Notts, NG22 8TL ("the Applicant")

Ms Emma Fraser, c/o Margaret Fraser, 50 The Cleaves, Cambus Park, Tullibody, Clackmannanshire, FK10 2XD ("the Respondent")

Tribunal Members:

Petra Hennig-McFatridge (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that a payment order for the amount of £2,191.61 by the Respondents to the Applicant should be granted, together with interest at the rate of 5.75% per annum from the date of the decision.

A Background:

1. An application was received by the First-tier Tribunal for Scotland (Housing and Property Chamber) (the FTT) from the landlord on 29 October 2021 under rule 111 of Schedule 1 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 ('the rules') seeking an order for payment. This case has to be considered in light of the related application under EV/21/2999 in terms of rule 79 and S 23 of the Rent (Scotland) Act 1984.
2. The documents lodged by the parties are set out in the previous Case Management Discussion (CMD) notes dated 22 April 2022 and 6 July 2022. The documents, CMD notes and directions issued by the Tribunal on 22 April 2022, 6 July 2022 respectively are referred to for their terms and held to be incorporated herein.
3. Following the CMD on 6 July 2022 both parties were directed to produce further documentation. In particular the Applicant was again asked to produce detailed vouching for the amounts he was claiming under breach of contract. He was also asked to advise

how the deposit of £1250 had been used and to provide information as to whether the various claims relate to solely the Private Residential Tenancy or also to a steading, which the parties had a separate contract for. The Respondent was directed to produce medical evidence to explain her repeated non attendance of Tribunal dates and further information regarding her disputing specific parts of the claim.

B The Hearing:

1. The notifications of the hearing on 15 September 2022 were sent out to parties on 5 August 2022 by using the email contacts previously used for the CMD notifications. The Tribunal is thus satisfied that both parties had sufficient and timely notification of the hearing.

2. No further contact was received from the Respondent. The Applicant provided an answer email to the direction of 6 July 2022 on 31 August 2022, which is referred to for its terms and held to be incorporated herein. Whilst this did address the individual headings of the direction, it did not include vouching for the claim headings, a specific breakdown of the allocation of the deposit and evidence of any damage to the property or the area around it. It also clearly stated that the Applicant does not intend to bring any witnesses or produce further documentary evidence for the hearing.

3. Dr Woodcock attended the hearing on behalf of the Applicant. The Respondent did not attend. It was agreed that the Tribunal would hear from Dr Woodcock on each of the claim headings set out in his amended list of claim under item 2 of his representations dated 6 May 2022, which the Tribunal considered to be the most detailed list of his claims. Some of these had been slightly amended in the representations of 31 August 2022 as shown below.

4. Dr Woodcock then proceeded to address each claim in turn. These are:

a) Private Water Charges: £279.84
b) Local Authority water testing charges £249.44
c) Losses of rent £3,375.00 amended to rent arrears £2,821.66
d) Council tax Bill £76.65
e) One emptying (de-sludging) of the septic tank based on the Scottish Water unscheduled charge £277.40
f) Estimated cost of removing rubbish and abandoned items £440
g) Estimated cost of rectifying damage caused by the tenant including unauthorised alterations carried out to unacceptable standard removal of the landlord's property and replacement of the lock to the entrance door £1,340
h) Estimated abortive costs and expenses in advertising and attempting to re-let the property following the giving of notice and the giving of several other dates for vacating the property £540.00

5. **Private Water Charges: £279.84**
The Applicant based this claim on clause 26 of the tenancy agreement. He had submitted two invoices to the Respondent dated £138.24 and £141.60, both dated 6 April 2021 together with a list of the Household Charges Band A 2020/2021 and 2021/2022 showing the relevant amounts as the respective Band A water supply charges. The Respondent had stated in her defences that the Applicant had at times only provided a failing water supply and had written to her on 17 December 2019 stating he was not collecting water charges. When this was put to Dr Woodcock he stated that there had been times when due to drought the water supply had failed and no charges were made at that time. However, the water supply was fit for human consumption in 2020 to 2022 and thus the water charges for these years were levied and insisted upon.

When it was put to him by the Tribunal that in the Certificate of Chemical Analysis of 12 July 2021 the comment was made "The copper level of the sample exceeded the maximum concentration or value prescribed in The Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017. The remaining results of analysis complied with the requirements of the above r=Regulations. The high level of copper present in the sample may give rise to green stains on toilet articles" and that in the letter or Moray Council to the Respondent on 3 August 2021 it was suggested "Treatment to raise the PH may result in the Copper content being reduced, I would recommend that pH treatment be applied before treatment to reduce the Copper content is considered", Dr Woodcock stated that the copper level did not affect the usability of the water supply and would most likely arise from the water in the copper pipes having not been run for a time before the sample was taken. He explained that the water charges of Band A were significantly less than the water charges for the property would be if it was a Council supply and the charges are clearly set out in clause 26 of the tenancy agreement and were agreed by the Respondent when she moved in. This was explained to her.

6. **Local Authority water testing charges £249.44**
Dr Woodcock stated that these were levied under clause 25 of the tenancy agreement. The invoice for the water charges from the Applicant to Miss Fraser dated 3 August 2021 for the amount and the invoice from Moray Council to Carron Bridge Estate of the same sum had been submitted in evidence. When it was put to Dr Woodcock that the Respondent had disputed she should pay for this as this was a necessary component of the provision of the private water supply, he stated the law said nothing about who should pay for this. Dr Woodcock was directed by the Tribunal to the Scottish government mygov website, which states: "*There's nothing in the legislation that specifies who must pay for risk assessments and water testing if there's a private let or shared land ownership. (Any relevant person is technically liable.)This means landlords can pass the costs of a risk assessment or water testing on to tenants. If you are a tenant, you can check your tenancy agreement for more detail.Your water supply also has to be tested regularly to make sure it is good quality.The fees for this should be paid by the owner of the property, but you may want to check if it is included in your rent as your landlord may try to pass the cost on to you.You may have to negotiate with them about this.".* The Tribunal asked specifically how the Applicant considers the costs for testing were passed to the tenant and Dr Woodcock stated their interpretation of clause 25 of the Private Residential Tenancy (PRT) stating "The Tenant will notify the local authority that they are responsible for paying the council tax and any other associated charges. Unless exempt, the Tenant will be responsible for payment of any council tax and water and sewerage charges, or any local tax which may replace this. The Tenant will advise the local authority of the start date and end date of the tenancy and apply for any exemptions or discounts that they may be eligible for." is that the charge is a *Water and Sewage Charge* the local authority levies and thus transferred to the tenant. There had been no notice from the Local Authority to the Applicant to carry out specific measures to make the water supply safe.

7. **Losses of rent £3,375.00 amended to rent arrears £2,821.66**
Dr Woodcock stated a rent statement showing the payments and amounts due to the end of the tenancy had been supplied in the bundle lodged on 31 August 2022. The rent increase had arisen out of the rent increase notice served on the Respondent on 4 March 2021 effective from 7 November 2021. The Tribunal noted that the Respondent had stated in her email of 22 April 2022 that she had made payments of rent regularly and had not returned the notice of rent increase to the Applicant as she had envisaged previously she would be leaving the property before this took effect. Dr Woodcock stated he had initially been of the view that if he accepted rental payments from the Respondent

this would start a new lease but that he is now content to ask for the amount as rent arrears as in his rent statement submitted for the hearing.

8. **Council tax Bill £76.65**
   The Tribunal queried first of all the amount stated for this, as this had been charged at £76.65 in the heads of claim made on 6 May 2022, was shown as £78.65 on Council Tax invoice produced dated 18/04/2022 from Moray Council to Michael Woodcock lodged in evidence and then stated as £78.39 in the invoice lodged on 31 August 2022 dated 08/06/2022 for the period of 01/04/2022 to 30/04/2022. Dr Woodcock stated that the invoice should be paid by the Respondent under clause 25 and he has disputed the payment with the Council. This is still pending. When asked by the Tribunal whether any of the invoices had been paid he stated that this had not been the case and an answer of the Council Tax department to his challenge of the invoice was still outstanding. It is not known when the Respondent moved out. She may have told the Council this was earlier than it actually was. The keys have still not been returned. Until the order for possession was made o 22 April 2022the Applicant had no legal way of ensuring access to the property and the Respondent should be liable for the Council Tax.

9. **One emptying (de-sludging) of the septic tank based on the Scottish Water unscheduled charge £277.40**
   Dr Woodcock was asked by the Tribunal why the charge was originally stated at £183.80 in the minute of amendment on 22 April 2022, as £163.80 in the representations dated 28 June 2022 and as £277.40 in the representations of 6 May 2022. He was unable to give an answer as to why the amounts had changed in the pleadings. He also confirmed that no invoice was produced because the Applicant had not instructed an emptying of the septic tank and discussions with the new tenants were ongoing and some arrangement would in due course be made. The new tenants have not moved in yet. He was asked if anyone had emptied the tank and stated "We don't know as the new tenants have not moved in yet". The Respondent was supposed to have emptied it on moving out as per clause 36 II of the PRT. He confirmed when asked by the Tribunal that no expenses had been incurred by the Applicant from the failure of the Respondent to arrange an emptying of the septic tank under clause 36 II to date. He stated the most recent figure charged, £277.40, is based on the Scottish Water Septic Tank De-sludging charges 2021-2022 unscheduled, which was lodged in evidence in the bundle of 6 May 2022. He stated the Applicant should not be expected to actually incur the expense on something they may not be able to get back if the contract clearly states the Respondent should have carried out that activity before leaving.

10. **Estimated cost of removing rubbish and abandoned items £440**
    The Tribunal asked Dr Woodcock why the amount for this had initially been quoted as £440 in the representations of 6 May 2022 but then been stated as £460 in the representations of 28 June 2022. He stated he did not know. He confirmed that no invoices or quotes had been submitted for this claim. The Tribunal asked why no evidence had been submitted to show what rubbish was left where and what precisely these alleged costs related to. He stated most of the rubbish had been cleared but not all of it and there were no receipts and nothing had been paid out. No decorative claims had been made. When the Tribunal asked him about the photographs of the interior of the house lodged by the Respondent he stated he was not claiming the rubbish was in the house. He stated it was left in the barn, the paddock and the farmyard but it was domestic appliances and a suit and they were charging basically for one skip. When the Tribunal members asked about the position stated in the Respondent's representations that this did not relate to the tenancy, he stated she did not say she didn't leave it. When asked again if there were any photos or invoices he stated he was the witness and the Tribunal would either believe him or not. He provided no explanation as to why no photographs had been lodged.

11. Estimated cost of rectifying damage caused by the tenant including unauthorised alterations carried out to unacceptable standard removal of the landlord's property and replacement of the lock to the entrance door £1,340

Dr Woodcock stated this was an estimate only and it was not quantified. He stated these were reasonable expenses. He was asked by the Tribunal what kind of damage he referred to as there were no details provided, no invoices or quotes lodged an no photographs lodged to show any damage. The Tribunal referred him to the photographs of the interior of the property lodged by the Respondent. He stated that the bathroom suit, floors and kitchen units had been damaged. When asked where this would be as the photographs appeared to show the kitchen units, the bathroom and the floor and no damage was visible he stated his estimate for putting the damage right is £1,340. This is based on his 55 plus years of experience dealing with properties left by tenants and he was not prepared to bring witnesses to the damage.

12. Estimated abortive costs and expenses in advertising and attempting to re-let the property following the giving of notice and the giving of several other dates for vacating the property £540.00

Dr Woodcock was asked by the Tribunal how he had arrived at this amount. He stated these were the normal costs arising from advertising and the Respondent should have provided access. The staff had taken telephone calls and more than 2 times the efforts to let the property had to be aborted because she had changed the date when she stated she would move out. This was an estimated loss. The local representative for the Applicant had attended 4x at the property when the tenant did not show up and the tenant did not leave the keys.

13. The submission of Dr Woodcock was that there was no need to show actual loss in terms of invoices or quotes as he was telling the Tribunal that the amounts were due, this was based on his over 50 year experience as a person dealing with rental property. There were no witnesses or documents. It was the responsibility of the Respondent to prove the amounts were not due not for him to provide otherwise as the Respondent was not present to dispute the claim. He wishes the interest to be added and during the hearing his secretary had calculated this would be £340.11 for the rent arrears and the interest was stated in the tenancy agreement. The Applicant had deducted the deposit of £1,250 from the costs for de-sludging, repairs and removal of rubbish internally but this was not a direction or decision of the scheme provider, they had just paid out the £1,250 deposit to the Applicant. With regard to the amounts claimed, either the Tribunal believes him or not. His evidence is that these sums are due.

C Findings in Fact:

Based on the documents lodged and the representations of both parties in writing and the evidence of Dr Woodcock at the hearing the Tribunal finds the following facts established:

1. The parties had entered into a PRT over the property commencing 21 August 2018.
2. The tenant had sent recorded delivery a notice to terminate the tenancy with an end date of 20 November 2021.
3. The tenant had then by emails dated 19 November 2021, 20 December 2021, 4 January 2022 and 20 January 2022 sought to postpone the end date of the tenancy.
4. The landlord did not agree to a later end date and confirmed termination of the tenancy on 20 November 2021 as per the initial notice from the tenant.
5. The tenant continued to reside at the property after 20 November 2021.

6. The Respondent changed the date when she intended to move out on several occasions after she had initially given notice.
7. The tenant did not provide the Applicant with a date on which she moved out.
8. She has not returned the keys to the property.
9. The Applicant was unable to legally take back the property until he obtained an order for possession of the property enforceable as of 22 May 2022.
10. She left the property inside in a good condition as shown in the photographs provided
11. The property has a private water supply provided by the Applicant.
12. For the period from 1 April 2020 to 31 March 2022 water charges at the level of the Band A water charges by the Council were invoiced to the Respondent in terms of Clause 26 of the PRT.
13. Previously the water supply had failed due to drought.
14. When the water supply had failed, no water charges were levied by the Applicant to the Respondent in terms of Clause 26 of the PRT.
15. The copper levels discovered exceeded the maximum allowed level prescribed in The Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017
16. No specific work to remedy this was instructed by the Council at that stage.
17. The Applicant was entitled to charge for the water supply in terms of Clause 26 of the PRT at the rate of Band A water supply charges for the period of 1 April 202 to 31 March 2022.
18. The relevant water supply Band A charges were £138.24 for the period of 1 April 2020 to 31 March 2021 and £141.60 for the period of 1 April 2021 to 31 March 2022 totalling £279.84
19. These remain unpaid.
20. The Applicant received an invoice for water testing charges for the amount of £249.44 for testing of the private water supply at the property on 12 July 2021.
21. The Applicant invoiced the Respondent for these charges with reference to clause 25 of the PRT.
22. Clause 25 refers to "Council tax and water and sewerage charges or any local tax which may replace this"
23. A water testing charge is not a water and sewerage charge or local tax.
24. The rent due under the PRT Clause 7 was stated as £625 monthly in advance.
25. The rent was increased to £675 monthly by rent increase notice served on the Respondent dated 4 March 2021 and effective from 7 November 2021.
26. At the date of 21 April 2022 rent for the property of £2,821.66 remained outstanding.
27. In terms of Clause 7 a rate of interest of 4% over the Bank of England base rate is chargeable on any outstanding sums.
28. To the date of the hearing the base rate of the Bank of England is 1.75%.
29. The interest on the arrears as at the date of the hearing amounted to £340.11.
30. In terms of Clause 36 II of the PRT the Respondent was obliged to empty the septic tank of the property when moving out.
31. The tank has not been emptied after her removal by the Applicant.
32. Negotiations are ongoing between the Applicant and the new tenants.
33. In terms of Clause 25 the Respondent was liable for Council Tax for the property.
34. The Applicant has received but disputed a Council Tax invoice for the period of 1 to 30 April 2022 for the amount of £78.39.

35. This has not been paid by the Applicant and a decision on the dispute has not been made by the Council to date.
36. Some items have been left by the Respondent in relation to the steading agreement.
37. The Respondent paid a deposit of £1,250, which was released to the Applicant in full.

D Reasons for Decision:

1. The Tribunal was acutely aware of the frustration caused to Dr Woodcock by the Scottish Tribunal Procedure and he was very forthcoming in advising the Tribunal that he will now withdraw from the Scottish rental market and invest his funds elsewhere. He also maintained that in England all his claims would have succeeded without any specification and vouching and without any documentary evidence to show items left in situ and damage to the property. The Tribunal operates under the Scottish legal system and it is simply not the case that an Applicant can state the Respondent owes an amount in damages for breach of contract and as long as the Respondent does not actively disprove this the claim will be successful. In order for a claim to succeed in the Tribunal it has to be evidenced and specified. It has to give the other side clear notice of what is claimed, why it is claimed and how the amount is arrived at. For the majority of claims in this application the claim was not sufficiently specified and evidenced regardless of the appearance of the Respondent at the hearing. The situation in this case was also not one of the application being undefended. Whilst the Respondent has not attended the CMDs and the hearing and has failed to provide specific medical evidence to prove that this was not possible for her due to health reasons, she has nevertheless provided a significant amount of information with regard to her position and documentary evidence which was not disputed by the Applicant regarding the provision of water from the private water supply, the state of the property when she moved in and moved out and correspondence with the Applicant during the tenancy. Whilst this was not spoken to by the Respondent at the hearing, the Tribunal did place some weight on the information received as this was not challenged by the Applicant and appeared on the face of it to be reliable and clear, in particular the photographic evidence produced and the correspondence produced between the Applicant and the Respondent and between the Council and the Respondent. These led to specific questions being asked by the Tribunal members during the hearing, which were necessary to clarify the facts in the case.

2. Private Water Charges: £279.84
The Tribunal was satisfied that these were due to be paid on the Band A charges as set out in the PRT. Clause 26 of the PRT states: "If the water supply is provided by the Landlord, the Tenant will pay to the Landlord the equivalent of the amounts charged by Scottish Water in relation to Council Tax Band A premises." Although the Tribunal noted that the Respondent had stated in correspondence that no charges were due as these had been waived, the Tribunal considered that this may have been correct for years when the water supply had failed but that, even though the copper levels may have been elevated, the private water supply was provided and working in the period from 1 April 2020 to 30 March 2022 and the water charges at Band A level were thus due to be paid. The Tribunal awards the £279.90 as charged in the invoices for water charges.

3. **Local Authority water testing charges £249.44**
   The Tribunal considered that the Applicant has not evidenced that these were contractually due by the Respondent. This is matter of contractual interpretation. The Tribunal, as had been explained to Dr Woodcock at the hearing, had consulted the Regulations and given consideration to the information provided on the mygov website regarding private water testing charges. This states, as the Applicant correctly quoted in the representations, that these charges can contractually be passed on to tenants. However, the Tribunal considered that as a matter of text and context the provision in Clause 25 does not do so. The Clause, which has the same wording as Clause 26 of the Scottish Model Tenancy Agreement, deals with Local Authority Taxes and Charges and in particular with council tax and water and sewerage charges, which would ordinarily be included in the Council tax liability if there was a public water supply. The water testing charge is just that, a water testing charge. It is not a charge for the supply of water or sewerage facilities levied by the Council. It is not a local tax replacing the council tax and water and sewerage charges. It is a specific charge for testing a private water supply, which would by its very nature not be part of a Local Authority water and sewerage charge levied with the Council Tax. The Applicant is absolutely correct that this charge can contractually be passed to a tenant However, the Tribunal considered that as a matter of the ordinary understanding of the meaning of the clause this is not covered by the words "Water and sewerage charges". It would require some specific reference to a liability of such charges just as Clause 26 of the PRT specifically refers to "If the water supply is provided by the landlord, the Tenant will pay to the Landlord the equivalent of the amounts charged by Scottish Water in relation to Council Tax Band A premises." Whilst Clause 26 of the PRT is modelled on Clause 27 of the Model Tenancy Agreement, it makes clear and specific additional provision for a private water supply and for the charges to be made for this by the Landlord. Had the Applicant included in Clause 25 or 26 of the PRT a reference to the water testing charges then this would have clearly regulated the liability. However, in the absence of any mention of the water testing charges the Tribunal considers these have not been contractually transferred to the Respondent. The Tribunal thus does not award this amount.

4. **Rent arrears of £2,821.66 up to 21 April 2022 and £340.11 interest at 4% over the base rate of the Bank of England**
   The Tribunal was satisfied that the monthly rent of initially £625 was legally increased to £675 as of 7 November 2021 with the rent increase notice sent to the tenant in March 2021. The Tribunal was further satisfied that the Respondent continued to reside in the property until April 2022 and that thus the landlord and Applicant has a right to payment of the equivalent of the rental charge until the end of the occupation of the property as set out in the rent statement. The Respondent did not contradict the information provided in the statement. The Tribunal is further satisfied that the interest of 4% over the base rate of the Bank of England was due on any arrears for the time of the existence of the arrears in terms of Clause 7. The Tribunal accepts that the amount of interest is due on the arrears as stated in the rent statement provided. The Respondent had not returned the keys to the property and thus the Applicant was not aware whether the Respondent had moved out. The right to continued payments thus continued to the time when the Applicant could legally take back possession of the property after the Tribunal order was issued. The Tribunal thus awards the amount of £3,161.77. The Tribunal allowed the amendment to this sum on the basis that it was less than the originally intimated claim of £3,375 and the Respondent had received fair notice of the claim for interest to be added in the email of 31 August 2022.

5. **Council tax Bill £78.65**

The Tribunal accepts the Applicant's position that in terms of Clause 25 of the PRT the Respondent is contractually liable for the Council Tax until she had properly given back possession of the house. However, that being the case, the Applicant has challenged and not paid the Council Tax invoice issued to him by Moray Council. There is thus no loss which has arisen to him at the time of the hearing for the amount of Council Tax invoiced. The Applicant has not paid the invoice. The Applicant has challenged the invoice with the Council and no decision on whether or not he will be held liable by the Council has been made. In terms of the Scotts Law, "Once a breach of the relevant legal duty has been established, it falls to the pursuer to show that the breach caused the loss of which he complains, for it is a basic principle of damages that only those injuries which were caused by the breach can figure in the assessment" (Stair Memorial Encyclopaedia, volume 15 at 893). The Tribunal considered that the Council Tax demand is not a current loss which has arisen as the liability is disputed and the loss thus not incurred at the relevant time. The Tribunal thus does not award this amount.

6. **One emptying (de-sludging) of the septic tank based on the Scottish Water unscheduled charge £277.40**
Similarly, the Tribunal considers that the amount has not been evidenced as a loss from breach of contract which has already arisen. The evidence from Dr Woodcock was that no emptying had been instructed, that nothing had been paid out to undertake the emptying of the septic tank which the Respondent was contractually obliged to undertake in terms of Clause 36 II and that the Applicant is not intending to actually spend the amount claimed but continues to be in negotiation with the new tenants over this matter. If the Applicant wishes to claim damages for loss due to breach of contract, then a loss has to be evidenced. The loss in this case has not been evidenced. The Tribunal, taking into account in particular the evidence of Dr Woodcock at the hearing, did not believe that the Applicant would actually end up paying the amount claimed. The Tribunal thus does not award this amount.

7. **Estimated cost of removing rubbish and abandoned items £440**
As stated above, in order to claim damages for a loss arsing out of a breach of contract, it is for the pursuer, in this case the Applicant, to show the breach has caused a loss. First and foremost it is for the Applicant to evidence that a condition of the contract has been breached and then to evidence the loss arising which leads to the damage claim.
The Tribunal noted that with regard to leaving rubbish and abandoned items, the Respondent had replied to the claim in item 4 of her representations dated 13 May 2022 under heading 4. She stated She does not accept the claim as the house and its surroundings were left empty and clean. The items left are not domestic, are not involved in my Private Residential Tenancy agreement, were never in the house. They are related to the Steading lease, are inside the Steading and I will attach a letter dated 2 February 2022 from Carron ridge Estate relating to that. I will also attach picture of the house as I left it ad how it was handed over to me..." The Respondent did provide photographs of what she states was the state of the house when she left. These were not disputed by the Applicant. She further provided the email from Drum of Carron Steadings with the heading "Removal of Belongings Notice" to her dated 22 February 2022 in which Carron Bridge Estate state: " Your Steadings Agreement has expired and you should have removed all of your personal belongings and rubbish from the buildings by now. It is clear you have not done so. We hereby give you until Friday 25th February 2022 to remove all of your belongings and rubbish from the steadings and failure to do so will result in costs. The estimate of our costs will be around £800 circa for the estate to remove your belongings and rubbish."
The Respondent did not attend the CMDs and did not attend the hearing. However, it

is also clear that she did not accept the claim and she has provided significant amounts of photographic evidence of the state of the house at the time she moved out. This shows the house in a clean and tidy condition and shows no rubbish left in the premises. She has given a clear explanation of where items were left and that these are not linked to the PRT. The Applicant also stated that the items were not in the house but in other areas of the farm land.

The Applicant was asked at two Case Management Discussions and in two different sets of directions issued by the Tribunal to provide evidence of the breach of contract and the loss arising from this. He was asked in the first direction under items 11 and 12 to provide "Evidence of all specific items claimed as damages and Vouching for any items charged, such as invoice for septic tank emptying, invoices for items such as removal of rubbish, skip provision etc." He did not do so. He was asked to do so again in the second direction at item 1 "Details of actual costs sought from the Respondent not speculative costs. This should be fully vouched." At item 5 he was further asked to produce "Confirmation if the outstanding amount being sought relates solely to the PRT or including aspects of the steading.". The answer of the Applicant in the representations of 31 August 2022 was "The costs sought are actual and reasonable but vouching is not generally possible as most of the costs are internal rather than through 3rd party charges invoiced to us. We estimate that over 150 hours of management and staff time have been spent in dealing with breaches of the tenancy agreement by the tenant including the two separate references to the First Tier Tribunal, the other to obtain an eviction order due to the tenant failing to vacate the property." At the hearing Dr Woodcock again stated that the amount claimed is the amount he states it is because of his 55 year experience as a person engaged in letting properties. He did not specify precisely what rubbish had been allegedly left where, which of this related to the PRT and which to the Steading and he had not produced any evidence of rubbish being present anywhere at all. It would have been easy for the Applicant to produce photographs showing left items and to advise where these were left.

On the civil standard of proof the Tribunal in this case was not satisfied on the evidence provided by the Applicant in the representations, documents and in the evidence of Dr Woodcock that a breach of the contractual obligation in Clause 36 III of the PRT had actually occurred. On balance it appeared more likely that items were left in relation to the Steadings Agreement. The Tribunal thus does not award this amount.

8. **Estimated cost of rectifying damage caused by the tenant including unauthorised alterations carried out to unacceptable standard removal of the landlord's property and replacement of the lock to the entrance door £1,340**

The Applicant has failed to specify an damage in advance of the hearing. He had not provided any evidence of specific items which were broken or removed other than saying that the keys had not been returned. He could have lodged photographs of any damage which had arisen. He had not given fair notice to the Respondent of the specific damage or breach of contract for the claim. He had not specified any amounts of loss arising from damage to the property. He had not provided any witnesses to speak to any damage. The only evidence was the statement of Dr Woodcock at the hearing, who vaguely referred to damage to the bathroom, floors and the kitchen cabinets. None of this was evident in the photographs lodged by the Respondent which she had stated were photographs of how she had left the property. Whilst the Respondent was not present to speak to the photographs, the Applicant had also not contradicted that these showed the inside of the property at the time the Respondent vacated the premises. Dr Woodcock did not provide sufficient detailed evidence about damage arising in the first place. He further provided no evidence of any remedial works necessary or carried out. The Tribunal had made it abundantly clear in the process leading up to the hearing that it is for the

Applicant to evidence the matters he is claiming. The claim lacked in specification and on balance the Tribunal did not accept that damage arose, far less that the damage led to costs of £1,340, which lacked any quantification and vouching. The Tribunal thus does not award this amount.

9. **Estimated abortive costs and expenses in advertising and attempting to re-let the property following the giving of notice and the giving of several other dates for vacating the property £540.00**
The Tribunal was satisfied from the evidence available that the Respondent had sent a notice to terminate the PRT to the Applicant and had then not moved out. This was also not in dispute. Had the Applicant produced any vouching for costs arising or any detailed description of how the amount was calculated then the Tribunal would have had no hesitation to award an appropriate amount. However, even after repeated requests for further information and specification none of this was made available. The only indication of what may have been a relevant consideration was the explanation of Dr Woodcock that staff time had been wasted in trying to advertise the property for potential new tenants on the occasions the Respondent changed the moving out date. Had he specified in any way which staff were involved, what the staff costs per hour would have been and when and for how long staff had been engaged in the activity of trying to let the property on these occasions then this would have allowed the Tribunal to make appropriate findings in fact as to the loss which may have been caused. In the absence of any such detail it is not possible for the Tribunal to make sufficient findings in fact to specify any loss and thus any amount due. The Tribunal thus does not award this amount.

10. Finally, the Tribunal has to consider the impact of the payment of the deposit of £1,250 from the scheme provider to the Respondent. Whilst the Tribunal appreciates that in his own accounting the Applicant had intended to set off the amount for specific items, this was not a finding of the scheme provider and it had not been agreed with the Respondent. The Tribunal allocated to the Applicant the sums claimed as follows:
£279.84 for water charges
£3,161.77 in rent arrears and interest
£3,441.61 in total
- £1,250 Deposit

£2,191.61

The Tribunal considers that since no other sums were due, the payment of the deposit has to be allocated to the sum as stated above, thus resulting in an overall amount due to be paid by the Respondent to the Applicant of £ 2,191.61 . The Tribunal also considers that further interest at the rate of 5.75% (4 % over the base rate of the Bank of England as of the date of the order) will be due from the date of the order to payment of the amount in terms of Clause 7 of the PRT and rule 41A (2) (a) of the Rules of Procedure.

E Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that a payment order for the amount of £2,191.61 by the Respondents to the Applicant should be granted, together with interest at the rate of 5.75% per annum from the date of the decision.

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.

Petra Hennig McFatridge

Petra Hennig McFatridge	**26 September 2022**
Legal Member/Chair	**Date**