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 16 Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/22/0468

Re: Property at 11 MacGillivary Court, Culloden, Inverness, IV2 7LN ("the Property")

Parties:

Miss Wendy Harrison, 11 MacGillivary Court, Culloden, Inverness, IV2 7LN ("the Applicant")

Mr Bruce MacKay, Revolution, 11 - 19 Church Street, Inverness, IV1 1DY ("the Respondent")

Tribunal Members:

Shirley Evans (Legal Member) and Mike Scott (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined to make an order for payment against the Respondent in favour of the Applicant in the sum of FIVE THOUSAND SIX HUNDRED AND SEVENTEEN POUNDS AND SEVENTY-FIVE PENCE (£5617.75) STERLING. The order for payment will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.

Background

1. This is an action for recovery of rent arrears and loss and damage to property totalling £7484.75 raised in terms of Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations").

2. The matter first called for a Case Management Discussion on 25 July 2022.

The Applicant appeared on her own behalf. The Respondent also appeared on his own behalf. The Respondent admitted he was in arrears of rent which had started during lockdown, but denied he was liable for damage to the Property. He claimed the photographs lodged by the Applicant were taken before he vacated the property after the Applicant and her father had entered the Property before he had finished clearing up and before the tenancy ended. He also referred to a letter he had received from Highland Council in February 2016 which he read out and may have related to a Rent Penalty Notice. The Applicant denied she had been subject to a Rent Penalty Notice, but stated her Landlord registration may have lapsed at some stage. He also stated that the photographs showed that the Applicant had not kept the Property in a good state of repair

3. The case was continued to a hearing to determine whether the Applicant was entitled to arrears of £4300, damages of £2484 for a replacement garden office, damages of £471.75 for a replacement front door and £229 for paint. The Tribunal requested the Respondent lodge the letter from February 2016 from Highland Council. A note on the Case Management Discussion was issued to parties. A hearing was fixed for 28 September 2022. Parties were advised of the date of the hearing.

Hearing

4. The Tribunal proceeded with the hearing on 28 September 2022 by way of teleconference. The Applicant was in attendance and represented herself. There was no appearance by or on behalf of the Respondent despite the hearing date being intimated on him.

5. The Tribunal had before it a copy of the tenancy agreement between the parties dated 2 March 2011, a copy rent statement, various copy receipts, a copy quotation from R Jack, joiners and various photographs lodged by the Applicant. These documents were considered by the Tribunal. The Tribunal noted that the Respondent had not lodged the letter dated February 2016 from Highland Council.

6. As a preliminary point, the Tribunal noted that the Applicant had lodged a List of Witnesses although late. The Applicant explained she had assumed that as she had mentioned she may call these witnesses during the Case Management Discussion that she had advised the Tribunal of her intention to call them. The Tribunal decided to proceed to hear Miss Harrison's evidence before determining whether to hear from the two witnesses named on her List of Witnesses, a copy of which the Tribunal had sent to the Respondent.

7. Miss Harrison gave her evidence. In relation to the rent arrears, she advised that pre COVID, the Respondent had been late with rent on a few occasions but had always paid. During the pandemic the Respondent had been put on furlough and had stopped paying rent. He contacted the Applicant on a couple of occasions, and they talked about getting him support to pay the

rent, but no-one contacted the Applicant to confirm the rent or the tenancy agreement. He made a couple of £200 payments during this time and the Tribunal noted with reference to the rent statement lodged that £200 had been paid in both July and August 2020 and that the rent was £625 per month. The Tribunal also noted that in terms of Clause 4 of the tenancy agreement between the parties the rent was £625 per month and that a deposit of £625 had also been paid. Miss Harrison explained she did go up to the Property a couple of times to try to get the Respondent to agree to a repayment plan, but he refused to sign a repayment plan. She gave evidence that she had received the deposit of £625 back after the tenancy terminated on 5 October 2021. This took account of the arrears, the damage to the Property, the replacement of carpets, the state the Property had been left in but did not cover her full losses in relation to cleaning, the time it had taken her and her family and in particular her father to paint the Property.

8. The Tribunal queried the accuracy of the rent statement lodged by the Applicant. The statement was taken to 3 November 2021 showing rent and a payment of £625. The Applicant conceded that was incorrect and that the arrears shown of £4300 should be reduced by £625.

9. The Tribunal also queried whether as Mr MacKay had alluded to at the Case Management Discussion there had been a Rent Penalty Notice. The Applicant denied this. She reminded the Tribunal that the letter the Respondent had read out at the CMD was allegedly from 2016 which predated the arrears detailed on the rent statement. She had never had any correspondence about any Rent Penalty Notice.

10. Dealing with the outside garden office, the Applicant claimed £2484. She explained that when the Respondent had moved into the Property in 2011 the purpose made office had been insulated with Kingspan, had been plaster boarded, carpeted and was connected to the electrical supply. After the tenancy had ended, the Applicant discovered the ceiling had water coming through it and had been left in a terrible state. The Tribunal referred the Applicant to two of the photographs she had lodged which appeared to show the interior of the office. The Applicant confirmed that the photographs showed the interior of the office and pointed out the Kingspan insulation lying on the floor, black mould on the walls and another unidentified green covering which appeared to be a growth cause by water penetration. The Applicant did not know whether the Respondent had ever used the office and though he may have just used it for storage, but she could not be sure.

11. The Tribunal queried how the office could have got into the state shown in the photographs. The Applicant accepted that it would have taken some time for the level of damage shown in the photographs to have developed. The Applicant advised the Respondent had not reported water penetration to her. The Applicant's friend who was acting as her agent had apparently inspected the Property about six months before the tenancy had ended but had never brought any issues to the Applicant's attention. When the tenancy terminated the Applicant had been shocked by the state of the office. She

explained she was no longer friends with the person who had inspected the Property. She explained that she had had to clear the office and the lean to shown in the photographs after the Respondent left. The roof was still on the office. However due to her financial situation she had not been able to afford to instruct the joiner Mr Jack who had given her a quotation to replace the office for £2484. The Tribunal noted the quotation lodged by Mr Jack.

12. The next item the Applicant claimed was £471.75 for the front door. She explained that when she got the Property back she had found the front door had been burst and referred to a photograph lodged. She had had to replace this and had been put to inconvenience in doing so. She referred to receipts for £378 from Wickes, a receipt for £25.78 from Highland Industrial Suppliers and for £50.53 from Norland Distributors. Her uncle was a joiner and he carried out the work for her. No receipts were produced for that work.

13. The next item the Applicant claimed for was for painting the Property. She claimed £229. When she took repossession of the Property the whole Property was stained from the Respondent smoking. She explained it had taken a long time to clean off as it was quite oily. It had taken about 4-5 coats of paint. She and her father had worked to take that staining off and then paint the Property causing her inconvenience. The Tribunal noted various receipts for paint from B&Q and Wickes totalling £204.97. The Tribunal also noted that in terms of Clause 4 of the tenancy agreement between the parties that the Respondent had agreed to pay for the cost of repair or replacement of any damage, fair wear and tear excepted.

14. After hearing the Applicant's evidence, the Tribunal did not consider that it was necessary to hear any further evidence and accordingly advised the Applicant that they would not hear evidence from her two witnesses.

Findings In Fact

15. The Applicant and the Respondent agreed by way of Clause 4 of a Short Assured Tenancy Agreement commencing 3 March 2011 in relation to the Property that the Respondent would pay the Applicant a monthly rent of £625.

16. The Respondent fell into arrears of rent in breach of clause 4. The tenancy terminated on 5 October 2021. The arrears at termination were £3675.

17. The tenancy agreement provided that a deposit of £625 be paid. The Applicant recovered the full deposit at the termination of the tenancy to cover some of the losses she was not claiming such as cleaning costs and replacement of carpets.

18. The Applicant and the Respondent also agreed by way of Clause 4 that the Respondent would pay for any damage to the Property, fair wear and tear excepted.

19. At the start of the tenancy the garden office was fully insulated, plaster boarded, carpeted and had an electrical supply. The Respondent did not report water penetration to the garden office to the Applicant. The damage caused to the garden office was partially caused by the Respondent's failure. The office deteriorated. At the termination of the tenancy black mould had grown on the interior of the office and the insulation and plasterboard had come away from the walls..No issues about the office had been reported to the Applicant by her agent.

20. The Applicant has obtained a quote to repair the office for £2484. The Applicant is not able to carry out the work until compensated.

21. The front door to the Property was found to be broken at the termination of the tenancy. The Respondent was in breach of Clause 4 by breaking the door. The Applicant required to replace the door. produced receipts of £454.31 for the replacement door and joinery. The Applicant's uncle carried out the work to the door. The Applicant was put to inconvenience, The Applicant's total loss for the door replacement is reasonably stated as £471.75.

22. At the termination of the tenancy the walls in the Property was badly stained from the Respondent smoking. The walls were covered in an oily substance from smoking. The Respondent was in breach of Clause 4 by leaving the Property in such a state. The Applicant produced receipts for paint of £204.97. The Applicant and her family required to clean the walls. The walls required 4 coats of paint. The Applicant was put to inconvenience. The Applicant's total loss is reasonably stated as £229.

Reasons for Decision

23. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the submissions made by Miss Harrison.

24. The Tribunal noted the terms of the tenancy agreement and the rent statement lodged. The Tribunal accepted the submissions of Miss Harrison as being credible and in particular her concession that the statement lodged was overstated by £625 and that the correct level of arrears as at the date of termination were in fact £3675. The Respondent had agreed to pay rent under clause 4 of the tenancy agreement. Miss Harrison had produced evidence of non- payment of rent. The Tribunal also noted that the Respondent had conceded at the Case Management Discussion that he had been in arrears, although no specific amount was admitted. The

Respondent had had an opportunity to contest the amount claimed by the Respondent, but had not done so, In the circumstances the Tribunal was satisfied the arrears were correctly stated at £3675.

25. The Tribunal also accepted the evidence of the Applicant in relation to the state the Respondent had left the Property in at the termination of the tenancy. The Respondent was in breach of clause 4 of the tenancy agreement by leaving the Property in an unacceptable state at termination for which the Applicant is entitled to be compensated for her losses. Her evidence was substantiated by the photographs lodged and by the receipts and quotation lodged. The Respondent was obliged to leave the Property undamaged and in a clean state at the end of the tenancy. He had damaged the door and left extensive staining to the paint on the walls throughout the Property. That the breach of contract entitled the Applicant to an award of compensation. The Applicant had been put to inconvenience in replacing the door and painting the Property. The Tribunal considered the amount claimed for painting of £229 was modest. Although the Applicant had only produced receipts for £204.97 the Tribunal accepted that her losses were at least £229 taking into account the cleaning and time taken to paint the Property. Similarly with regard to £471 claimed for the replacement of the front door, although receipts for the door and joinery lodged amounted to £454.31 the Tribunal was satisfied that her total losses were modestly stated at £471 when taking into account the inconvenience the Applicant was put to and the work carried out to replace the door.

26. In relation to the office the Tribunal was of the opinion that the quote for £2484 was overstated. Whilst it was clear that the office was badly damaged at the termination of the tenancy, the roof was still on the office. The Tribunal had some empathy with the Applicant that she was not in a financial position to have the works carried out until compensated, but at the same time did not consider that the Respondent alone could be held responsible for all her losses in this regard bearing in mind her agent who had reportedly inspected the Property about six months before termination had not reported any issues. It would have been clear to that agent that the office was already deteriorating at that time. That should have been reported to the Applicant by her agent. It was not. That was not something that the Respondent could be responsible for. However it was clear to the Tribunal from the photographs lodged and the evidence of the Applicant when she took repossession of the Property that the office had deteriorated over a far longer period of time than 6 months. In the circumstances it appeared to the Tribunal that the Respondent was at least partially responsible for such a deterioration and accordingly the Tribunal was of the opinion that a fair assessment of the Applicant's loss in that regard was £1242.

Decision

27. The Tribunal granted an order for payment of £5617.75. The decision of the Tribunal was unanimous.

Right of Appeal

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

S Evans

1 October 2022

Legal Chair **Date**