



**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/22/2646**

**Re: Property at Unit 2 Dildawn House, Dildawn Estate, Kelton, Castle Douglas, DG7 1SE (“the Property”)**

**Parties:**

**Mr William Moultrie, Dildawn House, Dildawn Estate, Kelton, Castle Douglas, DG7 1SE (“the Applicant”)**

**Miss Joanne Parker, UNKNOWN, UNKNOWN (“the Respondent”)**

**Tribunal Members:**

**Steven Quither (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent is to pay to the Applicant the sum of SEVEN THOUSAND TWO HUNDRED AND SEVENTY SIX POUNDS (£7,276) STERLING ONLY.**

**BACKGROUND**

1. This is an application for payment of rent arrears arising out of a “Tenancy Agreement” between the parties in respect of the Property, commencing 13 October 2021 and stated to run on a month to month basis, although the parties erroneously understood it to have a 6 month duration. The Agreement itself provided for the Respondent to pay 6 months in advance, possibly based on this understanding. In another application (FTS/HPC/PR/22/3367), a differently constituted Tribunal considered at length the exact nature of the arrangement

between the parties and concluded that it was truly in the nature of a Private Residential Tenancy (“PRT”), a view with which this Tribunal sees no need to differ. In this application, made in August 2022, the Applicant stated rent arrears had accrued in the sum of £5,800, albeit that said sum also included other parts of the Applicant’s larger property let to the Respondent, in respect of which the Tribunal previously referred to decided the Tribunal had no jurisdiction. This sum was subsequently amended and updated to £7,800 in respect of the residential part only of the property let to the Respondent, as referred to hereafter. Rent payable by the Respondent was to be paid monthly and in advance. Lodged in support of the original application was said Agreement and Notice to Leave.

2. After the application was made, the Tribunal requested further information from the Applicant and in due course there was also lodged in support of the application a rent statement showing a sum due of £5.800 as previously referred to, as well as confirmation and clarification of the Applicant’s ownership of the Property, which formed part of a larger property owned by him. Thereafter, the application was accepted by Tribunal Notice of Acceptance of 10 November 2022 and a Case Management Discussion (“CMD”) was duly scheduled for 25 January 2023.
3. As well as the application previously referred to, the Tribunal was also aware of several other applications between the parties, namely, FTS/HPC/EV/22/2642 (dismissed), FTS/HPC/RT/22/2939 (decision available), FTS/HPC/EV/23/0177 (proceeded with but subsequently withdrawn, as hereafter referred to) and FTS/HPC/RE/23/0276 (Decision available).
4. On 23 November 2022, the Tribunal issued its Decision in respect of case reference FTS/HPC/RT/22/2939, making a Repairing Standard Enforcement Order (“RSEO”) against the Applicant in respect of the Property, works to be completed by 28 February 2023. On 6 January 2023, the Tribunal extended this time limit to 14 April 2023.

5. Between said CMD date being assigned and the CMD taking place, both parties lodged further information to the Tribunal, regarding this and the other applications between them, the Applicant (via his solicitor) by email of 17 January and his own email of 18 January, both 2023 and the Respondent by emails of 6 December and 9 December, 2022 and further emails of 16, 17, 18, 20 and 23 January, all 2023. Said emails from both parties variously contained information and attachments relating to the numerous issues in dispute between them, not simply the rent arrears relating to this application.
  
6. At the CMD on 25 January 2023, the various cases then outstanding or already concluded were noted, as was the Respondent's position that she did not consider rent was due after May 2022 due to the condition of the property making it uninhabitable on account of there being no functioning toilet or boiler, albeit that she had not relinquished possession of it and continued to use some of its facilities. Her intention to leave the Property in early March 2023 was noted. The Applicant's noted position was that the Respondent's own actions had caused the problems of which she was now complaining and this was supported by tradesmen. In any event, no access had been provided to remedy any defects. The Tribunal considered an evidential Hearing was necessary to determine the issues between the parties and issued a Notice of Direction for them to lodge various documentation for same. For the Respondent, these were a written note of defence, a personal statement of her evidence and that of any witnesses relied upon by her and a paginated and indexed bundle of any documentary and other evidence similarly relied upon, the Applicant being directed to lodge a written response to the Respondent's said note of defence, a full and up to date rent statement, his own personal statement and that of any witnesses relied upon by him and his own similarly paginated bundle of any documentary evidence upon which he sought to rely. By Tribunal letter of 18 May 2023, parties were advised of a Hearing date of 21 June 2023.
  
7. On 6 March 2023, in Tribunal case FTS/HPC/RE/0276, the Tribunal issued a Decision to assist the Applicant and various tradesmen instructed by him to

obtain access to the Property in order to comply with the RSEO granted on 23 November 2022 in Tribunal case FTS/HPC/RT/22/2939.

8. Following the CMD, the parties lodged further documentation to comply with the Tribunal's Direction.

For the Respondent, this comprised email of 25 February 2023 containing her Defence Statement and various pictures of parts of the interior of the Property referred to therein. She subsequently sent further emails on 7, 8, 9 and 14 March in relation to the Applicant's request for an extension to lodge his documentation and the general condition of the Property.

For the Applicant, this comprised, after an extension afforded to him, emails of 8 and 9 March and subsequently, via his solicitor on 17 March, a 129 page "bundle" of 4 separate inventories of enclosures, comprising:--

- a) Tenancy Agreement;
- b) Notice to Leave;
- c) Royal Mail Confirmation of Postage by Recorded Delivery;
- d) Section 11 Notice and email Notification of Service;
- e) Royal Mail confirmation of delivery on 29<sup>th</sup> June 2022;
- f) Disposition by Mrs Beryl Moultrie in favour of John Moultrie and others;
- g) Disposition by Executors of John Moultrie in favour (Applicant) and others;
- h) (Title Information re Title Number) KRK9474;
- i) Landlord registration update approved;
- j) 14 screenshots from Respondent's Instagram account, advert and photographs;
- k) Picture of Applicant's arm, "showing dog bite";
- l) Email of 6 July 2022 from Respondent to Applicant;
- m) Email of 17 October 2022 from "Robert Schiller" to Applicant;
- n) Tribunal Decision in case FTS/HPC/CV/21/0152;
- o) Schedule 1, Rental Property Inventory of 26 October 2021, with photographs of Property;
- p) Applicant's Written Response to Respondent's Note of Defence;
- q) Rent Statement "for the duration of the tenancy";
- r) Applicant's Personal Statement; and

s) Tribunal Decision of 6 March 2023 in case FTS/HPC/RE/23/0276.

**9.** Subsequently and prior to the Hearing taking place, the parties lodged further information and representations with the Tribunal

For the Applicant, these comprised email, via his solicitors, of 12 April and emails from him of 14 June, (one of which attached his “final evidence submission”).

For the Respondent these comprised emails of 21 March, 4 and 17 April, 18 May and 14 and 15 June.

**10.** On 5 April 2023, the Tribunal issued its Decision in Tribunal case FTS/HPC/PR/22/3367, above referred to.

**11.** All of this documentation and other documentation previously referred to herein, as well as documentation lodged by parties available in the case file was available to and considered by the Tribunal in reaching this Decision, along with the oral representations of the parties at the Hearing on 21 June.

## **THE HEARING**

**12.** This duly took place by teleconference on 21 June, with both parties in attendance, having been changed from an in person hearing at the request of the Respondent, who advised the Tribunal that she is now living in England. In response to a preliminary issue raised by the Tribunal, the Applicant asked to amend the sum claimed, in line with his rent statement. Having confirmed with the Respondent that she had no opposition to this, the amendment was duly allowed, altering the sum claimed to £7,800. The Applicant also clarified that the sum of £650 per month rent for the Property was based on an exchange of text messages between the parties from about 10 or 11 October 2021, wherein the rent was to be £500 per month with the additional £150 being paid for electricity, heating and council tax, although for some reason that detail was not included in the Tenancy Agreement formally drawn up shortly thereafter. The

Respondent confirmed the monthly figure she understood due by her was £650, so there was no dispute in any event.

**13.** In his first submission to the Tribunal and including answers by way of response to points raised by it and by the Respondent in correspondence copied to him, the Applicant confirmed his position to be that:--

The sum claimed was properly due since he was unable to gain access to the Property to carry out any repairs as a result of the Respondent's misuse of the Property.

He had now carried out the work required by the RSEO, but had had to seek Tribunal assistance to gain access to do so.

He had now lodged a Report from surveyors, with email of 14 June, confirming that any moisture in the bedroom was surface only on the plasterboard covering the wall, the wall itself being dry behind the plasterboard. Accordingly, any such moisture was being generated internally, rather than penetrating from the outside, which he attributed to use of a tumble dryer in said room without venting out of the room.

Similarly, a solid stone wall in the hallway was found to be dry behind the plasterboard, any damp in the plasterboard being suspected to have been caused deliberately by the Respondent pouring water onto it.

So far as he was concerned, there was no dampness problem in either the bedroom or the hallway and this view was supported by the surveyor's report. He suspected also that any dampness with the hallway floor had been caused by puppies kept by the Respondent in a pen there urinating, since there had been no further issue since the puppies had been removed.

Any complaint about plaster flaking off walls was minor and had now been dealt with by simply brushing down and sealing the plaster where needed.

Any problems with toilet blockage had been caused by wet wipes being flushed down the toilet, since the toilet was working well at the start of the Respondent's occupancy and was now doing so again after removal of a quantity of wet wipes from it, pictured as part of his Written Response to Respondent's Note of Defence referred to in preceding paragraph 8p) hereof (p105 of bundle). There was a specific prohibition on flushing wet wipes in the Tenancy Agreement, the

Respondent had been told not to do so as a matter of routine and, in addition, there was a sign in the toilet reminding users not to do so. So far as he was aware, only the Respondent and/or her friends or family used the toilet during her occupancy of the Property.

At about the beginning of February 2022, when he was advised that Amanda Green from Dumfries & Galloway Council ("the Council") was to attend to inspect the Property, he attempted to arrange a visit just to check all was in order, but was thwarted from doing so by the Respondent's lack of co-operation, as evidenced by email exchanges and submissions at pp88-90 of bundle, arising out of a belief on her part that the Applicant had contacted the SSPCA in relation to the Respondent keeping puppies at the Property.

He was regularly unable to gain access to the Property to attend to any issues raised by the Respondent and on one occasion (on 9 May 2022) when he and tradesmen did, they were unable to access the area in question to carry out any necessary work due to access being blocked or obstructed by the puppy pen in the hallway (bundle pp94 to 97). The Respondent subsequently told him she was not permitting access except in case of emergency and also said there had been a theft from the Property.

On another occasion, on 16 June 2022 he was bitten on the arm by a dog belonging to the Respondent (bundle p63).

He was made aware of an issue with the central heating and found that the hot water cylinder had a broken switch, which was duly repaired.

The Respondent made frequent, perhaps even constant, use of the central heating, washing machine and tumble dryer in the Property.

**14.** In her first submission to the Tribunal and including answers by way of response to points raised by it and to points raised by the Applicant in correspondence copied to her and at the Hearing, the Respondent confirmed her position to be that:--

She took up occupancy for reasons of expediency, but there was nothing particularly special about the Property, except that it was available. She paid 6 months rent in advance.

Upon taking entry, she and her mother noticed bare pipework and loose plasterwork, grit etc., which would crumble and fall off regularly at the stairs and in the bathroom. She advised the Applicant of this in a short conversation in about January 2022, but the Applicant said he was on his way to Edinburgh and couldn't spare time to talk to her, it was shortly after this that she received the first request from the Applicant for her to leave the Property.

She completely denied putting wet wipes down the toilet, (a denial she repeated on several occasions during the Hearing).

An email she received from the Applicant to obtain access to do repair work was sent last thing on a Friday evening, leaving her inadequate time to make arrangements for the next day's proposed visit, but generally she did afford him access whenever he wanted, even if he then failed to do the repairwork she was asking him to do, eg on one such occasion she was asking him to repair the toilet but instead he replaced 2 light bulbs, leaving the toilet still not working. Some repairs he seemed reluctant to do at all and on occasion he cut the water off to one of the other parts of his larger property which she was using also as part of her agreement with him.

Such was the state of matters that in February 2022 she required to involve the Council for assistance.

She was looking for alternative accommodation from fairly early on in the tenancy but since she had animals her options were restricted.

She did not say she would move out in May 2022 ie at the end of what was understood to be an initial 6 month term of the tenancy.

She only had a mattress, not a bed, in the living room.

She eventually left the property on 19 March 2023, having found somewhere else to stay.

She denied any dogs belonging to her had killed any sheep.

Due to the condition of the Property, she had required to leave same and live in a "shepherds hut", which she had brought with her, which measured about 18 foot by 10 foot, where she had facilities for heating food, although she still obtained water from and used the fridge and washing machine etc. in the Property.



She could not sleep in the Property due to dampness in it and in addition, there were broken windows in the bedroom and living room.

She couldn't simply leave the Property out of concern for the animals she owned & looked after, but from fairly early on in the tenancy she had been looking for alternative accommodation, since she formed the view that it would be a "waste of time" raising any issues with the Applicant.

She did not keep any dogs at the Property, these were kept at a "paddock" a short distance away. Any puppies at the Property would only be there for a short time. Such puppies would be kept in a puppy pen in the middle of the hallway, beside a spare room used for storage by the Applicant, which pen could be easily moved if needed, which the Applicant had done.

She did not breed puppies, she rehomed them, which the Applicant knew about and was comfortable with. Accordingly, any puppies there, at most 5 or 6 at any one time, did not belong to her as such. This was the position in January 2022, when she had some puppies with her for rehoming through Facebook. They were not sold, but a rehoming fee of about £500 each was paid to her and she maintained contact with any customers who rehomed a puppy by this means. She only used the cooker in the Property till about June/July or so of 2022, but she kept it clean thereafter, even though she was not using it.

The toilet in the Property stopped working in January or so of 2022, when it became blocked. When she told the Applicant about this, he said he would get back to her, but instead she received a request from him to leave the Property. Thereafter, she bought a chemical toilet from Amazon and used it for the duration of her time at the Property, emptying it when required into various holes in the ground dug by her for that purpose.

Her mother had told her she should not put up with the condition of the Property and after there was no response to her complaint of plaster crumbling, she contacted the Council for advice.

She estimated she had received 5 separate requests from the Applicant to leave the Property and in about March or April of 2022, the Applicant had turned off the electricity and heating in the Property.

She saw no reason why she should have tried to fix the toilet herself.

Such was her concern about the condition of the Property, she consulted a solicitor of her own to write to the Applicant's solicitor about it, on 3 May 2022. She did not know why said email only mentioned, in relation to the Property as opposed to other parts of the Applicant's larger property, a faulty boiler, when the toilet had not been working since January 2022.

She had been told by the police that the Applicant was not allowed simply to enter the Property as he pleased, there had to be agreement for him to do so. On one such occasion when he did make an unauthorised visit to the Property in the Respondent's absence, £200 had gone missing and there had been damage caused to an item of particular sentimental value to her. In addition, the washing machine had not worked thereafter, although the Respondent had a washing machine of her own in the Property, which she could and did continue to use.

She denied any sort of constant use of the washing machine, tumble dryer or suchlike. When she had access to the 2 washing machines in the property (ie the Applicant's and her own), she had used the Applicant's machine for washing dog blankets etc. and her own for her personal laundry. She would normally leave the window open in the bedroom for drying clothes, rather than the tumble dryer, which she only used occasionally. She used an electric heater in the living room.

In relation to her email to the Applicant of 1 May 2022, (bundle pp 93 to 94), in which she used abusive language towards the Applicant, she considered she was at the end of her tether and simply "lost the plot".

She had continued to look for other accommodation and had purchased a plot of land in mid 2022 to build a house and other separate accommodation on, but her intentions had fallen through and she had sold that property in September or October of 2022.

She advised that when she queried exposed piping and wiring in the Property, she was in effect told that since there were 3 separate dwellings in the building, such items had to be somewhere and that was in the Property. This caused another problem, in that condensation dripped down from the pipes.

She had repeatedly requested the Applicant fix the toilet and noted this was one of the items referred to in the RSEO.

**15.** In view of the range of issues raised by the Respondent, the Applicant was asked if he wished to make any further submission. By way of doing so, he advised, again sometimes by way of response to matters raised by the Tribunal and despite regular interruption and remarks by the Respondent:--

The Respondent's son and friends were regular visitors to the Property, sometimes staying for 5 or 6 days at a time.

He was sure of his position re the tumble dryer being in virtually constant use.

The Respondent could have left the Property anytime and the fact that she had animals on other parts of his larger property was no reason for her not to do so, since they were in separate accommodation entirely and could have remained there.

In relation to the RSEO, many of the matters it addressed were not raised by the Respondent.

As previously stated, on one occasion when he did get in (on 9 May 2022, the puppy pen in the hallway prevented him and tradesmen obtaining access to do any work and this was then followed up by the Respondent's email of 10 May 2022, telling him he should not enter except in case of emergency (bundle pp99 to 100), which was indicative of the type of difficulty he had reaching any access arrangement to do anything. So, despite the fact the Respondent was coming and going from the Property throughout her time there, he could not get access to attend to matters about which she had complained and, as previously advised, on one occasion when he did, he was bitten by one of the dogs there. Although he couldn't get in, the Council did obtain access, but thereafter he required to obtain assistance from the Tribunal to carry out work required in terms of the RSEO.

He confirmed he had a number of other properties but did not appreciate he needed a separate Electrical Installation Condition Report for the Property since, although it formed a separate property, it was still part of his own house. He had requested the Respondent to leave the Property in January 2022 and accepted said request was informal, rather than complying with legal requirements. His view was that the tenancy was not working out and it was simply better to bring it to an end as soon as possible. He misunderstood the

legal position and thought the tenancy had to subsist for 6 months, since the Respondent had paid 6 months rent in advance. He similarly misunderstood that what had actually been entered into was a PRT, as opposed to a “lodger agreement”.

He had not lodged any bills vouching excessive electricity use by the Respondent since he was restricting his claim to the £650 per month as above referred to.

The Respondent chose to use a chemical toilet, the toilet could have been fixed without any difficulty. He did not know what steps the Respondent took as regards emptying the chemical toilet.

Problems had started in January 2022, but he did not accept these had been raised by the Respondent while he was at his car preparing to leave to go to Edinburgh. He recalls other members of the Respondent’s family were at the Property at that time and the initial difficulty was that gates were being left unsecured, leading to difficulties with livestock and the Respondent’s dog having access to where livestock were kept. At this time, at about the end of January 2022, no issue had been raised about the toilet or anything else in the Property.

Nonetheless, it seemed clear to him, even at that early stage, that there was a potential for further difficulty, hence the request made by him to bring matters to an end by the Respondent leaving within the next month or so, a suitable refund being made for any overpayment of rent, to reflect the early termination of the tenancy. To this the Respondent advised that she would leave at the end of the 6 month period then understood by the parties to apply (bundle p88).

(At this point in the Hearing, the Respondent interjected to confirm the date of said request was 30 January 2022, that she was given 28 days at most to leave the Property and that repayment would be made of any overpaid rent, the latter couple of points being in response to questions from the Tribunal).

It was after this exchange that the Council became involved and the Applicant tried unsuccessfully to arrange to visit the Property in advance of any Council inspection, as previously referred to herein, in addition, by email of 3 February 2022, the Respondent had basically told the Applicant that she was blocking any attempts by him to arrange further access visits (bundle p90).

He denied that he had placed logs about the larger property to obstruct the Respondent, stating that he thought other users of the larger property might have done so to control livestock movement and stop vehicles driving around certain areas. In any event, any such logs did not prevent movement on foot.

He was aware of a report of the Respondent's dog worrying sheep.

To summarise, he stated he tried to do all he could to assist the Respondent in dealing with any issues raised but could not do so for the reasons previously outlined herein. She could have left anytime she wished but chose not to do so. For that reason, the sum claimed was due by her.

- 16.** The Respondent was then asked if she wished to make any further submission, notwithstanding difficulties which had occurred during the Applicant's second submission, further referred to hereafter. In taking the chance to do so she stated that:--

There had been no issues of sheep worrying of any kind.

2 pigs belonging to her had died during her time at the Property, but this had been due to old age, as opposed to disease and there was a vet's certificate to prove it.

A plumber who had attended had dismantled the toilet then reassembled it without fixing it, which was a pointless exercise.

She felt she had to make a stand about the unacceptable condition of the Property and, as soon as she did so, the Applicant became difficult towards her. The state of the property was such that she should never have taken it in the first place, which was surely vouched by the RSEO.

Her email of 10 May 2022 (bundle p100) was simply to make clear the circumstances in which she considered the Applicant could gain access to the Property and she considered a blocked toilet was just such an emergency, but the Applicant failed to fix it.

She would also consider a heating repair to be an emergency.

She should not have to pay the rent etc. now claimed by the Applicant.

**17.** The Tribunal then advised the parties that it would take time to consider all that had been said today and lodged by them in support of their respective positions and issue its decision in due course.

## **FINDINGS IN FACT**

**18.** The Respondent occupied the Property under a PRT from 13 October 2021 until 19 March 2023 at a rent of £650 per calendar month, to include electricity, council tax and heating and paid 6 months in advance at the commencement of the tenancy. The parties erroneously believed at this time that the tenancy was for a fixed period of 6 months.

**19.** On 26 October 2021, the parties signed a Rental Property Inventory confirming that overall the Property was in satisfactory condition, with the exception of a cracked window pane, which was repaired by the Applicant on or about 3 December 2021. At the time of said repair, the Property was messy and untidy and showing signs of being used to keep dogs.

**20.** Between then and January 2022, the Applicant received no further complaints from the Respondent but did receive complaints from other persons using his larger property about the Respondent's use of land ancillary to the Property. Consequently, the relationship between the parties began to break down, as a result of which, at about the end of January 2022, the Applicant suggested that the tenancy be terminated at a mutually convenient time, any balance due in terms of the advance rent paid to be refunded. The Respondent declined this request and continued to occupy the Property, stating that she would leave on or about 14 April 2022, a date which the parties erroneously believed was the last date of the tenancy.

**21.** Shortly after making said request to the Respondent, the Applicant received a complaint from her about the condition of the Property, namely that plaster kept falling off the ceilings and the electricity had gone off. The Respondent told the Applicant she was going to contact the Council, when she heard further from

him. The Applicant then attempted, without success, to arrange a visit to the Property in advance of any visit by the Council and the Respondent then told the Applicant, in an email of 3 February 2022 at 4-15pm, that she suspected he had reported her to the SSPCA and, as a result, she was blocking any further attempts by him to contact her by text or email, any further communication to be via solicitors.

**22.** The Applicant was accordingly unable to inspect the Property prior to the Council visit to same on or about 11 March 2022. By email of 11 March, the Council wrote to the Applicant, advising him of “areas of concern” identified by it and that the Property did not at that time meet the requirements of the Repairing Standard.

**23.** Notwithstanding the difficulties between the parties by this time, the Respondent requested by email of 9 March an extension of the (erroneously believed) expiry date of the tenancy of 13 April 2022, but this was declined by the Applicant in email of 11 March, who again requested her to leave on said (erroneous) date, (which the Respondent subsequently failed to do). The Respondent consulted solicitors of her own, who replied to said email (date unknown), raising certain procedural matters, advising that their information was that the electricity in the Property had been cut off and requesting it to be restored immediately.

**24.** On said 13 April, the Applicant wrote again to the Respondent by email, again requesting her to leave the Property and advising her he was now consulting solicitors to have her evicted if she did not do so. By email of 3 May, the Respondent’s solicitors advised the Applicant’s solicitors, among other matters, that the boiler was not working and that her access to other areas of the larger property was being blocked.

**25.** Further email correspondence took place between the parties and solicitors and agreement was reached for the Applicant and tradesman instructed by him to visit the Property on 9 May 2022. On attending, their access to part of the Property was impeded by a puppy pen in the hallway, housing 6 puppies. In

addition, there were patches of urine on the floor. What inspection did take place found that the water heater switch was broken and the toilet blocked with toilet wipes. Founding on Clause 16 of the PRT, the Applicant declined to repair the toilet (bundle pp94 to 97).

- 26.** By “Notice” of 10 May, the Applicant wrote to the Respondent, detailing what he had found the previous day and requesting that the puppies be removed forthwith. The Respondent answered by stating that the Applicant was not to enter the Property except in case of emergency, that she was padlocking doors as necessary to stop him and accusing him of theft and causing damage (bundle pp98 to 100). She continued to occupy the Property and use its facilities and utilities.
- 27.** The Applicant attended at the Property on 16 June 2022 but was bitten by a dog there. He reported the matter to the Council and was subsequently advised on 13 September 2022 that a dog control notice had been served.
- 28.** On or about 28 June 2022, the Applicant’s solicitors served a Notice to Leave on the Respondent by recorded delivery post, intimating grounds of eviction as breach of the PRT, rent arrears and antisocial behaviour (bundle pp15 to 23). Said Notice was the foundation for Tribunal case FTS/HPC/EV/22/2642, which was subsequently dismissed as previously referred to.
- 29.** The unhappy stalemate between the parties continued, giving rise to the various Tribunal cases previously referred to. In addition, criminal complaints were made under PF references DF22001226 and DF22002045, in both of which the Respondent was the accused and the Applicant a witness and under PF reference DF22003664, in which the parties’ roles are reversed.
- 30.** On 23 November 2022, the RSEO was made by the Tribunal under Tribunal reference FTC/HPC/RT/22/2939, instructing the Applicant to carry out various works to the Property, including obtaining a Dampness Report, repairing a broken window, repairing or replacing the front door, repairing or replacing the heating and hot water system, unblocking the toilet, carrying out electrical works



and issuing an EICR, installing smoke alarms and making good any damage to decor occasioned by carrying out such works.

**31.** The Respondent indicated in an email to the Tribunal of 6 December 2022 that she was planning to leave the Property in January 2023. The Applicant was then afforded some access to carry out repair work on or about 13 December 2022, but further requests to do so on 20 December 2022 and 4 January 2023 were unsuccessful. For 20 December, the Respondent advised she would be away over the Christmas period and for 4 January, she advised (the Tribunal) by email of 29 December 2022, that she would be leaving “in the next couple of weeks” and “I’m out of here ASAP” and accordingly the Applicant could obtain access then. The Applicant’s belief is that the Respondent did not go away for said Christmas period. Furthermore, she did not then vacate the Property in January 2023, but advised by emails of 12 January that she was trying to move out, of 16 and 17 January that she was wanting to leave but being prevented from doing so by actions of the Applicant, that she was seeking vehicular access so she could “pack up properly and go” and that she wanted to just “leave in peace”, of 18 January that she was trying to move out, of 23 January that she would do so “in 6 weeks time. Max” and of 25 January that she would do so in early March 2023. Subsequently, a Decision to Assist the Landlord in respect of said RSEO was made by the Tribunal on 6 March 2023 under Tribunal reference FTS/HPC/RE/23/0276

**32.** The Respondent left the Property on 19 March 2023 and the relevant work was then carried out in respect of said RSEO, a Certificate of Completion being issued on 12 June 2023. As part of that work, parts of the Property were inspected by Arthur Blower, Surveyor, of Richardson & Starling, Property Preservation & Repairs, Dumfries. He tested all areas of the walls in the bedroom of the Property and found no excessive damp or moisture readings on the areas tested. In respect of the hallway, he tested the wall area and found above average moisture readings from various mortar joints which he felt could possibly be as a result of residual moisture from recent re-pointing work. This broadly supported the Applicant’s long held opinion that any issues with

dampness etc. in the Property had been caused by the Respondent's use of same and failure/refusal to afford him access to remedy her complaints.

- 33.** Relevant correspondence lodged by the parties confirms that the Applicant requested the Respondent to leave the Property at least on or about each of 30 January, 11 March, 13 April, 28 June and 17 November, all 2022 and 11 March 2023 and the Respondent declined or gave an indication of declining to do so at least on or about each of 31 January, 1 May, 6 July and 6 December, all 2022 and 18 January and 11 March 2023. On several occasions her refusal to do so was made in or accompanied by intemperate and sometimes abusive language towards or relating to the Applicant.
- 34.** From about the end of 2021/beginning of 2022, the parties were not on good terms, as evidenced by the content and tone of any direct communication between them or in communications to 3<sup>rd</sup> parties, particularly on the part of the Respondent, who frequently used intemperate or abusive language towards or in relation to the Applicant.
- 35.** The condition of the Property deteriorated as a result of the Respondent's use of same. She was in occupancy until she vacated same on or about 19 March 2023. Accordingly, with the exception of any rent claimed for the period after she vacated the Property on 19 March 2023, the rent claimed by the Applicant is properly due in terms of the PRT entered into by the parties as previously referred to herein.

## **REASONS FOR DECISION**

- 36.** It was evident from the content and tone of the large amount of correspondence and other material lodged prior to the hearing (not all of it relevant to the issue before the Tribunal) that, to put it mildly, the parties were not on good terms from about the end of 2021 or so. This was characterised by such correspondence being at best blunt but also at times intemperate and abusive, especially on the part of the Respondent. This bad feeling percolated the Hearing when, despite initial advice at its commencement as to how the

Hearing was to proceed and then after a number of warnings about her language and not to interrupt the Applicant, especially during his second address to the Tribunal, the Respondent required to be muted in order that the Hearing could proceed in a meaningful manner. It goes without saying that such conduct on the Respondent's part did her no credit.

- 37.** So far as the merits of the case are concerned, the Tribunal found it difficult to reconcile much of what the Respondent was saying at the Hearing and stating in correspondence. In particular, the Tribunal found it difficult to understand:--
- a) How the Property could deteriorate so rapidly from the condition it was in at the outset, accepted by the Respondent, as evidenced by her signature on the rental Property Inventory;
  - b) Why, if the Property was in such a poor condition at the outset, the Respondent chose to take it on at all and then seek to stay in it longer than the parties' understood termination date in April 2022;
  - c) Why the Respondent repeatedly refused to allow the Applicant access to the Property to carry out the very repairs of which she was complaining over such a prolonged period of time, especially after an RSEO was granted;
  - d) Why, in the face of repeated demands for her to do so, she did not vacate the Property, especially if it was in such poor condition from such an early stage of her occupancy;
  - e) Why, if she was not occupying the Property throughout 2022 and into 2023, she chose to enhance its security to prevent the Applicant obtaining access to it, again in relation to carrying out said repairs; and
  - f) Why, if she was truly wanting and/or intending to leave earlier than she in fact did, the Applicant would obstruct and prevent her from doing so, given the state relations between the parties had reached,
- all of which left the Tribunal in some doubt as to her credibility.

All of this notwithstanding, the Applicant appears to have behaved from time to time in a regrettable manner also. There was something of an unfortunate flavour about the suggestion that he cut off utility supplies to the Property in an effort to make it uncomfortable for the Respondent and that he blocked her access to other parts of the larger property. However, on the whole, the Tribunal

found the Applicant to be more reasonable, credible and reliable in the evidence produced by him for and given to the Tribunal. It seemed entirely reasonable to the Tribunal to accept his recollection that matters began to deteriorate from when he advised the Respondent at about the end of 2021 that due to issues with other tenants, he considered it best to bring the arrangement between the parties to a close, subject to a suitable arrangement being reached for repayment of any overpayment of rent paid in advance. The Respondent's text by way of response, stating that she could be "just as awkward", regrettably set the tone for just about all of the rest of the dealings the parties had with each other with, perhaps, the exception of her email of 9 March 2022, requesting to be allowed to stay in the Property beyond 13 April 2022.

The Applicant's position throughout appears to have been that any issues with the Property were caused by the use made of it by the Respondent, a view supported by pictorial evidence and then, once he could obtain access to carry out the repairwork etc., Mr Blower's report. Having said that, the Tribunal was not entirely convinced by the suggestion of the Respondent deliberately pouring bottles of water down the walls of the Property, but nonetheless regards it as possible, given the manner in which the Respondent conducted herself at the Hearing. The Tribunal found it entirely credible that the dampness issue in the bedroom had been caused by the Respondent's use of a tumble dryer there without adequate ventilation, especially given her own evidence about carrying out frequent washings of dog blankets etc and her own personal laundry.

It was a matter of agreement that the Respondent moved out of the Property on 19 March 2023. The Applicant claims a full payment of rent for the month following 13 March 2023 as well as for the period from 13 April 2022. In the circumstances, the Tribunal finds the Applicant entitled to the rent claimed as shown on his Rent Statement for April 2022 to February 2023 in the sum of £7,150 and then to a further £126, for the further period between 13 and 18 March, being rent due for 6 out of the 31 days the March rent payment would have covered to 12 April 2023, to reflect that further period the Respondent was in occupancy. Accordingly, the total sum awarded is £7,276.

## **DECISION**

**38.**The Tribunal determines that a payment order should be granted against the Respondent in the sum of SEVEN THOUSAND TWO HUNDRED AND SEVENTY SIX POUNDS (£7,276) STERLING ONLY

### **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.**



**Legal Member/Chair**

**19 JULY 2023**

\_\_\_\_\_  
**Date**