



**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/21/2230**

**Re: Property at 17 Ashgrove Road West, Aberdeen, AB16 5BB (“the Property”)**

**Parties:**

**Mrs Fiona Mackay, Backhill Farmhouse, Castle Fraser, Kemnay, Aberdeenshire, AB51 7JT (“the Applicant”)**

**Mr Nasir Ahmed Haque Begum, Mohsena Akter Dalia, Taraqul Haque Akter, Ground Floor Whole, 18 Craigie Street, Aberdeen, AB25 1EL; Ground Floor Whole, 18 Craigie Street, Aberdeen, AB25 1EL; Ground Floor Whole, 18 Craigie Street, Aberdeen, AB25 1EL (“the Respondent”)**

**Tribunal Members:**

**Jan Todd (Legal Member) and Ann Moore (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**Background**

1. This was an application by the Applicant for an order for payment in respect of the time the Respondent tenanted the Property from the Applicant.
2. The Applicant is seeking an order for payment of £8,884.10 made up of £6,851.26 in respect of rent she alleges has not been paid and late payment charges and costs in respect of repair, damages in the property and the cleaning of the Property and work in the garden.
3. The Applicant had lodged the following with the Application:-
  - Copy tenancy agreement
  - Rent statement
  - Ingoing inventory
  - Checkout inventory

- Rent chase log
  - Various quotes for locks, cleaning and repair
  - E-mail correspondence regarding the garden
4. The Applicant had lodged in response to a direction sent by the Tribunal an e-mail response dated 3<sup>rd</sup> March 2022 confirming the amount sought after deduction of the deposit amount of £975, was £8884.10, that the Landlord has not undertaking the quoted work yet and a response in relation to the gardening work.
  5. The Respondent initially instructed a solicitor to represent them namely Mr Scott Runciman of Gilson Gray solicitors who had asked and obtained a postponement of the original CMD set down for 21<sup>st</sup> January 2022. However Mr Runciman advised by e-mail dated 15<sup>th</sup> March to the Tribunal administration that he was previously instructed but would now not be appearing for the Respondents and that they would appear personally to take this forward. A CMD was scheduled for 18<sup>th</sup> March 2022 but was adjourned as neither the applicant's representative was not present and it was felt the Respondent would benefit from an interpreter.
  6. A further CMD took place on 16<sup>th</sup> May 2022. Both parties took part and Mr Sinclair or Stonehouse Lettings represented the applicant with an interpreter present to interpret for the Respondent.
  7. Mr Sinclair advised at the CMD that the amount of rent due at the end of the tenancy was £6,851.26 as per the rent statement lodged, but that after the deposit was deducted the sum due was £5876.26.
  8. Mr Sinclair then went through the work quoted on the table of damage and costs that the Applicant is claiming.
    - Mr Sinclair confirmed that with regard to cleaning, the cost quoted included a general clean of the house; an oven and hob clean; cleaning a carpet; and replacing a bulb. Under comments from the Respondent and questions from the legal member he confirmed that this is just a quote obtained following the checkout inventory and that due to the significant level of arrears of rent the applicant was not in a position to arrange and pay for this work. The Applicant later confirmed that she carried out cleaning herself.
    - The Respondent challenged why he should be required to pay if the Applicant had not got an invoice.
    - With regard to the cost of £110 Mr Sinclair advised this was the cumulative total for various damage noted in the check-out inventory to cover items such as staining on a table, spots and damage to carpet, spill marks on skirting boards and pen marks on the drawer unit. Mr Sinclair advised the amounts reflect amounts in line with guidelines used in the sector.
    - With regard to the summerhouse handle/lock being missing Mr Sinclair confirmed that the amount stated was again a quote and this had not been repaired.
    - With regard to the claim for replacement keys for several internal locks which the Applicant claimed had keys this is for £504. Mrs McKay

- advised later in the discussion that as they were old fashioned locks she did not replace these but that she had replaced the summer house lock.
- With regard to the quote for replacement chair upholstery Mr Sinclair advised that one chair had a large rip in it and as the material was no longer available all the chairs would have to be reupholstered to fix this.
  - Finally with regard to the garden Mr Sinclair advised the work to bring the garden back to the standard it was in when let was done by the applicant. The Tribunal noted the hours claimed are 120 hours which equates to 17 days at 7 hours a day. He advised this reflects the time Mrs McKay spent restoring the garden but confirmed that there were no pictures as it was late November when the tenancy was given up and that it wasn't feasible to take pictures then. He advised that the only photograph he had was of the garden waste removed at the end of the garden being done.
9. Mr Sinclair confirmed that the Landlord had served notice asking the tenant to leave in August 2020 and the tenancy ended on 22<sup>nd</sup> November 2020 after the tenants moved out. Mr Sinclair also advised that the house has now been sold, that it was originally the landlord's intention that her son lived there but due to a downturn in the economy her son was relocated elsewhere and the house was then sold. The Applicant confirmed the house was presented for sale in June 2021, that she did the cleaning and gardening work herself that she did not replace the internal keys but did replace the lock on the summer house.
10. Mr Begum advised at the CMD that he and his family rented the Property from May 2018 and when the notice to leave was served they emailed the landlords agent and left in October/November. He could not remember exactly when. He advised he left all the keys with the letting agent at their offices. Mr Begum explained that due to a downturn in work for taxi drivers he struggled to pay the rent from March 2020 and requested a reduction, he did not hear anything immediately and assumed it had been granted. He later received e-mails confirming this was not granted. He denied that the house was not clean or that the garden had not been maintained and expected invoices to show if the work had needed to be done.
11. As there was a dispute over the amounts due the matter then proceeded to a hearing.
12. A hearing was scheduled for 16th August 2022 at 10am but on the day of the hearing the scheduled interpreter did not attend, another was instructed but could not start until 11am, so the hearing commenced at 11am but both parties advised they could not attend after lunchtime due to other commitments.
13. The hearing started in the limited time available. The Applicant and her representative Mr Sinclair from Stonehouse Lettings was present as was an interpreter and Mr Begum the Respondent. Evidence was given on the matter of the rent from Mr Sinclair and Ms McKay the applicant as well as from Mr Begum for the Respondents.

14. Mr Sinclair explained that he was the senior property manager for Stonehouse Lettings and the senior property manager for this tenancy. He advised that the tenancy started on 30<sup>th</sup> June 2018 and rent was paid on time until March 2020. He advised that only one payment was received after that until November when the tenants left. He advised that as per the rent statement the rent due and unpaid was £6,611.26 plus late payment fees of £240 which made a total of £6851.26 and the deposit was successfully reclaimed and put towards the arrears leaving a total of £5,876.26. He advised that with the additional sums sought the full claim amounted to £8884.10. Ms McKay and Mr Begum both agreed that £5,876.26 was the amount of rent not paid. Mr Sinclair also confirmed that the Respondent had asked for a reduction in rent for 3 months which he would pay later on and he advised that although the landlord was sympathetic she was unable to grant this request.
15. Mr Sinclair advised that a notice to leave was sent to the Respondents asking them to leave by 22<sup>nd</sup> November 2020. He advised that the keys to the property were returned to his offices at the weekend and they were picked up on the Monday when the office reopened.
16. Ms McKay confirmed that the notice was based on her son or daughter wishing to live in the Property but due to circumstances changing she actually sold the house about a year later.
17. Mr Begum then gave evidence and explained that he had always paid the rent regularly sometimes 1 or 2 days early but in March 2020 his work stopped as there was no demand for taxis and he had no income. He advised that he asked the letting agent for a reduction in rent due to these extreme circumstances. He advised that he was told the letting agent would talk to the landlord but he advised he never had a response. He advised that he met the landlord one day when she came to visit the property and advised that she was not happy the rent was not being paid and he kept trying to ask for a reduction. The Respondent advised he had an e-mail asking for this. He advised that he had no work and could not pay the full amount, but managed to pay one month at the end of June. He advised that he did not get any help or information from the landlord or letting agent. He disagreed that he should have to pay the full amount of £5,876.26 (after the deposit is deducted) but accepted that is the amount that has not been paid. With regard to when he left the house Mr Begum indicated he thought it was one or two weeks before 22<sup>nd</sup> November but agreed he had dropped the keys in to the letting agents office through the letterbox after e-mailing to say he would be leaving.
18. Ms McKay then responded advising that she had met Mr Begum but was not harassing him, only trying to give him information and that she understood Stonehouse Letting had asked for information from Mr Begum re his request for a rent reduction and he did not respond. She confirmed she had not agreed to any rent reduction.
19. Due to time constraints the Tribunal adjourned the hearing at that point and a Direction was sent to the applicant requesting further written information namely: \_

1. *“As previously requested a copy of the invoice for the repair of the summerhouse lock or confirmation it was not repaired.*
2. *A copy of any log or intimation of damage to the summerhouse lock from the tenants.*
3. *A copy of the last inspection report carried out prior to the tenants leaving.*
4. *A copy of the notice to leave.*
5. *A copy of the e-mail from the letting agent advising the tenant they were not getting a rent holiday or reduction.*
6. *Confirmation if the Applicant is claiming for the keys to the internal locks as she previously advised these were not replaced?*
7. *Confirmation if the chairs have been upholstered and if so to provide a copy invoice.”*

20. The Applicant responded on 16<sup>th</sup> September and advised:-

21. “In relation to the direction received in relation to the above case I can confirm as follows:
22. 1 & 2 The applicant has decided not to pursue the claim for the summerhouse lock further.
23. 3 Please see attached as requested
24. 4 Please see attached as requested
25. 5 Please see attached a copy of the email conversation as requested.
26. 6 The applicant has decided not to pursue the claim for the internal locks further.
27. 7. The applicant has decided not to pursue the claim for the chairs further We would also ask that the previously submitted evidence in relation to the garden is given due consideration.”
28. The Applicant provided a copy of the last inspection report by Stonehouse Lettings dated 9<sup>th</sup> February 2020; a copy of the Notice to leave dated 20<sup>th</sup> August 2020 asking the Respondent to leave by 23<sup>rd</sup> November 2020 and copy e-mails dated between the 4<sup>th</sup> May 2020 and 8<sup>th</sup> July 2020, the last e-mail confirming the landlord is unable to accept any payment proposal and insisted that the rent is paid as per the lease.
29. A further hearing date was arranged firstly for 14<sup>th</sup> November, then when that was cancelled due to inability to get an interpreter a new hearing was arranged for 8<sup>th</sup> February 2023. The hearing commenced at 10am and Ms McKay was present along with Ms Lisa Campbell from Stonehouse Lettings and Mr Begum was also in attendance as was Ms Lama the interpreter.
30. The legal member started the proceedings by asking if there were any further comments to be made about the claim for rent. Ms Campbell confirmed that the Applicant was seeking the full amount of rent and advised that there was little or no communication from the Respondent about why he had asked for a reduction. The Respondent advised that he had wanted to pay the rent but had just wanted a reduction during Covid time. He acknowledged that he had received an e-mail after 3 months confirming the landlord wanted the full rent.
31. Ms Campbell then went on to confirm, after being reminded that the Applicant had withdrawn her claim for locks and damage to the chair, that she was seeking payment of rent of £6851.26; payment for the cleaning of the Property of £451.80; payment for damages noted on the checkout report amounting to £110; cost of gardening work of £1200 and a contractors charge in terms of clause 12.2 of the tenancy agreement. She confirmed the full amount now

sought was £7,651 after deduction of the deposit which had been returned to the Applicant.

32. The Tribunal then went through each claim for damages in turn.

### **33. Claim for Cleaning**

Ms Campbell advised that the house needed a general clean, carpets needed shampooed, the oven and hob and extractor needed cleaned and due to the landlord's lack of funds at the time the tenants checked out they did not arrange for the property to be cleaned by professionals. She advised that Stonehouse obtained a quote and that they gave the cleaning company the checkout report and asked them to quote to clean based on what was stated in the check out report that required cleaned. She confirmed under questions that they did quote only on what was needed as per the checkout report and not just a general clean but that the work was not instructed due to lack of funds.

Ms McKay confirmed that she carried out the cleaning herself. She advised that there was a lot to be cleaned which is confirmed in the contractors quote but as she was already out of pocket because of the non-payment of rent she took the view she could do this herself. She confirmed that she spent a considerable amount of time in the kitchen, that she probably spent 2 days at least and the extractor fan had not been cleaned and there was fat on the walls and ceiling. She also advised she cleaned the bathroom thoroughly and used a carpet shampooer on the carpets as well as cleaning all the windows inside and out. She also referred to the interim inspection reports of the Property which indicated that the property could be cleaner especially the bathroom and kitchen. The inspection report lodged of 2<sup>nd</sup> September 2020 confirms the Kitchen could do with a deep clean.

Ms McKay confirmed under questions that she was not VAT registered.

34. Mr Begum advised when asked about the state of the Property and the claim for cleaning that he said at the inspections he had never been told there was a problem with the cleanliness of the house and it was inspected regularly. He advised that they did normal cleaning whilst they were living there and a thorough clean when leaving including cleaning the windows. He advised he took photos but hasn't sent them to the tribunal.

### **Damages on Check out Report**

35. The second item claimed is £110 for a list of damages noted in the checkout report and given a value by the author of the report. Ms Campbell explained that the inventory clerk who is trained to do this prepares the inventory and will put a value on any damage based on if it is not worthwhile fixing. She confirmed they are experienced and use their knowledge to do this. She then went through each item where it is noted in the check out report. The items are as follows:-

- Window heavily scratched in the middle - £10
- 2 scrapes on wall -£15
- Side unit stained -£15
- Rips on a fitted carpet - £35
- Spot stains on carpet - £10
- Spill marks skirting board- £10

- Pen marks on tall drawer unit - £15
36. Ms Campbell confirmed the tenant was not present at the checkout which took place on 23<sup>rd</sup> November 2020, although they had been afforded the opportunity to be present. She also confirmed after checking her e-mails that the checkout report had been sent to Mr Begum on 29<sup>th</sup> November and again on 19<sup>th</sup> February with a note that they were still working on the final bill and then finally on 29<sup>th</sup> March 2021 with the final bill.
37. Mr Begum advised in response to this claim that it was now so long ago he could not remember the condition of the items claimed. He confirmed he received an e-mail in March 2020 and when asked to leave the property he left, before the date they were asked to leave by. He advised that in the e-mail received were photographs and a claim for money. He did not respond to the e-mail he advised because the landlord had not reduced the rent.

### **38. Claim for work and time spent on Garden.**

39. Ms Campbell advised that in the checkout report it is noted there were weeds between the slabs but that due to the poor light a full inspection could not be carried out. She advised that when she spoke to the person who carried out the checkout report she was advised that due to the prevailing weather conditions a full inspection could not be carried out. She accepted under questions that there was no comment about the garden in the inspection report dated 2<sup>nd</sup> September 2020, and that the only matter noted in the checkout report dated 23<sup>rd</sup> November was the presence of weeds between slabs. She confirmed that the owner Ms McKay contacted them after attending the Property a few days after the inspection to say there was work requiring to be done on the garden.
40. Ms McKay advised it is a large back garden and she thought the tenants were only cutting the grass and not maintaining the rest of the garden. She advised she found slate and stone paths encroached with weeds and that she had told the tenants at the beginning of the tenancy that the garden had to be maintained. She advised that she asked for a quote for remedial work to be done but didn't get one. She advised the person asked sent an e-mail to Stonehouse Lettings saying it was too big a job for him at present. When asked what Ms McKay did she advised she spent time cutting and pruning bushes, clearing dead wood and weeding. She advised she did this in December as the weather was alright.
41. Mr Begum advised that when he left the house the garden was in a good condition. He advised that there are no receipts or proof it was otherwise and that he did not believe Ms McKay worked in the garden as December is not a good month for working in the garden.

### **42. The Contractor Charge.**

43. Ms Campbell advised that the Applicant is seeking £12 as set out in Clause 12.2 of the tenancy agreement as a contractor charge. Ms Campbell advised that this clause is used in all leases prepared by Stonehouse Lettings and has been claimed in other tribunal cases. When asked

if she thought the charge could be applied to a case where work had not actually been instructed but only a quote obtained such as this case in respect of the cleaning, she advised that she thought it could as it was work that required to be done and is for any contractor charge. She advised that she would send in copies of some or all of the other cases where this claim had been successfully claimed.

#### **44. Final Remarks**

Mr Begum stated again that he regularly paid the rent, that he only sought a reduction in the rent and did not say he would never pay. He also indicated he would be content to go with the decision of the Tribunal.

Ms Campbell on behalf of the Applicant advised that the Applicant felt that Mr Begum had not responded to questions about his income and that she was still insisting on the full amount of rent.

#### **Finding in Facts and law**

1. The Applicant and the Respondent entered into a lease of the Property from to 22<sup>nd</sup> November 2020.
2. The Applicant is the landlord of the Property the Respondents were the tenants.
3. The Respondents agreed to pay £975 in rent payable monthly in advance.
4. The Respondents paid regularly until March 2020. From March 2020 until the tenancy ended on 22<sup>nd</sup> November 2020 they only paid one month's rent in June 2020.
5. The Deposit of £975 was successfully claimed by the Applicant and has been deducted from the rent due.
6. The Rent due and not paid after deduction of the deposit is 5,876.26
7. The Property was in need of cleaning at the end of the tenancy, in particular in the kitchen and the carpets.
8. A fair and reasonable sum for a landlord to carry out the cleaning is £150.
9. Damage has been caused to some of the furniture and fixtures in the house amounting to a value of £110 as per the check-out report.
10. The Tenants are liable for weeding between some slabs in the garden and a fair charge for that is £50.
11. The claim for the contractors charge is not properly incurred as no work was instructed or carried out by a contractor.

#### **Reasons**

1. The first claim by the Applicant is for the payment of rent. It was agreed by both parties that the rent due was £975, that it was paid by the Respondents up until March 2020 and that only one payment was made thereafter by the Respondent in June 2020 when he paid £975. In addition the Applicant has charged late payment fees which are contractually provided for in clause 9.2 of the lease. The late payment fees amount to £240. The deposit of £975 has been reclaimed by the Applicant and has been put towards the rent arrears. The total rent due is therefore £5876.26. Although the Respondent stated on



several occasions that he had asked for and hoped for a reduction in the rent due during 2020 due to his lack of income because of the effect of the pandemic, he acknowledged that the Applicant had refused this eventually and this was confirmed in the e-mails lodged with the Tribunals. As there is an obligation to pay rent each month in the lease, and given the parties agreed the rent that was due and outstanding and there was no evidence that the Applicant had agreed to a reduction or even a postponement of the rent then the Tribunal agreed that rent is due and owing in the sum of £5876.26 from the Respondent to the Applicant.

2. The Tribunal then considered the claims by the Applicant for damages or recompense for work done on the Property that she believed was caused by the breach of the tenancy by the Respondent. By virtue of the Applicant's e-mail of 16<sup>th</sup> September, the Applicant has withdrawn claims for the summerhouse lock key, the internal locks and damage to a chair so the Tribunal had to consider the claim for cleaning of the Property, the claim for compensation for damage to the Property as set out in the check-out report; the claim for the Applicants time in attending to the garden and the claim for a contractors fee in terms of the lease.

### 3. CLEANING

The Applicant was seeking the payment of the sum of £451.80 and lodged a quote from a cleaning company dated 4<sup>th</sup> December 2020 in support of this. However both at the CMD and the hearing the Applicant admitted that she did not engage the company to do the work. She advised that due to the non-payment of rent for several months prior to the end of the tenancy she had a cash flow problem and could not afford to hire the cleaning company to do the work. She did however confirm that their quote was only for cleaning the items and areas noted in the check-out report and in particular it is noted on the quote that the oven, hob and extractor would need cleaned, carpet cleaning was needed and "end of tenancy clean as per check out". The Applicant agreed that she was not VAT registered and it is noted that part of the total for the quote includes a sum for VAT of £75.30.

The Respondent denied the Property was not clean at the end of the tenancy and stated that it was always kept clean. This view however is contradicted by both the inspection report and the check-out report which highlight some cleaning was required. The inspection report notes the kitchen could do with a deep clean and the check-out report notes the kitchen and bathroom could do with cleaning that is the tenant's responsibility. Given the written reports carried out by the letting agent confirm the Property did need cleaning at the end of the tenancy, the Tribunal accepted that some cleaning was required. Given that the Applicant chose to do the cleaning herself she is not entitled to the value of the quote, but the Tribunal agreed that the sum of £150 would be a reasonable value to award for the work done by the Applicant to the kitchen, bathroom and cleaning the carpets.

4. Damages to the Property noted in the check-out report.

The applicant was claiming the value of £110 for damage done to various items as set out in the check out report. Ms Campbell referred in detail to the items damaged during the tenancy and explained that the items referred to in the report are items where if it is not worthwhile fixing them will incur a charge and the inventory clerk is trained to carry out this inspection and uses their knowledge to award a charge. Each charge had a nominal value of around £10 to £35 for items such as stains, spill marks, pen marks on drawers and scrapes on wall or window ledge. The Respondent advised that it was so long ago he could not comment on these claims. Given the check-out report was done at the end of the tenancy and by a 3<sup>rd</sup> party the Tribunal accepts the full value of the items specified in it and grants the sum of £110 as being due to compensate the landlord for damage done to the Property during the tenancy by the Tenants.

#### 5. Claim for work done on the Garden

The Applicant is claiming the sum of £1200 for work done in the garden after the tenants left the Property in November 2022. She has lodged an invoice for this sum but admitted this is not an invoice from a contractor, but merely a record of what she has assessed as her costs for clearing, pruning, weeding and removing garden waste. The Applicant advised that she felt the remedial work needing done to the garden was extensive. She claimed that the garden area is large and there were a lot of large shrubs and plants which she felt had not been maintained properly throughout the tenancy. She also advised she had asked a gardener to give her a quote for the remedial work to be done but she advised although he came he advised that the job was too large for him at the present time and no quote or specification of what work needed done was given. She advised that she had to clear out all the dead shrubbery, prune and weed the garden and that she did this in December 2022 as the weather was alright and allowed her to do so.

The Respondent vigorously denied the garden had not been maintained and confirmed that in his view the garden was left in a good condition and that he doubted the Applicant had done the work in December as she alleged because it was winter and that is not a good month for working in the garden. The Respondent also pointed to the fact there were no quotes or invoices for work done by an external contractor and therefore no proof the work required to be done.

The Tribunal considered the terms of the inspection report which was carried out around 2 months before the end of the tenancy and noted that the front garden was referred to as well maintained and that there were no issues with the rear of the Property. In the overall comments section at the end of the report it is noted that "Property is generally in good condition and appears to be relatively well maintained by the current tenant". The check-out report refers to the garden but only mentions weeds between slabs and shows one picture of slabs requiring weeding. Ms Campbell advised that the reason there are no more pictures of the garden was the weather was not conducive to doing a full check and her colleague did not return to take any further pictures. The Tribunal carefully considered both submissions. The Tribunal considered the point of a check out report is to compare the state of the Property with the condition when

the tenants took entry and this includes the state of the garden. Given the lack of any evidence from the check-out report or the recently done inspection report of a major issue with the garden the Tribunal was not satisfied that any work done by the Applicant apart from the weeding in the slabbed area shown in the check-out report could be fairly attributed to the fault of the Respondents. The Tribunal did not find the explanation that a full check of the garden could not be done because of the weather to be credible. The inspection report carried out on 2<sup>nd</sup> September on the front page shows a picture of the house and front garden and the only picture of the back garden showed some but not a large area of weeds in a small paved area. The checkout report only notes some weeding as being needed and nothing to support the 120 hours of work at £10 an hour which the Applicant is seeking reimbursement for. The Tribunal has accepted the check-out report for the other items of damage as submitted by the Applicant, and therefore accepts its findings as reliable in relation to the state of the garden. It is supported by the fact that the recent inspection report carried out at the start of September when the growing season is nearly over states and shows the garden is quite well maintained. The lease only states that the tenant should keep the garden maintained. The pictures of the garden in the inspection report show a garden that looks reasonably well maintained. It would appear the garden does contain a number of bushes and these will grow over time. The Applicant may well have pruned a large number of these after taking possession of the Property and may have chosen to reduce their size this does not necessarily mean that it is the responsibility of the tenants and in the absence of any pictures or other evidence to show the tenants failed to maintain the garden the Tribunal can only accept that some weeding of slabs were necessary and awards a sum of £50 representing the time the Tribunal considers would be reasonable to carry out that work.

6. Contractors Charge in Clause 12.2 of the Lease.

12.2 of the lease states *“The fair costs incurred in compensating the Landlord for or for rectifying or remedying any meaningful breach by the Tenant of his obligations under this Agreement including those relating to the cleaning and repair of the let property, its fixtures and fittings and those specified in clause 9,1 and 9,2 , 38 and 40.3. Without prejudice to the foregoing, The Tenant hereby agrees to pay to the letting agent and have deducted from the security deposit) a fee of £12 (the default fee) inclusive of VAT for each and every contractor engaged by the Landlord’s agents to remedy such default by the Tenant. For the avoidance of doubt this Default Fee is charged over and above any contractors costs. The Tenant agrees this default fee is a fair measure of the Tenant’s breach of their obligations under this Agreement and hereby accepts the Default fee as reasonable and irrevocably waives any claim to the contrary.”*

13. Ms Campbell confirmed the Applicant was claiming one Default fee of £12 in relation to this clause in respect of the quote from the cleaning company and she advised that this clause is used in all their leases for clients and the letting agents have successfully sought this fee in other cases before the Tribunal. Ms Campbell could not however confirm if it had been awarded in any other case where a contractor was not actually engaged but a quote merely obtained. The Tribunal noted that the wording of this clause must be given its plain meaning.

The Tribunal noted the clause allows a fee to be paid to **the Letting Agent** and not the landlord for each “contractor **engaged** by the Landlord’s agents”. The Applicant has admitted that no contractor was engaged and she acknowledged that the only quote obtained was for cleaning which was not then carried out by a contractor. The Tribunal therefore finds that on a plain reading of the clause a contractor would have to be engaged to do work, no contractor has been and so this claim for a fee of £12 is refused.

14. The Tribunal therefore awards the total sum of £6,186.26 being the total of the sum awarded for rent arrears of £5,876.26 together with the sums for cleaning, damage and weeding of £150, £110 and £50 respectively.

## **Decision**

**The sum of £6,186.26 is awarded to the Applicant.**

## **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.**

Jan Todd

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<b>Legal Member/Chair</b>	<b>Date</b>		