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 Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended ("the Regulations")

Chamber Ref: FTS/HPC/CV/24/1451

Re: Property at 7 Buccleuch Place, Hawick, TD9 0HP ("the Property")

Parties:

Mrs Annette Smith, Hendersyde Stables Cottage, Kelso, TD5 7ST ("the Applicant")

Mr Hamish Ritchie, 4 Towerknowe, Hawick, TD9 0HP ("the Respondent")

Tribunal Members:

Nicola Weir (Legal Member) and Jane Heppenstall (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment by the Respondent in the sum of £563.29 should be made in favour of the Applicant.

Background

1. By application received on 2 April 2024, the Applicant sought an order for payment against the Respondent in the sum of £800 in respect of the first month's rent she and her husband had paid in contemplation of a tenancy in respect of the Property. The Applicant had never moved into the Property, due to its condition on the commencement date of the tenancy. The tenancy commencement date was 5 July 2023 and was terminated by mutual agreement on 28 July 2023. Although the tenancy deposit of £750, which had also been paid by the Applicant in advance, was returned to the Applicant and the usual notice period was waived by the Respondent, the Applicant's request for refund of the first month's rent was refused. The Applicant had dealt throughout with the Respondent's letting agents, Lowrie Property Limited, who managed the Property on his behalf.

2. Supporting documentation was lodged with the Tribunal by the Applicant, including a copy of the tenancy agreement, the Inventory/Schedule of Condition, some emails between the Applicant and letting agents, photographs taken by the Applicant of the Property and proof of payment by the Applicant of the first month's rent and deposit.

3. On 23 May 2024, following initial procedure, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance in respect of the application in terms of Rule 9 of the Regulations.

4. Papers were thereafter served on the Respondent by Sheriff Officer on 14 August 2024. The Respondent was invited to submit any written representations in respect of the application. No written representations were lodged by, or on behalf of, the Respondent prior to the Case Management Discussion ("CMD").

Case Management Discussion

5. The CMD took place by telephone conference call on 13 September 2024 at 2pm. It was presided over by a different Legal Member. A detailed CMD Note was issued to parties following the CMD, together with a Direction. The CMD Note indicates that the Applicant, Mrs Smith, was in attendance, together with a Mrs McGeorge of Lowrie Property Limited on behalf of the Respondent. There appears to have been detailed discussion regarding the respective positions of both parties and the issues in dispute. The claim was denied by the Respondent who considered the Applicant to have been unreasonable in refusing to move into the Property on the basis of issues which they considered 'cosmetic'. It was decided that the application required to be continued to an Evidential Hearing and that this should take place by video-conference. The Direction issued following the CMD required the Applicant to submit a description of what each of her photographs showed, for the Respondent to submit written representations confirming their position in respect of the condition of the Property and for both parties to intimate details of any witnesses. The timeframe for compliance with the Direction was stated as 3 December 2024.

Further Procedure

6. The Evidential Hearing was subsequently scheduled to take place on 29 January 2025 and parties notified accordingly.

7. On 2 December 2024, the Applicant responded to the Direction, explaining the position with regard to the photographs lodged, with reference to emails between the parties which she reproduced. She also indicated that her husband, Mr Doug Smith, may attend as a witness, if required.

8. On 22 January 2025, the Respondent's representative lodged (late) supporting documentation on behalf of the Respondent, including copies of emails between the parties, between the Respondent and Lowrie Property Limited and

notes/internal messages from employees of Lowrie Property Limited; a further copy of the tenancy agreement; and a further copy of the Inventory/Schedule of Condition dated 5 July 2023 and a copy of a "Check-out Report" dated 20 June 2024 relating to the Property, which made reference to a previous report/inventory dated 14 August 2023.

9. On 22 January 2025, the Applicant emailed the Tribunal asking why the Respondent's lengthy representations had not been circulated to her sooner and that she considered this unfair as their response should have been lodged by 3 December 2024 and the hearing was due to take place the following week.

10. On 23 January 2025, the Tribunal Administration clarified to the Applicant by email that the Respondent's representations had only been received by the Tribunal on 22 January 2025 and circulated the same day. The Respondent's representative also emailed to indicate that they were allowed to submit documentation until a week before the hearing [presumably in reference to the general Tribunal procedural rule regarding the time limit for lodging of documentation prior to a hearing, but not making any reference to the time limit in the Direction of 3 December 2024 which had not been complied with].

11. The Tribunal subsequently received a postponement request from the Applicant on the basis that she was without power and access to online materials. The postponement request was considered and granted by the Tribunal on 28 January 2025 and both parties notified accordingly.

12. A fresh Evidential Hearing was subsequently scheduled to take place on 25 April 2025 and parties notified accordingly.

Evidential Hearing – 25 April 2025

13. An Evidential Hearing took place on 25 April 2025 by video-conference, presided over by the former Legal Member and the same Ordinary Member. It is understood that the Applicant was in attendance and may have been accompanied by her husband, Mr Doug Smith, in a supportive capacity. The Respondent was represented at the hearing by a representative from Lowrie Property Limited. It is understood that the hearing was concluded that day and that the former Legal Member had indicated that the Tribunal would thereafter issue its decision in writing.

Further Procedure

14. Following the hearing, on 28 April 2025, the Respondent's representative emailed the Tribunal to confirm that, following discussions at the hearing, they had now refunded the equivalent of 9 days' rent to the Applicant.

15. On 28 April 2025, the Applicant emailed the Tribunal to confirm that she had indeed received the sum of £236.71 via the Respondent's letting agents.

16. Unfortunately, the Tribunal's written decision in the matter was never subsequently received by the Tribunal Administration from the former Legal Member, despite several reminders being issued. The Applicant subsequently contacted the Tribunal several times regarding the delay in receiving the Tribunal's decision. Responses were issued by the Tribunal Administration, explaining the position. The former Legal Member has now left the Tribunal Chamber and is no longer in post. The Tribunal Administration explored all options but, in this particular case, it was considered that the only fair and just way to deal with the matter was to arrange a re-hearing of the application as soon as possible in front of a freshly constituted Tribunal.

17. A further Evidential Hearing was scheduled to take place on 22 October 2026 by video-conference and parties notified accordingly.

18. On 21 October 2026, the Respondent's representative emailed the Tribunal Administration confirming that she would be representing the Respondent at the hearing and requesting a copy of the case papers which were issued to her.

Evidential Hearing – 22 October 2026

19. An Evidential Hearing took place on 22 October 2026 by video-conference, commencing at 10am, presided over by the new Legal Member and the original Ordinary Member. The Applicant, Mrs Annette Smith, was in attendance and the Respondent was represented by Ms Asheigh Patterson of Lowrie Property Ltd, the letting agents who had dealt with the matter throughout. Due to technical issues, Ms Patterson was unable to get her camera to work but was able to hear and be heard via her microphone.

20. Following introductions and introductory comments by the Legal Member, the procedural background to the application was discussed, including the previous Evidential Hearing which had taken place and the reasons for a fresh Evidential Hearing being required. It was noted from Mrs Smith that she feels very let down by the Tribunal in this matter and that she is already pursuing a formal complaint, which is being dealt with by the President's Office.

21. The procedure to be followed was then explained by the Legal Member and both parties confirmed that they were ready to proceed and that neither had any witnesses. It was clarified that the "Check-out Report" document which had been lodged on behalf of the Respondent related to a subsequent tenancy to that of the Applicant, had been lodged in error and should accordingly be disregarded for the purposes of the hearing.

22. It was also clarified that the sum of £236.71 paid to the Applicant shortly after the previous Evidential Hearing represented 9 days' rent and was refunded on the basis that the Respondent had waived the notice period and accepted that

the tenancy arrangement had terminated on 28 July 2023, 9 days before the end of the first month rental period. Ms Patterson confirmed that this decision was made as a direct result of discussions which had taken place at the previous Evidential Hearing. Mrs Smith indicated that she was annoyed that this refund was not made earlier if the Respondent accepted that it was due. She also confirmed that she was maintaining her position that the full month's rent of £800 should have been refunded, so was still seeking the balance of £563.29. Ms Patterson confirmed that the Respondent still disputed the remainder of the Applicant's claim.

23. The hearing then proceeded with the Tribunal hearing evidence from the Applicant, Mrs Smith, and then from Ms Patterson on behalf of the Respondent. Both answered questions from the other party and from the Tribunal throughout and were thereafter given an opportunity to sum-up.

Evidence of Mrs Annette Smith – the Applicant

24. Mrs Smith gave detailed evidence regarding the background circumstances to the tenancy; the condition of the Property at viewing, on entry and at the end of the tenancy; the events which had taken place; her dealings throughout with the Respondent's letting agents; and explained how and why these factors led to the decision of she and her husband not to move into the Property and ultimately to withdraw from the tenancy. She answered questions throughout from the Tribunal Members and made frequent reference to the documentary evidence which had been lodged by both parties. She also answered some questions from Ms Patterson. Mrs Smith confirmed that she had not served notice on her current landlord as at the entry date of 5 July 2023 but explained that she would have, had the condition of the Property on entry been acceptable. She explained that she and her husband had budgeted to pay two rents for July 2023, but not beyond that, and that they had the added stress of potentially becoming homeless as they knew that their existing landlord was wishing to sell. Mrs Smith conceded that they had not made an appointment for a second viewing on 5 July 2023, when they were due to collect the keys, but considered that the letting agents were very unhelpful in this regard and basically told them 'either you sign for the keys or you don't'. Mrs Smith explained that they lived a distance away and would just have liked the reassurance of viewing the condition of the Property again before accepting the keys. She could not recall if she had explained to the letting agents regarding the issues she had noticed and raised at the first viewing. Mrs Smith also conceded that she had not raised the issues noted at the first viewing with the letting agents between the viewing in June 2023 and 5 July 2023. She explained that she did not consider this her responsibility and was, in any event, not relevant, given that the letting agents ultimately agreed that the cleaning had not been satisfactory and that cleaning, mould removal and other works were necessary.

Evidence of Ms Ashleigh Patterson of Lowrie Property Ltd – for the Respondent

25. Ms Patterson also gave detailed evidence explaining the situation which had arisen from the perspective of the letting agents and their duties to the landlord. She maintained that Ms McKean had not made any mention of maintenance issues being raised by the Applicant at the initial viewing and that the only matter noted in Ms McKean's report to the Respondent subsequently was regarding the uplift of a bedside drawers unit which had been requested by the Applicant. She spoke of the letting agents' protocols regarding requests for second viewings and in respect of maintenance issues raised by tenants. She maintained the Respondent's position that the Property was habitable and that the Applicant could have moved in, pending matters being rectified. She maintained that the delays had not been significant, that matters were being put right and that they had acted appropriately throughout. She conceded during her evidence that additional cleaning had been needed "100%" and also that the waste pipe issue and leak did fall within the Repairing Standard, although explained that her understanding was that the kitchen tap just needed a washer. Ms Patterson answered questions from the Tribunal Members and also made frequent reference to the documentary evidence lodged. She also answered some questions from Mrs Smith. She conceded that when the Inventory/Schedule of Condition was prepared on 5 July 2023, the remaining items in the shed should have been noted but explained that these items were mostly painting equipment of the Respondent's and did not consider that this issue should have prevented the Applicant moving into the tenancy. Ms Patterson maintained that she considered that Mrs Smith should have followed up on the issues she said she had noticed at the initial viewing, rather than just intimating these the day after taking entry to the tenancy. Ms Patterson conceded that additional cleaning had been required but maintained that they had arranged cleaning of the Property prior to the tenancy commencing. She stated that there would be an invoice somewhere concerning this but that it would be archived by now. She initially denied that separate mould removal had been required, over and above being simply wiped off during the cleaning but, on being referred by Mrs Smith to the messages between the letting agents and Respondent, then conceded that the maintenance contractor had quoted £80 for mould removal and had ultimately attended at the Property to remove the mould from all the window seals. She also conceded that, in retrospect, it would have been better if some of the issues had been dealt with sooner. Ms Patterson maintained that Mrs Smith had given no context to them regarding her request for a second viewing on 5 July 2023 and that this could have been facilitated if they had been given prior notice. As to her own late involvement in the situation, Ms Patterson explained that matters were being dealt with initially by Ms McKean from the sales/lettings team and then by Ms Parker in the maintenance team, as was appropriate. She denied undue delays due to staff being off or any bad practice on the part of the letting agents.

Summing-up

26. Mrs Smith stated that she stood by her original application. She explained that both she and her husband had loved the Property, that it had been exactly what they had been looking for and that they were genuinely upset at the way matters turned out. However, they had completely lost faith in the Respondent and his letting agents in the end.

27. Ms Patterson stated that she had nothing to add in summing-up as she considered all matters had already been covered in the hearing.

Conclusion of the hearing

28. The Tribunal confirmed that their decision in the matter would follow in writing, as soon as possible, once the Tribunal had fully considered the evidence. Parties were thanked for their attendance and the hearing concluded.

Findings in Fact

1. The Respondent was the owner and landlord of the Property.

2. The Applicant and her husband were the joint tenants of the Property by virtue of a Private Residential Tenancy, which commenced on 5 July 2023 and was terminated by mutual agreement on 28 July 2023.

3. The Property was managed by Lowrie Property Ltd, the Respondent's letting agents and the Applicant had no direct contact or communications with the Respondent in connection with the tenancy.

4. The Applicant and her husband were living in Grangemouth but wished to move to the Hawick area to be closer to family support.

5. The Applicant had some health issues, including fibromyalgia.

6. The Applicant and her husband viewed the Property on or around 16 June 2023, with a Ms McKean from Lowrie Property Ltd.

7. Their viewing was one of several taking place and lasted around 15 minutes.

8. The Applicant noticed some issues of concern at the viewing, namely that there was black mould present in the Property, that water was running down an external wall linked to the kitchen tap and that the shed was still full of the Respondent's belongings.

9. The Applicant raised these matters with Ms McKean at the viewing, explained regarding her health conditions, and was assured that these matters would be dealt with before any tenancy began.

10. The Applicant also asked Ms McKean if they could bring their own (new) machine to the Property in place of the Respondent's existing washing machine, which Ms McKean did not appear to think would be a problem.

11. The Applicant and her husband were very keen on the Property and were ultimately successful in applying for the tenancy.

12. The Applicant was required to pay the first month's rent of £800 in advance, together with the tenancy deposit of £750, both on 30 June 2023, in order to secure the Property.

13. The Applicant and her husband signed the tenancy agreement on 30 June 2023 and the Respondent's letting agents signed the agreement on his behalf on 6 July 2023, the day after the tenancy commenced and the Applicant had collected the keys.

14. The Inventory/Schedule of Condition referred to in the tenancy agreement was not seen by the Applicant and her husband prior to them signing the tenancy agreement or collecting the keys on the commencement date of the tenancy.

15. The Applicant had received a prior written communication from the letting agents stating that the tenancy agreement and Inventory/Schedule of Condition would be available on the tenant's portal on the start date of their tenancy.

16. The Inventory/Schedule of Condition was dated 5 July 2023 but the Applicant was unable to view it, or the tenancy agreement, on the letting agent's portal that day.

17. The Applicant advised the letting agents of this by telephone on the morning of 6 July 2023 and requested a copy of both documents.

18. Both documents were subsequently emailed to the Applicant on 6 July 2023.

19. In terms of the tenancy agreement, the Applicant and her husband had 7 days to challenge the Inventory/Schedule of Condition which they did as they did not consider it was an accurate representation of the condition of the Property.

20. On 5 July 2023, the Applicant attended at the letting agents' offices to collect the keys to the Property.

21. On 5 July 2023, the Applicant asked an employee of the letting agents if they could have a second viewing of the Property before signing for the keys, but this request was refused.

22. The Applicant and her husband collected the keys and thereafter attended at the Property.

23. The Applicant and her husband noted that the issues raised at the viewing had not been attended to, that the Respondent's washing machine had not been removed and that there were other issues with the condition of the Property.

24. In particular, the Applicant and her husband noted that the Property did not appear to have been cleaned; that there was still black mould present in several locations, including around windows, on blinds and on skirting boards behind

curtains; the leak at the external wall was still there, the shed had not been emptied, the washing machine and other items had not been removed; and that there was a hole in the waste water/sewer pipe at the courtyard.

25. The Applicant took her own photographs of all these issues on 5 July 2023 as they had not yet been issued with the Inventory/Schedule of Condition in respect of the Property.

26. The Applicant and her husband decided to postpone moving into the Property due to its condition until these issues were resolved.

27. On the morning of 6 July 2023, the Applicant telephoned the Respondent's letting agents (not Ms McKean) to advise regarding these issues and to explain that they could not move into the Property until these were resolved.

28. The Applicant also referred in the telephone call to her underlying health conditions, the assurances she had been given by Ms McKean at the initial viewing and that the tenancy agreement and Inventory/Schedule of Condition were not available for them to view on the tenant's portal.

29. The Applicant was told on the telephone that she would require to provide photographic evidence of the mould and other issues raised regarding the condition of the Property.

30. The letting agents' Ms McKean emailed the Applicant on 6 July 2023 in response to her telephone call, apologising in respect of the issues raised; stating that she hoped to have these rectified as soon as possible and was passing to their maintenance team; requesting photographic proof of the mould and attaching a copy of the signed tenancy agreement and Inventory/Schedule of Condition.

31. Later on 6 July 2023, the Applicant emailed Ms McKean in response, further detailing the issues found on taking entry to the Property, attaching photographs of the various issues and referring to their previous discussions at the viewing.

32. Ms McKean acknowledged the Applicant's email and stated that they were reviewing with their maintenance team and would be in further contact as soon as possible.

33. It is understood that Ms McKean was thereafter on holiday, had no further contact with the Applicant and subsequently left her employment with the letting agents.

34. On 12 July 2023, the Applicant emailed the letting agents again, referring to her previous email of 6 July 2023 and requesting an update on progress, explaining that they could neither 'sign-of' on the Inventory/Schedule of Condition or move into the Property until the issues were resolved.

35. On 17 July 2023, the letting agents' Ms Parker responded by email stating that the Property was taken 'as seen', that the Applicant had been happy at the viewing and had not previously advised them that the removal of items, including from the shed, was required.

36. Ms Parker also explained in her email the actions they were proposing to take in respect of the various issues, including notifying the Respondent, and also made reference to the Repairing Standard.

37. The Applicant subsequently telephoned Ms Parker on 17 July 2023 to advise that she was not happy with her response and did not wish to serve notice on her current landlord or arrange removers until the issues with the Property were resolved.

38. On 17 July 2023, the letting agents' Ms Parker notified the Respondent by email of the issues raised by the Applicant in respect of the Property and advised him of the issues he was responsible for rectifying, as landlord.

39. The Respondent subsequently engaged with his letting agents by email on 18 and 19 July 2023, confirmed that he would arrange the clearance of the shed, agreed for the removal of the other items, except the washing machine, and instructing his letting agents to obtain estimates for the various works involved.

40. On 19 July 2023, Ms Parker emailed the Applicant, advising regarding the Respondent's position as to removal of items and redecoration issues.

41. On 19 July 2023, the Respondent's letting agents emailed a maintenance contractor, requesting estimates for the works required.

42. On 24 July 2023, the maintenance contractor contacted the Applicant directly seeking access to the Property to clear the items from the shed and house, and to deal with the mould.

43. The Applicant was still living in Grangemouth and notified the letting agents by email on 24 July 2023 that she could not attend at the Property at such short notice but was agreeable to the contractor being given access by the letting agents on 25 July 2023.

44. Subsequently, on 24 July 2023, the Applicant telephoned the letting agents to say she was disappointed at the lack of progress with the various maintenance issues she had reported to them by email on 6 July 2023, that she regarded the Property uninhabitable and that if there was no progress by the end of the week, she wished to hand the keys back and have her July rent and deposit returned.

45. In response, the letting agents chased up the maintenance contractor on 24 July 2023 for estimates for the remaining issues.

46. On 25 July 2023, the letting agents informed the Respondent of the estimate received for cleaning the mould, sought his instructions on that and advised that an estimate for the uplift and disposal of items was still awaited.

47. On 25 July 2023, the Respondent responded to say he would like the maintenance issues resolved quickly but was worried about the potential costs and authorised the cleaning to proceed.

48. On 25 July 2023, the letting agent emailed the Applicant to ask if she agreed to the maintenance contractor attending at the Property that day to deal with the mould and to another contractor quoting for the removal of items as the Respondent was seeking a second estimate.

49. On the evening of 25 July 2023, the letting agents emailed the Respondent to confirm that they had visited the Property today and recommended that one of the bedroom and the sitting room blinds be removed altogether and that the blind fixtures were broken.

50. Also on the evening of 25 July 2023, the letting agents emailed the Applicant and advised her that the contractor had attended that day and removed the black 'debris' from all the window seals and had also cleaned the extractor fan in the kitchen but would be returning the following day to further clean the fan.

51. On 26 July 2023, the letting agents' Ms Patterson called the Applicant to advise of the removal of the mould from the window seals, the cleaning of the extractor fan, that the Property had been hoovered to remove the dog hair, that the items to be uplifted would be attended to on Friday and that they were awaiting quotes for the waste pipe and other issues.

52. The Applicant stated during this phonecall that she was considering terminating the tenancy but would revert after speaking to her husband.

53. Later on 26 July 2023, the Applicant emailed Ms Patterson confirming their telephone discussions regarding the possible termination of the tenancy, waiver of the 28 day notice period and refund of the deposit and July rent, given the circumstances.

54. On 27 July 2023, Ms Patterson emailed the Applicant to confirm that the Respondent would waive the 28 day notice period and that she would contact Council Tax and the utility companies to advise that the Applicant never moved into the Property.

55. On 28 July 2023, the Applicant confirmed to the letting agents that they wished to terminate the tenancy.

56. Thereafter, arrangements were made for return of the keys by the Applicant and the deposit of £750 was refunded to her.

57. The Respondent authorised his letting agents to re-advertise the Property for let on 1 August 2023.

58. It is understood that the Property was subsequently re-let to a third party.

59. The Applicant and her husband had incurred additional costs in respect of their proposed house move and in retaining their existing tenancy for a longer period than expected.

60. The Applicant and her husband had also been caused anxiety and inconvenience in respect of this matter for a period of around three weeks in July 2023.

61. The Applicant called upon the Respondent to refund the first month's rent of £800, given the background circumstances, but this was refused.

62. The Applicant lodged an application seeking refund of the sum of £800 with the Tribunal on 2 April 2024.

63. The Respondent denied the claim on the basis that the Property had been habitable at the commencement date of the tenancy and that the Applicant had been unreasonable in refusing to move into the Property before the various issues with condition of the Property had been resolved.

64. A previous Evidential Hearing took place on 25 April 2025.

65. Following the Evidential Hearing, on 28 April 2025, the Respondent's letting agents paid the sum of £236.71 to the Applicant, representing a refund of approximately 9 days' rent covering the period 28 July 2023 to 5 August 2024.

66. The balance of the £800 originally claimed, namely the sum of £563.29 remained in dispute between the parties.

Reasons for Decision

1. The Tribunal carefully considered the documentary evidence produced by both parties and the oral evidence of Mrs Smith and Ms Patterson at the hearing.
2. The Tribunal considered that both parties had largely been consistent in their respective positions throughout the Tribunal process and were both credible in their evidence. It was clear, however, that they both felt strongly about their respective positions and their interactions became a little heated at times. Mrs Smith was understandably frustrated at the delays in the Tribunal process and the fact that the parties were having to present their evidence for a second time

which she found stressful, especially given the passage of time since events had occurred. However, they answered all questions asked of them by the Tribunal Members and the opposing party and both were given the opportunity to fully present their cases to the Tribunal. Both referred throughout their evidence to the communications which had taken place between them during the relevant period. The Tribunal found the copy email messages between the Applicant and the letting agents and between the letting agents and the Respondent, together with the additional notes from the letting agents' system particularly useful in supplementing the oral evidence at the hearing and establishing the chronology of what had taken place during the relevant period.

3. Having considered matters fully, and with reference to their Findings-in-Fact above, the Tribunal determined that they were more persuaded by the Applicant's position and that a payment order in the sum of £563.29, the outstanding balance of the original claim for £800, should be made in her favour.

4. The Tribunal accepted the Applicant's evidence of the verbal discussions which had taken place with Ms McKean at the initial viewing in June 2023 when the Applicant had raised initial concerns regarding the Property. The Tribunal considered that her position was reinforced by her subsequent emails to the letting agents in which she referred back to those discussions. It was not disputed that the Applicant had informed the letting agents of her health conditions and had explained that this meant she was unable to carry out a deep clean of the Property herself and could not move into a Property that was not clean, had visible black mould and other issues such as the leak from the sink and the hole in a waste pipe. The Tribunal tended to agree with the Applicant's assessment that the Property had not been cleaned at all before the commencement date of the tenancy, or had been inadequately cleaned, as there were references in the various email chains and letting agents' notes to there being mould around the window seals, issues with the blinds in some of the rooms which the letting agents ultimately advised the Respondent should be removed altogether, dog hair in the Property and the kitchen extractor fan/cooker hood having to be cleaned twice over two days. It was noted that, although it was claimed by the letting agents that the Property had been cleaned before the commencement of the tenancy, no supporting invoice or other evidence of this had been presented to the Tribunal. The Tribunal considered that it was not reasonable to expect the Applicant to have moved into the Property on 5 July 2023, given the condition in which she found the Property on taking entry. The Tribunal also considered the Applicant's decision to terminate the tenancy on 28 July 2023 to have been a reasonable one, given that some of the maintenance issues were still outstanding as at that date and had not even been approved by the Respondent or instructed by then. The mould removal and cleaning had only been carried out on 25 and 26 July 2023. The Tribunal understood the Applicant's frustration at the delays in communication from the letting agents and in the various issues being rectified and understood why she considered that it was not tenable to continue the tenancy with the Respondent. As she had stated, she had lost faith completely in the Respondent as a landlord and in his letting agents to deal with any maintenance issues that might arise in future.

5. Ms Patterson did not accept that the Applicant had raised some of the issues with the Property with Ms McKean at the initial viewing and maintained that the letting agents were only made aware of these by the Applicant on 6 July 2023. She explained why the Applicant was refused a second viewing on 5 July 2023 (as it had not been pre-arranged) before accepting the keys and also the processes whereby they have to seek instructions from the landlord and obtain estimates, or more than one estimate, if the landlord required this. However, Ms Patterson did concede in her evidence that some of the issues with the Property had needed attended to and that some of them, such as the mould and the waste pipe may have invoked the 'Repairing Standard'. The Tribunal considered that this factor made the Respondent's position that the Property was habitable and that the Applicant should simply have moved in and allowed the issues to be resolved 'in time' untenable. As the Applicant had pointed out, Ms Patterson had stated during the hearing that the Property was "not entirely not fit for habitation", which the Tribunal took to mean that, in some respects, the Property was not fit for habitation. It appeared to the Tribunal that the letting agents had perhaps initially been rather dismissive of the Applicant's complaints regarding the condition of the Property and regarded the issues as minor. They had not prioritised the rectification of any of the issues, despite having been informed of the Applicant's health and other circumstances and her decision not to move into the Property until the more serious issues had been resolved. They appeared to have put the onus on the Applicant to follow up the verbal discussions which had taken place at the viewing in writing, prior to taking on the tenancy and to produce proof of what she had reported about the condition of the Property on taking entry, even although one of their employees had allegedly visited the Property during the morning of the entry date and prepared the Inventory/Schedule of Condition. The Applicant pointed to the fact that, at the very least, it should have been noted that the shed was still full of the Respondent's belongings but there was no mention of that, or photograph of the inside of the shed, in the Inventory/Schedule of Condition. The Tribunal also considered that the Applicant had been placed at a disadvantage by not having access to the Inventory/Schedule of Condition on taking entry, for comparison with the Property itself. It appeared from the email chains that the letting agents had only notified the Respondent of the issues intimated by the Applicant on 6 July 2023 on 17 July 2023 and, furthermore, had not visited the Property again themselves until 25 July 2023. It was noted that Ms McKean, who was initially dealing with the Applicant had at some point been on holiday and subsequently left her employment with the letting agents and that Ms Parker had also been off sick around the same time. The Tribunal considered it likely that this had contributed to the delays in matters being dealt with and that if matters had been escalated to Ms Patterson at an earlier stage, as had been requested by the Applicant, the situation may perhaps have been capable of resolution. The Tribunal also noted, however, that, even once the Respondent had been notified by his letting agents and advised regarding the maintenance issues raised, his priority seemed to be about saving costs, rather than seeking to rectify matters quickly for his new tenants. In this regard, the Tribunal understood that the letting agents were, at that stage, in the hands of the Respondent and had to follow their processes and await his instructions.

6. The Tribunal noted that Ms Patterson had sought to resolve matters at the end of the tenancy by persuading the Respondent to waive the 28 day notice period, by ensuring the swift return of the Applicant's deposit of £750 and by ensuring that she was not held liable for any Council Tax or utility bills relating to the Property. The Tribunal was also pleased to note that, shortly after discussions at the previous Evidential Hearing, the sum of £236.71 had been refunded to the Applicant in part-settlement of her claim for £800.
7. However, in reaching its decision, the Tribunal considered that the Applicant had paid the first month's rent of £800 in good faith in order to secure the Property and, in the Tribunal's view, she had not got what she had contracted for, in terms of its condition on entry. Nor had the issues raised by the Applicant been rectified within a reasonable period of time and the Tribunal was satisfied that this had caused the Applicant and her husband considerable inconvenience, as well as stress and anxiety regarding their housing situation. The Tribunal determined that, in these circumstances, the whole of the £800 should have been refunded to the Applicant. The Tribunal accordingly determined that a payment order in respect of the balance claimed of £563.29 should now be granted in favour of the Applicant.
8. The Tribunal's decision 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.

Nicola Weir

Legal Member/Chair **Date 22 October 2026**