



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing(Tenancies) ( Scotland ) Act 2016**

**Chamber Ref: FTS/HPC/CV/21/1970**

**Re: Property at 461 Calder Road, Edinburgh, EH11 4AN (“the Property”)**

**Parties:**

**Mr Norman Blair, 43/6 Deanhaugh St, Edinburgh, EH4 1LR (“the Applicant”)**

**Mr Nitin Jangda, 23 Sighthill Street, Edinburgh, EH11 4PQ (“the Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member) and Helen Barclay (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order in the sum of seven hundred and ten pounds only (£710.00), be made in favour of the Applicant and against the Respondent.**

**The decision of the Tribunal was unanimous**

**Background**

1.This is an application for a payment order which was first submitted to the Tribunal on 16<sup>th</sup> August 2021 and accepted by the Tribunal on 28<sup>th</sup> September 2021.A case management discussion was initially set down for 5<sup>th</sup> November 2021 at 2pm.At that case management discussion the Applicant did not attend, and the case management discussion was continued to a later date. The Tribunal issued a Direction requiring the Applicant to set out the legal basis for the claims made in the application and to confirm that he was proceeding with the application.

2.The Applicant lodged written representations dated 21<sup>st</sup> November 2021 and confirmed that he was proceeding with the application and had not been made aware

of the date of the case management discussion on 5<sup>th</sup> November 2021. The case management discussion was adjourned until 17<sup>th</sup> December 2021.

3. At the adjourned case management discussion both parties were present. There was a discussion as to the claim and the Respondent noted that some of the costs claimed had not yet been incurred. He did not accept that he owed the amounts being claimed by the Applicant. He said that he had had conversations with the Applicant regarding moving out of the property, but a date had not been agreed between the parties. He expressed doubt that an invoice for accommodation was genuine. In the light of the factual disputes between the parties the Tribunal fixed a hearing to determine the application.

4. The Initial application requested a payment order in the sum of £2087 plus costs and a late payment fee of £21 per month until paid. After the case management discussion in December 2021 the Applicant requested to alter the claim for payment and submitted a fresh claim dated 26<sup>th</sup> January 2022. This claim was for a total of £2202.62 and included claims for alternative accommodation costs, carpet and wall cleaning, painting, cleaning curtains, a fee for finding and signing up a replacement tenant and a late payment charge of £21 per month up to February 2022. The claim was said to be reduced by £156.38, a sum said to be a refund of 14 days rent to cover the period from 1<sup>st</sup> to 14<sup>th</sup> June 2021.

### **The Hearing**

5. A Hearing was fixed for 25<sup>th</sup> February 2022 at 10am. Both parties attended, and the Applicant requested to amend the amount of the sum being claimed to reflect the figures set out in his amended claim dated 26.1.22. The Tribunal allowed the sum being claimed to be amended as the details had been intimated to the Respondent.

6. At the hearing the Tribunal had sight of the Application, written submissions lodged by the Applicant with the application, submissions made in response to a Direction, pages from a tenancy agreement, an information sheet, a cleaning estimate, photographs, bank statements, copy cheques, a copy of a boarding pass for a flight from Hong Kong to London, a typed transcript of text messages between the parties, and emails sent to the Respondent. The Applicant intimated that he would be calling a John Cairns as a witness as he had carried out cleaning and painting at the property. The Respondent had lodged no productions or written submissions before the hearing commenced on 25<sup>th</sup> February 2022.

7. The Hearing commenced, and the Applicant gave evidence and was questioned by the Respondent. The Tribunal Legal member and chair experienced continuing difficulty in accessing the teleconference and after a number of attempts which were unsuccessful the hearing required to be adjourned to a later date.

8. The Hearing resumed on 24<sup>th</sup> June. Both parties were again present, and the Respondent had lodged brief written representations on his position as to the issues raised in the application. The Applicant objected to these being considered by the Tribunal when the hearing had started, and the Tribunal decided that it would not consider the submissions which had been lodged more than 6 months after the first case management discussion. The Respondent was advised that this did not prevent him from stating his position in evidence to the Tribunal at the hearing if he wished to do so.

9. The Hearing concluded on 24<sup>th</sup> June 2022 and the Tribunal heard evidence from both the Applicant, Mr John Cairns, and the Respondent.

## **Applicant's Claims for Payment**

10. The Applicant owns the property which is a 5-bedroom house which is let out, mainly to students. The property is let out as a private residential tenancy with 5 tenants in occupation at any one time. It is not let out as separate tenancies for each room as this is not permitted by the Applicant's insurance or mortgage providers. Tenants are provided with an information sheet which contains additional tenancy terms and are required to read these terms before signing the tenancy agreement. Prospective tenants are directed to the Applicant's website for the property to access the additional terms. These additional terms set out that if a tenant wishes to leave the property before the other tenants, then the landlord may accommodate that request and source a new tenant to take the place of the tenant who leaves. This new tenant would come into the property and in evidence the Applicant indicated that a new tenancy would then be in place although the new tenant simply signed the tenancy agreement already signed. The Applicant indicated in evidence to the Tribunal that tenants liked the flexibility that this offered, and all agreed to this before moving into the property. The proximity of the property to Napier university made it popular with students and the Applicant indicated that he always had people looking to move in. The tenants shared the use of a kitchen and bathroom, and the Applicant emailed all the tenants in a single e mail if he required to communicate with them

11. The additional terms set out that if a tenant wished to leave before the other tenants, then a new tenant could be found but the departing tenant would forfeit one month's rent. The Applicant indicated that this fee was to compensate him for finding and signing up a new tenant and he described what this involved and the time and number of trips to the house he might require to make. The additional tenancy terms also set out that if a tenant gave a month's notice and left at the end of August then no rent would be forfeited.

12. The additional tenancy terms contained a section headed Deposits and rent payments. This suggested that no deposit was taken but that a tenant required to pay one month's rent to reserve the room and two months rent before moving in. If a tenant wanted to leave the tenancy early, then rent did not require to be paid for the last two months as this had been paid at the start. This section also suggested that the landlord reserved the right at their discretion to charge a late payment fee of £21 for any payment more than 7 days overdue and a further £21 on the first of each month until payment has been made in full.

13. The Applicant was contacted by the Respondent who enquired about renting at the property late in 2020. He initially paid £10 to the Applicant then another £330 to secure a room at the property. The Applicant described the Respondent as a very cautious person and felt that the initial ten-pound payment which was followed up by a phone call was proof of this cautious approach. He moved into the property on 17<sup>th</sup> January 2021. In submissions to the Tribunal the Applicant's position was that the Respondent was told that he would forfeit a month's rent if he left before the other tenants or if he moved out before the end of August. The submissions made by the Applicant suggested that this amounted to permission being given to sublet the room but in evidence the Applicant agreed that this was not a subletting arrangement and with agreement of the other tenants and the landlord a tenant who moved out was relieved of all ongoing liabilities of the tenancy.

14. The Applicant asked the Respondent if he wished to move out of the property early on 1<sup>st</sup> May 2021 given that the Respondent had apparently mentioned this earlier in the tenancy. The Applicant produced a transcript of emails which passed between the two parties on this subject. The Respondent's immediate response was to question whether he would be "liable" until August and whether he would get what he called his deposit money back, being the £340 which had been initially paid, "if all was ok". The Applicant confirmed that he would have this money returned to him if he moved out "end of this month" and that the Respondent would not be liable until end August. The Respondent answered that he could move out between 15-30 "this month" and saying, "you got a deal". The Applicant answered by asking if this was definite as he said he did not want to go ahead and let the prospective tenant know that the room was free if the Respondent "changed his mind". There was no text answer to this, but the Applicant's position was that he phoned the Respondent on 8<sup>th</sup> May and the Respondent confirmed on the call that he would leave by the end of the month.

15. On 16<sup>th</sup> May 2021 the Applicant sent a text to the Respondent querying the exact date when he would move out and told the Respondent that the new tenant wanted to move in on 1<sup>st</sup> June 2021. The Respondent in answer promised to leave the room exactly as it was handed over to him.

16. The next text from the Applicant to the Respondent on 28<sup>th</sup> May 2021 indicated that the prospective new tenant had paid a deposit and that if the Respondent did not leave before 31<sup>st</sup> May that the Respondent would have to pay his hotel costs. In this series of texts, the Applicant indicated he would have to put the new tenant in a B and B and charge the Respondent for this.

17. The Respondent answered by asking to stay until August and offering to pay extra rent for this period. The Respondent increased the offer of higher rent which was refused by the Applicant and then said he might be able to leave on 2<sup>nd</sup> June as he had asked a new landlord to confirm a date and time he could move in so that he could plan.

18. On 1<sup>st</sup> June the Applicant then asked the Respondent by text if he was definitely moving out the next day and he said that he could not do that. The Applicant answered by saying that the Respondent would have to pay the new tenant's accommodation costs. On 4<sup>th</sup> June the Applicant again asked the Respondent if he was moving out the next day and the Respondent answered by saying that he was unwell and might have Covid.

19. On 6<sup>th</sup> June the Respondent again told the Applicant that he could not move out as he was unwell and would let the Applicant know about the move out date.

20. The Applicant provided an airline ticket to the Respondent showing that the prospective new tenant had arrived from Hong Kong some days before. The Respondent answered by saying he would update him in the morning and said that he would be out "by Wednesday".

21. On 14<sup>th</sup> June the Respondent queried by text if the new tenant had moved in and if he had found the keys. The Respondent answered by saying that he had not moved in as the room had to be cleaned as it was "disgustingly filthy" and expressed disappointment that the Respondent had smoked in the room. He described cigarette dust in the rooms and finding cigarette butts outside the property on the ground in the area where tenants were to smoke. He believed that the Respondent had been flicking cigarette butts out of the window in the bedroom.

22. There were further texts between the parties suggesting that each did not agree with each other's position on matters.

23. On 27<sup>th</sup> June 2021 the Applicant sent a text to the Respondent saying that the Respondent owed him £1767 and gave him until 2<sup>nd</sup> July to pay this or he would issue court proceedings. The Applicant sent a lengthy email to the Respondent dated 27<sup>th</sup> June 2021 setting out his position on matters and the monies he said were owed by him.

24. On 13<sup>th</sup> August 2021 the Applicant sent another email to the Respondent explaining that further costs would be due as the repainting of the room was to take 4 days and the tenant would have to be accommodated elsewhere during this period and this cost would be having to be borne by the Respondent.

25. In his evidence the Applicant indicated that he was firmly of the view that the Respondent had agreed to leave by the end of May 2021, but he accepted that after he ceased to occupy the property having paid rent until 14<sup>th</sup> June, the Respondent had no further obligations in terms of the tenancy agreement and the new tenant moved in on 15<sup>th</sup> June 2021.

26. The Applicant was adamant that the £340 paid by tenants ahead of moving in was to cover costs of replacing one leaving tenant with another but when asked how these costs were made up in this case, he gave no information but referred to the fact that every tenant agreed to the additional terms and conditions which they were directed to on his website. He agreed that he had been approached by someone who knew the new tenant, he had not had to find this new tenant and that he had taken a payment from the new tenant before he moved in, although he did not sign a tenancy agreement until he moved in.

27. The Applicant had been approached by a Mrs Wong who lived in Hong Kong with whom he believed he might have had previous dealings, asking if a room was free for someone she knew. The Applicant had paid cash for the accommodation costs incurred by the Wongs for the new tenant who had flown over to Scotland but could not access the room at the property until 15<sup>th</sup> June 2021. Later the Applicant had this cash payment repaid and he paid the accommodation costs by cheque. The new tenant was provided with accommodation by Mrs Wong at a cost of £ 80 per night for an ensuite room in Edinburgh from 1<sup>st</sup> until 15<sup>th</sup> June 2021. The Applicant considered in his experience that this was a reasonable price for a room in Edinburgh and said he had no involvement in fixing the amount to be charged.

28. The Applicant denied that he charged the fee for tenants leaving the tenancy early and said there was no end date in the tenancy agreement. It was put to him that there was an end date in the copy sent to the Tribunal. His position was that it did not matter if there was a date but that tenants could leave at any time if they wished, subject to the additional terms i.e., that they would lose the £340 initially paid. He said he did not believe he had ever had to charge this fee before to any tenant leaving the property as agreed. When asked if there was usually a gap of a few days between a tenant going and another moving in he accepted that cleaning might generally have to be done in between one leaving and another moving in and that there might be a gap of a few days between tenants as a result.

29. The Applicant indicated that the new tenant moved in after the walls were washed down and bleached due to them being as he described as them being "covered in nicotine" and the carpet had to be cleaned and the walls repainted. The curtains also had to be cleaned. He had obtained an estimate for this work, but the work was done by Mr John Cairns and the Applicant had lodged cheques for payment to him for the work done.

30. Mr Cairns gave evidence confirming that he had carried out the work as described. He had washed down the walls with sugar soap and had cleaned the carpets. He had

cleaned the carpets using carpet cleaner and had washed the skirtings, doors, and the curtains. He said it was obvious someone was smoking in the room and described cigarette ash at the window of the room and cigarette ends lying around. He said that after the room was washed it was "liveable" but needed painted as it still had a smell of smoke. He described also having to remove rubbish from the room and said that it did not look like anyone had done any kind of clean-up. He had removed cardboard boxes and packaging. He said that when he went into the property in June 2021 he had worked for about a day and he had returned in January 2022 and had painted the walls, ceiling, and the skirting boards. This had been done between January 5<sup>th</sup> - 7<sup>th</sup> and had taken three days.

### **Respondent's position**

31. The Respondent gave evidence and denied that he had agreed to leave on a particular date. He said that when he moved in it was made clear that he had to stay until at least the end of August or he would lose his £340 which he had paid before he moved in. He was adamant this was what the fee was for as far as he understood it and that it had been made clear to him that there was an end date on his tenancy for after August 2021. He said he was not aware of additional tenancy terms and gave the impression that he had not seen these before the Tribunal proceedings. He said he felt he was being harassed to move out. He believed when he said he could move out between 15-30 May that he was giving his months' notice from those dates and had already paid rent up to 15<sup>th</sup> May when some of the text exchanges took place. He said on 15<sup>th</sup> May that the rent was paid for the month until 15<sup>th</sup> June, so he was expecting to leave around that time. When he said in a text "you got a deal" he said that he meant he would leave before August and understood the deal was that he would not be liable to pay rent until end August in terms of what he understood was his obligation in terms of the tenancy and would not forfeit a month's rent for leaving "early". He said that he never agreed a "solid" date in May and was waiting for the landlord to arrange for the tenant to look at the room either in person or by video call. This had not happened, and he had not been sure that there was another person who wanted to move in. When he found that there was someone else, he did move out and said that he had moved out within his notice period. He did not see a flight ticket until 6<sup>th</sup> June and at that time he made arrangements to move out and moved out on 10<sup>th</sup> June. His rent until 15<sup>th</sup> June had been paid on 15<sup>th</sup> May and he felt that his tenancy continued until then and for some reason his tenancy was being treated differently from others.

32. The Respondent did not accept that he had smoked in his room at the property and was aware that this was not permitted. He confirmed there was a no smoking sign on the bedroom door, and he said that he did not smoke or allow anyone else to smoke in the room. When asked regarding cigarette ash he said this was dust at the windowsill. He agreed that he was a smoker but said that he did this outside and used a bin provided for cigarette butts. When shown a photograph of cigarette butts on the ground outside the property he explained that he had not left these and there was at least one other smoker at the property at the time.

33. The Respondent denied that he had left the room dirty or in need of cleaning. He said that it did not require painting and pointed to the fact that the new tenant had lived in the room until January 2022 without it being painted, and he said that his view was that he was being charged for home improvements. He accepted that he might have left some boxes which had to be removed from the room. He denied being liable for the accommodation costs for a new tenant and said that he had never agreed an exact

date to move out so these were not bills he should require to pay. In any event he felt that the £80 per night cost was high and did not accept that the invoice for these costs from a Mrs Wong appeared genuine.

34. There was no check out carried out at the property and he had been instructed to leave the key by the Applicant. He understood that when he had left the other tenants had been told not to let him access to the property again. He said there was a tenant what's app group that he had been part of during the tenancy.

35. After the evidence concluded parties were invited to make any final submissions. The Applicant had nothing to add, and the Respondent made brief submissions summing up his evidence

36. The Tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

### **Findings In Fact and Law**

37. The Respondent moved into the property on 17<sup>th</sup> January 2021 as a tenant in terms of a private residential tenancy between 5 tenants and the Applicant.

38. This tenancy agreement had a handwritten end date of 31<sup>st</sup> September 2021.

39. The model private residential tenancy agreement was used but there were additional tenancy terms provided which set out that if a tenant wished to leave the tenancy before the other tenants, they could do so by agreement and would forfeit one month's rent.

40. The additional tenancy terms also suggested that in this situation the tenancy continued.

41. The additional terms also stated that if a leaving tenant left at the end of August the rent forfeiture would be zero.

42. The Respondent understood when he moved into the property that he would be liable to pay rent until the end of August 2021 and would lose a month's rent paid at the start if he moved out before the end of August 2021 and that this was the only reason for a month's rent being forfeited.

43. In a text message dated 2<sup>nd</sup> May 2021 the Applicant confirmed that if the Respondent moved out in May 2021, he would not be liable until August 2021. He also confirmed if all was well at the property that the Respondent would not forfeit a month's rent.

44. There were discussions between the Applicant and Respondent in May 2021 about the Respondent leaving the tenancy before August. These discussions were started by the Applicant landlord.

45. Although there was an agreement that the Respondent could leave before August without penalty there was no agreement on an actual date when the Respondent would leave.

46. The discussions between the parties did not amount to notice by the tenant or a consensual agreement on a date when the tenancy ended in terms of section 48 or 49 of the Private Housing Tenancies (Scotland) Act 2016.

47. The Respondent ceased to occupy the property on 10<sup>th</sup> June 2021.

48. The Applicant verbally agreed with a new prospective tenant that he could move into the Respondent's room at the property before the Respondent had agreed an actual date to move out and before the Applicant could give the incoming tenant possession. The Applicant incurred costs for alternative accommodation as a result of this agreement.

49.The property was a no smoking property, and this was made clear to all tenants and was included in the additional tenancy terms a bin was provided to allow tenants to smoke outside.

50.There was a no smoking sign inside the Respondent's room.

51.When the Respondent vacated his room it required extensive cleaning and cigarette smoking had taken place in the room.

52.The Applicant required to have the room washed down, the carpet and curtains cleaned, and the room repainted.

53.The Respondent failed to take reasonable care to ensure that the property was kept clean during the tenancy as required in the model private residential tenancy agreement and allowed his room to become extensively cigarette smoke dirtied.

54.The Applicant incurred costs of £710.00 as a result of the cleaning washing and repainting required to be carried out in his room between June 2021 and January 2022.

55.The sum of £710 is lawfully due by the Respondent to the Applicant as a result of this breach of the tenancy agreement.

56.The Additional tenancy terms in the section on deposits and rent payable sets out that the landlord will charge a late payment fee of £21 per month for any payment more than 7 days overdue on the first of each month and will charge this until payment is made in full.

### **Reasons for Decision**

57.The tenancy presented in this application appeared to be a joint tenancy but with additional terms which appeared to allow one tenant to leave the tenancy with the agreement of all others and the landlord. A single tenant cannot terminate a joint tenancy in terms of the 2016 Act and this model appeared to allow a tenant to leave before other tenants who wished to continue the tenancy. It was said in the terms that the tenancy continued but the Applicant accepted in his evidence that a new tenancy was created even though he did not have a new agreement signed by everyone each time a tenant left the property. Whilst the Tribunal accepts that a joint tenancy may be capable of being ended in this way, by agreement of all and a new tenancy can be created with continuing tenants and the "new" tenant, this does not in our view allow a landlord to impose terms which do not accord with the legislation.

58.The tribunal was presented with a tenancy agreement with a start date before the Respondent took up occupation at the property and with an end date of 31<sup>st</sup> September 2021.The Tribunal was presented with different reasons for the potential forfeiture of a month's rent clause set out in the additional tenancy terms. This was variously said to be a reservation fee, a fee to compensate the landlord for finding a new tenant when an existing tenant was allowed to leave or as understood by the Respondent, to be a fee for leaving the tenancy before the end of August. The additional tenancy terms confirmed that there would be no forfeiture if a tenant gave a month's notice and left at the end of August. The Tribunal accepted the evidence of the Respondent on this matter who said that it was explained to him at the start that the forfeiture would apply if he left the tenancy before August. His position appeared to be confirmed by the additional terms. The Tribunal took the view that this term was therefore entirely at odds with the legislation which allows tenants and joint tenants to give notice to leave in specific ways at any time during a tenancy without penalty. The Tribunal took the view that the extra terms allowing a tenant to leave before others with the agreement of all did not mean that the legislation could be ignored, and tenants could not be



expected to forfeit monies for leaving a tenancy before a specific date if appropriate notice is given. A private residential tenancy has no end date for this reason, to allow tenants and all joint tenants to leave by giving notice in terms of the Act.

59. Having accepted that the sum of £340 was being charged and sought in the application as the Respondent had effectively left the tenancy before its suggested "end date" the tribunal found that this sum was not lawfully due by the Respondent.

60. The Tribunal considered whether the extensive texts and communications between the parties amounted to an agreement of a tenancy end date to allow the Respondent to leave and have a new tenancy created. The Applicant instigated the conversations and texts apparently because the Respondent had mentioned earlier that he might leave early to buy a property. The Applicant took from the texts that there was an agreement that the Respondent would leave by 30<sup>th</sup> May 2021 and the Respondent has used the words "you got a deal". That was not the end of the texts or conversations and even after this comment was made the Applicant, who knew the Respondent to be a cautious man, queried whether this was definite. The Respondent's position was that he was agreeing to leave early once he had established that he did not need to pay rent until August 2021 and would not forfeit a month's rent by leaving "early". He said that he understood he would still have the notice period which would run after any date that was agreed. The Tribunal took the view that when the communications were considered as a whole what they amounted to was a protracted negotiation initiated and led strongly by the Applicant which ended without an actual agreed date for the Respondent to leave. The Tribunal does not look into the minds of parties to consider what might have been agreed but looks at what was presented in writing and the evidence given as to the surrounding circumstances and noted that even the Applicant was in some doubt as to what had or had not been agreed when he asked on 2<sup>nd</sup> May if what had been said was definite. The Respondent said "I can move out between..." certain dates, not that he would move out then. The comment appeared to be a suggestion made in a discussion. It was self-evident from the transcript of all the texts presented in evidence that an actual date to leave had not been agreed between them. The tribunal did not accept the evidence of the Applicant that the Respondent had agreed to leave by 30<sup>th</sup> May on a telephone call on 8<sup>th</sup> May. In a text on 16<sup>th</sup> May the Applicant was still asking the Respondent on what date he would move out and by that time the Respondent had paid his rent for the month up to 14<sup>th</sup> June,

61. On the basis of the text exchanges on 2<sup>nd</sup> May and the phone call between the parties on 8<sup>th</sup> May the Applicant took an advance payment of rent from the new tenant Mr Wong to have the room with effect from 1<sup>st</sup> June 2021 when it had not been vacated by the Respondent. The Applicant seeks to recover accommodation costs incurred by Mr Wong when he could not move into the property on 1<sup>st</sup> June 2021 which were paid by the Applicant. The Tribunal's view is that the Respondent is not liable for these costs given that it found that no date in May was agreed by the Respondent to leave the property, the Respondent had not left the property by the date agreed between the Applicant and the new tenant Mr Wong, and as such the landlord took a risk in coming to an agreement with a new tenant at a time when he could not give vacant possession of the room. It is reasonably foreseeable to any landlord that when one tenant leaves there may be cleaning, or other work required before a new tenant can move in. There was no evidence of any pre checkout inspection of the room given in this application and the condition of the room was not known until 11<sup>th</sup> June when it was vacated. The Tribunal took the view that the landlord Applicant made an agreement with a

prospective tenant at his own risk and any obligations in terms of that agreement are between those parties and do not impose liability on the Respondent.

62.The Tribunal took the view that the Applicant had effectively agreed to allow the Respondent to leave the tenancy before the other tenants as set out in the additional terms and he could have continued to charge him rent on that basis until the date he vacated the property on 10<sup>th</sup> June. Instead, he made a choice to accept payment from another party towards rent for a room that this party was not even occupying at that time. The Tribunal makes no finding regarding any outstanding rent as the Applicant does not claim such a payment.

63.The Tribunal accepted the evidence from the Applicant, and Mr John Cairns as to the condition of the room when the Respondent vacated it and the work that was required as a result of the Respondent's failure to keep the room clean. It also accepted that cigarette smoking had taken place in the room. The Applicant chose to proceed against the Respondent only in this application and in particular in relation to cleaning and painting costs as they related to his room only.

64.The Applicant seeks late payments charges for all the payments he seeks to recover. He relies on a clause in the additional terms which states that the landlord can charge a late payment fee for any payment seven days overdue. The Tribunal considered this and took the view that the clause was clearly intended to cover payments required at specific times in terms of the tenancy as it was placed in the section of the terms which covered rent and deposits. Although there are sums found to be due by the Respondent to the Applicant by way of a breach of the tenancy agreement these sums were not incurred as costs until paid by the Applicant in December 2021 and January 2022.As such they cannot be said to be late payments which are overdue but rather sums which were in dispute as to whether these were lawfully due until the Tribunal determined that they were so due in its decision. The tribunal did not consider that late payment charges were applicable to these sums, and they are not "overdue".

65.The original application referred to "costs" but the Tribunal's decision is based on the amended claim dated 26<sup>th</sup> January 2022 which made no mention of "costs" and as such no consideration of expenses was requested or made.

## **Decision**

The Tribunal determined that a payment order in the sum of seven hundred and ten pounds only (£710.00) be made in favour of the Applicant and against the Respondent.

## 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.

Valerie Bremner

\_\_\_\_\_  
Legal Member/Chair

24.6.22  
\_\_\_\_\_  
Date