



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/CV/18/3281

Re: Property at Schoolcroft, Dorbshill, Aberdeen, AB41 8HG (“the Property”)

Parties:

Mr Philip Simpson, Hemingway, Pitfour, Mintlaw, AB42 4JQ (“the Applicant”)

**Miss Sarah Pickles, Mr Leigh Inglis, 5 Fairway Avenue, Inverurie, AB51 3WY; 5
Fairway Avenue, Inverurie, AB51 3WY (“the Respondents”)**

Tribunal Members:

Neil Kinnear (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

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

Background

[1] This is an application for a payment order dated 5th December 2018 and brought in terms of Rule 70 (Application for civil proceedings in relation to an assured tenancy under the 1988 Act) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

[2] The Applicant seeks from the Respondents payment of arrears in rental payments and damages in respect of repair and reinstatement works to the Property which he asserts were required as a result of the Respondents’ occupation of the Property, and provides with his application copies of the short assured tenancy agreement, rent arrears statement, quotations for work, photographs, inventory reports and other documentation.

[3] The short assured tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

[4] The procedural history of this case is lengthy and complex, and requires detailed consideration for the reasons which will follow.

[5] A Case Management Discussion was held on 26th February 2019, at which the Applicant and both Respondents appeared. The Applicant was allowed to amend his original application which was simply in respect of rent arrears, to include a claim for damages, and the Case Management Discussion was adjourned to allow the Respondents to address and respond to that amended claim.

[6] A continued Case Management Discussion was held on 28th March 2019, at which the Applicant's solicitor, Mr Doran, appeared on his behalf and both Respondents again appeared.

[7] The Tribunal directed the Respondents to provide detailed responses to the Applicant's amended claim, and to specify the evidence they intended to lead in support of their position, and again adjourned the Case Management Discussion for that purpose.

[8] A further continued Case Management Discussion was held on 18th July 2019, at which the Applicant's solicitor, Mr Doran, again appeared on his behalf and both Respondents again appeared.

[9] During the further continued Case Management Discussion, the Tribunal discussed the details of the claim with the parties, and identified some elements of the claim which the Respondents did not dispute, and the remainder which they did dispute. The Tribunal was able to set out and list in its Case Management Discussion note the disputed elements and the costings for those.

[10] The Tribunal made a further direction on both parties to lodge inventories of productions with cover sheets listing the documents contained therein, and which were to collate all of the voluminous material each party had already lodged into one coherent package for each party. Parties were also directed to lodge lists of witnesses, and a Hearing was set.

[11] The Hearing set for 28th August 2019 was postponed in advance, and a fresh Hearing date was set for 25th September 2019.

[12] The Applicant's solicitor lodged one consolidated inventory of productions and list of witnesses in compliance with the Tribunal's direction. The Respondent did not comply with the direction timeously.

[13] A Hearing was held on 25th September 2019 at Credo Centre, 14-20 John Street, Aberdeen. The Applicant appeared, and advised the Tribunal that he would represent himself in the application henceforward due to the considerable cost of continuing to have his solicitor appear on his behalf. His new representative, Ms Holmes, of Aberdeenshire Leasing, appeared with him.

[14] The Respondents did not appear, having e-mailed the Tribunal that morning requesting an adjournment of the Hearing upon the basis that their childcare arrangements for their young family had unexpectedly fallen through that morning, and they could not attend the Tribunal with their young family. As both Respondents requested to appear and give evidence, they sought to postpone the Hearing to another date.

[15] The Tribunal invited the Applicant to make representations regarding the Respondents' request to postpone the Hearing, and he opposed the granting of the postponement request.

[16] The Applicant expressed frustration at the length of time it was taking to conclude this application, and was of the view that the Respondents were deliberately delaying matters.

[17] He advised the Tribunal that he and Ms Holmes had passed the First Respondents' car, which has a distinctive cherished number-plate, driving near St Machar Drive in Aberdeen on their way to today's Hearing, which he said indicated that the Respondents were not being truthful in asserting that they were unable to attend today.

[18] The Tribunal sought confirmation from the Applicant as to whether or not the repair and reinstatement work which forms his damages claim had been carried out, as the evidence lodged by him comprised quotes for work which was yet to be done.

[19] The Applicant confirmed that all the work had been completed, and that he had invoices for the final cost of these works which he could provide if this was required.

[20] The Tribunal rose to consider the written submission from the Respondents, and the oral submission by the Applicant, and then resumed the Hearing.

[21] Rule 28 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended allows the Tribunal discretion on its own initiative or on an application by a party, to adjourn a Hearing.

[22] The Tribunal had considerable sympathy with the objections from the Applicant, which are entirely understandable from his perspective, but nonetheless considered it to be reasonable to adjourn the Hearing in the whole circumstances in terms of Rule 2 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

[23] The Tribunal was persuaded that it was in the interest of justice, and consistent with its overriding objective of dealing with the proceedings justly, and ensuring, so far as practicable, that the parties are on equal footing procedurally and are able to participate fully in the proceedings in terms of Rule 2 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, to allow the Respondents one further opportunity to appear at a Hearing on this application.

[24] Albeit that postponing this matter would undoubtedly cause delay, the Tribunal considered that this factor was narrowly outweighed by the consideration of ensuring so far as practical that the Respondents are able to fully participate.

[25] They had previously appeared on the various days when the Tribunal has considered this application, had conceded and accepted some elements of the claim, and asserted a positive defence to certain elements of the claim which required them to appear as witnesses to give evidence upon.

[26] If the Hearing was to have proceeded in their absence, then there would be little evidence before the Tribunal in support of their asserted position, which would undoubtedly be highly prejudicial to establishing their defence.

[27] The Tribunal considered that the prejudice to the Applicant in granting a final postponement of this Hearing was less than that to the Respondents of insisting on its proceeding.

[28] The Tribunal also considered that the Applicant should lodge copies of the invoices for the various works for which he claims and which have now been carried out, and made a direction upon him to do so. Invoices disclosing the actual cost of work completed and paid for by the Applicant, and itemising what work was done, are the best evidence of his claim for damages, as opposed to quotations provided before the work was undertaken.

[29] The Tribunal noted the Applicant's comments concerning passing the First Respondent's car on his way to the Hearing, but did not consider, if he was correct, that this necessarily showed that the Respondents were being untruthful, as it is possible that they were in the car with their children, or that either might have been driving whilst the other was at home looking after the children. In any event, the Respondents were not present and so could not be given the opportunity to comment upon the Applicant's assertion in this regard.

[30] In adjourning this matter, the Tribunal made clear to the Respondents in the Tribunal's Case Management Discussion note that it was extremely unlikely that it would adjourn this case again if they were to make a further such request to do so, and that it was highly likely that the Hearing would proceed on the date set for it in their absence if they failed to attend.

[31] For these reasons the Tribunal granted the postponement request. After so doing, the Tribunal clerk identified a date with the Tribunal members, and with the Applicant and his representative, of 12th November 2019, when all were available. In the absence of the Respondents or any representative present on their behalf, it was not possible to confirm their availability.

[32] The Tribunal issued a direction to the Applicant to produce copies of the invoices for the various works for which he claims and which he advised the Tribunal had by then been carried out. Those should disclose the actual cost of work completed and paid for by the Applicant, and itemise what work was done.

The Continued Hearing

[33] A continued hearing was held on 12th November 2019 at Credo Centre, 14-20 John Street, Aberdeen. The Applicant again appeared, and again he was accompanied by Ms Holmes, of Aberdeenshire Leasing. The Respondents appeared, and were not represented.

[34] At the continued hearing, the Tribunal confirmed with the parties that the issues previously identified to the Tribunal and noted in its Case Management Discussion note of 18th July 2019 remained those in dispute between the parties, and that the elements of the claim which the Applicant sought and which were accepted by the Respondents also remained unchanged.

[35] The Respondents confirmed that they accepted arrears of rent, subject to deduction of the tenancy deposit of £1,100.00. They also sought to deduct the sum of £300.00 awarded to them against the Applicant by the Tribunal under a previous separate application arising from the Applicant's failure to lodge the tenancy deposit in an approved scheme in terms of the *Tenancy Deposit Schemes (Scotland) Regulations 2011*.

[36] The Applicant accepted this position, and parties were agreed that rent arrears of £1,817.95 remain outstanding.

[37] It would perhaps assist to explain that although the Property is let for residential purposes, it is located in a rural setting and encompasses a house together with outbuildings formerly used for livestock.

[38] The Applicant also seeks damages in this application, which are comprised of the following elements:

- 1) £170.00 in respect of dilapidations identified in a checkout inventory. The Respondents accept £10.00 in respect of the fridge freezer, but dispute the remainder.
- 2) £150.00 in respect of carpet cleaning, and £79.00 in respect of cleaning of the Property. The Respondents dispute this claim, upon the basis that they assert that the Applicant recovered possession of the Property unlawfully, which prevented them from carrying out this work, which they accepted was required, before they left the Property.
- 3) £440.00 in respect of electrical works. The Respondents accept £100.00 in respect of the cost of removal of a socket and industrial switch unit which they had installed in the livingroom with the Applicant's permission, but dispute the remainder.
- 4) £880.00 in respect of redecoration. The Respondents accept £770.00 in respect of work required to the stable floors, to the kitchen, and the doors in the hallway and bathroom, but dispute the remainder.
- 5) £6,756.00 in respect of restoration works. The Respondents accept £120.00 in respect of the cost of tidying up the grassed area at the Property, £60.00 in respect of replacement of the hallway and bathroom doors, £85.00 in respect of the cost of repairing the stable door, £66.00 for repairing holes made in

walls to run LPG pipes and electrical wirings, £300.00 in respect of the cost of removing waste and rubble, but dispute the remainder.

[39] The total amount of the sum sought by the Applicant which the Respondents accepted is therefore £3,328.95.

[40] The Tribunal heard evidence from the Applicant, Ms Holmes, and both Respondents in relation to these disputed items.

[41] A major element of the Applicant's claim for restoration works which was disputed by the Respondents, was for the cost of replacing internal walls in the outbuilding. They initially did so upon the basis that they had discussed the removal of the walls with the Applicant, and he had given them permission to do so. Indeed, the Respondents asserted that the Applicant insisted they carry out this work, and in so doing waived his right in terms of clause 8 of the written lease agreement to demand its reinstatement at the termination of the lease, on the basis that it was a prohibited structural alteration.

[42] The Applicant runs a building business, and in the course of his evidence, he confirmed that he had personally reinstated and rebuilt the internal walls, sliding doors and gates and metal posts which formed the original stables in the outbuilding of the Property with his employee, Kevin Bruce. He also confirmed that work has been undertaken to the floor of the original stables in the outbuilding of the Property to chemically strip, scrape and powerwash it.

[43] In response, the Respondents accused the Applicant of lying in his evidence on this matter to the Tribunal, and sought to lodge photographs said to have been taken the week before, being the 3rd November 2019, which they wished to use in rebuttal of the Applicant's evidence on this point. The Respondent asserted that these photographs clearly showed that these works had not been carried out.

[44] The Tribunal explained to the Respondents that in terms of Rule 22 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, all documents which a party seeks to rely on must be sent to the Tribunal no later than 7 days prior to any hearing. Rule 22(2) provides that before allowing a document to be lodged late, the Tribunal must be satisfied that the party has a reasonable excuse.

[45] The Respondents submitted that the photographs were very recent, and that they did not anticipate that the Applicant would lie to the Tribunal on such an important matter in his evidence. It would be unjust for the Tribunal not to allow them to produce evidence which they asserted conclusively proved that the Applicant was lying in an attempt to deliberately mislead the Tribunal.

[46] The Tribunal confirmed with the Applicant that he objected to the late lodging of the photographs. He argued that it was too late to introduce such new material without any fair notice in advance.

[47] The Tribunal adjourned for a short time to consider the photographs, the submissions of the parties thereon, and whether it should allow the Respondents to lodge them late.

[48] After doing so, the Tribunal resumed the hearing. The Tribunal considered that the Respondents had reasonable excuse for not having lodged the photographs previously. Their purpose in doing so now was for the purpose of rebutting evidence which the Applicant had just given to the Tribunal on an important disputed element of his claim, and proving that he had lied to the Tribunal in his evidence.

[49] The Tribunal considered that the Respondents were making an allegation against the Applicant, which if true, was of the utmost seriousness. In those circumstances, the Tribunal considered it would be unjust to refuse to consider the photographs, and it allowed them to be lodged late.

[50] Having done so, the Tribunal asked the Applicant to confirm, firstly, whether or not he accepted that the photographs were of the outbuilding in question at the Property and within which he asserted the work which he had described had been carried out. The Applicant confirmed that he accepted that the photographs were of the outbuilding in question.

[51] Secondly, the Tribunal asked the Applicant to confirm whether or not he accepted that the photographs clearly showed that the work which he had described had not been carried out at the time they were taken. The Applicant confirmed that he accepted that the photographs showed that the work had not been carried out when they were taken.

[52] Thirdly, standing his acceptance of what the photographs showed, the Tribunal asked the Applicant to explain why the photographs showed the work which he had described in his evidence had not been carried out. The Applicant stated that he did not know, but assumed that the photographs had not been taken on 3rd November 2019, and were in fact taken before the work was done over a period ending prior to the previous hearing date of 25th September 2019. He asserted to the Tribunal that the work had been done as he had described in considerable detail in his evidence.

[53] The Tribunal again adjourned for a short time to consider the extremely serious allegation made against the Applicant. The Respondents submitted that the Applicant had lied and misled the Tribunal in his evidence. He was committing a criminal offence in so doing, and was also committing the criminal offences of attempting to pervert the course of justice and attempted fraud by seeking to obtain an order from the Tribunal for payment of damages in respect of monies which he had not in fact expended.

[54] After taking time to carefully consider this issue, the Tribunal resumed the hearing. The Tribunal adjourned the hearing and issued a direction to the parties.

The Direction of 12th November 2019

[55] The Tribunal issued a direction to the Applicant to:

1. Instruct his letting agent and representative, Mrs Angela Holmes, of Aberdeenshire Leasing, to arrange to personally inspect the Property as soon as possible, and to provide the Tribunal with a written report confirming both whether or not the internal walls, sliding doors and gates and metal posts which formed the original stables in the outbuilding of the Property have been reinstated and rebuilt as stated in invoice number 638 from A.K. Simpson, Joiners & Building Contractors addressed to the Applicant dated 25th September 2019, and whether or not work has been undertaken to the floor of the original stables in the outbuilding of the Property to chemically strip, scrape and powerwash it as stated in invoice number 555 from Graeme P. Bruce, Painter & Decorator addressed to the Applicant dated 24th June 2019, which report should include photographs showing the presence or absence of the internal walls, sliding doors and gates and metal posts and whether the floor has been chemically stripped, scraped and powerwashed.
2. Provide further details and specification of the dates when the work to reinstate and rebuild the internal walls, sliding doors and gates and metal posts which formed the original stables in the outbuilding of the Property was carried out, the materials used, and the identities of the persons who undertook that work.
3. Provide further details and specification of the dates when the work to chemically strip, scrape and powerwash the floor of the original stables in the outbuilding of the Property was carried out, the materials used, and the identities of the persons who undertook that work.

[56] The Tribunal issued a direction to the Respondent to provide:

1. Copies of the three photographs lodged by the Respondents at the Hearing on 12th November 2019 in this application said to show the absence of the internal walls, sliding doors and gates and metal posts in the interior of the original stables in the outbuilding of the Property as at 3rd November 2019.
2. The metadata relating to those photographs confirming the location of the photographs and the date and time at which they were taken.

[57] The direction indicated to the parties that the above required to be lodged with the Tribunal no later than close of business on 19th November 2019.

The further Continued Hearing

[58] A continued hearing was held on 20th January 2020 at Credo Centre, 14-20 John Street, Aberdeen. The Applicant again appeared, and again he was accompanied by Ms Holmes, of Aberdeenshire Leasing. The Respondents again appeared, and were not represented.

[59] In the period following the hearing of 12th November 2019, both parties had complied with the Tribunal's direction of 12th November 2019.

[60] The Respondents lodged copies of the photographs, together with the associated metadata.

[61] The Applicant lodged an undated report from Ms Holmes, in which she confirmed that as at 21st November 2019 the internal walls had not been rebuilt, that the sliding doors and gates and metal posts had been reinstated, and that after test areas of the floor had failed to remove the paint, the floors had not been chemically stripped, scraped and powerwashed.

[62] The Applicant also lodged an undated letter to the Tribunal apologising for stating in his evidence "that the wall had been re-instated", and stating that "this was purely to avoid more confusion and delay". He then sought to explain that this confusion began when the Tribunal asked him to provide invoices for the work rather than estimates.

[63] The Applicant went on to state that he had every intention of re-instating the wall, and observed that the Respondents had not produced any counter quotations for the work.

[64] The Respondents submitted to the Tribunal that Ms Holmes' report clearly proved that the Applicant had deliberately and flagrantly lied in his evidence to the Tribunal, and that they had reported the matter to the police.

[65] The Tribunal before proceeding to hear the remainder of the evidence concerning the disputed elements of the Applicant's claim, invited the Applicant to give his response to the allegation that he had deliberately lied to the Tribunal in his evidence.

[66] The Tribunal was disappointed that Ms Holmes in her response on behalf of the Applicant sought to forcefully assert that the Tribunal was at fault for "demanding" that the Applicant provided invoices for the work which he had not carried out, thereby pressuring him into complying with that request, and in consequence causing him to have to state that the work had been done.

[67] As noted above, Ms Holmes was present at the hearing of 25th September 2019, at which the Applicant volunteered to the Tribunal that all the work had been carried out and completed. It was solely in response to that statement, that the Tribunal asked him to provide invoices for the final cost of the completed works as opposed to preliminary estimates. To suggest otherwise appeared to the Tribunal to be an attempt by her to misrepresent what had previously occurred.

[68] The Tribunal had issued a Hearing Note prepared by its members on the day of the Hearing of 25th September 2019, in which it noted what had taken place. That note was sent to the parties shortly after the hearing date. The Applicant and Ms Holmes had at no point sought to suggest previously that that note contained an inaccurate account of what occurred.

[69] The Applicant then, on 12th November 2019, gave a detailed account of how the wall was rebuilt, when it was rebuilt, and by whom, in circumstances where he was clearly aware that this had not occurred.

[70] Indeed, when confronted with the Respondents' allegation that the wall had not been rebuilt, he continued to assert to the Tribunal that it had. It was as a result of his continued insistence that the work had been done that the Tribunal issued its direction of 12th November 2019 to confirm the position. It appears to be only in consequence of Ms Holmes' report that the Applicant changed his position.

[71] The Tribunal then resumed hearing evidence from the Applicant and the Respondents, and at the conclusion of that evidence adjourned to consider matters before issuing a decision.

Findings in fact

[72] After hearing all the evidence led by both parties on the issues in dispute between them and upon which the Tribunal requires to reach a decision, the Tribunal found in fact:

- 1) That the Respondents received notices to quit the Property served by the Applicant, and requiring them to remove by 8th January 2019.
- 2) That the Respondents were in the process of removing their possessions as at 8th January 2019.
- 3) That the Respondents had not quit the Property as of 8th January 2019, as they intended to remain for a short period thereafter in order to complete their removal from the Property and carry out cleaning, reinstatement and repair works before returning the keys and confirming that they had left the Property to the Applicant.
- 4) That the Applicant attended at the Property on 8th January 2019 when the Respondents were not present, removed the Respondents' remaining personal possessions from the Property and placed them in the back of the Respondents' unlocked vehicle, and changed the locks so that the Respondents were unable to return to the Property.
- 5) That the Applicant wrongfully evicted the Respondents from the Property against their will.
- 6) That as a result of the Respondents' wrongful eviction from the Property, they were unable to carry out the cleaning, reinstatement and repair work which they accepted they required to do in terms of the lease agreement.
- 7) That the Applicant claims for those cleaning, reinstatement and repair works which the Respondents accepted they were required to carry out in terms of the lease agreement, together with further reinstatement and repair works which the Respondents do not accept they were required to carry out in terms of the lease agreement.
- 8) That the Applicant has failed to prove on a balance of probabilities that the further reinstatement and repair works which the Respondents do not accept they were required to carry out in terms of the lease agreement, were in fact carried out.
- 9) That the Applicant has failed to prove on a balance of probabilities that the further reinstatement and repair works which the Respondents do not accept they were required to carry out in terms of the lease agreement, were reinstatement and repair works which the Respondents were obliged to do in terms of the lease agreement at its termination.

- 10) That the Applicant is not entitled to claim for works which the Respondents accept they were obliged to carry out at the termination of the lease, and which they were prevented from doing by the Applicant's wrongful eviction of them from the Property.

The Evidence

[73] The Tribunal heard from both Respondents in evidence. Both were clearly upset and very emotional explaining their position, and were clearly very angry and resentful towards the Applicant in respect of his treatment of them.

[74] On a number of occasions the Tribunal required to warn them both about their use of bad language, and in respect of using insulting terms towards both the Applicant and Ms Holmes.

[75] However, the Tribunal found both to be credible and reliable in their evidence concerning the issues in dispute in this application.

[76] By stark contrast, the Tribunal found the Applicant to be entirely incredible, and entirely unreliable in his account of the events which are in dispute between the parties.

[77] The Applicant clearly deliberately lied in his evidence to the Tribunal about his carrying out of the work to rebuild the wall.

[78] In his undated letter to the Tribunal, received by it on 4th December 2019, although he accepted that the works had not been carried out which he said he had done in his evidence, and offered an apology, he went on to assert that "this confusion" began and was as a result of the Tribunal's request that he provided invoices for work which had been carried out in terms of the quotations provided for those.

[79] Ms Holmes went further in her submission to the Tribunal, forcefully seeking to assert that her client was the innocent victim in this case, and that the Tribunal was at fault for "demanding" that the Applicant provided invoices for the work which he had not carried out, thereby pressuring him into complying with that request, and in consequence causing him to have to state that the work had been done.

[80] For the reasons discussed in paragraphs 67 to 70 of this decision, that is at best an erroneous account of events, and at worst might be described as a disingenuous attempt to deflect blame from her client for his behaviour and to attribute fault to the Tribunal.

[81] As a result, the Tribunal could not accept any of the Applicant's evidence on the matters in dispute in this application as truthful, as it simply did not believe the Applicant for these reasons.

[82] The Respondents disputed £160.00 in respect of dilapidations identified in a checkout inventory as being ordinary wear and tear. The Tribunal, after considering

all of the evidence led by both parties, and the checkout inventory which contained photographs, accepted that the disputed amount was ordinary wear and tear.

[83] Many of the sums shown in the checkout inventory appeared to have no justification provided for the sums sought, which Ms Holmes advised were estimates based on a table used by the company that prepared the inventory. She confirmed when asked by the Tribunal that a copy of the table was not lodged, and that it was one which did not appear to have been any form of industry-agreed rates used generally in such matters.

[84] The Respondents dispute the Applicant's claim for £150.00 in respect of carpet cleaning, and £79.00 in respect of cleaning of the Property. They do so upon the basis that the Applicant recovered possession of the Property unlawfully, which prevented them from carrying out this work, which they accepted was required, before they left the Property.

[85] The Tribunal accepts their evidence on this point. The Respondents accept they were required to carry out these works, and that the Applicant would ordinarily be entitled in terms of the lease to recover the costs of those in the event that the Respondents failed to do them.

[86] However, in circumstances where they were deprived of the opportunity to fulfil their obligations in terms of the lease agreement due to their wrongful eviction from the Property in breach of that agreement, the Applicant was not entitled to recover these costs.

[87] With regard to the Applicant's claim for £440.00 in respect of electrical works, the Respondents accept £100.00 in respect of the cost of removal of a socket and industrial switch unit which they had installed in the livingroom with the Applicant's permission, but dispute the remainder.

[88] The Tribunal was not satisfied by the evidence of the Applicant with regard to the disputed element of this claim.

[89] With regard to the Applicant's claim for £880.00 in respect of redecoration, the Respondents originally accepted £770.00 in respect of work required to the stable floors, to the kitchen, and the doors in the hallway and bathroom, but disputed the remainder.

[90] As a result of the report prepared by Ms Holmes in response to the Tribunal's direction of 12th November 2019, the Respondents realised that the work required to the stable floors had not been carried out in terms of the invoice produced for that work by the Applicant, and indicated that they would (not unreasonably) only accept the claim if the work had been carried out, which the Applicant has belatedly conceded he has not.

[91] The invoice from Graeme P. Bruce, painter and decorator dated 24th June 2019, which was lodged by the Applicant, seeks payment for the work which it narrates was carried out at a price of £650.00.

[92] Standing the Applicant's belated admission that this is untrue, and that the work has not been carried out, the Tribunal was not satisfied by the evidence of the Applicant, and accordingly that leaves the figure of £120.00 in respect of this element of the claim which is undisputed by the Respondents and which the Tribunal does, for that reason, accept.

[93] Finally, with regard to the Applicant's claim for £6,756.00 in respect of restoration works, the Respondents accept £120.00 in respect of the cost of tidying up the grassed area at the Property, £60.00 in respect of replacement of the hallway and bathroom doors, £85.00 in respect of the cost of repairing the stable door, £66.00 for repairing holes made in walls to run LPG pipes and electrical wirings, £300.00 in respect of the cost of removing waste and rubble, but dispute the remainder.

[94] The Tribunal was not satisfied by the evidence of the Applicant with regard to the disputed element of this claim.

Statement of Reasons

[95] Section 16 of the *Housing (Scotland) Act 2014* provides as follows:

"16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3) Part 1 of schedule 1 makes minor and consequential amendments."

[96] Accordingly, the Tribunal now has jurisdiction in relation to claims by a landlord (such as the Applicant) for payment of unpaid rental against a tenant (such as the Respondent) under a short assured tenancy such as this.

[97] The Tribunal found both Respondents in all material respects to be credible and reliable witnesses in relation to the facts in dispute between the parties in this application, for the reasons earlier explained.

[98] In these circumstances, the Tribunal accepted their evidence regarding the areas of dispute between the parties.

[99] The Tribunal found the Applicant to be incredible and unreliable in relation to the facts in dispute between the parties in this application for the reasons earlier

explained, and accordingly did not accept his evidence regarding the disputed matters and preferred the evidence of the Respondents.

[100] That being so, the Tribunal does not need to consider the terms of the lease agreement standing its rejection of the Applicant's evidence.

[101] However, the Tribunal would note that the claims for damages advanced by the Applicant appear to be sought in terms of clauses 8 (prohibition on affixing anything to the interior or exterior of the Property), 10 (interior decoration – the tenant obliged to leave the Property in a like condition, ordinary wear and tear excepted), 11 (furnishing and fittings - the tenant obliged to keep them in the like condition, ordinary wear and tear excepted), 15 (cleaning – the tenant obliged to leave clean at termination, with obligation to pay the cost if not done), and 29 (payment for repairs – the tenant liable for the cost of repair where the need for those is attributable to their fault and negligence).

[102] The Tribunal concluded that many of the items claimed for by the Applicant fell into the category of ordinary wear and tear, and the need for repair was not attributable to fault and negligence on the part of the Respondents.

[103] Other damages sought were for cleaning, reinstatement and repair which the Applicants accepted they were liable for in principle in terms of the lease, but which they would have carried out themselves if the Applicant had not illegally evicted them and deprived them of the opportunity to do those works.

[104] Such illegal eviction is contrary to the relevant legislation, and indeed in terms of clause 38 of the lease agreement which narrates the bases upon which the landlord may recover possession of the Property.

[105] The Applicant's antecedent breach of the agreement entitles the Respondents to withhold performance of their obligations under the lease in terms of the mutuality principle in the Law of Contract.

[106] Finally, the Tribunal accepted the Respondent's evidence that the Applicant had agreed with them, and asked them, to take down the internal walls in the original stables in the outbuilding of the Property.

[107] That agreement made verbally between them would appear to be a verbal agreement to vary the terms of the written agreement in that respect. If the Tribunal is wrong in that legal characterisation, then it would in the Tribunal's assessment amount to either a waiver of the written contractual terms, or personally bar the Applicant from insisting on performance of the written obligation where the Respondents have materially altered their position by carrying out the work in reliance of the Applicant's representations.

Decision

[108] In these circumstances, the Tribunal will make an order for payment by the Respondents to the Applicant of the sum of £2,678.95, being the amount originally undisputed by the Respondents of £3,328.95 under deduction of the sum of £650.00

in respect of the cost of work to the stable floor which was invoiced for, but not carried out.

[109] The Tribunal will also report the Applicant's conduct both in relation to his untruthful evidence to the Tribunal and his actions in unlawfully evicting the Respondents from the Property to the appropriate authorities in relation to his entry on the Register of Landlords, and also in relation to his potential prosecution with respect to breach of the *Scottish Tribunals (Offences in Relation to Proceedings) Regulations 2016*, attempted fraud, and attempting to pervert the course of justice.

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.

N Kinnear

Legal Member/Chair

30/01/20

Date