



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/22/4281

Re: Property at Brownhill Cottage, Tyrie, Fraserburgh, AB43 7DT (“the Property”)

Parties:

Boyndlie Estate Company Ltd, 1 Carden Place, Aberdeen, AB10 1UT (“the Applicant”)

Ms Janice Gray (also known as Stewart), Brownhill Cottage, Tyrie, Fraserburgh, AB43 7DT (“the Respondent”)

Tribunal Members:

Shirley Evans (Legal Member) and Nick Allan (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order against the Respondent for possession of the Property at Brownhill Cottage, Tyrie, Fraserburgh, AB43 7DT under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) be granted. The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent. The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from the Property and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

Background

1. This is an application dated 30 November 2022 for an order for eviction under Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”) based on the Respondent’s

alleged failure to pay rent in terms of a Private Residential Tenancy between the parties dated 23 May 2019. The application founded on Ground 12 (three months rent arrears) of Schedule 3 of the 2016 Act.

2. The application included a copy of the Private Residential Tenancy agreement between the parties, pre-action letters dated 13 December 2021, 17 February 2022 and 4 April 2022 from Fraser & Mulligan solicitors addressed to the Respondent, a Notice to Leave dated 26 July 2022 together with Sheriff Officer's Execution of Service, a rent statement to 25 November 2022 showing arrears of £12 671.50 and a Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003 dated 29 November 2022 to Aberdeenshire Council.
3. On 23 December 2022 the Tribunal wrote to the Applicant as the Cost of Living (Protection for Tenants) (Scotland) Act 2022 ("the 2022 Act") affected the application and set out three options for the Applicant to consider as follows-

"1. Proceed with the application although any eviction or possession order will be affected by the delay in enforcement provisions,

2. Withdraw the application and submit a fresh application when you have served a Notice on the Tenant on one of the new grounds or a ground which is not affected by the delay in enforcement provisions,

3. Proceed with the application and ask the Tribunal to allow the application to be amended to include new or different grounds and/or consider a ground which was not specified in the Notice which was served. For example, if you have based the application on ground 1, you could ask the Tribunal to allow you to add or substitute the new ground 1A. Please be aware that should this option be chosen, the Tenant can object to any amendment and whether or not the Tenant objects, the Tribunal may not give consent to allow such an amendment of the application.

If you wish to proceed on the basis of option 3, and the request to amend is made after the application has been accepted, or if the new or additional grounds were not specified in the Notice which was given to the Tenant, the request will not be considered until the application has been served on the Tenant and they have had the opportunity to give their views on the application and any proposed amendment to it. AMENDMENT OF THE APPLICATION AS DETAILED IN OPTION 3 IS AT THE DISCRETION OF THE TRIBUNAL AND MAY BE REFUSED."

4. On 6 January 2023 the Applicant's solicitor requested that as the arrears exceeded six months at the time the Notice to Leave was served, the ground of repossession on the Notice to Leave of Ground 12 be substituted to

Ground 12 A (Substantial Rent Arrears). The Applicant's solicitor submitted a further rent statement on 12 April 2023 showing arrears of £15 071.50.

Case Management Discussion

5. The Tribunal proceeded with a Case Management Discussion ("CMD") on 19 April 2023 by way of teleconference. Both parties were in attendance. Miss Bain from MacKinnons solicitors appeared for the Applicant. Mrs Stewart appeared on her own behalf.
6. Miss Bain moved the Tribunal to grant an Order for eviction due to the Respondent's substantial rent arrears of £15 071.50.
7. In response Mrs Stewart disputed the level of arrears. She submitted she had paid David Brose, the Property Manager and Director of the Applicant, £983 when she moved in. She submitted that she made payments totalling £6207 including the £983 until February 2020. The rent due up to then was £5877. Between March 2020 – December 2021 she was on Universal Credit and that £425 per month was paid for the rent against the monthly rent due of £653. Mrs Stewart advised that she would pay what she could if she had the money but that she would make up the shortfall at some point. She submitted that during that period from March 2020- December 2021 she had paid £8877 rent as against rent due of £9350.
8. Mrs Stewart submitted that in January 2022 she took advice from Diane Coutts at Aberdeenshire Council with a view to lodging a claim with the Tenant's Hardship Fund. She sent numerous texts to Mr Brose about the Fund but due to his refusal to discuss matters with her, she missed the deadline to submit the application for the Fund in March 2022.
9. She submitted she was also advised by Shelter in January 2022 to withhold rent due to nuisance arising from the use of neighbouring barns and a lack of maintenance and repairs. Although Shelter had advised her to raise an action in the Housing Tribunal to force the Applicant to have the repairs carried out and seek compensation, Mrs Stewart explained she had not done so as she had hoped to reach an agreement with Mr Brose. Shelter told her to put the rent money into a different account. She had done that, but she had had to use some of that money to get by. She explained that her husband lived with her, but he was suffering from cancer. She could not advise how much money she had in that account, but thought it was a couple of thousand pounds.
10. The Tribunal queried why if she had been advised to withhold rent by Shelter she paid rent in March and April 2022. She advised that Shelter felt that the amount of rent was not justified. The Tribunal referred Mrs Stewart to the letter dated 17 February 2022 from Fraser and Mulligan addressed to her which stated that repairs to the wood burner and shower had been carried out and that due to the inconvenience experienced by her the Applicant had

reduced the rent to £600 between September – December 2021. Mrs Stewart denied there had ever been a reduction in rent.

11. Mrs Stewart explained she had a long list of repairs including having no heating for over two years. There were two log burners. It took two years to fix one of the fires which had been fixed by February 2022. She had texted Mr Brose about the lack of heating. She had also had some communication with Fraser and Mulligan solicitors, the Applicant's solicitors setting out the repairs. She complained-
- i. the bathroom window was not wind tight
 - ii. the bedroom window had black mould as did the walls surrounding the window
 - iii. the front door was letting water in
 - iv. the drain at the back was blocked outside
 - v. the toilet drain was not fixed
 - vi. there was dampness in the kitchen and the living room
 - vii. there was a crack in the fireplace.

At one stage Mr Brose had attended at the Property with a handyman who had suggested some repairs, but those were not carried out. She sent numerous text messages to Mr Brose complaining about dampness, but nothing has been done. She advised that the smell of dampness, particularly in the living room, was strong.

12. Mrs Stewart also complained that she had been led to believe that the driveway to the Property was only for her use but other vehicles from the neighbouring barns were using the driveway. However, Mr Brose claimed the driveway was shared. Mrs Stewart submitted that the accumulation of problems with the Property over the last couple of years entitled her to a rent reduction.

13. The Tribunal continued the application to a Hearing as the Respondent disputed the level of arrears and claimed she was entitled to withhold rent due to lack of repair. The Tribunal issued a Note on the Case Management Discussion.

Notice of Direction

14. On 4 July 2023 the Tribunal issued a Notice of Direction to parties. The Applicant was directed to lodge an affidavit from Mr Brose regarding the granting of the tenancy agreement and his subsequent dealings with the Respondent including complaints with regard to repairs, the driveway, neighbouring sheds, the Tenant's Hardship Fund and withholding rent. The Applicant was also requested to lodge an up to date rent statement, all correspondence showing when the Respondent gave notice to the Applicant that repairs were required to the heating, the windows, the drains, the front door and complaints of dampness and mould and all corresponding documents in relation to the maintenance of the Property in relation to these items and in

particular any documentation showing whether the Respondent's reports relating to whether these items had or had not been attended to and when any such repairs were completed. The Applicant was also directed to lodge all correspondence with Mrs Coutts from Aberdeenshire Council relating to repairs and maintenance at the Property. The Applicant was required to comply with the Direction by 21 July 2023.

15. The Respondent was directed to lodge the text messages to Mr Brose about the Tenant's Hardship Fund, all correspondence with Mrs Coutts from Aberdeenshire Council in relation to her application with the Tenant's Hardship Fund and referencing the deadline that she had missed to submit the application with the Fund, all the correspondence regarding the barns and that the Respondent had put the Applicant on notice that she intended to withhold rent at the Property and her reasons for doing so, evidence of the separate account holding the equivalent of the rent withheld by her in a bank or other account and evidence of what her Universal Credit entitlement had been. The Respondent was also required to comply with the Direction by 21 July 2023.
16. On 21 July 2023 in accordance with the Notice of Direction, the Applicant's solicitor lodged a 14 page affidavit from Mr Brose, an up to date rent statement showing arrears to 25 July 2023 of £17 303.50 with a note of annual payments made throughout the tenancy, an inventory of text messages between Mr Brose from 18 December 2018 - 17 February 2023, an inventory of documents including letters to the Respondent from Fraser and Mulligan, correspondence with Mrs Coutts from Aberdeenshire Council and photographs and videos.
17. The Respondent did not comply with the Notice of Direction.

Hearing

18. A Hearing was assigned to proceed on 4 August 2023 at 10 am in person at Banff Sheriff Court. On 23 June 2023 parties were given notice of the date and time of the Hearing.
19. At 9.21 am on 4 August 2023 after a telephone call to the Tribunal's administrative team, the Respondent sent an email in the following terms-
*"Good morning
I have a hearing today at 10am in Banff Sheriff Court.
Due to my husband recent bereavement, I have been prescribed anti-depressants which I started taking on Tuesday.
They have made me very unwell and unable to attend this morning.
I have also had to report thefts from the property to the police and this has added to my anxiety and panic attacks.
I apologise for any inconvenience this has caused
Regards
Janice Gray"*

20. Mr Sinclair from MacKinnons solicitors appeared at the Hearing. Mr Brose, the Applicant's Property Manager was also in attendance.
21. The Tribunal read out the Respondent's email to Mr Sinclair and gave him an opportunity to consider its contents. Mr Sinclair advised the Respondent's husband had died on 30 May 2023 and submitted the Applicant wished to proceed with the Hearing as arrears were increasing.
22. After consideration of the Respondent's email, in terms of Rule 29 of the Regulations the Tribunal decided to proceed with the Hearing in her absence. The Tribunal noted the Respondent had not requested a postponement of the hearing. The Tribunal had the Note from the CMD fully setting out the Respondent's position that she disputed the arrears and was entitled to withhold rent due to issues at the Property. The Tribunal now had copies of text messages between Mr Brose and the Applicant dating from 18 December 2018 – 17 February 2023, the correspondence with Aberdeenshire Council, further email correspondence with the Respondent and photographs of the Property. The Tribunal was conscious of the overriding objective. It determined that it could deal with proceedings justly on the materials before it. In doing so the Tribunal was dealing with the matter flexibly and proportionately to the complexity of the matter. In doing so further delay was avoided.

Mr Brose's evidence

23. On behalf of the Applicant Mr Sinclair referred the Tribunal to Mr Brose's affidavit. He submitted this set out the evidence for the Applicant. The affidavit was 14 pages long and addressed the issues that had been discussed at the CMD including the repairs, the amount of arrears and the withholding of rent. The Tribunal accepted Mr Brose's affidavit as read as forming his evidence in chief. Mr Sinclair did not wish to lead any further evidence from Mr Brose at this stage.
24. Mr Brose's affidavit was dated 21 July 2023. He gave evidence in his affidavit that the Respondent had first expressed an interest in the Property in December 2018. The Tribunal noted the text messages lodged between with the Respondent dated 18 December 2018. He went on to state that the tenancy agreement started on 25 May 2019 with a rent of £653 per month and a deposit of £1306. He had given the Respondent a 50% reduction in rent for June 2019 as she did not take possession until then. The Tribunal noted the terms of an email dated 27 May 2019 from Fraser and Mulligan to the Respondent confirming the rent reduction and that the tenancy agreement lodged reflected this at Clause 7. The deposit was received on 25 June 2019. Rent was paid, although sometimes not on time with double rent sometimes being paid.
25. Mr Brose's affidavit evidence proceeded to explain that issues with the rent started in 2020. The Respondent raised minor issues relating to the neighbouring barn, wasps, flies in the chimney and the stair giving way which he attended to quickly. There were no further complaints at that time. In January 2021 the Respondent advised him that she was dipping into her savings.

26. In April and May 2021 arrears continued to accrue with the Respondent texting Mr Brose to advise she needed to sort out the arrears and go to the bank but due to COVID restrictions she could not do so. Mr Brose's evidence was that there were no restrictions at that time and questioned the Respondent about that. He received no reply. The Applicant had lodged text messages between Mr Brose and the Respondent dated 6 April 2021 showing the conversation between them, the contents of which the Tribunal noted.
27. On 2 June 2021 Mrs Stewart advised she had paid 4 months rent (£2612) and would do the same the following month. When no payment was made Mr Brose had a conversation with her on 8 June 2021 in which she advised she had accidentally sent the payments to her son's account. Mr Brose's affidavit evidence was that she paid £1200 on 9 June and another £1200 on 10 June 2021. The Tribunal noted the text messages between Mr Brose and the Respondent between 2-10 June 2021 regarding these payments and the rent statement showing the payments made.
28. By July 2021 the Respondent was in arrears of £3526.50. She complained that there were cracks in the wood burner. A new wood burner was purchased but due to COVID restrictions was not installed until January 2022. Mr Brose's affidavit stated there was oil central heating and a second wood burner for use by the Respondent.
29. Mr Brose's affidavit evidence continued that she also made complaints of birds in the chimney. In terms of Clause 36 (e) of the tenancy agreement it is the Respondent's responsibility to sweep the chimney. Mr Brose also stated she complained about the front door seal which caused the door to open in the wind. His evidence was he checked this and that the Respondent had not been engaging the five-lever lock fully. He checked the temperature at the door with a heat gun. The Tribunal noted the photograph lodged of the heat gun.
30. She also reported that there was an issue with the bathroom window seal, but he could not find any issue with the seal. Mrs Stewart also complained about traffic to the neighbouring barn. Mr Brose explained in his affidavit that the barn had been let under an agricultural tenancy which had been in place for a number of years before the Respondent's tenancy started. The tenant had vacated in 2022, but no rent had been paid by the Respondent since then. Mr Brose continued in his affidavit to explain that the Respondent's husband had stored scrap cars on the agricultural leasehold and had repeatedly asked to lease one of the sheds. The Tribunal noted the text messages between Mr Brose and the Respondent between 6-10 July 2021 regarding these complaints and the photograph showing cars on the land.
31. Mr Brose's affidavit went on to explain that in September 2021 the Respondent texted him as she believed she had paid more rent than outlined in the rent statement and undertook to send bank statements to show the payments made. She also requested a rent reduction due to her complaint about the neighbouring barns and the chimney. The Tribunal noted the Respondent's text to Mr Brose dated 15 September 2021 complaining about the barns, the shared

track and that the chimney was uncapped for 18 months preventing use of the fire.

32. His affidavit explained that the Respondent complained about the water pressure in the shower on 21 September 2021. The Tribunal noted the text messages from the Respondent of 21 and 22 September 2021. He explained when the Estate properties had been upgraded a new water tank had been fitted. Mr Brose immediately got the plumber to check the water pressure and a new shower was fitted. However, the issue was not resolved and the Water Board were asked to have a look. They discovered an issue with the mains' pressure valve, which they replaced. The Tribunal noted the texts between the Respondent and Mr Brose dated 22- 28 September 2021 regarding the Water Board. On 1 October 2021 the Respondent complained that the new shower did not have the same water pressure as the old one. Mr Brose asked the plumber to change the shower back, but this was not possible. The Tribunal noted the texts between the parties on 1 October 2021 in this regard. A larger pipe was fitted on 13 November 2021.
33. Mr Brose gave further affidavit evidence that on 23 October 2021 the Respondent complained about the front door again. There had been issues with the Respondent not engaging the lock properly. The joiner attended on 27 October 2021 and adjusted the lock slightly although he did not feel this was necessary. The Respondent also complained of black mould in the bedroom. On inspection there was no signs of mould. Mr Brose's affidavit explained the bedrooms were well insulated with Kingspan on the walls and ceiling and referred to photographs lodged with the Tribunal. He went onto explain that the Respondent did not use heating in the bedrooms which were heated by the wood burner and that they only used the oil central heating for the hot water. She complained again about the chimney being uncapped. However this did not stop the Respondent being able to use the fire. She also complained that the drains were blocked but when he attended to inspect there was no sign of overflowing. His affidavit went onto explain that when he was at the Property in February 2022, he cleared some leaves and debris from the drain although the Respondent had not complained about it and did not notice he had done so. She also complained about the bathroom window seal again. The bathroom window is double glazed. He attended with the joiner on 27 October 2021 and again found no issue with the seal. She also complained about dampness in the kitchen cupboards, but he could see no evidence of that, the Property being fully insulated. He referred to photographs lodged with the Tribunal to show the insulation in the kitchen. He advised the Respondent to open the windows from time to time and to use the extractor fan. The Tribunal noted the text messages between the Respondent and Mr Brose from 23 October -26 October 2021 regarding these matters.
34. His affidavit explained that after Storm Arwen in November 2021 there was no power at the Property and that he spent a considerable period of time on the phone with SSSEN to get the power back on. When the power did get back on the Respondent complained the boiler was not working. He attended at the Property and discovered the oil tank was empty, but he managed to get the boiler up and running again. A couple of days later the Respondent complained

that the plumber had put in the boiler incorrectly, so the heat settings were incorrect. Mr Brose attended that day and found the Respondent had been pressing the wrong buttons. There was no issue with the boiler. The Tribunal noted the text messages between 13 November – 6 December 2021 recording the dealings between the parties regarding the power, SSEN and the boiler.

35. Mr Brose further explained that a pre-action letter was sent to the Respondent due to the arrears. The Tribunal noted the letter lodged with the application dated 13 December 2021 to the Respondent and that the rent arrears were £5485.50 to 24 November 2021.

36. On 21 December 2021 Mr Brose explained that the solicitors received a letter from Diane Coutts from Aberdeenshire Council indicating she had been contacted by the Respondent's husband who raised issues about the drains, shower, window seals and damp in the bedrooms. The Tribunal noted the email dated 21 December 2021 from Mrs Coutts and the reply from Fraser and Mulligan dated 23 December 2021 outlining how and when the repairs had been attended to. Both were lodged with the inventory of documents. Mr Brose's affidavit went onto explain that on receipt of that letter he asked the plumbers to check the shower again. This was replaced on 19 January 2022.

37. Mr Brose's affidavit evidence was that Mrs Coutts replied on 24 December 2021. She was satisfied all repairs had been or were getting attended to. There was no mention of the Respondent withholding rent. The Tribunal noted the email of 24 December 2021 from Mrs Coutts lodged with the inventory of documents.

38. On 10 January 2022 Mr Brose gave evidence in his affidavit that the Respondent had called Fraser and Mulligan disputing arrears were due. She advised she had been in receipt of Universal Credit during COVID but was now back at work. She indicated she was withholding rent due to birds in the chimney, being without a shower, the wood burner, that he had not allowed Mrs Stewart to put a lock on the oil tank and the neighbouring barns. These repairs were being attended to. Mr Brose's evidence was that he had simply mentioned to the Respondent she may wish to put a lock on the oil tank. She also advised she wanted a rent reduction and had been advised by Shelter to make an application to the Tribunal. Fraser and Mulligan asked the Respondent to show proof that she had paid the rent she claimed. To his knowledge the Respondent has never provided proof of such payments.

39. Mr Brose's evidence was that on 1 February 2022 the Respondent texted him to say the heating was not working. He attended on 2 February 2022. The heating was working. The Tribunal noted the text messages dated 1 February 2023 between Mr Brose and the Respondent dated 1 and 2 February 2022 about the heating.

40. His evidence was that the wood burner was replaced on 11 and 12 February 2022. He asked the Respondent not to use the wood burner for a few days to allow the putty to dry. He attended on 14 February 2022 and noted that she had

been using the wood burner. The Tribunal noted the text message dated 12 February 2023 from Mr Brose to the Respondent asking her not to use the fire.

41. On 17 February 2022 Mr Brose instructed solicitors to send another pre- action letter to the Respondent. The letter also offered a reduction in rent of £53 per month from September – December 2021 due to inconvenience caused by the shower and wood burner. A copy of that letter had been lodged with the application. The Tribunal also noted the reduction in rent was reflected in the rent statement lodged. The Tribunal also noted that at the CMD the Respondent when referred to this letter had disputed she received a rebate.
42. On 25 February 2022 the Respondent emailed Fraser and Mulligan indicating she had provided proof of rent payments and had applied to Aberdeenshire Council for the rent shortfall to be paid. She also wanted a rent reduction due to the barns. The Tribunal noted the terms of emails between Fraser and Mulligan and the Respondent between 24 -25 February 2022 and that the solicitors had advised the Respondent they had received no proof of payment and asking her to resend these. Mr Brose repeated his belief that no proof of payment was ever received.
43. A pre action letter was sent on 4 April 2022. A copy of this letter was enclosed with the application. Rent was paid in March and April 2022, although the March rent was £3 short. Mr Brose's evidence was that those were the first payments since July 2021. No payments to rent have been made since then. The Tribunal noted the rent statement lodged which noted these payments and that no further payments had been received.
44. On 20 May 2022 there was a complaint about wasps which Mr Brose attended to that day.
45. Mr Brose continued his evidence that the Notice to Leave was served on 28 July 2022. The Notice to Leave dated 26 July 2022 based on Ground 12 (rent arrears) and the Sheriff Officer's execution of service dated 28 July 2022 were lodged with the application. The Tribunal noted the arrears were over £10 000 at that stage.
46. Continuing his affidavit evidence Mr Brose stated the Respondent called Fraser and Mulligan on 28 July 2022 demanding a rent reduction to £500 from when the barn was rented out. She also complained about the slates on the roof rattling in the wind, the window seals and a blocked drain. Mr Brose had already given evidence he had checked the drain and the window seals. It was common for slates to rattle in the wind. The roof was in a decent state of repair. Mr Brose referred to a letter from a slater dated 11 July 2023 lodged in the inventory of documents stating he had worked on the roofs on the Estate for 20 years and that the roof at the Property was in good order. The Tribunal noted the terms of this letter.
47. Mr Brose stated his solicitors rejected the Respondent's request for a rent reduction. The Tribunal also noted an email dated 11 August 2022 from the

Respondent lodged with the inventory of documents which stated she would be “*prepared to settle the rent*” but that she was looking for a rent reduction to £500 from when the barns were rented in September 2019 and stated there were other issues that needed to be addressed. The Tribunal also noted an email dated 12 August 2022 from Fraser and Mulligan in response rejecting the rent reduction and asking for proof that the Respondent was putting the withheld rent into a separate account.

48. Mr Brose gave further evidence that during the same call the Respondent advised she had had the opportunity to apply for a grant to cover the rent owed from March 2020 to December 2021 when she received Universal Credit. The Respondent claimed she had tried to speak to Mr Brose about that and that he had refused to discuss this with her. Mr Brose denied that. He went on to give evidence that the Respondent had been provided with a number of rent statements and that she had all the information she needed in the letters from Fraser and Mulligan dated 13 December 2021 and 17 February 2022. She had never provided proof of payments she claimed she had made. The Tribunal also noted the terms of the Respondent’s email dated 15 August 2022 to Fraser and Mulligan in which she repeated that she had been given an opportunity to apply for a grant to cover her rent from March 2020- December 2021 when she was on Universal Credit, but that in February Mr Brose had refused to go through the figures.
49. Mr Brose gave further evidence that in October 2022 he received a text that the two log burners were leaking and that smoke was making her husband unwell. Mr Brose offered to attend the Property that same day. The Respondent replied stating she had both fires on and requesting Mr Brose attend the following week. Mr Brose advised her that she should not use the fires if they were leaking. The Respondent replied that she did not think they were leaking but that the ropes needed replacing. The Tribunal noted the terms of the text messages dated 22 October 2022 from the Respondent reporting the leaks and Mr Brose’s offer to attend that day and not to use the fires and the text message dated 23 October 2022 from the Respondent advising that they weren’t actually leaking and that a new rope was required. The Tribunal also noted the photographs showing a loose rope on the door of the wood burner.
50. Mr Brose gave evidence that in December 2022 he received a letter from Aberdeenshire Council that the Respondent had applied for social housing. He was requested to fill out a questionnaire which he did. The Tribunal noted the terms of a letter dated 20 December 2022 from Aberdeenshire Council and the email returning the completed questionnaire on 23 December 2022.
51. Mr Brose’s evidence continued that on 14 February 2023 the Respondent had sent a video of the kitchen tap making a loud noise which she claimed had been like that for weeks, although it was only reported to him on 14 February 2023. He attended the Property that day and fixed the tap. The Respondent then complained about a crack in the wooden mantle. Mr Brose’s suspicion was that this had been damaged by the Respondent.

52. On 17 February 2023 he received a further message that a tree had fallen in the garden. He attended that day and chopped it into smaller pieces.
53. Mr Brose gave further affidavit evidence that he was aware of the complaints about the track but that the responsibility for this was shared between the Respondent and the tenant of the barns. There was a second access that the Respondent could have used which was not used by farm vehicles. Both the farm tenant and the Respondent's husband had carried out repairs to the track. Mr Brose described the track as a typical county track.
54. Mr Brose in his affidavit referred to the various text messages lodged as proof he had attended to the various reports of repairs. He felt that the Respondent's story changed to avoid paying rent. The Estate had not received any rent for over a year and before then there were arrears. The Respondent's refusal to pay rent has had an impact on the Applicant's cashflow and a huge impact on the business. He is reluctant to let out other properties for fear that he may encounter the same issues and has lost income from four other properties as a result. He is fearful that if the situation continues he will have to sell off the other properties on the Estate which will have an impact on the local area.
55. In relation to the arrears, he referred to the Respondent's statement at the CMD that she had paid more rent than the rent statement showed. She claimed that between May 2019- February 2020 she had paid £6207 against rent of £5877 and that between March 2020 – December 2021 she had paid £8877 against rent of £9350. He stated she had made this repeated claim over the years but had never showed proof of payment. Mr Brose confirmed the rent statement was accurate. It showed payments between May 2019 – February 2020 of £4901 against rent of £6203.50 and payments between March 2020 – December 2021 of £8877 against rent of £14 154. The Tribunal noted the rent statement lodged by the Applicant reflected the figures given by Mr Brose and that the last payment to the rent was of £653 on 29 April 2022.
56. The Tribunal also noted the terms of an email dated 22 August 2022 from the Respondent to Fraser and Mulligan. In this email the Respondent stated from June 2019 – February 2020 she paid £6207 against rent due of £5877, from March 2020 -May 2021 Universal Credit paid £6207 against rent of £6375 and was £198 short due to her own miscalculation, from June 2021 – September 2021 £3000 was paid against rent of £2612. The email also stated that *“Universal Credit payment for October 2021 -December 2021 was £1275, this was paid in March 2022 with an underpayment of £234 a payment was made in April 2022 of £653 this covered the underpayment of £234 and £198 from May 2021, Any monies due from January 2022 – June 2022 is £5471.”* The Respondent also repeated her request for a rent reduction due to the barn and claimed Mr Brose had not helped her in any way.
57. Mr Brose concluded by saying on a personal level he feels under attack from the Respondent's constant accusations. He has always tried to attend to matters. He feels it unfair the Respondent has been able to live in the Property

without paying any rent for over a year. The Respondent's late husband had advised Mr Brose that he could not evict them during lockdown and repeated this when the latest restrictions were announced. The Respondent has been using the restrictions to her advantage. The Respondent and her late husband often discussed what new cars or properties to buy and had asked if Mr Brose would sell the Property to them.

58. On being questioned by the Tribunal Mr Brose stated he felt that at times the Respondent was goading him. He understood she was saving up to buy a house. He felt the Respondent wanted to provoke a reaction from him.

59. With regard to the replacement of the wood burner, Mr Brose explained that due to COVID this was delayed. The Tribunal questioned whether that delay had been reasonable. Mr Brose confirmed that whilst one wood burner needed to be replaced the Respondent had the use of another wood burner and central heating. She was not without heat. He was further questioned about the chimney cap. He explained that a lack of a chimney cap would not prevent the Respondent from using the fires.

60. The Tribunal questioned him about the drainage. He clarified that when the Respondent first complained about that in October 2021 he went out to the Property that same day, but found no issues. When he was at the Property in February 2022 when the wood burner was getting replaced, he simply checked the drain and pulled some leaves and debris out. It was nothing substantial. He didn't mention it to the Respondent, and she did not notice he had done that.

61. The Tribunal queried whether the complaints were at times without foundation. Mr Brose confirmed there were repeated complaints about window and door seals, but they had always been found to be in order. He had never seen any sign of dampness in the house. Other complaints such as slates rattling, the rope on the wood burner, the boiler not working, wasps amounted to nothing. There had been trouble with the shower and clarified that the shower had been replaced twice in October 2021 and January 2022. The rent had been reduced to reflect that. He confirmed the tenant of the barn had been there for about 25 years, well before the Respondent moved in. This was a working farm. There had never been any issue with that tenant who in fact complained that the Respondent's husband had placed scrap cars on his tenancy. The Applicant's evidence concluded.

Submissions

62. Mr Sinclair made submissions to the Tribunal. The Tribunal asked to be addressed on the motion to amend the Ground in the Notice to Leave. Mr Sinclair submitted that when the Notice to Leave was served on the Respondent on 28 July 2022 the Respondent was already in arrears of nearly £10 000. The monthly rent was £653. The Notice had proceeded on Ground 12 of Schedule 3 (three months rent arrears). Mr Sinclair confirmed that in accordance with the email of 6 January 2023 as the arrears amounted to well

over six months in arrears he was moving the Tribunal to substitute the ground of repossession to Ground 12 A (substantial rent arrears) as introduced by the Cost of Living (Tenant Protection) (Scotland) Act 2022. He referred to the rent statement lodged which showed arrears of £17 030.50. The Tribunal went through this rent statement with him noting that there had been a rent reduction to £600 in September – December 2021, that the last payment to account was of £653 on 29 April 2022, that the Respondent first started to accrue arrears from January 2020, that payments throughout 2020 totalled £5877, payments in 2021 totalled £3200 and in 2022 totalled £1303. There had been no payments in 2023.

63. Mr Sinclair submitted that repairs had been attended to in a reasonable period of time and that the Respondent had no legal right to withhold rent. She had never shown proof of payments that she claimed had been made and had never shown that she was keeping the unpaid rent in a separate account. Mrs Coutts from Aberdeenshire Council had been satisfied that all repairs had been attended to. The Tribunal had noted a further email from Mrs Coutts from Aberdeenshire Council dated 9 September 2022 to the Applicant that all repairs appeared to have been dealt with and suggesting the Applicant request clarification as to why rent was being withheld. There were no benefits issues that Mr Sinclair was aware of. Mr Sinclair moved the Tribunal to grant an order for eviction based on Ground 12A, the Respondent being in substantial arrears of over six months.

64. The Tribunal asked to be addressed on reasonableness. Mr Sinclair submitted that the issue with arrears had gone on for a long time. Mr Brose's affidavit he submitted set out the steps taken to attempt to resolve matters with the Respondent. His affidavit was supported by the correspondence lodged between Fraser and Mulligan and the Respondent and the numerous text messages between Mr Brose and the Respondent. He repeated his submission that the Respondent had failed to produce any evidence of payments. He submitted the Tribunal required to balance the rights of both parties; in this case due to the high level of arrears, which had had a financial impact on the Applicant, who was concerned about the viability of continuing to rent properties on the Estate, the balance favoured the Applicant. The Respondent lived alone. She had applied for social housing and had had plenty of opportunity over the years to pay the arrears. When pressed by the Tribunal as to whether it was reasonable in all the circumstances to evict the Respondent as she had lost her husband on 30 May, Mr Sinclair submitted that that did not outweigh the Applicant's right to rent. Even since her husband's death the Respondent had not been in contact with the Applicant. In his submission the Respondent's position that she was entitled to withhold rent was not one that was credible. On balance, he submitted it was reasonable in all the circumstances to evict.

Findings in Fact

Rent

65. The Applicant and the Respondent entered into a Private Residential Tenancy Agreement on 23 May 2019. In terms of Clause 5 the start date was 25 May

2019. In terms of Clause 7 the monthly rent was £653. Clause 7 also provided for a 50% reduction in rent for from 25 May – 24 June 2019.

66. The Respondent paid the Applicant £983 when she moved into the Property.
67. Between May 2019 – February 2020 the Respondent paid £4901 including the against rent of £6203.50.
68. From March 2020- December 2021 the Respondent was in receipt of Universal Credit. The Respondent returned to work in December 2021. There are no outstanding benefits issues that will have any impact on the arrears. The Respondent made sporadic payments between March 2020 – December 2021 of £8877 against rent of £14 154.
69. The Applicant reduced the monthly rent to £600 between September – December 2021 for inconvenience in relation to issues relating to the shower and the wood burner.
70. The Applicant's solicitor Fraser and Mulligan sent pre-action letters with rent statements and Tenant's Rights Information Sheets to the Respondent on 13 December 2021, 17 February 2022 and 4 April 2022. These letters also sign posted the Respondent to various advice agencies.
71. The Respondent sought advice from Dianne Coutts, Aberdeenshire Council in December 2021. On 21 December 2021 Mrs Coutts emailed Fraser and Mulligan with a list of repairs to the Property. Fraser and Mulligan responded on 23 December 2021 advising of the current state of repairs. On 24 December 2021 Mrs Coutts advised Fraser and Mulligan that she was satisfied all repairs had been or were being attended to.
72. On 10 January 2022 the Respondent indicated she was withholding rent due to outstanding repairs and traffic to the barns. The Respondent has not provided any proof that she has put aside the withheld rent in a separate account.
73. On 25 February 2022 the Respondent requested a reduction in rent for inconvenience due to traffic at the neighbouring barns.
74. The Respondent's last payment of rent was of £653 on 29 April 2022.
75. On 28 July 2022 the Applicant served a Notice to Leave on the Respondent by Sheriff Officers requesting the Respondent remove from the Property by 26 August 2022. The Notice to Leave proceeded on Ground 12 of Schedule 3 of the 2016 Act. The arrears were £9847.50 at the time of serving the Notice to Leave. The Respondent had been in arrears of rent for more than three consecutive months with the level of arrears greater than the one month's rent under the tenancy. The arrears were the equivalent of over fifteen months of rent arrears.

76. On 11 August 2022 the Respondent requested a reduction in rent to £500 from September 2019 when she claimed the barns were first let out. The Respondent is not entitled to a reduction in rent. The barns have been let out since before the Respondent's tenancy started and terminated in 2022. There was no material impact on the Respondent's tenancy.
77. The Respondent made repeated claims she made payments which were not shown in the rent statement. She has never produced proof of payment to substantiate her claims. The Respondent has not made any such payments.
78. The Respondent has fallen into arrears of rent of £17 030.50 to 25 July 2023 and is in breach of Clause 7 of the tenancy agreement.
79. The Respondent lives alone and is in employment. The Respondent has applied to Aberdeenshire Council for social housing.
80. A Notice under Section 11 of the Homelessness, etc. (Scotland) Act 2003 was served on Aberdeen City Council on 30 November 2022.

Repairs

81. There was a longstanding agricultural tenancy in existence at the neighbouring barns at May 2019 which shared a track to the Property. The Respondent made repeated complaints about traffic to the neighbouring barns and the track. These complaints were without foundation. The Respondent's late husband stored scrap cars on part of the agricultural tenancy. The agricultural tenancy terminated in 2022.
82. The Property is heated by oil fired central heating and two wood burning stoves. On 6 July 2021 the Respondent texted Mr Brose to report that one of the wood burners had cracks in it. The Applicant took steps to replace the wood burner. Due to COVID restrictions the Applicant was unable to replace this until 11 -12 February 2022. In the circumstances this was reasonable. On 22 October 2022 the Respondent texted Mr Brose to report the two wood burners were leaking. On 22 October 2022 Mr Brose offered to check the wood burners that day but did not attend at the Respondent's request. On 23 October 2022 the Respondent texted Mr Brose to advise that the wood burners were not leaking but only needed their door ropes replaced which she stated she would do. The absence of a chimney cap did not prevent the Respondent's use of the wood burners.
83. On 6 July 2021 and 10 January 2022, the Respondent texted Mr Brose to report about birds nesting in the chimney. In terms of Clause 36 (e) the Respondent is responsible for cleaning the chimney.
84. On 6 July 2021 the Respondent texted Mr Brose to report that there was an issue with the front door seal which blew open in the wind. Mr Brose attended and found that the Respondent had not fully engaged the door's five-lever lock. On 23 October 2021 the Respondent texted Mr Brose to advise the front

door was leaking. The Applicant's joiner attended on 27 October 2021 and adjusted the lock slightly.

85. On 6 July 2021 the Respondent texted Mr Brose to report an issue with the bathroom window seal. The window is double glazed. Mr Brose attended and could not find any issue with the seal. On 23 October 2021 the Respondent texted Mr Brose to repeat her complaint about the bathroom window seal. Mr Brose and the joiner attended on 27 October 2021 and found nothing wrong with the bathroom window seal.
86. On 21 September 2021 the Respondent texted Mr Brose to report there was an issue with the water pressure at the shower. The Applicant replaced the shower immediately. There continued to be an issue with the water pressure. The Applicant contacted the Water Board who after investigation identified that there was an issue with the valve at the mains which they replaced. The Applicant then replaced pipes on 13 November 2021. The Respondent made no further complaint to the Applicant about the shower. On 21 December 2021 Dianne Coutts from Aberdeenshire Council wrote to the Applicant to advise that she had been advised that there was an issue with the shower. The Applicant investigated that complaint and replaced the shower on 19 January 2022.
87. On 23 October 2021 the Respondent texted Mr Brose to complain about the drainage. Mr Brose attended that day and found no issues with the drainage. Mr Brose cleared out some leaves and debris whilst attending the Property on 11-12 February 2022 despite the Respondent not making a further complaint about the drainage.
88. On 23 October 2021 the Respondent texted Mr Brose to complain about black mould in the bedroom and dampness in the kitchen cupboards. On 27 October 2021 the joiner and Mr Brose inspected the bedroom and found no sign of black mould. They also inspected the kitchen cupboards and found no sign of dampness. The Property is fully insulated.
89. On 26 November 2021 the Respondent texted Mr Brose to advise the boiler was broken. Mr Brose attended that day and restarted the boiler. On 6 December 2021 the Respondent texted Mr Brose to report the boiler was not working. Mr Brose attended that day and found there was no issue with the boiler. The Respondent had been pressing the wrong buttons. On 1 February 2022 the Respondent complained the heating was not coming on. Mr Brose attended on 2 February 2022. The heating was working.
90. On 14 February 2023 the Respondent sent a video and a text message to Mr Brose complaining about a noise from the kitchen tap. Mr Brose attended at the Property and resolved the issue. The Respondent also complained about a crack in the wooden mantle.
91. On 17 February 2023 the Respondent texted Mr Brose to advise a tree had fallen in the garden. Mr Brose attended that day and chopped the tree into smaller pieces to move.

Findings in Fact and Law

92. The Respondent was not and is not entitled to withhold rent. The Respondent is not entitled to any further rent reduction. The Applicant has responded to all reports of repairs within a reasonable period of time. The neighbouring barns had no material impact on the tenancy.
93. The Respondent is in substantial rent arrears of £17 030.50, being over six months of arrears. The Applicant has established a case in terms of Ground 12A of Schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016. It is reasonable to evict.

Reasons for Decision

94. The matter before the Tribunal was whether the Respondent was in rent arrears and whether due to repairs at the Property and complaints about the neighbouring barns, she was entitled to withhold rent.
95. The Tribunal considered the following legislation in its determination -
- Private Housing (Tenancies) (Scotland) Act 2016
 - The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020.
 - The Cost of Living (Tenant Protection) (Scotland) Act 2022 (“the 2022 Act”).
96. Section 51(1) of the 2016 Act gives the power to the Tribunal to evict if it finds that any of the grounds in Schedule 3 apply. This application originally proceeded on Ground 12 (three months rent arrears). The Applicant moved to amend the ground to Ground 12 A (substantial rent arrears).

Motion to Amend

97. The Tribunal considered Applicant’s solicitor’s leave to amend dated 6 January 2023 under Rule 14(1) of the Regulations to allow the application to proceed under Ground 12A of Schedule 3 of the 2016 Act even though the Notice to Leave only included Ground 12 and not Ground 12A.
98. Paragraph 5 (a) of Schedule 2 of the 2022 Act introduced additional grounds of repossession and amended Schedule 3 of the 2016 Act with effect from 28 October 2022, including the introduction of Ground 12A. Ground 12A (substantial rent arrears) provides –
- “(1) It is an eviction ground that the tenant has substantial rent arrears.
(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—
(a) the tenant has accrued rent arrears under the tenancy in respect of one or more periods,*

(b) the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave is given to the tenant on this ground in accordance with section 52(3), and

(c) the Tribunal is satisfied that it is reasonable to issue an eviction order.

(3) In deciding under sub-paragraph (2) whether it is reasonable to issue an eviction order, the Tribunal is to consider—

(a) whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit,

(b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).

(4) For the purpose of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 (S.I.2006/213),

(ii) a payment on account awarded under regulation 93 of those Regulations,

(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

(b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.”

99. The significance of the Applicant's motion to include Ground 12A is that paragraph 1(1) and (2) of Schedule 2 of the Cost of Living (Tenant Protection) (Scotland) Act 2022 Act introduced certain restrictions on residential evictions which in general terms postpone the carrying out of eviction for a period of 6 months. This application proceeded under Ground 12 (three months rent arrears) and would have been subject to those restrictions. Paragraph 1(5) of Schedule 2 of the 2022 Act provides that where an eviction order relates to a private residential tenancy under the 2016 Act the restrictions do not apply where an order for eviction is granted on various grounds including Ground 12A (substantial rent arrears). These grounds were introduced to give some protection to landlords in certain circumstances including where the tenant is in arrears of over six months. In other words if an order for eviction is granted on Ground 12 A there will be no such restriction.
100. In terms of Section 52(5)(b) of the 2016 Act the Tribunal may give permission for a ground of eviction to be included in the application even though it is not stated in the Notice to Leave.
101. The Respondent had received intimation of the application to amend the application to proceed under Ground 12A with the application papers on 10 March 2023. The Tribunal considered the Respondent's poor payment history

throughout the tenancy. She had not paid anything towards the rent since 29 April 2022. Arrears have increased to £17 030.50, being the equivalent of twenty six months of rent. Substantial rent arrears under Ground 12A equate to six months arrears when the Notice was served. At that stage the arrears were nearly £10 000 being well in excess of six months rent. The arrears currently stand at a figure of over four times the defined amount of substantial rent arrears in Ground 12A. Accordingly the Tribunal was prepared to allow the amendment to allow the insertion of Ground 12A.

2016 Act

- 102 In terms of Section 52 of the 2016 Act the Tribunal is not to entertain an application for an eviction order unless it is accompanied by a Notice to Leave and unless the eviction ground applied for is stated in the Notice to Leave accompanying the application.
- 103 In terms of Section 54 of the 2016 Act a landlord may not make an application to the Tribunal for an eviction order against a tenant until the expiry of the relevant period in relation to that Notice. The relevant period begins on the day the tenant receives the Notice which in the case of Grounds 12 or Ground 12 A (as introduced by Schedule 2 paragraph 4 (2) of the 2022 Act) of Schedule 3 is 28 days.
- 104 Notice to Leave is defined in terms of Section 62 of the 2016 Act. The Notice to Leave clearly states the Respondent is in three months' rent arrears at Part 2 of the Notice. The Notice to Leave specifies the date the Applicant as landlord expects to become entitled to make an application for an eviction order namely 26 August 2022. In terms of Section 62(4) of the 2016 Act, the Notice to Leave must specify the day falling after the day on which the notice period defined in section 54(2) will expire. In this case the Notice to Leave was received by the Respondent on 28 July 2022, having been served by Sheriff Officers. In the circumstances the Tribunal is satisfied the Respondent has been given sufficient notice of 28 days. Accordingly, the Notice to Leave complies with Section 62.
105. The Tribunal considered the issues set out in the application, the Note from the CMD (the Legal Chair of the Tribunal had also been the Legal Chair at the CMD) which set out the Respondent's position. The Tribunal also considered the documents lodged in support of the application and the documents lodged by the Applicant in response to the Notice of Direction comprising the updated rent statement, the Inventory of Documents and Inventory of Text Messages. The Tribunal also considered the detailed affidavit by Mr Brose. Further the Tribunal considered the submissions made by Mr Sinclair.
106. The Tribunal considered that despite the Respondent's claims she had paid more rent than shown in the rent statement she had never produced any proof of payment either to the Applicant, the Applicant's solicitor or to the Tribunal despite being required by the Notice of Direction to do so. It is easy to make such a statement, but without proof that such payments had been made, it does not take the Respondent anywhere. The Applicant had lodged

documentary evidence in the form of correspondence to the Respondent from the Applicant's solicitors including the pre-action letters setting out the arrears and had lodged the Respondent's emails claiming to have made such payments, but without producing any evidence to support her position. The Tribunal considered that the documentary evidence lodged by the Applicant was indispensable to point to where the truth lies. In this case, the evidence indicates that the Respondent had accrued arrears and had not made any other payments to the rent other than was shown in the rent statement.

107. There was some agreement between parties as to what was paid toward rent and when it was paid. There was no dispute that the Respondent had paid £983 at the start of the tenancy or that she had paid £8877 between March 2020 – December 2021. However, these payments did not cover the rent due. The Tribunal was satisfied the rent statement accurately reflected the level of arrears. The arrears were continuing to increase. The Respondent has not paid anything towards the rent or arrears since 29 April 2022. Whilst she had corresponded with the Applicant's solicitor, she has never produced any proof of any other payments. Had she produced such proof when given plenty of opportunity to do so that may have supported her position. The Tribunal was of the opinion that the Respondent had no such proof. The Tribunal accepted that arrears were £17 030.50.
108. The Tribunal accepted the Respondent's position that there had been repairs to the Property. Mr Brose's affidavit highlighted repairs had been required throughout the tenancy which had been attended to when reported. The Applicant accepted there had been some delay in fitting a new wood burner between July 2021 and February 2022 (although there was another wood burner and central heating throughout this period) and some issues with the shower towards the end of 2021 – January 2022. For this inconvenience the rent had been reduced to £600 per month between September – December 2021. At the CMD the Respondent denied that that rent reduction had been made even when presented with the letter dated 17 February 2022 from Fraser and Mulligan which set out this rent reduction. The rent statement also reflected that reduction.
109. The Tribunal is satisfied the Applicant has complied with its duty to repair. The landlord has a duty to comply with his obligations under the repairing standard in terms section 14 (1) (b) of the Housing (Scotland) Act 2006. He has to ensure that the tenancy meets the repairing standard at the start of the tenancy and at all times during the tenancy. The duty to repair is only imposed on the landlord when the tenant notifies the landlord or the landlord otherwise becomes aware that work requires to be carried out. Repairs have to be carried out within a reasonable time.
110. Mr Brose's affidavit clearly set out when repairs were reported, the nature of repairs, his response to the reports and when repairs were carried out. The Tribunal was satisfied that repairs had been attended to in a reasonable period of time. Where the Applicant accepted there had been some issues, a rebate was given. The correspondence and the texts lodged reflect the

chronology of repairs' reports and support the evidence in Mr Brose's affidavit. The email dated 24 December 2021 from Mrs Coutts from Aberdeenshire Council, who raised various repairs issues on behalf of the Respondent on 21 December 2021, showed Mrs Coutts was satisfied that that all repairs had been attended to or were getting attended to. Despite that email from Mrs Coutts the Respondent then indicated she was withholding rent on 10 January 2022 in a telephone conversation with the Applicant's solicitor. That struck the Tribunal as an incredible stance to take when Mrs Coutts had advised the Applicant's solicitor a few weeks before she satisfied all repairs had been carried out. At that stage, even had the Respondent been entitled to withhold rent (which she was not), the whole amount of rent would then be required to be paid to the Applicant as all repairs had been attended to.

111. There was no evidence before the Tribunal that would indicate the Respondent was entitled to withhold rent. The Respondent is wrong if she thought the fact repairs were required at all entitled her to withhold rent. It is normal in the course of a tenancy that repairs arise. As long as the landlord attends to these within a reasonable period of time, the landlord will have properly complied with the obligation to repair. The Respondent had been asked to produce proof that she held the money for the withheld rent in a separate account by the Applicant's solicitor and by the Tribunal in the Notice of Direction. Had she produced such proof that may have supported her position that she was putting aside the rent in a separate account and that her withholding of rent was based on a genuine belief she was entitled to do so. However, the Tribunal was of the opinion that the Respondent had not put aside the rent and accordingly had no such proof, hence the fact she had not produced any such evidence to the Applicant's solicitor or the Tribunal.
112. The Tribunal was also of the opinion that the Respondent was not entitled to any rent rebate, let alone a rent rebate to £500 per month due to the barns. The Respondent claimed the barns were only let in September 2019. The Tribunal accepted Mr Brose's evidence that the barns had been subject to a longstanding agricultural tenancy which had been in existence before the Respondent took up residence in June 2019. The Tribunal was of the opinion that the barns had no adverse effect on the Respondent's tenancy.
113. The Tribunal was satisfied there were no outstanding benefits issues. The Respondent had advised at the CMD that she been in receipt of Universal Credit but had started work again in December 2021. The Tribunal was satisfied that the factual basis of the application had been established and a case under Ground 12A of Schedule 3 of the 2016 Act as amended by the 2022 Act was met. A notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Aberdeen City Council had been served.
114. Ground 12A is discretionary ground of eviction. As well as being satisfied the facts have been established to support the ground, the Tribunal must be satisfied that it is reasonable to evict. In determining whether it is reasonable to grant the order, the Tribunal is required to weigh the various factors which apply and to consider the relevant circumstances of the case. In this case the Tribunal accepted Mr Sinclair's submissions it was reasonable to evict. The

Tribunal was mindful that the Respondent's husband had died on 30 May 2023 and appreciated that would have an emotional impact on her. Whilst that is a relevant factor it is not the only factor that the Tribunal must consider. The Tribunal considered that weight should be given to the level of arrears and the lengthy period over which the arrears accrued. The Tribunal also had to consider that the Applicant's business had been adversely affected by the Respondent's failure to pay rent. It would not be reasonable to expect the Applicant to continue to bear the level of arrears which equated to twenty-six months of rent. The Applicant had taken reasonable steps to enable the Respondent to pay the arrears, enter into an arrangement or provide proof she had made payments. Unfortunately, the Respondent had not done so. That was a matter that was in the Respondent's control. The Tribunal considered weight should be given to the Respondent's failure. The Respondent had applied for social housing. The Tribunal also considered the Respondent lived alone and was in employment. The Tribunal was of the opinion that on balance, all things considered, there was little choice but for the Tribunal to grant the order. The balance of reasonableness weighted towards the Applicant.

115. In the circumstances the Tribunal considered that in terms of Ground 12A of Schedule 3 the Respondent is in substantial rent arrears of over six months and that it is reasonable to grant an eviction order in terms of Section 51 of the 2016 Act. The order is not subject to the restrictions on eviction under the 2022 Act.

Decision

116. The Tribunal granted an order for repossession. The decision of the Tribunal 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.

S. Evans

21 August 2023

Legal Chair

Date