



Statement of Decision by the First-tier Tribunal for Scotland (Housing and Property Chamber) under 70(1) of the Private Housing Tenancies (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/19/0298

Re: Property at 1H Cuparstone Court, Aberdeen, AB10 6FB (“the Property”)

Parties:

Mr Keith Wright, The Firs, Potterton, Aberdeen, AB23 8UY (“the Applicant”)

Mr Andrew Davies, c/o 18/8, The Gallolee, Edinburgh, EH13 9QL (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member)
Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal determined to make an order for payment in the sum of One thousand two hundred and thirty five pounds and twenty two pence (£1,235.22) in favour of the Applicant against the Respondent

Background

- 1 By application dated 25 January 2019 the Applicant sought an order for payment of rent arrears against the Respondents in the sum of £1650. In support of the application the Applicant provided the following documentation:-
 - (i) Copy Lease between the parties dated 19 July 2019;
 - (ii) Email from Duncan Kerr, AMPM Leasing dated 29 April 2019 regarding water leak;
 - (iii) Email from Steven Rintoul, Rintoul Plumbing and Heating to Duncan Kerr dated 15 August 2018;
 - (iv) Letter from AMPM Leasing to Applicant dated 12th December 2018; confirming no rent paid from 27th April 2018 to 27th June 2018;
 - (v) Letter from Davidson Accounting to AMPM Leasing dated 8 March 2018;
 - (vi) Photograph of door frame;

- (vii) Copy Inventory by Prestige Inventories dated 27 April 2018;
 - (viii) Copy Invoice for cleaning costs dated 10th May 2018;
 - (ix) Copy Invoice for supply and fit of fire door dated 5 June 2018;
- 2 The Applicant subsequently emailed the Tribunal to confirm that he was seeking the sum of £1750, which equated to two months rent together with the cost of cleaning and repairs to the door. He advised that the deposit had been recovered and a sum of £550 had therefore been deducted from the outstanding rent arrears.
- 3 A Case Management Discussion was assigned for 1st August 2019. The application paperwork was served upon the Respondent by Sheriff Officers.
- 4 By letter dated 3rd July 2019 the Respondent submitted his response to the application. In summary, the Respondent disputed he was due any money to the Applicant and queried the amount sought, which he noted amounted to £1730 and not £1750. The Respondent criticised the Applicant and his agent AMPM Leasing and highlighted a previous Tribunal decision against AMPM Leasing following an application made by the Respondent under the letting agent regulations. In support of his position the Respondent submitted the following documentation:-
- (i) Copy application paperwork with comments noted by the Respondent therein;
 - (ii) Copy email correspondence from Aviva Insurance;
 - (iii) Copy email correspondence dated 9 October 2017 between AMPM Leasing and the Respondent regarding inspection;
 - (iv) Photograph of couch;
 - (v) Copy Letter from Respondent to AMPM Leasing dated 7 November 2017;
 - (vi) Copy Letter from AMPM Leasing to Respondent dated 13 November 2017;
 - (vii) Copy Letter from Police Scotland to Respondent dated 15 August 2018;
 - (viii) Copy receipt from AMPM Leasing dated 20th April 2018 acknowledging receipt of 1 front door key;
 - (ix) Copy proof of special delivery dated 26 April 2018;
 - (x) Copy receipt for cost of microwave;
 - (xi) Copy email from AMPM Leasing to Respondent dated 4 December 2017;
 - (xii) Copy email correspondence between AMPM Leasing and Respondent's mother dated 8 and 9 November 2017;
 - (xiii) Copy request for information to Police Scotland dated 22 July 2018;
 - (xiv) Decision of First-tier Tribunal Housing and Property Chamber dated 28 August 2018;
 - (xv) Letters from First-tier Tribunal Housing and Property Chamber to the Respondent dated 10 September 2018 and 11 July 2018;
 - (xvi) Decision of First-tier Tribunal Housing and Property Chamber dated 14 November 2018;

- (xvii) Email correspondence between the First-tier Tribunal Housing and Property Chamber and Respondent regarding application FTS/HPC/LA/18/1283;
- (xviii) Email from AMPM Leasing to Respondent dated 6 June 2018;
- (xix) Email from AMPM Leasing to the Respondent dated 30 May 2018;
- (xx) Copy excerpt from BT web address help;
- (xxi) Copy detail of complaint by Respondent against AMPM Leasing;
- (xxii) Copy notification of complaint to AMPM Leasing dated 25 May 2018 and proof of delivery;
- (xxiii) Copy application to First-tier Tribunal under ref FTS/HPC/LA/18/1283;
- (xxiv) Repair log from AMPM Leasing;
- (xxv) Respondent's reply to email correspondence from Duncan Kerr and Stephen Rintoul;
- (xxvi) Copy Letter from Respondent to AMPM Leasing dated 28 November 2017;
- (xxvii) Statement from Gillian Hodge;
- (xxviii) Copy invoice from Rintoul Plumbing to Gillian Hodge dated 12 October 2016;
- (xxix) Copy emails between the Applicant and Duncan Kerr dated 30 July 2018;
- (xxx) Copy receipt for locksmith dated 3 November 2017 and details of police incident number;
- (xxxi) Copy email correspondence from AMPM Leasing to Respondent dated 7 November 2017;
- (xxxii) Copy email from AMPM Leasing to Respondent's Mother dated 19 September 2017;
- (xxxiii) Photograph of microwave;
- (xxxiv) Email correspondence between AMPM Leasing and Respondent's Mother dated 11 September 2017;
- (xxxv) Email from Christopher Bridle dated 5 August 2018;
- (xxxvi) Email correspondence between AMPM Leasing and Respondent dated 7 November 2017;
- (xxxvii) Email correspondence between AMPM Leasing and Respondent dated 4 December 2017;
- (xxxviii) Copy excerpt from Rightmove advertising property for let as at 8 June 2018;
- (xxxix) Second statement from Gillian Hodge;
- (xl) Respondent's response to the Applicant's statement regarding the keys;
- (xli) Request for police records dated 22 July 2018;
- (xlii) Email correspondence between AMPM Leasing and Respondent between 20 October 2017 and 23 November 2017;
- (xliii) Receipt for car park payment;
- (xliv) Statement from Respondent's mother;
- (xlv) Email correspondence between AMPM Leasing and Respondent's mother from 10 September 2017 to 19 September 2017;
- (xlvi) Letter from Respondent to AMPM Leasing dated 15th November 2017;
- (xlvii) Email correspondence between AMPM Leasing and Respondent between 10 September 2017 and 13 September 2017;
- (xlviii) Copy receipt from locksmith dated 27 November 2017;

- (xlix) Email correspondence from AMPM Leasing between 30 April 2018 to 6 June 2018;
- (l) Counter response to AMPM Leasing statement from Respondent;
- (li) Copy record of calls from 17 April 2018 to 23 April 2018;
- (lii) Email from AMPM Leasing dated 18 April 2018;
- (liii) Email from APL Factoring to Respondent dated 8 August 2018;
- (liv) Email correspondence between Respondent and AMPM Leasing dated 19 April 2018 and 20 April 2018;
- (lv) Copy contents inventory regarding insurance claim;
- (lvi) Excerpt from CAB records;
- (lvii) Photographs of Respondent's belongings;
- (lviii) Receipt for cleaning dated 9 May 2018;
- (lix) Email from AMPM Leasing to Respondent dated 23 April 2018;
- (lx) Excerpt online reviews for AMPM Leasing;
- (lxi) Character references for Respondent from DPG Investment Management Ltd, Susan Reid and Jackie Urquhart;
- (lxii) Photographs of property.

The Case Management Discussion

- 5 The Case Management Discussion took place on 1st August 2019 at the Credo Centre, Aberdeen. The Applicant was present and accompanied by his wife Jane Wright as a supporter. The Respondent was present and accompanied by his mother Gillian Davies as a supporter.
- 6 The Legal Member discussed the terms of the application with the parties and noted the following as issues to be resolved by the Tribunal:-
 - (i) On what date did the tenancy terminate, whether the rent was lawfully due having regard to the condition of the property, and what arrears, if any, are due by the Respondent;
 - (ii) Whether the Respondent is liable under the terms of the tenancy agreement for the cost of cleaning the property;
 - (iii) Whether the Respondent had to force access to the property due to the actions of the Applicant or the Applicant's Agent and whether he is therefore liable for the cost of replacing the door under the terms of the Tenancy Agreement.
- 7 Having identified the above as issues to be resolved by the Tribunal, the Legal Member fixed a hearing in the matter which was assigned for 4th October 2019.
- 8 Following the Case Management Discussion both parties submitted further written representations. The Applicant submitted the following documentation:-
 - (i) Photographs of keys;
 - (ii) Leaflet from mould growth consultants;

- (iii) Inventory Report from Prestige Inventories dated 17 July 2018;
- (iv) Excerpt from Inventory Report dated 12 October 2017;
- (v) Letter from Police Scotland dated 20 August 2019;
- (vi) Letter from AMPM Leasing dated 17 September 2019;
- (vii) Statement by Graham Stewart dated 20 September 2019

The Respondent submitted duplicates of documentation already provided in his initial response, with the following additional documents:-

- (viii) Response to issues identified by Tribunal;
- (ix) Photographs of property and Flat 1F Cuparstone Court;
- (x) Excerpt from Tenancy Agreement;
- (xi) Counter Response to AMPM Leasing;
- (xii) Email from Aviva Insurance;
- (xiii) Copy receipts for keys posted special delivery on 25th April 2018;
- (xiv) Copy Letter from Respondent to AMPM Leasing dated 15th November 2017;
- (xv) Letting Agent Code of Practice;
- (xvi) Photograph of water on external wall;
- (xvii) Response from AMPM Leasing to Respondent's application to First-tier Tribunal under reference FTS/HPC/LA/18/1283;
- (xviii) Email from cleaning company to Respondent's mother;
- (xix) Receipt for replacement bathroom sink;
- (xx) Letter from Respondent to AMPM Leasing dated 16th March 2018; and
- (xxi) Letter from Police Scotland.

The Hearing

- 9 The Hearing took place at Ferryhill Community Centre on 4th October 2019. The Applicant was present and accompanied by his wife Jane Wright as supporter. The Respondent was present and accompanied by his mother Gillian Sinclair as supporter. The Tribunal noted that the Respondent also wished his mother to give evidence on his behalf and agreed that she could remain in the room during the hearing for this purpose. The Legal Member therefore explained the purpose of the Hearing and the procedure to be followed.
- 10 As a preliminary matter, the Tribunal confirmed that the Applicant sought a total sum of £1730, not £1750 as previously stated. The Tribunal also confirmed that both parties had received copies of the additional representations lodged, from the Applicant on 26th August 2019 and from the Respondent on 12th September and 27th September 2019. The Applicant produced a further document in the form of email correspondence from Aviva Insurance in respect of the Respondent's claim which he wished to include in his evidence. The Tribunal considered the terms of the document and noted it related to the Respondent's claim and he would therefore have been aware of it. It was also noted that one of the emails had already been lodged as part of the Respondent's evidence.

The Tribunal therefore gave the Respondent the opportunity to consider the document before agreeing to allow it to be received.

- 11 The Tribunal then noted that both parties had brought video evidence to the hearing that they wished to rely upon. The Applicant had a video which purported to show the condition of the property as at the termination of the tenancy. The Respondent had video clips which purported to show the water leak alleged in his response to the application. The Tribunal therefore agreed to adjourn the hearing for a short time to allow both parties and the Tribunal to view the video clips from both parties before agreeing to accept it as evidence in its determination of the application.
- 12 The Tribunal then heard evidence on the three heads of claim sought by the Applicant, namely the claim for rent arrears, cleaning costs and door repair. The Tribunal had regard to the fact that both parties were unrepresented and therefore it focused the evidence on matters relevant to its determination of the application by asking questions throughout both parties evidence. Both parties were then given the opportunity to make any final submissions.

Evidence from the parties

Claim for rent arrears

- 13 The Tribunal first heard evidence from the Applicant. The Applicant explained that the Respondent's tenancy had commenced on 27 July 2017. The tenancy agreement had been submitted with the application. The Respondent had taken on the tenancy from a former tenant at a rent of £550 per month. The Applicant explained that he had instructed AMPM Leasing to act as agents on his behalf. It was a full management package. They dealt with the property, including carrying out inspections and attending to any repairs, although they had to obtain the Applicant's permission before proceeding. They also dealt with the legal side of things, advertising the property and sorting out the tenancy agreement.
- 14 The Applicant explained that AMPM Leasing would tell him when any repairs issues arose and he would instruct them on what he wanted to be done. If an issue was raised by a tenant he would make a decision, on guidance from AMPM Leasing. He would decide if he wanted a contractor instructed or if he would do it himself. Often he would just let AMPM Leasing handle it. The Applicant explained that the only time he had been in the property during the Respondent's tenancy was on 23rd April 2018. He had not been in the property at any other time. Any issues that had cropped up had been dealt with by AMPM Leasing or by their contractors.
- 15 The Applicant explained that there were three issues that had been raised during the Respondent's tenancy – a microwave, hoover and sofa. He couldn't remember offhand but the correspondence lodged by the Respondent confirmed the dates. The Applicant confirmed that the inspection report produced dated 12 October 2017 confirmed the condition of the property at that

time. He had not been made aware of any other issues during that period up to 17th April 2018.

- 16 The Applicant confirmed that there had been a water leak to the property in April 2018 and this had been reported by the Respondent. However he and the Respondent disagreed on the extent to which the property had been affected by the leak. The Respondent's account was inconsistent. He had previously stated that it was only the hall cupboard and part of the hall carpet, but in his later statements he had said the whole property had been affected. The Applicant explained that he had received a first phone call on 18th April 2018 and a further three calls thereafter. The call on the 18th informed him that there was no water to the property. He had asked AMPM to check in the first instance whether Scottish Water were doing any work in the area, and if not to instruct a plumber to attend the property. The Applicant had then received a phone call on 20th April 2018 advising that there had been a leak to the property. The plumber had returned to the property and the leak had been resolved that day however he was subsequently informed on Monday 23rd April that the electrics had tripped, which he assumed was because of the leak. He had therefore attended the property on 23rd April 2018, having collected a key from AMPM Leasing.
- 17 The Applicant explained he had entered the property on 23rd April 2018 and noted a blue bowl in the middle of the floor. He noted that the lights didn't work and reset the trip switch for the electrics. He noted that the hall carpet was soaked and the bedroom carpet was damp. The rest of the property appeared to be unaffected. There was no damage to the walls and the ceiling was intact. The Applicant made reference to the video evidence from the Respondent which showed that no ceilings had come down due to water damage or anything of that nature. The Applicant explained that by that point the leak had stopped on the 19th April when the plumber attended. He had come back and shut off the water so the tap was drained down. The plumber had then come back on the 20th April to carry out repairs and the water was reinstated to the property.
- 18 In terms of the timeline of events, the Applicant confirmed his understanding that the lack of water had been reported on 17th April 2018 and the plumber had attended on 19th April 2018. A dehumidifier had been set up on 23rd April 2018 to dry out the carpets. The Applicant noted the photos lodged by the Respondent and confirmed that he accepted they were an accurate depiction of the property at that time. There had been water to the front of the building and water staining in the communal area.
- 19 The Applicant was then asked about the alleged incident between the parties on 23rd April 2018. He explained that he had been in the property and had been about to set up the dehumidifier, having reset the electrics. The Respondent, his mother and his sister had attended the property. The Respondent's mother had engaged him in conversation and had told him that the landlord used to let himself into the property. The Respondent then advised her that he was the landlord. The Respondent's mother had called the Respondent through from another room and had told him this. The parties had then discussed a number

of issues including the front door, the sofa, the microwave and various things. There was then a discussion regarding keys. The Respondent had highlighted a key that he didn't have. Another set of keys was then discovered in the spare bedroom by the Respondent. The Applicant had taken the keys to check what they were. The Respondent's mother had become agitated at that point. She accused him of stealing their property and phoned the Police. The Applicant then took a photograph of the keys in the kitchen and offered them back to the Respondent and his mother however they said they didn't want them. The Applicant then left the keys and went downstairs to sit in his van. The Police arrived and spoke to the Applicant. He was clear to them that he did not assault anybody and it was a made up allegation. No charges had been brought against the Applicant. There had been no crime. He was not previously known to the police in any way. The Applicant confirmed that at the same time Gillian Hodge the previous tenant and her father were moving items out of the property. Thereafter a set of keys, which belonged to Ms Hodge were returned to AMPM Leasing. The keys that the Respondent was using have never been returned.

- 20 The Applicant explained that AMPM Leasing were due to carry out an inspection of the property on 27th April 2019. The report had relayed back to him that the property was in poor condition and in a poor state of cleanliness. He had informed them that he wanted to see the property and had understood that AMPM had notified the Respondent of his attendance. The Applicant had attended the property on 29th April 2019. He explained that it did appear from his visit to the property that the Respondent had removed clothes and was not presently living there. However there had been no confirmation from the Respondent. AMPM Leasing had been emailing him regarding outstanding rent and he had failed to respond.
- 21 The Applicant explained that the video he had submitted as evidence was taken on 29th April 2019. It was the first time he had a chance to look at damage to the front door and see the rest of the property for himself. Everything else had been relayed back to him through photos or reports. The Applicant pointed out the Respondent's position that the property had had a deluge of water and flood through it and that he had lost everything he'd owned. However the Applicant invited the Tribunal to look at the unit tops and see dust and shapes where things have been sitting. Ms Hodge had never complained about her remaining goods being damaged. The electrics were okay. The heaters, fridge and cooker were all working as were the hoover and microwave.
- 22 The Applicant explained that he couldn't leave the property as it was. He had arranged for it to be professionally cleaned and the doorframe had been replaced by a joiner. The property had then been advertised for lease in June 2018, a month before the Respondent was due to leave. This was standard practice. The new tenant had commenced their tenancy in July 2018. At no point had the Applicant nor AMPM Leasing had any confirmation from Mr Davies that he had terminated his tenancy and left the tenancy. He had chosen not to respond. The Applicant explained that the keys that had been returned to AM PM Leasing belonged to Miss Hodge.

- 23 The Applicant explained that he accepted that there was a period of time when the Respondent was unable to occupy the property, but in his view this was a period of around two days. He explained that the Respondent had contacted AMPM Leasing on 17th April 2018 in the evening regarding the water leak. They had picked up his message the morning of the 18th. The phone records lodged showed his calls with the plumber who had come out to carry out a repair. Unfortunately the repair had caused a leak to the property. The Respondent had therefore contacted the plumber again, who had come back to the property and switched off the water. From the initial problem being reported to being dealt with was 24 hours. The plumber had then come back on the 19th April and turned the water off prior to coming back out again on the 20th April to carry out the repair and reinstate the water.
- 24 The Applicant noted the correspondence from the Respondent's insurer Aviva which had stated that the property was uninhabitable. However the Applicant pointed out that the insurers had not carried out an inspection of the property and had taken the Respondent's word on that. The Applicant further advised that the deposit had been received from the tenancy deposit scheme and the Respondent had not disputed this.
- 25 The Tribunal then adjourned the hearing for a short period prior to commencing the Respondent's evidence on the rent arrears claim in order to clarify on what date the new tenant had commenced their tenancy at the property. The hearing subsequently resumed and the Applicant confirmed that the tenancy had commenced on 20th July 2018. The Applicant therefore agreed that any arrears due should be calculated as at the 19th July 2018.
- 26 The Tribunal then heard evidence from the Respondent. For the sake of clarity the Tribunal noted that the Respondent had lodged documentation pertaining to his claim against AMPM Leasing under the letting agent regulations and the decision by the First-tier Tribunal in relation to that application. However the Tribunal explained that it was now dealing with a separate matter, namely a claim under the contractual relationship between the parties, and was not therefore bound by the previous decision.
- 27 The Respondent advised that water had started coming into the property on 19th April 2018. It had taken until 23rd April 2018 before he knew what was happening. He had vacated the property on 23rd April 2018 at which point he told the Applicant he was moving out. It was clear that he had vacated the property. His statement was supported by his mother and sister. He had never received any communication from AMPM Leasing, nor the Applicant regarding the state of the property after that date. He didn't know what work had been done, if anything. The application was the first time he was aware of any work having been carried out. The Respondent explained that the only communication he had received from AMPM Leasing was in respect of outstanding rent. He did not reply as by that point he felt it was pointless. He and his mother had been completely ignored by AMPM Leasing up until that

point. They had visited their office on numerous occasions, but AMPM had not replied. They did not have an out of hours phone number.

- 28 The Respondent explained that his statements and actions on 23rd April 2018 were a clear indication that he was leaving the property. He had told the Applicant verbally. The keys were posted back. It had not been one set of keys, it had been many keys. They had all been returned on 26th April 2018 and signed for by AMPM.
- 29 The Respondent then gave evidence regarding the circumstances surrounding the water leak. He explained that there was a lack of water on 17th April 2018, with no working toilet, bath or sinks. This was fixed but the leak then occurred. The Respondent referred to it as a "flood". The plumber had come out on the morning of 19th and said it was an overflow, which was why water was coming out of the side of the building. The plumber said he would fix it. The Respondent had gone to work, but on his return he had noted that water was still coming outside of the building. The Respondent referred to his video clips which showed this from the dashcam on his car. The Respondent noted the fire alarm was sounding and was coming from his property. When he entered he noted the door didn't open easily and was bowed into the door frame. He saw water coming through the fire alarm in the hall. There was also water coming through a lightbulb. He took one step and his foot squelched on the wet carpet. His bedsheets were damp and soggy. All of his belongings were ruined which could be seen from his insurance claim. His insurers had paid out for everything listed. He explained that the carpets were soaked and the electrics weren't working. The smell of damp was overpowering. The Respondent referred to the video clips he had produced which showed the water ingress to the property.
- 30 The Respondent had contacted the plumber who had said he would come back and attend to it. The plumber had turned off the water and had told the Respondent to turn off the tanks. The Respondent had packed up what was salvageable and had left the property to stay with a friend. He had stayed away from the property between the 19th and 23rd April 2018, having travelled to Edinburgh for the weekend to stay with his mother. He had handed the key in to AMPM Leasing on 20th April 2019 after getting no further forward with the property. He had heard nothing from AMPM Leasing. The Respondent advised that he had been scheduled to work but was unable to do so due to his living situation. The Respondent was not aware of anything having been done over the weekend. AMPM Leasing had not told him anything. They had promised a dehumidifier but this had not been installed.
- 31 The Respondent then explained what had transpired on 23rd April 2018. The Applicant was there when he arrived with his mother and sister and water was still present in the property. They had assumed the Applicant was an electrician until he advised them he was the landlord. The Respondent and his mother had explained to him the difficulties they had experienced with AMPM Leasing and the problems they had experienced with the flat. They had sat with him for two hours. The Respondent advised him that he wanted to move out of the property. He was removing his belongings. Gillian Hodge was there too, removing some of her remaining items. She had found keys in a drawer

belonging to her which she had passed to the Respondent. He did not know they were there. The Respondent took these through to the living room and the Applicant had snatched them out of his hand. He started taking pictures in the living room, not the kitchen. The Respondent's mother had reached to take the keys back and the Applicant had smacked her hand away. The Respondent's mother had phoned the Police. They were worried about the Applicant's aggressive behaviour. The Police had called his mother but she didn't want to pursue any charges. It wasn't the case that the Police decided there was no evidence. The Police had spoken to both the Respondent and his family and the Applicant. The Police had told them to move out right now and not to come back. The Respondent's mother explained that the Applicant had slapped her really hard and that was why she had called the Police.

- 32 The Respondent and his mother advised that the inspection report dated 27th April 2018 which had been produced by the Applicant was accurate as at that date. Up until that point they had maintained the property in a reasonable state of cleanliness. There were issues with recurring mould, as could be seen in the photographs produced. This had been reported to AMPM Leasing but nothing had been done.
- 33 The Respondent and his mother explained that they had returned to the property on 24th April 2018 to ensure all belongings had been removed. Gillian Hodge had also forgotten a few things. They removed the remaining items and returned the keys to AMPM Leasing thereafter. With regard to the video clip produced by the Applicant the Respondent and his mother explained that this showed non-essential items remaining in the property. They didn't have any more room in their car.
- 34 The Respondent and his mother advised that they had previously taken advice in November 2017 on ending the tenancy from Citizens Advice Bureau ("CAB"). The CAB advisor had told them that because of the issues they had experienced the Applicant would have to let the Respondent move out and end the tenancy early. They had been advised to write to the Applicant asking him to agree to this. They had done so in November 2017. However they had received a letter back from AMPM Leasing which advised that the Applicant did not agree to this.
- 35 The Respondent noted he had received emails regarding rent from AMPM Leasing after he left the property which he had not responded to. He did not know what the condition of the property was at that point. AMPM Leasing weren't in contact with him in relation to the property and he wasn't there. If work had been carried out at the property he should have received notification of this.
- 36 The Respondent advised that his insurers were not able to carry out an inspection of the property, as he had moved out on 23rd April 2018. However they had inspected his contents and had paid for items to be washed.

- 37 The Respondent accepted that he had paid rent up until the water leak in April 2018. He had not sought to withhold his rent at any point. However he had repeatedly informed AMPM Leasing of issues at the property. The Respondent was asked about his tenancy deposit which had been applied to the outstanding rent arrears. He confirmed that when the deposit scheme had been looking at this his application to the Tribunal against AMPM Leasing was already in process. He had spoken to someone from SafeDeposits Scotland who had said he wouldn't get his deposit back. He just decided to let AMPM Leasing have the deposit at that point.

Claim for cleaning costs

- 38 The Tribunal then heard evidence from the Applicant regarding his claim for cleaning costs in the sum of £200. The Applicant stated that the inspection report dated 27th April 2018 was an accurate depiction of the property as at that date. The Applicant had gone ahead with the cleaning which was carried out on 10th May 2018. He was entitled to do so under Clause 7 of the Tenancy Agreement. The Applicant confirmed that the costs covered cleaning the carpets and kitchen, and removal of rubbish left in the property in order to reinstate it to a reasonable state of cleanliness.
- 39 The Tribunal heard evidence from the Respondent. He explained that he had never had any correspondence from the Applicant or AMPM Leasing to say that the property required cleaning. He had only received correspondence regarding rent. The Respondent did however concede that he had no intention of returning after that date to carry out any further cleaning. The Respondent's position was that he was not liable for the cleaning costs, as the majority of the work required was a result of the water leak. The property had been kept clean up until that point. He referred to the inspection report from October 2017 to support this. The Respondent did accept that items had been left in the property. He had assumed these would be removed and dumped by the Applicant. He didn't really care what was done with it. He had removed all that he could. The Respondent and his mother both stated that if they had left under normal circumstances, they would have cleaned the flat and would not have left it in the same condition. Given the manner in which they had left, having been told by the Police to go, they were not able to carry out any cleaning. The Respondent concluded by advising that the cost claimed by the Applicant did not appear unreasonable, but he and his mother would ordinarily have done the cleaning themselves.

Claim for repair to door

- 40 The Tribunal heard evidence from the Application regarding his claim for repairs to the door. He advised that he had been contacted back in November 2017 by AMPM Leasing who had told him there was an issue and asked if he had keys to the flat. He had initially been told that a locksmith had been called out as there was an issue with the lock. However he subsequently found out that the locksmith hadn't replaced the lock, but that entry to the property had been forced. He was provided with photographs showing the damage to the

door. The Applicant advised that he was initially willing to replace the door at his own cost but that position had changed when he found out the damage that had been caused by the locksmith instructed by the Respondent.

- 41 The Applicant advised that there were only three sets of keys in circulation which were held by himself, AMPM Leasing and Gillian Hodge. He understood that a further set had been cut for Mr Davies. The Applicant was aware of the Respondent's allegations regarding unauthorised entry to the property and his position that a yale lock had been engaged by an alleged intruder that he did not have a key for. He advised that he had only been in the property once, on 23rd April 2018. He was nowhere near it in November 2017. He was not physically fit enough to make it up those five flights of stairs at that time due to illness. The Applicant explained that there was no outstanding maintenance at the property and that AMPM Leasing had advised him that the keys for the property held by them were not signed out at that time. As far as the Applicant was aware Mr Davies had instructed the locksmith to make that entry due to his own inability to enter the property and the locksmith damaged the door. He therefore disputed the Respondent's claim that his inability to access the property was a result of the actions of the Applicant or his agent.
- 42 The Respondent then gave evidence. He accepted that there had been damage to the door but explained that the damage was caused by having to force access due to a yale lock having been engaged that he did not have a key for. He had a copy of the keys for the property from Gillian Hodge. On one occasion his key had broken off in the yale lock. He had to call out a locksmith who had replaced the other lock and left the yale lock. AMPM Leasing still had the key for the yale lock. The Respondent knew Gillian Hodge wouldn't have been in the property as she was in Edinburgh in November 2017. She had kept the key for the yale lock in the drawer beside her bed as there was no point in keeping it with the new lock. The yale lock was not used. On 3rd November 2017, the Respondent had attempted to gain access but had been unable to do so. AMPM Leasing did not have an emergency contact but had given him a number for locksmith who did not answer his call. The Respondent then had to get his own locksmith out. The locksmith had to use a crowbar to open the door which had caused the damage. He said the yale lock had been engaged, which was the lock that the Respondent no longer had a key for.
- 43 The Respondent then advised that AMPM Leasing had offered to replace the door on 11th December however that had never happened. They also offered to reimburse him for the locksmith in the sum of £150 but that hadn't happened. The Tribunal asked the Respondent why he thought someone else had been in the property. The Respondent advised that there was nothing obvious out of the ordinary. However he would not have engaged the yale lock therefore someone else must have done it.
- 44 The Respondent concluded by advising that he accepted the sum of £430 as a reasonable cost for replacing the door. He did not know what a door would ordinarily cost.

Final Submissions

- 45 The Tribunal then gave both parties the opportunity to make final submissions on the evidence heard.
- 46 The Applicant pointed out that the Police had taken no action regarding the assault charge. He pointed out inconsistencies between the statement the Respondent and his mother had given to the Police and the evidence heard. He stated that the Respondents' account of evidence was constantly changing.
- 47 The Applicant noted that the inspection report in October 2017 confirmed the property was in a good condition. The Respondent and his mother were happy with this. There was no mention from them of mould. The only issues the Applicant could see were in relation to the microwave, Hoover and sofa. The Applicant referred to his video evidence of the property on 29th April 2019. It was clear that this was not a weeks worth of dust. It was filthy. The shower was black. The Applicant challenged the evidence from the Respondent regarding the water leak. It was not accurate. The property was not uninhabitable. The reported leak had been attended to timeously and the Respondent could have moved back into the property.
- 48 With regard to the keys for the property, the Applicant pointed out that the Respondent had arranged for locks to be replaced. There were multiple locks in circulation. There were not just the keys held by the Applicant and AMPM Leasing. The Applicant pointed out that his video showed the condition of the property. It was not in a good condition. The Applicant advised that the Property was fine when Ms Hodge stayed there. However something had changed when the Applicant took over the tenancy.
- 49 The Tribunal then heard final submissions from the Respondent. He advised that the Applicant had made reference to his insurance claim and implied false reporting however the claim had been accepted and everything had been replaced item for item. He also noted the Applicant's claim that he had obtained another set of keys for the property without telling him however this was not the case. He had a second car park key for his mother. She was the only person going to and from the flat.
- 50 The Respondent advised that the smell from the property following the water leak was unbearable and that in itself made the flat uninhabitable. It was not a small leak. The wall in the hall cupboard was soggy. The leak had occurred on the 19th April and there were then eight days when nothing happened. There was plenty of time for mould to develop. The flat had limited ventilation.
- 51 The Respondent concluded by stating that he had done everything right in relation to his tenancy.

Reasons for Decision

- 52 The Tribunal made its determination of the application having considered the entirety of the documentary evidence produced by both the Applicant and the Respondent together with the visual and verbal evidence at the hearing. In setting out its reasons for the decision the Tribunal has however focused on those issues that were relevant to its determination of the application. For the avoidance of doubt the Tribunal is not bound in any way by the decision of the First-tier Tribunal (Housing and Property Chamber) in the case ref FTS/HPC/LA/18/1283 which found AMPM Leasing in breach of the Letting Agent Code of Practice under the Letting Agent Code of Practice (Scotland) Regulations 2016.
- 53 With regard to the claim for rent arrears, the Tribunal accepted that there had been a lack of water supply and subsequent water leak at the property in April 2018 and consequently there had been a period of time during which the Respondent had been unable to reside there. The Tribunal noted that the evidence in this regard was broadly agreed by the parties, however there was a dispute over the extent to which the property had been affected by the leak. Having considered the visual evidence in the form of video recordings from both parties, the Tribunal preferred the evidence of the Applicant in this regard. The Tribunal did not accept the Respondent's description of the leak as a "flood". The evidence produced did not support that statement. The Tribunal accepted that the repairs had been carried out and a dehumidifier installed at the property by 23rd April 2018. Taking into account a reasonable period for the water saturation to dry, the Tribunal therefore considered that the property would have been habitable again on 27th April 2018. The Tribunal did not consider it was bound by the insurance company's assessment which concluded the property was not habitable until 30 April 2018 as it was accepted that an inspection of the property had not been carried out by the loss adjuster. Further, having not returned to the property after 24th April 2018 the Respondent was unable to speak to its condition after that date.
- 54 The Tribunal therefore accepted that the Respondent was unable to occupy the property between 17th April 2018 and 27th April 2018 and therefore that rent was not due for that period. The Tribunal did conclude however that the Respondent could resume occupation thereafter and had chosen not to do so.
- 55 The Tribunal thereafter considered the issue of termination of the tenancy. Clause 2 of the Tenancy Agreement between the parties states that "*The Lease will be for the period from 27 July 2017 for a period of 12 months until 26 July 2018. The lease may be terminated at expiry by either party giving sixty days written notice to that effect. If not so terminated the Lease will continue on a month to month basis with either party giving sixty days written notice of termination of the Lease*".
- 56 It is accepted by the Respondent that written notice was not given in line with the requirements of Clause 3. The Respondent considers that having regard to the events that occurred between 17 April 2018 and 23 April 2018 which were the culmination of an alleged history of mismanagement by the Applicant's

Agent he was entitled to unilaterally terminate the lease with immediate effect. His position is therefore that the tenancy terminated on 23rd April 2018 by him giving verbal notice to the Applicant and thereafter returning the keys and therefore no rent was due from that date. The Applicant accepted during the hearing that the tenancy terminated on 19th July 2018, prior to the new tenant taking up occupation.

- 57 The Tribunal accepted that there had been a period of time during which the Respondent was unable to occupy the property. The Tribunal further accepted that there had been an altercation between the parties at the property on 23rd April 2018 arising from a dispute over keys. It was clear from the behaviour exhibited by the parties at the hearing that the relationship between them was strained. The Tribunal concluded that tensions would have been running high on 23 April 2018 following the incident with the leak and the Respondent and his mother were clearly frustrated at what they perceived to be a lack of action on the part of the Applicant and AMPM Leasing as his agent. Those frustrations were likely to have exacerbated any encounter between the parties. The Tribunal accepted that there may have been a clash between the Applicant and the Respondent's mother over the spare set of keys. However the Tribunal noted that no crime had been charged and no further action taken against the Applicant. Whilst it was the Respondent's position was that this was a result of his decision not to pursue matters further, the Tribunal was cognisant of the Applicant's evidence that he had no criminal record. This was not disputed by the Respondent.
- 58 The Tribunal therefore considered that the emphasis the Respondent had placed on this incident in terms of it being a ground in part for his termination of the tenancy was not justified. Whilst the Tribunal noted the Respondent's position that the Police had advised him to leave the property, the Tribunal took the view that any advice would have been in the context of the particular situation the Respondent had complained of, and not in relation to the tenancy as a whole. The Tribunal accepted that the Respondent had experienced difficulties with AMPM Leasing during the period of the tenancy, but again did not consider that these, coupled with the water leak, established a basis for termination out with the provisions of the tenancy agreement. There was an alternative remedy available to him in terms of a claim against the agent under the Letting Agent Scotland Regulations 2016 which he had rightly pursued and if he had complaints regarding the condition of the property, the appropriate statutory remedy to exercise would have been an application to the Tribunal under the Housing (Scotland) Act 2006 and the terms of the Repairing Standard.
- 59 The Tribunal considered that the Respondent was aware of what his obligations were as a tenant, having previously taken advice from the Citizens Advice Bureau in this regard. He had sought to terminate his tenancy in November 2017 by writing to AMPM Leasing asking for the Applicant's agreement to this. When the Applicant had advised that he was not agreeable, the Respondent had remained in the property. The Tribunal could not understand why the Respondent had not sought similar advice from an agency following his decision to leave on 23rd April 2018.

- 60 The Tribunal therefore concluded that the Respondent had not been entitled to unilaterally terminate the tenancy agreement between the parties with immediate effect on 23rd April 2018 by verbal notice to the Applicant. The Respondent required to comply with the provisions of Clause 3 of the tenancy agreement. The Tribunal could see no basis upon which it could set aside the terms of that agreement and the contractual obligations that were binding on both parties regarding termination.
- 61 The Tribunal then considered whether the Applicant could have concluded that the Respondent had abandoned the property and therefore sought to mitigate any accruing arrears by reletting. The Tribunal accepted that it was more likely than not that the Respondent had made comments to the Applicant to the effect that he was leaving the property on 23rd April 2018. However the Tribunal could not conclude that all of the keys to the property had been returned to AMPM Leasing on 25th April 2018. Whilst the Respondent had produced a recorded delivery slip, there was no confirmation of what had been sent and no acknowledgement from either the Applicant or AMPM Leasing. The Tribunal took into account the terms of the email correspondence from AMPM Leasing which had been sent in May and June regarding outstanding rent which indicated a belief that the tenancy was continuing. The Respondent had chosen not to reply to any of these emails, having believed at that point that the relationship between the parties had broken down irretrievably.
- 62 The Tribunal also considered the inspection report of 27th April 2018 which highlighted items left in the property. The Tribunal therefore accepted that the question of whether or not the Respondent had fully vacated the property at that time was unclear. The Applicant had latterly began the process of reletting the property in May 2018 by carrying out cleaning and repairs and a new tenant had taken up occupation on 20th July 2018.
- 63 The Tribunal therefore accepted that the Applicant was entitled to payment of rent up until 19th July 2018, under deduction of rent for the period 17th April 2018 to 27th April 2018 in the sum of £180.80, which amounted to £712.72, based on a daily rent of £18.08.
- 64 The Tribunal then considered the claim for cleaning costs. Clause 7 of the Tenancy Agreement between the parties states *"It is the Tenant's responsibility to keep the Property clean at all times during the tenancy and to clean the Property on a regular basis."* and *"The Tenant agrees that if the Landlord considers that during any routine inspection of the Property the Tenant has failed to fulfil their cleaning or gardening obligations in terms of this clause (the Tenant agrees that the Landlord will be the sole judge on this matter) then the Landlord will be entitled to instruct professional cleaners or gardeners at the cost of the Tenant to have the property cleaned and/or garden attended to"*.
- 65 It was a matter of agreement between the parties that the property was not in a reasonable state of cleanliness as at the 27th April 2018. The Respondent and his mother both agreed that the inspection report as at that date was an

accurate depiction of the property at the time. It was also a matter of agreement that the sum of £200 was a reasonable cost for the work carried out. The Respondent and his mother were clear that they had maintained the property to a high standard throughout the tenancy, up until the water leak in April 2018. They stated in their evidence that the reason the property had been left in a poor condition was a result of them having to vacate in a hurry following the events on 23rd April 2018. They had also stated that the cleaning was primarily required as a result of the water leak. The Respondent and his mother had returned to the property once on 24th April 2018 to collect their belongings but had not undertaken any cleaning at that time, citing issues with the overwhelming smell at the property.

- 66 The Tribunal did not accept that any cleaning required was primarily a result of the water leak. Having regard to the video evidence from the Applicant and the inspection report, it was clear that cleaning was required in rooms that had not been affected, such as the bathroom, kitchen and living room. The Tribunal did not see any justification for the Respondent having left the property in that condition. He had been able to return and remove belongings on the 24th April therefore the Tribunal would have expected that he would have been able to undertake or arrange cleaning. As already noted, the Tribunal did not accept that the effect of the water leak on the property was as severe as the Respondent and his mother had outlined in their evidence and that this would have prevented any cleaning from being carried out. The Tribunal therefore accepted that the Respondent was liable for the cleaning costs in accordance with Clause 7 of the Tenancy Agreement.
- 67 Finally the Tribunal considered the claim for the repairs to the door in the sum of £430. Clause 6 of the Tenancy Agreement states that "*The Tenant accepts the Property as in all respects in good, substantial and tenantable repair and condition and in all respects fit for the purpose for which the property is let and at all times throughout the period of this lease at the Tenant's expense to repair, maintain, renew, reinstate, decorate and generally in all respects put and keep in good and substantial repair and condition the Property irrespective of the cause of damage causing such repair, maintenance and others (excluding damage caused by any latent or inherent defect or any matter caused by a matter covered by normal landlords insurance)*". For the avoidance of doubt the Tribunal was of the view that the Respondent could only be held liable for the cost of repairs to damage which was attributed to any fault or neglect by him or persons residing or visiting him.
- 68 It was a matter of agreement between the parties that the Respondent had engaged a locksmith on or around 3 November 2017 and that said locksmith had caused damage to the door through the use of a crowbar to gain entry. This had ultimately resulted in the replacement of the door, at a cost to the Applicant. The Respondent's position was that a disused yale lock for which he did not have a key had been engaged therefore preventing him from access. The Tribunal however concluded that the Respondent had failed to evidence that the Applicant or any person representing him had been in the property on 3rd November 2017 when the Respondent alleged the yale lock had been engaged. The Tribunal accepted the evidence from the Applicant that he had

only been in the property once during the Respondent's tenancy on 23rd April 2018. Whilst the Tribunal noted the Respondent had alleged that there had been previous occasions when the Applicant's agents and his contractors had entered the property, there was nothing in the Respondent's evidence that could lead the Tribunal to conclude that any other person on behalf of the Applicant had been in the property on the 3rd November 2017. The Respondent had said in his evidence that there was nothing "untoward" when he entered the property that would suggest someone else had been there, other than the yale lock. The Tribunal therefore concluded that the yale lock had not been engaged by the Applicant or any person on his behalf and the Respondent was at fault for the damage caused to the door. The Tribunal did however take into account the fact that the Applicant is not entitled to betterment and could not therefore claim for the full replacement value of the door. The Tribunal therefore determined to deduct 25% of the full cost, having regard to the age of the property and the likelihood of the door requiring replaced due to fair wear and tear. The Tribunal therefore found the Respondent liable in the sum of £322.50.

69 The Tribunal therefore made an order for payment in the sum of £1235.22 against the Respondent.

70 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.

Ruth O'Hare

31st October 2019

Legal Member/Chair

Date