Decision

Of

the Housing and Property Chamber of the First-tier Tribunal for Scotland

issued in terms of regulation 17 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

Case Reference Numbers: **FTS/HPC/TE/18/1940, FTS/HPC/TE/18/1941, FTS/HPC/PR/18/2269**

Parties:

Mr Hakim Saumtally, 2nd Floor Left, 40 Esslemont Avenue, Aberdeen AB25 1SP ("the Applicant")

Dr Alan Barclay, 118 Stanley Street, Aberdeen, AB10 6UQ ("the Respondent")

Tribunal Members:

Adrian Stalker (Legal Member), Linda Robertson (Ordinary Member)

DECISION:

Under rules 17 of schedule 1 to the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Procedure Rules"), the Tribunal:

(1) Refuses application FTS/HPC/TE/18/1940, having heard from the applicant that it is no longer insisted upon.
(2) Finds that the tenancy between the parties was a private residential tenancy ("PRT") under the Private Housing (Tenancies) (Scotland) Act 2016.
(3) In respect of application FTS/HPC/TE/18/1941 finds that, for the purposes of section 16(1) of the 2016 Act: (a) the respondent failed to perform the duty under section 11 to provide the applicant with the information required by the Private Residential Tenancies (Information for Tenants) (Scotland) Regulations 2017; (b) that the respondent has still not provided the applicant with the information; and (c) that the respondent does not have a reasonable excuse for failing to perform the duty under section 11.
(4) Finds that: (a) application FTS/HPC/PR/18/2269 is not an application for statutory damages under section 36 of the Housing (Scotland) Act 1988, and is not therefore

made by the applicant under rule 69 of the Procedure Rules; and (b) application FTS/HPC/PR/18/2269 is correctly regarded as civil proceedings arising from a PRT, under section 71(1) of the 2016 Act, and was made under rule 111 of the Procedure Rules.

(5) Appoints applications FTS/HPC/TE/18/1941 and FTS/HPC/PR/18/2269 to a hearing at a date to be fixed, in order for the Tribunal to determine:

(a) whether to impose upon the respondent, in respect of his failure to comply with the duty under section 11, a sanction under section 16(2)(a)(ii), and if so, the level of that sanction;

(b) whether, in light of the circumstances that existed at the tenancy property between 26 June and 6 August 2018, and the communications between the parties during that period, the respondent: (i) illegally evicted or attempted to illegally evict the applicant; (ii) harassed the applicant; (iii) was in breach of the parties' tenancy contract; and if so, what damages are payable to the applicant.

Reasons for Decision

1. This decision concerns three separate applications, involving the same applicant and respondent, arising from a tenancy granted by the respondent to the applicant on 4 February 2018. The three applications have effectively been conjoined, and were appointed to a hearing before the same Tribunal, at 10:00 on 19 November 2018 at 10:00 in The Credo Centre, 14-20 John Street, Aberdeen. On 14 November 2018, the Tribunal made a decision to discharge the hearing, and fix a Case Management Discussion ("CMD"), under rule 17, at the same time and place. Reference is made the Tribunal's decision, which ought to be read along with this decision.

2. Both parties attended the CMD. The applicant was accompanied by his wife, Frances Buckley, who acted as a supporter. The respondent was accompanied by his daughter, Emily Barclay, and by James Steel. The latter acted as a supporter.

Was the tenancy a PRT, under the 2016 Act?

3. At paragraph 9(a) of the decision of 14 November, the Tribunal indicated that the CMD would consider the issue of whether the parties' tenancy was a PRT under the 2016 Act. At the CMD, the legal member explained to the parties why the Tribunal considered this to be an important preliminary matter: if the tenancy was not a PRT, then applications FTS/HPC/TE/18/1940 and FTS/HPC/TE/18/1941 could not be made, as the 2016 Act would not apply. Also, the Tribunal would not be able to determine application FTS/HPC/PR/18/2269, because it would not have jurisdiction to do so, under section 71 of the 2016 Act, or section 16 of the Housing (Scotland) Act 2014. The Tribunal accordingly invited the parties to set out their respective positions on the issue of whether the tenancy was a PRT. It advised the parties that it intended to make a decision on this issue, as it is entitled to do, under rule 17(4) of

the Procedure Rules. Both parties indicated that they were content with that approach.

4. Having heard from the parties, the Tribunal made the following findings in fact:

i. 118 Stanley Street is a ground floor flat. The flat has two bedrooms, a kitchen with a dining area, a living room, bathroom and hall. One of the bedrooms also has an ensuite bathroom. The respondent produced a helpful floor plan drawing, which was accepted as accurate by the applicant. In that plan, the bedroom with the ensuite is designated “bedroom A”, and the other bedroom is “bedroom B”.
ii. The respondent owns the flat. He bought it in 2005.
iii. The respondent advertised both bedrooms as being available for let, on Spareroom.com. The applicant saw one of the adverts and telephoned the respondent on 2 February 2018.
iv. The applicant viewed the property on 4 February, and the parties agreed to enter into a tenancy.
v. The tenancy was constituted by a written agreement, a copy of which has been produced by both parties.
vi. The let was from 4 February. No end date was specified in the agreement. The rent was stated to be £375 per calendar month.
vii. The tenancy agreement also states that the lease was to be the “…single occupancy of one room in the ground floor flat 118 Stanley Street, Aberdeen, with a share of the kitchen/dining room and bathroom therein…”
viii. The agreement does not indicate which of the bedrooms is to be occupied by the tenant.
ix. However, the applicant took up occupation in bedroom B.
x. At the beginning of the applicant’s tenancy, there was no one using bedroom A.
xi. From on or about 4 March, the respondent let the other bedroom to a Nigerian man called “Sean” (at the CMD, neither party could recall his surname). Sean and the respondent entered into a tenancy agreement which had the same terms as the agreement between the parties.
xii. Sean moved out, on or about 5 July. From 7 July, bedroom A was occupied by a French student, Valerian Hussard. The respondent initially provided Mr Hussard with a tenancy agreement of the same type as he had given to the applicant and Sean. However, he subsequently provided Mr Hussard with an agreement based on the Model Private Residential Tenancy issued by the Scottish Government.
xiii. The applicant ceased occupation on 6 August.
xiv. Throughout the applicant’s occupation, the living room at the property did not form part of the shared accommodation in the flat. The living room door was fitted with a lock, the key for which was not provided to the applicant or the other tenants.

xv. Throughout the applicant's occupation, the living room was used by the respondent to store his own belongings and personal effects.

xvi. The respondent is an Electronic Engineer. He also works in IT, in particular Software Engineering. He travels throughout the UK for his work.

xvii. Throughout the applicant's occupation, he also frequently used the living room as an office and workplace. When he was at the flat, using the living room, he also used the kitchen/dining room and the bathroom.

xviii. The frequency of these visits varied from week to week, but on average were no less than twice per week.

xix. The respondent is married. He has two sons, aged 6 and 2, with his current wife. He also has four children from a previous marriage.

xx. One of those children is his daughter Emily (aged 20), who attended the CMD. Emily's three siblings are aged 22, 17 and 15.

xxi. Until October 2017, the respondent was living at the flat with his current wife, and their two young sons. Emily was also living there, from time to time.

xxii. Emily has a very serious psychiatric condition. She stays sometimes at the Royal Cornhill Hospital in Aberdeen, and sometimes with the respondent.

xxiii. The respondent decided move his family from 118 Stanley Street into rented accommodation elsewhere in Aberdeen, which they currently occupy. That accommodation has four bedrooms. This enables Emily to have her own bedroom, when she stays. The children from his first marriage can also visit.

xxiv. The respondent still considers 118 Stanley Street to be his home. All of his mail (numerous items of which were produced to the Tribunal) is still addressed to him there.

xxv. He cannot contemplate renting long term, and he cannot afford to buy a larger property in Aberdeen.

xxvi. As at the date of the Tribunal, there are no longer tenants in occupation.

xxvii. The respondent's current lease is month to month. He and his wife and seriously considering returning to live at 118 Stanley Street, but have not yet made a decision.

5. Findings in fact i – xvi were not in dispute. Findings in fact xix to xxvii were based on evidence given by the respondent, as to matters that were not within the applicant's knowledge. The Tribunal accepted the respondent's evidence on these matters as being credible and reliable.

6. Findings xvii and xviii were a matter of dispute. The parties were at odds as to the frequency and extent of the respondent's use of the flat, during the applicant's occupation. The respondent maintained that he was there 2-5 times a week. He kept food on a shelf, and in the refrigerator. He regularly made cups of tea. He was there for hours at a time, during the day. The applicant insisted that the respondent's visits were much less frequent. He said that the respondent was there once or twice a week, and sometimes not for a week or so. However, the applicant accepted that, as he was often out during the day, he could not be fully aware of the applicant's use of

the flat. At any rate, the Tribunal accepted that there was frequent use, being an average of not less than twice per week by the respondent of the living room as an office and workplace, with ancillary use of the kitchen and bathroom. In Tribunal's view, the exact extent of that use is not determinative of the question as to whether the respondent is a resident landlord, for the purposes of schedule 1 of the 2016 Act, for the reasons stated below.

7. Certain matters were disputed by the parties, or at least were not a matter of agreement. The applicant insisted that the advert he had seen on Sparerooms.com, on 2 February, expressly stated the tenancy had a "live out landlord". He showed the tribunal members the advert, on his laptop. However, the respondent produced paper copies of the adverts for each room, neither of which contained that statement. The Tribunal found the evidence on this point inconclusive. It did not find it necessary to make any finding in fact on this point.

8. The respondent insisted that the applicant had been let bedroom A, but had, without the respondent's permission, taken up occupation of bedroom B. He did not find out about this, until three weeks later. However, he did not, at that point, ask the applicant to move into bedroom A. The applicant insisted that he was, at the outset, offered a choice by the respondent, and picked bedroom B. The Tribunal preferred the applicant's evidence on this point. The respondent had advertised both rooms. When the applicant visited the flat on 4 February, the other room was not yet occupied. The respondent did not explain why in the circumstances, he would have insisted on the applicant occupying bedroom A, rather than bedroom B, and the Tribunal did not consider it likely that he would have so insisted.

9. Section 1(1) of the 2016 Act provides:

> **1 Meaning of private residential tenancy**
> (1) A tenancy is a private residential tenancy where—
> (a) the tenancy is one under which a property is let to an individual ("the tenant") as a separate dwelling,
> (b) the tenant occupies the property (or any part of it) as the tenant's only or principal home, and
> (c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.

10. Thus, in order to achieve PRT status, the parties' tenancy had to fulfil conditions (a), (b) and (c) in section 1(1).

11. As regards section 1(1)(a), section 2 of the Act provides:

> **2 Interpretation of section 1**
> (1) This section makes provision about the interpretation of section

> 1.
> …
> (4) A tenancy is to be regarded as one under which a property is let as a separate dwelling if, despite the let property lacking certain features or facilities—
> (a) the terms of the tenancy entitle the tenant to use property in common with another person ("shared accommodation"), and
> (b) the let property would be regarded as a separate dwelling were it to include some or all of the shared accommodation.

12. In the case of the parties' tenancy, the applicant occupied a bedroom, and was entitled to use the kitchen/dining room and the bathroom. A property comprising all of those rooms would be regarded as a separate dwelling. Accordingly, section 1(1)(a) is fulfilled. There was also no dispute that, during the course of his occupation, the tenant was occupying the tenancy as his only or principal home. Thus section 1(1)(b) was also fulfilled.

13. The question of whether section 1(1)(c) is fulfilled is more complex, because of the possible application of the "Resident Landlord" exception in paragraphs 7 and 8 of schedule 1 to the Act. It was not suggested that any other paragraphs of schedule 1 were applicable. Paragraphs 7 and 8 state:

> 7. A tenancy cannot be a private residential tenancy if paragraph 8 …applies to it.
> 8. This paragraph applies to a tenancy if—
> (a) the let property would not be regarded as a separate dwelling were it not for the terms of the tenancy entitling the tenant to use property in common with another person ("shared accommodation"), and
> (b) from the time the tenancy was granted, the person (or one of the persons) in common with whom the tenant has a right to use the shared accommodation is a person who—
> (i) has the interest of the landlord under the tenancy, and
> (ii) has a right to use the shared accommodation in the course of occupying that person's home.

14. Paragraph 8(a) applies to this tenancy for the reasons stated above: the let property is treated as a separate dwelling, because of the applicant's entitlement to use the "shared accommodation".

15. However, the Tribunal finds that paragraph 8(b), and in particular, 8(b)(ii) does not apply. In explaining that view, the Tribunal finds it convenient to describe the typical situation in which paragraph 8 would apply. Let us say that tenancy is in an HMO (House in Multiple Occupation), bedsit, or other property in which the tenant is

entitled to occupy one of several bedrooms, and to have use of the “shared accommodation”, being the hall, kitchen and bathroom, with the other occupants. Let us also say that landlord and owner of the property occupies one of the other bedrooms as his home, and also uses the shared accommodation, along with the tenants. In that case, the conditions of paragraph 8 would be fulfilled. That would be so, even if the tenancy agreements did not expressly reserve any “right” to the landlord to use the shared accommodation. In the situation described, the landlord would have a “right” to use the shared accommodation, by virtue of his ownership of the property, and would be doing so in the course of occupying his home.

16. It follows that, had the respondent been occupying bedroom A during the course of the applicant’s occupation, he would have been a resident landlord under paragraph 8 of schedule 1. However, that was not the case. He was occupying the living room. Near the beginning of stating his position to the Tribunal, the respondent described the living room as his “office and workplace”. Later, he described how he continued to use the living room to store many of his belongings. On his evidence, it appears to the Tribunal that his use of the kitchen and bathroom were ancillary to his use of the living room, as office, workplace and storage space.

17. There have been reported cases in which the Courts have accepted that a person still “occupies” a property even though he is not physically present, if there is a *corpus possessionis* (physical signs of occupation), together with *animus revertendi* (an intention to return which could be established by some visible state of affairs). See, for example: *Beggs v Kilmarnock and Loudoun District Council* 1995 SC 333. Had the statutory test under paragraph 8 required that the landlord occupied the property as his “only or principal home”, then that test would arguably have been met (though the respondent’s intention to return was not entirely clear).

18. However, that is not the test. The Tribunal considers that, during the time when the applicant was in occupation, the respondent had, for the purposes of paragraph 8(b)(ii), the right to use the shared accommodation, not “in the course of occupying” part of 118 Stanley Street as a “home”, but “in the course of occupying” part of it as an office or storage space. By moving his family out, and renting the two bedrooms, he ceded the “home” use of the property to his tenants. Accordingly, at least during that time, it was the tenants (including the applicant) who had the right to use the shared accommodation “in the course of occupying” the property as a “home”, not the respondent.

19. For these reasons, the Tribunal finds that the test under paragraph 8 of schedule 1 to the 2016 Act is not met. None of the other exceptions to PRT status under schedule 1 is established. Therefore, conditions (a), (b) and (c) of section 1(1) of the 2016 Act are all met. The Tribunal concludes that the tenancy was a PRT under the 2016 Act.

20. The Tribunal accordingly moved on to a discussion of the individual applications, in turn.

Application FTS/HPC/TE/18/1940

21. This application was made under section 14(2) of the Private Housing (Tenancies) (Scotland) Act 2016, and rule 106 of the Procedure Rules. It invites the Tribunal to draw up the terms of the parties' tenancy, because the written terms of the tenancy purport to displace a statutory term in an unlawful manner.

22. The applicant confirmed that he left the tenancy in August 2018, and has no intention of returning. Therefore, this application is no longer insisted upon. It is dismissed by the Tribunal.

Application FTS/HPC/TE/18/1940

23. This application is made under section 16(1) of the 2016 Act, and rule 107. The applicant contends that the respondent failed to provide specified information under section 11 of the 2016 Act, and asks the Tribunal to impose a sanction in respect of that failure, by granting an order requiring the respondent to pay to the applicant a sum not exceeding three months' rent. As the rent was £375 per month, that would amount to a maximum sanction of £1,125.

24. Section 11 of the 2016 Act allows the Scottish Ministers, by regulations to impose a duty on the landlord under a PRT to provide the tenant with information by a certain deadline. Those regulations are the Private Residential Tenancies (Information for Tenants) (Scotland) Regulations 2017. Regulation 3 states:

> **3.— Duty to provide specified information**
> (1) For the purposes of section 11(1)(a) of the Act (duty to provide specified information), the person who is, or is to be, the landlord under a private residential tenancy must provide the person who is, or is to be, the tenant with—
> (a) where the written terms of the tenancy are in the form of the Model Private Residential Tenancy Agreement, the Easy Read Notes for the Scottish Government Model Private Residential Tenancy Agreement; or
> (b) where the written terms of the tenancy are in the form of a tenancy agreement drafted by the landlord, the Private Residential Tenancy Statutory Terms Supporting Notes.

25. Section 16 of the Act provides:

16 First-tier Tribunal's power to sanction failure to provide information

(1) On an application by the tenant under a private residential tenancy, the First-tier Tribunal may make an order under subsection (2) where—

(a) the landlord has failed to perform a duty arising by virtue of section 10 or 11 to provide the tenant with information,

(b) at the time the First-tier Tribunal considers the application, the landlord has still not provided the tenant with the information, and

(c) the landlord does not have a reasonable excuse for failing to perform the duty.

26. As the Model Agreement was not used by the respondent, he was accordingly obliged to provide the applicant with the Private Residential Tenancy Statutory Terms Supporting Notes. He accepted that he had not done so, at any time. It follows that the requirements section 16(2)(a) and (b) are met, as the respondent conceded. The Tribunal accordingly invited the respondent to say whether he had a reasonable excuse for failing to perform the duty under section 16(1)(c).

27. The respondent explained that the tenancy agreement was provided to him by his solicitors, Messrs Raeburn, Christie, Clark & Wallace, several years ago. They have acted for him in various matters, including the purchase of the flat in 2005, and since then. He described the agreement as being “out of date”. His solicitors never told him that the tenancy agreement should be updated. However, the respondent accepted that he had not sought his solicitors’ advice, between leaving the flat around October 2017, and renting out the bedrooms in February and March 2018. The respondent asserted that, had he known that the tenancy was a PRT, and that he could not recover possession without making an application to the FTT, he would never have rented the flat. He was under the impression that the agreement was flexible, and could be terminated by either party at short notice.

28. The Tribunal gave some consideration to postponing a decision on section 16(1)(c) to a hearing. However, it was satisfied that, even taking the respondent’s evidence at its highest, he did not have a reasonable excuse for failing to perform the section 11 duty. The important point is that, after having decided to let the bedrooms in the flat, he did not take any steps to obtain up-to-date advice or information from his solicitors, or from any other source, as to the legal steps that he would require to take, as a private landlord.

29. The Tribunal accordingly finds that section 16(1)(c) is also established. At a subsequent hearing, it will determine whether to impose upon the respondent, in respect of his failure to comply with the duty under section 11, a sanction under section 16(2)(a)(ii), and if so, the level of that sanction.

Application FTS/HPC/PR/18/2269

30. Application FTS/HPC/PR/18/2269 is made under rule 69: "Application for damages for unlawful eviction". This applies "Where a former residential occupier makes an application under section 36(3) (damages for unlawful eviction) of the Housing (Scotland) Act 1988". In his application, Mr Saumtally seeks damages under various headings, which come to a total of £12,035.

31. It is apparent, however, from part 7 of the application form ("application details") that this is not a claim for statutory damages under sections 36 and 37 of the 1988 Act. Where an unlawful eviction takes place in terms of section 36, the landlord is liable to pay to the former "residential occupier" damages assessed on the basis set out in section 37. This entails taking two figures, being the value of the property with, and without, a residential occupier with a right of occupation. The award is the difference between those figures. Evidence of the valuations is invariably provided by a surveyor. This exercise is difficult, if not impossible, in relation to a tenancy of a single room, with shared accommodation, because in that case, the tenancy property is not capable of being sold on the open market.

32. Under section 36(5) of the 1988 Act, the right to seek statutory damages does not affect the right of a residential occupier to seek damages for unlawful eviction at common law, but he cannot be awarded both. In cases of this type (being an alleged unlawful eviction from a tenancy of a single room with shared use of other rooms), common law damages would normally be sought.

33. The applicant does not refer to sections 36 and 37 of the 1988 Act in part 7 of his application form. It is evident, therefore, that his claim is made under common law. It is therefore correctly categorised as being civil proceedings arising from a PRT, under section 71(1) of the 2016 Act, and made under rule 111 of the Procedure Rules, rather than a claim for statutory damages, which would be brought under rule 69.

34. In part 7 of the application form, the application seeks sums for "exemplary damages" and "aggravated damages". The Tribunal pointed out that awards of exemplary and aggravated damages are made under English law. They are not awarded in Scotland.

35. Having explained those matters to the parties, the Tribunal indicated that it did not intend to make any final decision in relation to Application FTS/HPC/PR/18/2269, but would instead appoint parties to a hearing. However, it asked parties to briefly outline their position as to the facts in relation to the claim for damages for harassment and unlawful eviction. This was done in order that each might have notice of the other party's position.

36. The factual contentions made by the applicant were:

- He was abroad on holiday from 7 June 2018.
- He returned on 7 July.
- On 6 May, he sent a text to the respondent, which stated that he was “Flying out on 7th of June for a month”.
- On 21 June, he received a text from the respondent which stated: “Please let me know your return dates – in a couple of weeks I think? I asked Seun to close ur window as u’d left it open. Rgds, Alan”.
- On his return to the flat around midnight on 6/7 July, the applicant saw a person emerging from his bedroom (bedroom B). He subsequently learned that this was Valerian Hussard, a French student.
- He spoke to Mr Hussard, who told him that the respondent had allowed him to rent the room for two weeks.
- On looking in the bedroom, the applicant saw that Mr Hussard had been sleeping in the bed, using the applicant’s bedclothes. In the room, Mr Hussard had put his belongings on top of the applicant’s belongings.
- He sent four texts to the respondent, all around 00:20 on 7 July.
- The applicant and the respondent then discussed the matter by telephone. The respondent insisted on coming round to the flat.
- On arrival the respondent was angry, and behaved aggressively.
- He threatened to punch the applicant.
- The respondent insisted that the applicant leave immediately.
- There was at that time a chest of drawers, a desk and a chair in bedroom B.
- The respondent went into bedroom B, and cleared the applicant’s belongings from the chest of drawers and the desk. He then moved the chest of drawers, desk and chair out of the room, and into the living room, leaving the bed and the mattress.
- The applicant telephoned the police. The police attended. Having viewed the tenancy agreement, they spoke to the respondent. They asked the respondent to leave. He did so.
- The applicant had been given a key for bedroom B. The respondent took that key on 7 July, and did not return it to him.
- That night, Mr Hussard moved into bedroom A, which had been vacated by Sean on 5 July.
- Thereafter, the chest of drawers, desk and chair remained in the living room, and the applicant was no longer able to use them.
- When the applicant subsequently encountered the respondent, the respondent was rude and verbally abusive towards him.
- He found that he was unable to use the wireless router to gain an internet connection at the flat. The router or the password had been changed. Mr Hussard was able to connect to the internet. The applicant asked him for the password. Mr Hussard refused, saying that he was not permitted to divulge it.

- He found the situation at the flat intolerable. Without a desk or an internet connection, it was very difficult for him to work.
- Given what had taken place, and in particular because he had no key for his room, he felt that he could not leave anything valuable in room. It was not secure.
- In these circumstances, he decided to leave on 6 August. He had no other rented accommodation arranged. He was able to "sofa surf" with the help of friends.
- The applicant did not pay any rent after his payment at the beginning of May. Therefore, he did not make the payments due at the beginning of June, July or August. It was his intention to pay the rent due for June and July on his return from holiday. However, in the circumstances he did not do so.
- He had intended to stay at the flat until December.

37. The respondent's position was:

- There was uncertainty, between the parties, as to whether the applicant was going to continue to reside in the flat, after he left to go on holiday on 7 June. The respondent referred, in particular, to the applicant's text of 6 May in support of this point.
- The applicant was in arrears of rent as at 7 July.
- He provided Mr Hussard with accommodation in bedroom B from about 26 or 27 June. Mr Hussard paid rent in respect of his occupation.
- He had learned that Mr Hussard was in need of accommodation, and was in difficult circumstances. He decided to allow Mr Hussard to occupy the room for a short period, while the applicant was away.
- He disputed the applicant's description of his behaviour, when he attended the flat on 7 July.
- He did not take away the key for bedroom B, because the applicant had never been given a key for that room.
- He accepted that he moved out the chest of drawers, a desk and a chair, from bedroom B on 7 July, and put them in the living room. He maintained that the chest of drawers had been moved from bedroom A into bedroom B by the applicant, without his permission.
- There had always been problems with the internet at the flat. That was apparent from the texts between the parties in March and April.
- The respondent did not dispute that the applicant had originally intended to stay at the flat till December 2018.

38. Both parties produced copies of text messages. The Tribunal was asked to look, in particular, at copies of text messages produced by the applicant, from 4 and 7 February, 28 and 30 March, 26 April, 6, 7, 8 and 23 May, 5 and 21 June, and 7 and 9 July. The respondent confirmed that the copies produced by the applicant of the

messages on those dates were true and accurate.

39. The applicant indicated that he has video evidence, taken on his phone on 7 July, which he will wish the Tribunal to view at the hearing. He has transferred this onto a CD. The Tribunal indicated that it would discuss arrangements for viewing this evidence with the Chamber clerks.

40. The Tribunal advised both parties to give consideration to whether they wish to produce any further documentary evidence, or call any witnesses, in relation to the issues that will be determined by the Tribunal at the hearing, being:

(a) whether to impose upon the respondent, in respect of his failure to comply with the duty under section 11, a sanction under section 16(2)(a)(ii), and if so, the level of that sanction;
(b) whether, in light of the circumstances that existed at the tenancy property between 26 June and 6 August 2018, and the communications between the parties during that period, the respondent: (i) illegally evicted or attempted to illegally evict the applicant; (ii) harassed the applicant; (iii) was in breach of the parties' tenancy contract; and if so, what damages are payable to the applicant.

41. In particular, the applicant was invited to consider any evidence that he might wish to produce, as to any losses claimed by him, as a result of his leaving the flat on 6 August, rather than staying on till December 2018, as he had intended.

42. The applicant indicated an intention to refer to decisions of the courts in other cases. He was invited to send copies to the Tribunal of the judgments on which he wishes to rely.

44. For his part, the respondent indicated an intention to make a claim for his losses, in respect of breaches of the tenancy agreement by the applicant, including damage to property at the flat. He was advised that such a claim could be made to the First-tier Tribunal, but that it should be made fairly quickly, if the Respondent wishes the claim to be conjoined with the present cases raised by the applicant, in order that all of the outstanding disputes between the parties may be determined at a single hearing.

43. The Tribunal's decision was unanimous.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the

party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Adrian Stalker

Signed

Date 10 December 2018

Chairman