

**Housing and Property Chamber**  
First-tier Tribunal for Scotland



**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/18/1244 and FTC/HPC/18/2430**

**Re: Property at 7 Dundonnie Street, Boddam, Peterhead, AB42 3NT  
("the Property")**

**Parties:**

**Fraserburgh Car Sales Limited, 10 Greenbank Road, Fraserburgh, AB43 7GA  
("the Applicant")  
(Represented by Mr Andrew Mackey, Masson & Glennie, Broad House, Broad Street, Peterhead, AB42 1HY)**

**Ms Kimberley Baff, 7 Dundonnie Street, Boadam, Peterhead, AB42 3NT  
("the Respondent")  
(Represented by Mr James Fraser, 7 Dundonnie Street aforesaid)**

**Tribunal Members:**

**Gillian Buchanan (Legal Member)  
Linda Robertson (Housing Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing & Property Chamber) ("the tribunal") unanimously determined that:-**

- (i) With regard to FTS/HPC/EV/18/1244 ("Application 1244") the Applicant is entitled to an eviction order under ground 11 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act"); and
- (ii) With regard to FTS/HPC/EV/18/2430 ("Application 2430") the Applicant is entitled to an eviction order under each of grounds 11 and 14 of Schedule 3 of the 2016 Act.

**Findings in Fact**

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The tribunal makes the following findings in fact:-

1. The Applicant is the heritable proprietor of the Property.
2. The Property is situated within a terraced row of dwelling houses.
3. The Applicant and the Respondent entered into a Private Residential Tenancy Agreement in respect of the Property on 16 January 2018 ("the Tenancy Agreement").
4. The Tenancy Agreement was entered into on behalf of the Applicant by Megan Simpson acting as the Applicant's agent.
5. The Tenancy Agreement was not signed by the Respondent under duress.
6. The Tenancy Agreement commenced on 16 January 2018 and the rent payable by the Respondent to the Applicant in terms thereof was agreed to be £400 per calendar month payable in advance all in terms of Clause 7 thereof.
7. In terms of Clause 4 of the Tenancy Agreement, the Property is stated to be let on an unfurnished basis. As a matter of fact, the Property was furnished at least in part. Notwithstanding the terms of Clause 4 there was no Inventory or Record of Condition.
8. In terms of Clause 10 of the Tenancy Agreement the parties agreed that at the start date of the tenancy or before a deposit of £300 would be paid by the Respondent to the Applicant.
9. In terms of Clause 20 of the Tenancy Agreement, the Respondent accepted certain obligations that neither she nor those living with or visiting her would engage in antisocial behaviour towards any other person.
10. In terms of Clause 31 of the Tenancy Agreement the Respondent agreed not to keep any animals or pets in the Property without the prior written consent of the Applicant and that any pet, where permitted, will be kept under supervision and control to ensure that it does not cause, amongst other things, nuisance either to neighbours or in the locality of the Property.
11. The Respondent moved into the Property in around February 2018. Mr James Fraser moved into the Property a few days later.
12. The Respondent and Mr Fraser kept at the Property two Rottweiler dogs.
13. The Respondent did not have permission from the Applicant to keep the Rottweiler dogs.
14. The Respondent did not pay to the Applicant the deposit referred to in Clause 10 of the Tenancy Agreement.
15. The Respondent had previously been in receipt of Housing Benefit paid directly to the Applicant in the sum of £369.24 every four weeks. When paid, the Housing Benefit would cover the rental payments due by the Respondent to the Applicant in full.
16. Aberdeenshire Council suspended payment of Housing Benefit in respect of the

Respondent's tenancy of the Property with effect from 4th December 2018. No Housing Benefit payments have been paid to the Applicant and the rent is in arrears in respect of December 2018 and January 2019 totalling £800.

17. Various bags of rubbish were thrown by the Respondent from the Property over a fence into the garden of the immediate neighbour, Mrs Kathleen Balloch, 5 Dundonnies Street. Mrs Balloch required to involve the Environmental Health Department of the local authority, representatives of which attended and cleared the rubbish.
18. On or around 12th July 2018 one of the Rottweiler dogs kept in the Property by the Respondent and Mr Fraser attacked the post lady, Mrs Linda McGhee, by jumping on her back as she delivered mail in Dundonnies Street. Mrs McGhee was very frightened as a consequence of this incident and the Royal Mail ceased mail deliveries to the Property.
19. On or around 6th September 2018 one of the Rottweiler dogs kept in the Property by the Respondent and Mr Fraser attacked the post lady, Mrs Linda McGhee, and bit her arm causing a serious injury that required stitches in hospital and three courses of antibiotics. The dog was with the Respondent immediately prior to the incident and was not within her control. The dog was not muzzled. Mrs McGhee's arm is still affected by the incident giving her numbness and discolouration when swimming. As a consequence of this incident the Royal Mail no longer deliver mail to any address in Dundonnies Street.
20. On or around 23 July 2018 Police Constable Ross Dewar and a colleague attended Dundonnies Street to make routine enquiries relative to 2 Rottweilers dogs owned by the Respondent and Mr Fraser. They had to retreat to their vehicle as a consequence of the aggressive behaviour of the dogs which were growling and snarling and pulling the Respondent towards them whilst on leads held by the Respondent.
21. In respect of the Rottweiler dogs, dog control orders were issued against Mr James Fraser by Aberdeenshire Council on or around 6th July 2018. As a condition of the dog control orders, the dogs required to be muzzled when in public. Failure to muzzle the dogs when in public is a breach of the dog control order.
22. Furniture and furnishings were, at some stage, removed by the Respondent and Mr Fraser from the Property into the garden thereof.
23. Between 1 January 2018 and 22nd of July 2018 the Police attended the Property on 30 occasions.
24. On 24th August 2018 the Applicant's solicitors, Masson & Glennie, wrote to the Respondent by letter dated 24th August 2018 regarding access for an inspection of the Property on 28th August 2018. The letter was sent by recorded delivery post, receipt of which was refused by the Respondent.
25. On 24th October 2018 the Applicant's solicitors, Masson & Glennie, wrote to the Respondent regarding an inspection of the Property on 29th October 2018.
26. Mr Simpson on behalf of the Applicant was unable to obtain access to the Property to inspect.
27. The Respondent and Mr Fraser have engaged in antisocial behaviour at the Property causing alarm, distress, nuisance and annoyance to other persons including

neighbours, Mrs Kathleen Balloch and Mrs Mandy Watson, the post lady Mrs Linda McGhee, and Police Constable Ross Dewar. In particular, the Respondent has failed to control the Rottweiler dogs, and has caused or has allowed Mr Fraser to make excessive noise by playing loud music and singing during the night, by banging on internal communal walls and by shouting and swearing.

28. On 16 April 2018 the Applicant, per its solicitors, Masson & Glennie, issued to the Respondent under cover of an email dated 16 April 2018 a Notice to Leave the Property under section 50(1)(a) of the 2016 Act in terms of which the Applicant sought the Respondent's removal from the Property on the grounds that the Respondent had breached the terms of the Tenancy Agreement and was in rent arrears over three consecutive months. The reasons for the Respondent's removal were stated to be:-

- That the Respondent had kept or keeps within the Property an Alsatian or Alsatian type of dog;
- That the Respondent has failed to pay the deposit due in terms of the Tenancy Agreement of £300; and
- That the rent arrears then stood at £930.76, the only payment having been received from the Respondent on 9 April 2018 in the sum of £369.24.

29. On 7 August 2018 the Applicant, per its solicitors, Masson & Glennie, issued to the Respondent a Notice to Leave under section 50(1)(a) of the 2016 Act seeking the Respondent's removal from the property on the grounds that she had breached the Tenancy Agreement, had engaged in relevant antisocial behaviour and had associated in the Property with someone who has a relevant criminal conviction or has engaged in relevant antisocial behaviour. The reasons for the Respondent's removal were stated to be:-

- That the Respondent is in breach of Clause 20 of the Tenancy Agreement in that-
  - (a) She caused or permitted a large volume of her domestic rubbish to be dumped within the garden of a neighbour in July 2018;
  - (b) She or a person or persons residing with her are guilty of antisocial behaviour in that Police Scotland has, on as many as 40 occasions since the commencement of the lease, being required to attend the Property following complaints from neighbours;
  - (c) She has allowed a dog in her control to attack a postman.
- That the Respondent is in breach of Clause 19 of the Tenancy Agreement in that she has refused to allow the Applicant access to the Property despite the relevant contractual notice being given to her.
- That the Respondent is in breach of Clause 26 of the Tenancy Agreement in that she has fixed or allowed there to be fixed to the external wall of the Property a CCTV camera without the consent of the Applicant.
- That the Respondent had and has an implied duty to take reasonable care of the Applicant's properties within the Property. At entry there was within the Property inter alia a set of pine furniture and a blue settee. The Respondent, without reference to the Applicant, removed the pine furniture to the rear garden and the blue settee to the front garden as a consequence of which the furniture has been ruined.

The Notice to Leave was served by Sheriff Officers on 7th August 2018 by depositing a copy thereof in a sealed envelope for the attention of the Respondent by means of a letter box at the Property.

### **Findings in Fact and Law**

30. The parties having signed the Tenancy Agreement are bound by its terms. The Tenancy Agreement was not subsequently varied.
31. The presence of the two Rottweiler dogs within the Property without the prior written consent of the Applicant constitutes a breach of Clause 31 of the Tenancy Agreement and it is reasonable to issue an eviction order on account of that fact in terms of ground 11(3) of Schedule 3 of the 2016 Act.
32. The Respondent's failure to pay to the Applicant the deposit referred to in Clause 10 of the Tenancy Agreement constitutes a breach of the Tenancy Agreement and it is reasonable to issue an eviction order on account of that fact in terms of ground 11 of Schedule 3 of the 2016 Act.
33. There have been various acts of antisocial behaviour by the Respondent in terms of Clause 20 of the Tenancy Agreement. These include:-
  - (i) Throwing various bags of rubbish over a fence into the neighbouring garden of Mrs Kathleen Balloch in breach of Clause 29 of the Tenancy Agreement;
  - (ii) The two attacks by the Rottweiler dog on the post lady, Mrs Linda McGhee, on or around 12th July 2018 and 6th September 2018;
  - (iii) The aggressive behaviour of the Rottweiler dogs towards Police Constable Ross Dewar on 23rd July 2018;
  - (iv) The Respondent's inability to control the Rottweilers dogs;

This antisocial behaviour is relevant antisocial behaviour under ground 14(5) of Schedule 3 of the 2016 Act as it is reasonable to issue an eviction order given the nature of the antisocial behaviour.

34. There has also been antisocial behaviour by Mr James Fraser, who lives in the Property with the Respondent, in terms of Clause 20 of the Tenancy Agreement. In particular alarm, distress, nuisance and annoyance has been caused to other persons including the neighbours, Mrs Kathleen Balloch and Mrs Mandy Watson, by Mr Fraser making excessive noise, by playing loud music and singing during the night, by banging on internal communal walls and by shouting and swearing.
35. Valid Notices to Leave were issued on behalf of the Applicant to the Respondent on each of 16 April 2018 and 7 August 2018 in terms of Section 50 of the 2016 Act.
36. The Respondent has failed to leave the Property.

### **Findings in Law**

37. In relation to Application 1244, the tribunal being satisfied that the Applicant has met the requirements for an eviction order in terms of ground 11 of Schedule 3 of the 2016 Act makes an eviction order in favour of the Applicant.

38. In relation to Application 2430, the tribunal being satisfied that the Applicant has met the requirements for an eviction order in terms of grounds 11 and 14 of Schedule 3 of the 2016 Act makes an eviction order in favour of the Applicant.

### **Statement of Reasons**

39. These Applications called for a Hearing on 28<sup>th</sup> January which continued on 29<sup>th</sup> January 2019 and thereafter on 11<sup>th</sup> and 12<sup>th</sup> March 2019.
40. In Application 1244 the Applicant seeks an order for the Respondent's eviction from the Property on the following grounds.
- (i) That the Respondent keeps a large dog at the Property;
  - (ii) That the Respondent has failed to pay the deposit;
  - (iii) That the Respondent is in arrears of rent throughout the period of her occupation of the Property which, as at 16<sup>th</sup> of May 2018, amounted to £1463.78.
41. In the Notes of a Case Management Discussion relative to Application 1244 that took place on 2 August 2018 the issues in dispute between the parties were identified as being:-
- (i) Whether the Respondent is entitled to full housing benefit and whether this should have been paid since the start of the tenancy;
  - (ii) Whether Ms Simpson on behalf of the Applicant agreed to waive the deposit; and
  - (iii) Whether Ms Simpson on behalf of the Applicant agreed that the Respondent could keep two dogs within the Property.
42. In Application 2430 the Applicant seeks an order for the Respondent's eviction from the Property on the following additional grounds:-
- (i) That the Respondent is in breach of Clause 20 of the Contract of Lease in that -
    - (a) She caused or permitted a large volume of her domestic rubbish to be dumped within the garden of a neighbour in July 2018;
    - (b) She or a person or persons residing with her are guilty of antisocial behaviour in that Police Scotland has, on as many as 40 occasions since the commencement of the lease, being required to attend the Property following complaints from neighbours;
    - (c) She has allowed a dog in her control to attack a postman.
  - (ii) That the Respondent is in breach of Clause 19 of the Contract of Lease in that she has refused to allow the Applicant access to the Property despite the relevant contractual notice being given to her.
  - (iii) That the Respondent is in breach of clause 26 of the Contract of Lease in that she has fixed or allowed there to be fixed to the external wall of the Property a CCTV camera without the consent of the Applicant.
  - (iv) That the Respondent had and has an implied duty to take reasonable care of the Applicant's properties within the Property. At entry there was within the Property inter alia a set of pine furniture and a blue settee. The Respondent,

without reference to the Applicant, removed the pine furniture to the rear garden and the blue settee to the front garden as a consequence of which the furniture has been ruined.

43. At the Case Management Discussion relative to Application 2430 that took place on 24 October 2018 the Applicant's agent was allowed by the tribunal to add an additional ground of eviction that the Respondent had breached the terms of a dog control order placed upon her by authorities on numerous occasions.
44. In the Notes of the Case Management Discussion relative to Application 2430 that took place on 24 October 2018 the issues in dispute were stated to be as follows:-
- (i) The Respondent accepted that rubbish was placed in a neighbour's garden however there was good reason for this and she intended on submitting evidence in the form of correspondence from the local authority.
  - (ii) The Applicant's agent clarified that the antisocial behaviour alleged was the alarm and distress caused to neighbours by the number of police visits to the Property. The Respondent accepted that there had been police visits however explained that these were at her behest and therefore necessary.
  - (iii) The Respondent denied that a dog within her control attacked a post lady.
  - (iv) The Respondent denied that she had breached any dog control order.
  - (v) The Respondent denied having been given notice by the Applicant of any requirement for access to the Property. In any event her position is that there is no valid agent in place and therefore no one authorised to give such notice. The Respondent stated that she had turned a contractor away from the Property on one occasion as notice had not been given, that there were problems with the post and often did not get her mail and that no drilling had taken place within the Property.
  - (vi) The Respondent accepted that a CCTV camera had been fixed. However she required to check with "her partner" to see whether consent had been given.
  - (vii) The Respondent denied the damage to the furniture and stated that the items were still in the Property. The Respondent repeated that there was no agent in place. The Police had advised her that a new agent should be appointed by the Applicant but this had not been done.
45. At the Hearing the Applicant was represented by Mr Andrew Mackey, Solicitor, Masson & Glennie, Broad House, Broad Street, Peterhead. The Respondent was present throughout the Hearing and represented herself from time to time. From time to time the Respondent was represented by Mr James Fraser who, for a period, acted only as her supporter and who, occasionally, was not in attendance at all.

*28 January 2019*

**Preliminary matters**

46. At the outset of the Hearing on 28 January 2019 Mr Mackey on behalf of the Applicant sought to lodge with the tribunal a Schedule of Payments and a further Inventory of Productions for the Applicant.

47. In the Notes of the Hearing Discussion which took place on 16 November 2018, the tribunal directed that all parties must lodge all productions to be relied upon no later than 14 days before the next Hearing date and the Hearing in both Applications was adjourned to 28 January 2019. The last day for lodging productions was therefore 14 January 2019.
48. Mr Mackey explained that the Schedule of Payments and Inventory had not been submitted timeously due to the ill health and resultant absence of the Solicitor principally acting on behalf of the Applicant. Mr Mackey acknowledged that the Schedule of Payments had been available since the second week in January 2019 and that the documentation included within the Inventory had been in his firm's possession for two weeks. In the circumstances the tribunal did not consider there to be a reasonable excuse for producing and seeking to lodge the Schedule and Inventory at the Hearing and refused to allow them.
49. On behalf of the Respondent, Mr Fraser referred the tribunal to evidence collated on a laptop which he had with him and which the Respondent and Mr Fraser had been "up all night" preparing. He referred to himself and the Respondent having suffered ill health and to not having sufficient funds to produce printed copies of the evidence. The evidence had not been shared with the Applicant and the Respondent had failed to comply with the tribunal's previous and clear direction as to the lodging of documentation. In the circumstances, and leaving aside the very practical issues as to how the evidence could be shared and viewed, the tribunal did not consider there to be reasonable excuse for the evidence being late and refused the Respondent's request that the evidence held on the laptop be allowed at the Hearing.

### **Evidence - Applicant's Witnesses**

#### *Mr John Grant Simpson*

50. In examination in chief Mr Simpson stated that his company, Fraserburgh Car Sales Limited ("the Company"), owns the Property. He is a director of the Company.
51. Mr Simpson referred to the Tenancy Agreement between the Company and the Respondent in respect of the Property and stated that the Tenancy Agreement had been signed on page 22 at Clause 34 by the Respondent and by his daughter, Megan Simpson, as agent for the Company. Megan Simpson, he said, had authority to enter into the contract on behalf of the Company.
52. Mr Simpson explained that initially he had no problems with the Respondent. The difficulties began when Mr James Fraser arrived with his dog. Mr Simpson stated that the Respondent moved into the Property around 16th January 2018 and Mr Fraser arrived a few days later.
53. Mr Simpson stated that notwithstanding the terms of Clause 4 of the Tenancy Agreement, the Property was fully furnished and there was no Inventory or Record of Condition.
54. The first complaint received by Mr Simpson was around three weeks to one month after the Respondent and Mr Fraser moved into the Property which is within a terraced row of ex-Council houses. He said that the neighbours on each side of the Property complained. The neighbours complained about the dog and the Police presence. Mr Simpson attended in response to the complaints but could not get an



answer from the Property. Mr Fraser, he said, put his head out of the top window of the house and gave Mr Simpson abuse. Mr Fraser was also videoing Mr Simpson saying "get off our property". Mr Simpson went back to his car. He saw the Respondent walking the dog but she refused to speak to him.

55. Mr Simpson stated that Mr Fraser kept sending his daughter abusive texts to leave them alone and he kept calling telling Mr Simpson to stay away. Angry exchanges took place by telephone. Mr Simpson stated that he was reported to the Procurator Fiscal and was cautioned. Thereafter he did everything through his solicitor.
56. Mr Simpson stated that with regard to Clause 31 of the Tenancy Agreement, when the Respondent saw the Property she had no pets and the problem only arose when Mr Fraser arrived with his Rottweiler dog. A kennel was put in the front garden. Mr Simpson's understanding of the Tenancy Agreement was that no pets were allowed. Mr Simpson did not agree to any pets being kept. Mr Simpson had discussed the position with his daughter, Megan, as the Respondent and Mr Fraser had stated that they had her permission. Mr Simpson stated that this was not true.
57. Mr Simpson asked his solicitor to start eviction proceedings. The grounds of eviction were that the Respondent had a dog, that entry had been refused and that there were disturbances at the Property involving over 40 incidents relating to noise caused to neighbours and telephone calls from them.
58. Mr Simpson stated that the deposit referred to in Clause 10 of the Tenancy Agreement was never paid and that whilst the Tenancy Agreement provided for rental payments of £400 per month only £369.24 was paid on the 16th day of each month. These payments stopped in October 2018. These payments were of housing benefit received directly from Aberdeenshire Council. Mr Simpson did not waive the shortfall each month. The Respondent should have been making up the rent. Mr Simpson received a letter from Aberdeenshire Council that payment had been suspended. This was around the end of November 2018. He had received no payments since.
59. Mr Simpson was unclear as to the precise arrears outstanding and due. He stated that the rent was £31 short each month between January and October 2018 and that he had received no payments in December 2018 or January 2019. He was uncertain as to the position with regard to payment in respect of November 2018.
60. Mr Simpson said that there were now two Rottweiler dogs at the Property "terrorising the neighbourhood" and that a post lady had been bitten resulting in her being off work for about 6 weeks and the Post Office suspending delivery of mail. Mr Simpson believed the Respondent and Mr Fraser had been charged under the Dangerous Dogs Act. Mr Simpson described getting at least 10 telephone calls per week when that happened and still gets calls asking what he is doing about the Property. Mr Simpson was shown a photograph of a dog dated 10th September 2018 which he described as standing in the open communal area. He also was shown and read the headline of a Press and Journal article dated 14th September 2018 submitted to the tribunal by the Applicant's agent relating to the incident involving the post lady. Mr Simpson was shown a second Press and Journal article which referred to the incident involving the post lady having taken place on 6 September 2018. Mr Simpson did not see the incident.
61. Mr Simpson described other issues. All carpets were taken out of the Property to the back and most furniture had been ripped out the house and thrown out the back for

the Council to remove. Rubbish was also thrown into the garden and into a neighbour's garden. The kitchen was dismantled. Mr Simpson was shown copies of photographs and he described these photographs as showing lying outside carpets from upstairs in the Property with the Hoover also having been left outside. He was unaware when the photograph was taken. The photographs also showed the pine table from the living room outside along with the blue three piece suite.

62. Mr Simpson said he left his solicitor to deal with matters. A letter was sent on two occasions asking for entry to inspect which was refused. Mr Simpson referring to a letter from Masson and Glennie dated 24th August 2018 regarding a proposed inspection on Tuesday 28th August 2018. The second letter was sent by recorded delivery by Masson and Glennie on 24th October 2018 with an the inspection date of 29th October 2018 but was sent back having been refused. Mr Simpson stated that the Respondent and Mr Fraser were in the Property but refused to let him in. The dog was trying to get out the house and Mr Fraser was filming from an upstairs bedroom.
63. Mr Simpson described the Respondent and Mr Fraser as wrecking the Property.
64. He was also receiving reports from neighbours that they were playing music into the night and banging on walls, and about the dogs. Mr Simpson was shown a letter from Police Scotland dated 27th September 2018. The letter contained a reference to 30 visits which Mr Simpson described as "an understatement". Mr Simpson was at the Police station on the Friday before the Hearing and he said the number of complaints are around 100.
65. Mr Simpson described how the position had adversely affected his health causing strain and stress as a consequence of which a stammer from which he had not suffered since 21 years of age had returned. His daughter, Megan Simpson, was now off work.
66. Under cross examination Mr Fraser suggested that he had met Mr Simpson only once to which Mr Simpson responded "rubbish".
67. Mr Simpson confirmed that the Company was registered as a landlord and that only the Respondent had a contract with the Company. Mr Simpson confirmed that his daughter, Megan, acts as agent for the Company, being a family business. Mr Fraser suggested Megan Simpson was not qualified to act as an agent of the Company. Mr Simpson disagreed. Mr Fraser described Megan Simpson as an "unlicensed agent". Mr Simpson stated that Megan had a "licence". Mr Simpson confirmed that Megan was employed by the Company at the outset. However, as a consequence of the abuse from Mr Fraser she resigned.
68. Mr Fraser referred to Mr Simpson having received multiple calls about antisocial behaviour after he arrived at the Property. Mr Simpson confirmed this was the position at the start of the tenancy. Mr Fraser asked Mr Simpson to "differentiate malicious calls". Mr Simpson said that he was not in a position to judge but that they were nuisance phone calls from Mr Fraser. Mr Fraser referred to the allegations as being scurrilous. Mr Simpson said that when the individuals telephone him he apologises for owning the Property. He said he feels sorry for the neighbours. Mr Fraser asked if Mr Simpson could confirm the truth of the allegations to which Mr Simpson replied "no, not really". Mr Simpson said the Police had done nothing for him.

69. Mr Fraser asked Mr Simpson what evidence he had to question his integrity and honesty. Mr Simpson replied that Mr Fraser had refused him entry to the Property and had videoed him. Mr Fraser asked if Mr Simpson had received abusive phone calls from him which Mr Simpson answered, yes. Mr Fraser asked Mr Simpson whether Police Scotland or any other agency "qualified to" him that there was ever a problem regarding Mr Fraser. Mr Simpson replied "they have been called out" and "you are the problem".
70. Mr Fraser suggested to Mr Simpson that only the letting agent should visit the property and questioned on what basis Mr Simpson had any legal right. Mr Simpson responded that a letter was sent and that he attended with his daughter and the Police but that access was refused. Mr Simpson stated that he had gone down to speak to the Respondent but that Mr Fraser refused to let him do so. Mr Fraser asked whether Mr Simpson had received a call from the Respondent that day to the effect that she had physiotherapy. Mr Simpson denied that to be the case.
71. Mr Fraser put it to Mr Simpson that the Respondent did not move into the Property on the 16th or 17th of January but rather on 18th February 2018. Mr Simpson stated that he could not remember the date. Mr Fraser suggested that agreement had been reached with the letting agent that the Respondent would not move into the Property until February. Mr Simpson stated that he was there when the Respondent moved in and the removal men were in attendance. He stated that Mr Fraser arrived later. Mr Simpson confirmed that he did not give permission for a dog to be kept at the Property. He stated that he became aware of a dog being present some weeks later. Mr Fraser asked whether he had objected. Mr Simpson stated that there was nothing much he could do.
72. Mr Simpson confirmed that Masson & Glennie had drawn up the Tenancy Agreement and dealt with the eviction process. Mr Fraser asked whether Mr Simpson had threatened to remove the Respondent and to punch Mr Fraser. Mr Simpson denied these allegations.
73. Mr Fraser sought to ask Mr Simpson a question about an Electrical Safety Certificate. However, the tribunal refused to allow this line of questioning, not being relevant to the disputed issues highlighted in the Case Management Discussion Notes.

*Kathleen Balloch*

74. Kathleen Balloch is an immediate neighbour at 5 Dundonnachie Street. She has lived there for 42 years. In examination in chief Mrs Balloch stated that she first met the Respondent on a Sunday morning, the day after the Respondent moved into the property which she stated to be at the end of February 2018. The Respondent was on her own when she moved in on the Saturday but by Sunday morning Mr Fraser was there too.
75. Mrs Balloch noticed her daughter speaking to the Respondent and Mr Fraser. A Rottweiler dog was there. Her daughter has mental health problems and would be nervous with someone new. Mrs Balloch therefore went out. She understood one of the removal men to be the Respondent's boyfriend and asked who Mr Fraser was. He said he was the Respondent's carer and would be staying in Peterhead. Mr Fraser explained that the Rottweiler was an assistance dog.
76. On being asked about any incidents since the Respondent and Mr Fraser moved in, Mrs Balloch stated that they started straight away with banging and drilling, furniture

being taken out to the front and back of the Property including the fire, dogs barking, and singing. Mrs Balloch described the drilling as taking place all night along the walls. She let the landlord's daughter, Megan Simpson, know. She said the kitchen got demolished and was thrown out into the back as well as the fridge.

77. Mrs Balloch described feeling pretty scared. She also referred to a lot of shouting and swearing and on being asked to describe the swearing she quoted "the old fucking bastards wake me up every day". On being asked who she heard say that she referred to Mr Fraser. She also referred to swearing by the Respondent but not directed at her but at Mr Fraser. Mrs Balloch referred to the Respondent swearing outside and giving two finger salutes and to her saying "Fs and Cs".
78. On being asked about the dog, Mrs Balloch stated that Cole, the first dog, was a quiet dog. On the first day Mr Fraser said to Mrs Balloch that he would show her what his dog could do and he stretched his arms out and the dog jumped up and got hold of Mr Fraser's arms. Mrs Balloch described how she would open her door and the Rottweiler dog would be there. She didn't want it there when her grandchildren were around.
79. Mrs Balloch was asked what control the Respondent and Mr Fraser had of the dogs. She replied "not a lot". She described the dogs being trained on the grass area in front of the house. She described a lot of barking. She described a day when the dogs were out but not on leads and Mr Fraser was filming. A neighbour, Michael, came out with a bucket. Mrs Balloch said she had been told to film the dogs if they were acting in an aggressive manner. Mrs Balloch did so but she was not worried and thought Michael would be okay. Then one of the dogs jumped on Michael. The Respondent went and got the dog. Mr Fraser was filming Mrs Balloch. Michael was terrified. Mrs Balloch explained that she had previously phoned the dog warden as she was worried about the dogs. She could not remember when that was.
80. Mrs Balloch described an incident when "Linda" (Linda McGhee, the post lady) was delivering mail and Toby jumped on her back knocking her into a fence. She explained that Toby was the newest dog and a big one. On the day in question Linda shouted "number seven your dog jumped on my back" and Mrs Balloch told her to report it. She started filming but was too late. Linda was shaken and in shock. The Respondent jumped the wall, got Toby and took it back in. Toby had no collar or lead. Mrs Balloch could not say precisely when this took place.
81. Mrs Balloch described another incident being the day when Toby bit the post lady. It was obvious, she said, that the dog didn't like Linda and every day Mrs Balloch would go out and watch Linda deliver mail to the whole street. On the day in question Mrs Balloch stood and watched. She heard a noise and knew what was coming. The dog came flying in. Linda turned her face away and the dog got her arm. Linda was screaming. After a few seconds the Respondent appeared and called the post lady a liar. She offered no assistance. Mrs Balloch observed that the dog had a lead but the Respondent had not held it. Mrs Balloch was asked about the relationship between the posts lady and the Respondent and Mrs Balloch replied that she would not expect there to be one.
82. Mrs Balloch was asked what advice she got about the dogs. She indicated she had been told to make sure her phone was on at all times for her own safety. She was asked what effect the situation had had on her. Mrs Balloch said that her the freedom had been taken away if she couldn't leave the house without her phone being switched on.

83. Mrs Balloch stated that 40 to 50 black bags of rubbish had been thrown over into her property one night by the Respondent. The rubbish used to sit against the fence and was stinking and full of maggots. Mrs Balloch telephoned the Police and they came out and Mrs Mrs Balloch believed the Respondent had been charged. Mrs Balloch messaged the landlord's daughter who replied saying it was not their responsibility according to their lawyer. Environmental Health was contacted and 3 boys attended with a supervisor and cleared the rubbish. Mrs Balloch said the Respondent was responsible as she threw the rubbish into her garden. She also saw the Respondent swearing and rattling the fence.
84. Under cross-examination Mr Fraser showed Mrs Balloch a copy of a photograph of an injured arm and she confirmed this to be Linda and on the day she was bitten. She stated that she thought the date was 6th September 2018. She confirmed the photograph was taken minutes after the incident. Mr Fraser asked whether she had cleaned the injury and she replied that she never touched it. Mr Fraser remarked that he had been training dogs for 40 years and training them not to bite and that only a one toothed dog could make such a mark.
85. He asked where Mrs Balloch, the post lady and the dog were prior to the incident. Mrs Balloch stated that she was at her front door on the step. Linda was around 5 metres up the road and the Respondent was nowhere to be seen. Mrs Balloch described the dog running up to Linda as she was coming down a path. Mr Fraser again stated that only a one toothed dog with no incisors could cause an injury that didn't bleed, was not cleaned, had no pus and no saliva.
86. Mr Fraser questioned how the photograph could have been posted on the Internet on 20th August if the incident only took place on 6th September. Mrs Balloch was asked if her daughter posted the picture on that date to which Mrs Balloch replied that this was a fabrication.
87. With regard to the furniture, Mr Fraser asked how Mrs Balloch knew that the items belonged to the landlord. Mrs Balloch stated that she recognised to them. Mr Fraser showed to Mrs Balloch a copy of a photograph and asked if the carpet shown there was the landlord's carpet. She said she didn't know. She had never seen the carpet. Mr Fraser asked again how Mrs Balloch knew the furniture belonged to the landlord. Mrs Balloch stated that she recognised the grey settee, the units from the kitchen and the gas fire. Mr Fraser asked Mrs Balloch what she would say if he told her that the gas fire was still in place. Mrs Balloch responded that it could be in place as he had taken the fridge back inside. Mr Fraser asked if it was possible that there were two gas fires and Mrs Balloch said that could have been the case. Mr Fraser asked how the items could have been fitted back into the Property if broken and damaged. Mrs Balloch said she didn't know.
88. Mr Fraser asked about the relationship between him and Mrs Balloch. She said she did not speak to him. He asked how long they had last spoken for. She said not long and not since. He suggested they had spoken for an hour and 14 minutes. Mrs Balloch said she didn't know.
89. Mrs Balloch was asked about the drilling, reports of banging, and shouting and swearing all through the night. Mrs Balloch stated this happens sometimes.
90. Mr Fraser challenged Mrs Balloch that she claimed everything was damaged. Mrs Balloch replied that she didn't say everything was damaged but did see the kitchen

units damaged.

91. Mr Fraser asked whether at any time she had the antisocial behaviour at the Property "validated" by the local authority or the Police. Mrs Balloch said she had never asked anyone anything. Mr Fraser asked whether she had been in touch with the Police and Mrs Balloch replied that she called them when the rubbish was thrown in her garden. Mr Fraser asked whether any authority had found him guilty of antisocial behaviour. Mrs Balloch repeated that she had never asked anyone and didn't know the law.
92. Mr Fraser asked Mrs Balloch when the dog wardens had told her to film the dogs off the lead. She said she had no idea. He asked if this was prior to the incidents she described. She replied that she would need to check her phone to see the dates. Mr Fraser asked if she was aware of a dog control order on the Respondent's dogs and Mrs Balloch indicated that she had heard of one. Mr Fraser referred to the dogs having to be on leaded muzzles and Mrs Balloch said yes. He asked if the dog warden had told her this and she replied that this was after the bite but she would need to see her phone.
93. Referring to the incident involving Michael, Mr Fraser asked what Michael did. Mrs Balloch stated that he did not do a lot. He held onto the bucket. Mrs Balloch stated she was too busy watching Mr Fraser filming her.
94. Mr Fraser asked whether he was to blame for the Police being constantly at her door. Mrs Balloch indicated that she never said that. Mr Fraser asked whether Mrs Balloch is biased, malicious and prejudiced. Mrs Balloch stated that she did not know what that meant. Mr Fraser asked whether he was responsible for 200 visit by the Police. Mrs Balloch stated that she had called them out a couple of times, firstly in connection with the rubbish and secondly on a Saturday when the Respondent saw her coming home she tried to get the dogs in and the biggest dog nearly jumped over the 2m fence. Mr Fraser challenged Mrs Balloch that the fence is only 6 feet in height. Mrs Balloch stated that it is 2m on her side. She stated that she wanted to be able to get in and out her property in safety.
95. Mr Fraser asked when he had last been seen at the Property. Mrs Balloch said she had not seen him but had heard him plenty and the dogs too. Mr Fraser suggested that what Mrs Balloch had heard were audio recordings. She denied that. She said she heard coughing. Mrs Balloch stated that the Police had been there at least 100 times. She referred to guitars, drums and singing going on for hours. Mr Fraser suggested a recording was playing for safety.
96. Mr Fraser asked how the rubbish had accumulated. Mrs Balloch said she didn't know.
97. Mr Fraser sought clarification that after they moved in Mrs Balloch erected the fence. Mrs Balloch confirmed that take place after five weeks. Mr Fraser suggested that the fence was erected in connection with her granddaughter's dog. Mrs Balloch denied that be the case.
98. Mr Fraser suggested that on all but two occasions he and the Respondent had called the Police. Mrs Balloch said she didn't know. Mr Fraser suggested that in a neighbourly community if the neighbours had phoned the Police they would say. Mrs Balloch stated that they didn't gossip.

99. Mr Fraser asked why there is gate in the fence. Mrs Balloch responded that they were going to be nice and allow them to take their bins out.
100. Mr Fraser asked if Mrs Balloch had an issue with Rottweiler dogs or large breed dogs. She said no. She said no. Mr Fraser asked if she had an issue with him. She said only with the dogs. Mr Fraser asked what the issue with the dogs is. Mrs Balloch stated that they are disturbing, aggressive and jump against the fence when she comes in her back gate or when walking past on the path. Mr Fraser asked if she had approached the owners about the dogs and Mrs Balloch said no.
101. Mrs Balloch was asked who owned Toby. Mrs Balloch replied that she had been told by the dog warden that it was owned by Mr Fraser. Mrs Balloch was asked which dog she had most issues with and she replied the biggest one, Toby.
102. Mr Fraser asked why Mrs Balloch made recordings. She said she didn't do so on a daily basis. She said she did so in order that she would not be falsely accused of harassing Mr Fraser and the Respondent because of a disability. Mr Fraser asked whether she had ever had any bad words with him and she replied no. He asked whether she had any reason to record him. Mrs Balloch replied that recently he had been swearing and making hand signals. The last occasion was a couple of weeks ago but she could not possibly remember the date. Mr Fraser asked if Mrs Balloch would be surprised that he recorded himself daily and she said she wouldn't be surprised. He said he did not swear at her or make gestures.
103. Mr Fraser asked if Mrs Balloch ever had bad words with Mr Fraser since he moved in. Mrs Balloch stated that she had never spoken to him since the first Sunday. Mr Fraser suggested that Mrs Balloch had no grounds to phone the Police or the landlords for antisocial behaviour. Mrs Balloch replied that 40 to 50 bags of rubbish is antisocial behaviour.
104. There was no re-examination of Mrs Balloch.

*Linda McGhee*

105. Linda McGee is a post woman of around 22 years. In examination in chief she gave evidence that for 16 years she had worked in Boddam delivering letters and parcels. Mrs McGhee described taking the same route all the time. With regard to Dundonnion Street she would usually park her van outside and walk in taking the van only when she had a parcel to deliver.
106. Mrs McGhee gave evidence that she was not presently delivering to the Property. On being asked why Mrs McGhee explained that on 12th July 2018 a Rottweiler jumped on her back. Mrs McGhee explained that she had delivered to numbers five, seven and nine then using the communal path at the back of the house she had got to numbers 11 and 13. She heard a loud growl and the dog jumped and pushed her back into a fence. She knew the dog and now knows its name to be "Toby". She first encountered the dog a few days after the Respondent and Mr Fraser moved into the property. Mr Fraser was trying to control the dog which was on its hind legs. He was having trouble controlling it.
107. Five to six weeks after moving into the Property Mr Fraser introduced Mrs McGhee to the smaller dog which was also a Rottweiler. Mr Fraser told Mrs McGhee that the dog was not a problem and it gave her a paw. She was never introduced to the bigger dog.

108. Mrs McGhee was asked what encounters she had with the occupiers of the Property. Mrs McGhee explained that another letter box had been put on the door of the Property and she had difficulty putting the mail in. On one particular occasion Mr Fraser came around the corner shouting at her with a video camera in his hand saying that she had crushed a letter. Mrs McGhee apologised and explained that the letterbox was too small. She reported the incident back to her office. It was not necessary for Mr Fraser to shout in her face as he did. Whilst the letter was a little crushed it was nothing to speak of.
109. Mrs McGhee explained that she got a very big scare when the dog jumped on her back. She shouted "number seven, number seven come out your dog has jumped on my back". Mrs McGhee was shown a photograph and asked whether she recognised the picture. Mrs McGhee confirmed that was the wall the dog jumped over before it jumped on her back. She thought the wall would be around 3 feet high but was not very sure. She explained that she did what she was told to do by the Royal Mail which is to stand still like a statue. The dog went away and started smelling around the grass. In response to this incident Mrs McGhee gave evidence that her bosses came out to see both the Respondent and Mr Fraser. They came out on a few occasions. They were told to collect their own mail.
110. Mrs McGhee was asked what the Respondent said. She said nothing. Mrs McGhee felt quite upset. Her back was quite painful a couple of days later. Mrs McGhee was advised by the Royal Mail to keep an eye out.
111. Mrs McGhee explained that she saw the dog on 6 September 2018. That was when the dog bit her resulting in her receiving eight stitches in her arm. On being asked how this happened Mrs McGhee explained that she was delivering mail. She had finished at numbers 10 and 8 Dundonnie Street when she saw the Respondent with the dog. The Respondent shouted something at the dog. She crossed the road and dropped the lead and the dog was gunning for her. It bit and tore her arm. Mrs McGhee stated that she did not know why the Respondent crossed the road to come towards her. On being asked what the Respondent did Mrs McGhee stated that she saw the Respondent out of the corner of her eye and she said "Toby" or "Tory". She thought that was a command. Mrs McGhee tried to close the gate but the dog bit into her arm. Mrs McGhee screamed. She told the Respondent.
112. Blood was pouring from Mrs McGhee's arm. Mrs McGhee stated that the Respondent would have seen everything. The Respondent said the dog had never touched her. The Respondent got hold of the dog and took it into the house. "Kathleen" said to come into her house which Mrs McGhee did. Kathleen Balloch saw it all. She used to look out for Mrs McGhee.
113. After going into Mrs Balloch's she telephoned her bosses and was taken to Peterhead Cottage Hospital where x-rays were taken. It was thought Mrs McGhee might need a skin graft so she telephoned her husband and went to hospital in Aberdeen where stitches were put in her arm and she received a course of antibiotics. She has had two more courses of antibiotics since then. Her arm is still numb. It goes red in the swimming pool. She no longer works at Boddam now. Since September no mail has been delivered to the whole street. There is no guarantee the Respondent and Mr Fraser can keep the dogs under control. Mrs McGhee has spoken to the Police. She was told they should have been muzzled.
114. Mrs McGhee was asked what she knew about dog control orders. Mrs McGhee



thought the dogs would be taken away. She was frightened. The incident happened 2 to 3 days before her holiday.

115. Mrs McGhee was shown a photograph of a dog dated 10 September 2018 and she confirmed this to be the dog that bit her. She said it was not a very big bite but very deep. The photograph was taken in the casualty department in hospital. Photographs were also taken by her bosses, the Police and her husband. She did not know who took that particular photograph. PC Dewar went to the hospital and took a statement. Mrs McGhee was asked what has happened since. She indicated that she does not deliver mail in Boddam now. She tried to go back for four or five days but the pressure got to her and she was frightened. The incident had a tremendous effect on her. She is now working on a different round. Mrs McGhee confirmed at having previously given an affidavit. She said she was "199%" truthful.

*29 January 2019*

116. On 29th January 2019 Mr Fraser began cross-examining Mrs McGhee on behalf of the Respondent. He introduced himself by saying "I reside at 7 Dundonnie Street".
117. Mr Fraser asked Mrs McGhee if he was polite when they first met. Mrs McGhee said yes, that was when Mr Fraser had the smaller of the two dogs, call. Mr Fraser asked if Mrs McGhee saw him again. She confirmed that she saw him out in his pyjama bottoms "ranting and raving" on the telephone. He said the Respondent was suicidal because of her. Mrs McGhee carried on with her round, went back to her van and telephoned the office. She said this took place on 6th August 2018. When pressed by Mr Fraser as to when he first met Mrs McGhee she said she could not remember the date.
118. Mr Fraser suggested that he first met Mrs McGhee on 17 February 2018. Mrs McGhee said she couldn't remember.
119. Mr Fraser asked Mrs McGhee on what date he had been shouting at her. Mrs McGhee said she did not know. Mr Fraser said that the Respondent went to speak to her on two occasions. Mrs McGhee said she ignored the Respondent and carried on with her work. Mr Fraser asked when the Respondent had approached her. Mrs McGhee said that that she was making her way towards the flats in Dundonnie Street. Mr Fraser asked if she had her back to the Property. Mrs McGhee said no, she was side-on going into the flats when the Respondent approached her at the end of the cul-de-sac. Mr Fraser asked why she suggested he was shouting on 6 August. Mrs McGhee said he was on the phone shouting "Police, Police". She carried on with her work.
120. With reference to the incident on 6 September when Mrs McGhee stated she was bitten by the dog and Mr Fraser asked if Mrs Kathleen Balloch was conveniently there. Mrs McGhee said she was not there conveniently but that she looked out for her. Mrs McGhee said there was no distance at all between the dog and her when it was released. The Respondent was in the middle of the street when the dog was let go. She said the dog ran at speed. She said she was trying to close the gate of number 8 using her left arm which the dog went for. Mr Fraser asked what happened when the dog grabbed her arm. Mrs McGhee said she screamed that the dog had bitten her.
121. Mr Fraser referred to the photograph of the injury and referred to it as "a single line injury". Mrs McGhee responded that the injury was a dog bite deep into the tissues.

Mr Fraser referred to the dark colour running from top to bottom of the injured area shown in the photograph and asked how it was possible for a dog with 64 teeth to create "a one line" injury whilst coming at speed. Mrs McGhee responded that all she knew was that the dog had bitten her. Mrs McGhee said she had short sleeves that day.

122. Mr Fraser referred to the photograph submitted by the Applicant showing the arm injury and asked if it was the same photograph as that already shown. Mrs McGhee said yes it was the same. Mr Fraser asked if the picture was dated from 6 September and Mrs McGhee agreed. Mr Fraser referred to the date of 20th August 2018. He suggested the daughter of Kathleen Balloch is a make-up artist and that she posted the photographs at 11:52am that day. He questioned how it was that the injury could be shown in a photo on 20th August. Mrs McGhee said she didn't know. Mr Fraser asked if it concerned her that the photograph of the injury was 10 days previously to the date in question. Mrs McGhee said she didn't "do the internet". Mrs McGhee repeated that she knew she was bitten on 6th September.
123. At that point Mr Fraser asked for the witness to be asked to leave the room. The tribunal agreed and a discussion took place with regard to the two photographs, one being that attached to the affidavit signed by Mrs McGhee and the other which is blacked out at the top. Mr Mackey on behalf of the Applicant could not explain the position. Mr Fraser made reference to "a conspiracy".
124. Following the brief adjournment of only 10 minutes Mrs McGhee was brought back in to the hearing room to resume her evidence. Mr Fraser then announced that he was withdrawing from acting for the Respondent. At that point the Respondent personally took over her own representation.
125. The Respondent asked when Mrs McGhee started her round. She indicated that she started in the morning. She was asked how long it took to deliver the mail in Dundonnie Street. Mrs McGhee indicated that it varied depending upon the amount of mail. The Respondent asked if she had a lot of mail on 6th September. Mrs McGhee couldn't remember. (At that point Mr Fraser left the hearing room.)
126. The Respondent asked how Mrs McGhee felt about Mr Fraser shouting at her on 6 August. Mrs McGhee said that she apologised for the crushed letter but explained to Mr Fraser that it was a small letterbox. Mrs McGhee said that she told her bosses about the incident back at the office. Mrs McGhee said it was strange that Mr Fraser came out with a video in his hand. The Respondent asked how Mrs McGhee felt on the day that Mr Fraser had his pyjamas on. Mrs McGhee said she was quite distressed. She said she ignored him. The Respondent referred to paragraph 6 of the affidavit which referred to Mr Fraser having the camera in one hand and his phone in the other. Mrs McGhee repeated that Mr Fraser was shouting "Police, Police". She went back to her van and drove to Brae Street where she telephoned her bosses.
127. Mrs McGhee confirmed that 12th July 2018 was the date the dog jumped the wall. The Respondent showed Mrs McGhee the photograph of the dog dated 10 September 2018 and asked if this was a photo of the dog that jumped the wall. She said it was the big dog that bit her. She was not sure of the photo.
128. The Respondent referred to Mrs McGhee's Affidavit, paragraph 5 thereof. The Affidavit reflects Mrs Balloch having shouted Mrs McGhee into the house. The Respondent suggested that Mrs McGhee was lying in her evidence on the basis that

she previously said Mrs Balloch was outside and today inside. Mrs McGhee denied that.

129. The Respondent asked Mrs McGhee whether she saw her in the Street between 12th July and 6th August. Mrs McGhee referred to an occasion when the Respondent said "excuse me, excuse me". The Respondent asked whether she wanted to discuss the position with Mrs McGhee. Mrs McGhee indicated that she had been told by her bosses not to talk to the Respondent and was doing what she was told.
130. The Respondent asked whether she had ever made any complaints about Mrs McGhee. Mrs McGhee said she didn't know. The Respondent challenged Mrs McGhee that in her Affidavit she never mentioned the Respondent crossing the road and was there any reason for this. Mrs McGhee said she had no idea. She confirmed the Respondent was indeed in the road.
131. At this stage, around 12:10pm the Hearing was briefly adjourned. When the Hearing reconvened at 12:20pm Mr Fraser was in attendance and the tribunal allowed him to be present next to the Respondent as a supporter only in terms of Rule 11 of the Schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 ("the 2017 Regulations").
132. The Respondent asked Mrs McGhee whether she was suggesting that the Respondent instructed the dog on 6 September. Mrs McGhee indicated that was how it made her feel. Mrs McGhee stated that Mrs Balloch was standing at the side of her house. The Respondent suggested that Mrs McGhee grabbed hold of her arm to show the Respondent her injury. Mrs McGhee said she did not. The Respondent asked why Mrs McGhee's Affidavit does not say that. Mrs McGhee said she had no idea. The Respondent put it to Mrs McGhee that she was a complete liar. Mrs McGhee denied that.
133. The Respondent asked whether Lisa Balloch was present on that date. Mrs McGhee said no she was not there on the day of the dog bite and she didn't see her. The Respondent asked Mrs McGhee when Mrs Balloch took the photograph. Mrs McGhee replied that she asked Mrs Balloch to take a photograph of her arm. She was not sure who took the particular photograph in question. The Respondent asked why there was no blood showing. Mrs McGhee replied that the blood had "gelled in". The Respondent asked how that could be within only minutes of the dog bite. Mrs McGhee restated that she could not see that. The photo in question was taken immediately after. The Respondent said Kathleen Balloch said she took the photograph. Mrs McGhee explained that Mr Balloch was there and went to make a cup of tea. The Respondent persisted asking why there was no blood whatsoever. She challenged Mrs McGhee again that she was lying. Mrs McGhee said that she couldn't see that at all and that she was not lying.
134. In response to further questions by the Respondent Mrs McGhee confirmed that following the incident she contacted her work and her work contacted the Police. Mrs McGhee repeated that the delivery of mail stopped for the whole street on 6th September. However the mail for the Property stopped when the dog jumped on her back. The Respondent suggested that she and Mr Fraser had stopped their mail prior to that. Mrs McGhee indicated that the Royal Mail didn't know that.
135. Under re-examination, Mr Mackey asked whether Mrs McGhee told the truth when she swore the Affidavit. Mrs McGhee said the Affidavit was "right". Mr Mackey asked if Mrs McGhee was not sure of some dates and she replied yes. Mr Mackey asked

whether at the time of swearing the Affidavit the dates were correct. Mrs McGhee said yes.

*Police Constable Ross Dewar*

136. In examination-in-chief Constable Ross Dewar advised that he had been a Police Officer for three years, initially based in Aberdeen and out to Peterhead around a year ago. In relation to his involvement with the Respondent, PC Dewar indicated that he was dealing with a case involving a dog bite incident and breach of dog control incidents. He indicated he could not discuss these.
137. On 23 July 2018 PC Dewar and a colleague were making routine enquiries relative to 2 Rottweiler dogs owned by the Respondent and Mr Fraser. On that occasion the Respondent had the dogs on leads. They were growling and snarling and pulling the Respondent away. PC Dewar and his colleague retreated to their car for their own safety. He indicated that he found Mr Fraser not willing to engage.
138. With regard to the dog bite, PC Dewar indicated that took place on 20th August at Dundonnie Street but he could not discuss the position due to the ongoing criminal process. PC Dewar was asked what other enquiries had been made in the neighbourhood. PC Dewar referred to having been there previously and having met Mr Fraser filming. PC Dewar indicated that there had been several allegations of breach of dog control orders and several residents raising concerns regarding their safety.
139. PC Dewar was asked to look at and read a letter of 27th September 2018 by Police Scotland. PC Dewar indicated that he would have attended a few of the calls referred to. He was aware of numerous calls to the Property. PC Dewar was shown a photograph of a dog dated 10 September 2018. PC Dewar confirmed this to be one of the dogs that had acted aggressively towards him. He said he had encountered the dog two or three times. He referred to them being on a leads but not muzzled on the day he and his colleague retreated.
140. PC Dewar was aware that Aberdeenshire Council had served a dog control order on the owner of the dogs. PC Dewar was shown an email from Aberdeenshire Council dated 11 September 2018. PC Dewar confirmed the email to refer to the notices of which he was aware. The dog control orders appeared to have been issued on 6 July 2018. He agreed that this corresponded with his general knowledge of the position.
141. PC Dewar was asked in his impression of the Respondent dealing with the dogs. He replied that she couldn't control them properly, they were pulling her towards him and his colleague. They had no muzzles on and they were scared for their own safety. It was as if they wanted to attack. They left the area. PC Dewar made a formal note to ensure other officers would be aware of the position.
142. PC Dewar asked if he was aware of the conditions attached to the dog control notice. PC Dewar stated that the dog should be muzzled in public. PC Dewar referred to there being at least two dog control wardens covering the Peterhead area. He was asked about general complaints from neighbours and he replied that a lot of them that he had spoken to were concerned for their safety more than anything else and the failure to adhere to the control notices. Breaches have been reported to the Procurator Fiscal.

143. Under cross examination the Respondent challenged PC Dewar that he saw her on 23rd July 2018. He said it was about that date. He confirmed he would have recorded an entry in his official Police notebook which he didn't have with him and to which he was not referring. He indicated that he was not obliged to show his notebook in these proceedings. He indicated that he had looked at his notebook before attending and was pretty sure of the date.
144. The Respondent indicated that prior to and after 23rd July she was in Falkirk and she referred to the fact that could be confirmed by reference to CCTV footage, hospital footage and bus records in Falkirk. PC Dewar responded that he was not confirming the precise date but it was thereabouts. The date had been logged and relayed to the control room and he was not lying.
145. The Respondent asked whether during the criminal proceedings PC Dewar claimed the incident to have happened on the same date and would have referred to his notebook for the date. PC Dewar confirmed he would refer to his notebook when preparing his report. The Respondent asked who put PC Dewar up to this. PC Dewar responded that he was acting in the course of his duty, doing his job. The Respondent referred to PC Dewar having previously been present at a Case Management Conference which took place in these proceedings on 16th November 2018. PC Dewar agreed that he was in attendance. She asked whether in all his dealings with her and Mr Fraser PC Dewar found them obstructive. PC Dewar responded that on two occasions he found them obstructive and not willing to engage. On other occasions they would speak fine.
146. PC Dewar indicated that he was at the Property on two or three occasions maximum. The Respondent asked whether PC Dewar had video footage from 23rd July. He indicated he would need to check. A colleague was also in attendance and the situation was relayed back to the control room.
147. The Respondent asked how PC Dewar found the dogs on all the occasions that he attended at the Property. On the date of the incident he previously referred to he said he found them scary and aggressive. On other occasions he heard them barking loudly. He had not met the Respondent any other time with the dogs. The Respondent asked PC Dewar if he recalled what she was wearing on the date in question. He said he could not recall. She asked if he could recall the colour of the leads. He said he could not recall but was certain she was holding both dogs. The Respondent asked whether before he attended at the Property he had seen them anywhere else. PC Dewar said he had not seen them. The Respondent asked why if two people and two dogs were acting aggressively additional measures were not brought in. PC Dewar replied that a safety marker was put in place that day.
148. The Respondent asked about Police recordings. The Respondent asked why if all are informed to wear bodycam there is no footage. PC Dewar replied that the requirement is a recommendation, not mandatory. The Respondent asked if PC Dewar was wearing bodycam that day. He said he couldn't recall. She asked whether his colleague was wearing bodycam. PC Dewar said he would need to speak to him.
149. The Respondent asked if when criminal charges were pursued and before the Procurator Fiscal PC Dewar would have an opportunity to check his notebook. He said that was correct. The Respondent suggested that the allegation was malicious and falsified. PC Dewar denied that. He was sworn to tell the truth and did not feel any need to lie.

150. There was no re-examination.

*Mandy Watson*

151. Mrs Watson resides at 9 Dundonnie Street. She has lived there for 10 years. Her partner has lived there for over 30 years.

152. In examination-in-chief she was asked what the dealings she had with the Respondent and Mr Fraser. She replied verbal abuse and disturbance. She referred to Mr Fraser shouting up the Street accusing her and other people of attempting to have the Respondent commit suicide. She said the abuse started approximately 6 weeks after they moved in which was in February 2018. She referred to Mr Fraser banging on the wall and shouting "fat B, fat C" at 8.45am. This started in around July. The shouting from the house would take place up to 3 times a week.

153. Mrs Watson has to walk past the Property to get out the street. Mr Mackey asked how Mrs Watson knew the abuse was directed at her. She said she heard Mr Fraser saying "that's her walking down the path, that's her getting to her car". Mr Mackey asked how she felt about that. Mrs Watson said it was not nice when someone was watching every move. It was physically exhausting. It happened during the night and she has to get up early.

154. Mr Mackey asked what she meant by constantly watched. Mrs Watson replied there is grass at the front of the Property. The Respondent would walk up and down with the dogs and then look in or sit and stare in her windows. She said this made her feel uncomfortable and she would now hardly ever open her blinds. She said this could take place on a daily basis, every time she went out.

155. Mrs Watson said that when the Respondent and Mr Fraser first moved in they were nice enough and they introduced themselves and their dog, a Rottweiler. Mrs Watson said she had never had any problem with Cole who was friendly enough and well controlled. Mr Mackey showed Mrs Watson a photograph of a dog dated 10 September 2017. Mrs Watson said that was not Cole, that was the other dog, Toby. Mr Fraser said to Mrs Watson that they were getting another dog as a guard dog as a consequence of a friend moving abroad.

156. Mrs Watson spoke to the Respondent having the dog up on its hind legs. She would be walking to the house holding the dog on its back legs and taking all her time to control him. Mrs Watson said she knew that the dog had bitten the post lady, Linda McGhee, and jumped on her back. The dog bit her arm. Mrs Watson said she felt frightened of the dog because it's vicious. She based this on the postwoman having been bitten and when walking up and down the path the dog nearly comes out the door. She is frightened the dog jumps over the dyke and she rarely hangs her washing out as a result. She referred to Cole being really well trained and the Respondent having no trouble holding that dog.

157. Mr Mackey asked what incidents Mrs Watson had seen with the dog. She said none. He asked what complaints had been made. She referred to the noise. She referred to Mr Fraser shouting through the wall and to her telephoning the Police because she shouldn't have to put up with that. The last occasion was a week or so prior to the Hearing. She had had enough.

158. Under cross examination the Respondent asked Mrs Watson if they had spoken

briefly a week ago and she said yes. She said she had no issues with the Respondent, only Mr Fraser.

159. The Respondent referred to Mrs Watson's evidence that she had issues with the Respondent staring. Mrs Watson said she did then but not now she keeps her blinds closed. Mrs Watson answered questions from the Respondent about when she purchased the blinds and put them up. The Respondent asked why she had bought the blinds two years ago but they had only been put up a few weeks ago. Mrs Watson said the front blind was kept closed most of the time. The back blind was put up a few weeks ago and was open during the day and closed at night. Mrs Watson said she had been in the process of doing up her house but had had enough and had asked "Stuart" to put the blinds up. The Respondent suggested that Mr Fraser was hardly ever in the Property. Mrs Watson said she was lying.
160. The Respondent said that "due to issues" she played audio recordings. Mrs Watson said no, she heard coughing. The Respondent asked if Mrs Watson heard instruments playing and coughing. Mrs Watson said she wouldn't hear coughing if instruments were playing. The Respondent asked whether from March to the date of the Hearing most issues were with Mr Fraser. Mrs Watson agreed.
161. The Respondent asked Mrs Watson what wall was being banged. Mrs Watson replied that it was the kitchen wall on the Respondent's side.
162. The Respondent asked whether Mrs Watson or her partner had been charged or cautioned or spoken to by the Police. Mrs Watson said she did not know about her partner but she had been. The Respondent suggested to Mrs Watson that Stuart had been charged. The Respondent suggested that on a particular night Mrs Watson's partner had come to their door "steaming and abusive". Mrs Watson said she could not comment as she was not there.
163. With regard to the photograph of the dog dated 10 September 2018 the Respondent asked whether Mrs Watson had submitted it to the Applicant's agent, David Gibb. She said yes. The Respondent asked if Mrs Watson had taken the photograph and she said no. The Respondent asked if Mrs Watson knew who took the photograph and she said she couldn't say. Mrs Watson was certain the photo was of Toby.
164. The Respondent asked if Mrs Watson had ever seen the post woman's arm. Mrs Watson said she had not. The Respondent asked whether Mr Fraser and Mrs Watson have ever come face-to-face. Mrs Watson said no. The Respondent asked whether there had been any other forms of abuse and Mrs Watson said there was nothing else.
165. The Respondent asked when Mrs Watson has been charged by the Police. She said it was October or November 2018. She had not heard back about any further proceedings. Mrs Watson explained that she had been to the garage to put diesel in her car with her partner. They parked in Dundonnachie Street and walked along. Mr Fraser came out the Property and said that because of them and 600 folk the Respondent had tried to commit suicide. Mrs Watson said "who cares". The Respondent was at the window and Mrs Watson said "oh shut up". Two weeks later the Police came out. The Respondent suggested Mrs Watson's version was wrong and misleading that the Police had a full recordings which they were looking at. The Respondent suggested that Mr Fraser approached Mrs Watson amicably. Mrs Watson said this was a "load of rubbish". The Respondent asked why if Mr Fraser was telling her that a person in his care had attempted to commit suicide on four

occasions she would reply "who cares". Mrs Watson said that on the day in question she was about to bury a 23-year-old who had died.

166. The Respondent asked whether Mr Fraser had been abusive and threatening at all. Mrs Watson said he had just shouted at her. The Respondent asked why Mrs Watson had not called the Police. She said she could not be bothered with the hassle. The Police were there enough. The Respondent asked why Mrs Watson was charged and not Mr Fraser. Mrs Watson said that she never telephoned the Police about Mr Fraser.
167. The Respondent asked whether Mrs Watson had ever seen her and Mr Fraser throwing things from the Property into the back garden. Mrs Watson said no. The Respondent asked whether Mrs Watson had ever seen any items in the back garden that were damaged. Mrs Watson said no. The Respondent asked whether with regard to antisocial behaviour there had been any aggression face-to-face. Mrs Watson said no. The Respondent asked whether Mrs Watson would agree that from February to date they had been nothing but polite. Mrs Watson agreed apart from the one occasion when Mr Fraser threw something into their back garden and referred to the Respondent saying "you bastards". The Respondent suggested that as a "lady of God" that she would never swear. Mrs Watson said she was lying. The Respondent asked what the build up was to her calling Mrs Watson that. Mrs Watson referred to Mr Fraser standing shouting at her and Stuart. The Respondent was standing looking at her. The Respondent asked what Mr Fraser was shouting about. Mrs Watson said that he was asking what they wanted. They heard something smash and it was a candleholder that had been thrown into the garden.
168. The Respondent asked whether Mrs Watson had any issues with the dog. She said she had never been out the back of her house since the dogs were there. The Respondent asked whether they had made any attempt to jump the wall. Mrs Watson didn't know.
169. The Respondent asked if Mrs Watson was only at the Hearing because Mr Fraser was abusive. Mrs Watson said "and the noise". The Respondent asked whether Mrs Watson could recall a conversation between her and Mrs Watson and Stuart that they would not have the same hassles from Mrs Watson as they had from Kathleen. Mrs Watson could not recall that.
170. On re-examination Mr Mackey asked whether Mrs Watson has ever been prosecuted for the charge. Mrs Watson said she had never been to court. Mr Mackey clarified that the events involving the Police were relative to the same incidents regarding the suicide claim. Mrs Watson agreed.

*11 arch 2019*

171. The Hearing resumed on 11th of March 2019. The Applicant was again represented by Mr Andrew Mackey. The Respondent was personally present along with Mr James Fraser.

### **Preliminary matters**

172. At the outset of the continued Hearing Mr Fraser indicated that he wished to resume his representation of the Respondent. Mr Mackey opposed that request. Indeed, Mr Mackey sought that Mr Fraser be excluded from the proceedings entirely.



173. Mr Mackey stated that at the previous hearing on each of 28th and 29th January 2019, he had noted the tribunal as having given Mr Fraser four final warnings about his behaviour, none of which had been implemented. Mr Mackey said that Mr Fraser started as the Respondent's representative but withdrew. He said he should not be allowed to resume representing her. The tribunal should be seen to "hold its will". He stated that the proceedings would "descend into a farce" if it was open to Mr Fraser to resign and be readmitted as the Respondent's representative at a whim. Mr Mackey referred to the 2017 Regulations and the tribunal's powers to exclude a person under Rule 34 of the Schedule thereto. Mr Mackey referred to the overriding objective at Rule 2 to deal with the proceedings justly. He said that the tribunal required to conduct the proceedings to avoid delay. He said that if Mr Fraser was allowed to resume his role as representative then there was a danger of prejudice to the Applicant due to delay. The tribunal should deal justly for all parties. Mr Mackey indicated that this was the third day of evidence. The Applicant was a private fee paying client and the tribunal should have regard to the resources of the parties and the fact the Applicant was paying for representation and taking time off work.
174. Mr Fraser said that he "played a deliberate ploy" at the previous Hearing. (At that point the Respondent became agitated and left the Hearing room.) He said there were audible gasps from Mr Simpson and Mr Mackey throughout. He said that each time that happened he did the same. Mr Fraser asked that Mr Mackey recuse himself from acting any further in these proceedings. Mr Mackey had not heeded warnings from the tribunal and had been allowed to continue. He said evidence would show misconduct and that his behaviour had resulted in a complaint. The tribunal told Mr Fraser confine himself to issues concerning the Respondent's representation. There was no question of Mr Mackey recusing himself. Mr Fraser said that the Respondent was disabled and could not reference legal points whereas he could do so. The tribunal remarked that the Respondent had conducted her case well in the circumstances on the last occasion. Mr Fraser said that his frame of mind meant he couldn't cope on the last occasion. (The Respondent returned to the Hearing room.) Mr Fraser said that the tribunal "had no commission to be here today", that the tribunal had a duty to ensure compliance with Article 6 and there was not equality of arms.
175. The tribunal adjourned briefly to consider the issues arising with regard to the preliminary matters. The tribunal carefully considered Rules 2, 10 and 34 of the Schedule to the 2017 Regulations and determined that it was both permissible under the Rules and appropriate in the circumstances to allow Mr Fraser to represent the Respondent once again and that the tribunal would refuse Mr Mackey's motion to exclude Mr Fraser. On reconvening and intimating its decision the tribunal also warned all persons present to conduct themselves appropriately in order to make good progress during the time available.
176. Mr Mackey for the Applicant indicated that he was not calling any other witnesses and therefore closed the Applicant's case. Mr Fraser said that the Respondent had depended upon Megan Simpson who was named on the Applicant's witness list being in attendance. The tribunal stated that the Applicant did not require to call Megan Simpson as a witness despite her being named on their list of witnesses. Mr Fraser asked that the tribunal recall all previous witnesses who had given evidence. He referred to his health on the last occasion and what had been he had been subjected to during the hearing. The tribunal made it clear that there was no basis upon which witnesses would be recalled and refused that motion. The Respondent required to proceed with her own evidence.

177. The Respondent had no witnesses to call. The Respondent therefore took her place to give evidence.

## **Evidence for the Respondent**

### *The Respondent*

178. In the examination in chief, Mr Fraser asked the Respondent when she first realised the Property was available. She said this was around December and she contacted Megan in January 2018. She said she communicated through Gumtree several times and left a message. On the call back the Respondent spoke about the reasons for wanting to move, the dogs and her carers and she spoke of waiving the deposit. The Respondent explained that they had one dog, Cole, and that they trained dogs. The Respondent mentioned about getting another dog and Megan Simpson said this was okay as she loved dogs. Mr Fraser asked if the Respondent had recorded the calls and conversations, emails and text messages and the Respondent answered yes.
179. Mr Fraser asked how Megan Simpson introduced herself. The Respondent said as "the letting agent, the landlord". Mr Fraser asked if the Respondent had read the rules on registration as a landlord. The Respondent said not then but she had subsequently. Mr Fraser asked if the Respondent was under the impression that Megan Simpson was a letting agent. The Respondent said yes because she said she was. The Respondent said that Megan Simpson agreed with her that the Property would be unfurnished to get extra rent, so the full rent was covered.
180. Mr Fraser asked if the Respondent reached agreement and received an offer of a contract. The Respondent said yes, this was to be sent by email to sign electronically. The Respondent assumed the paperwork would come from Masson and Glennie who Megan said were the lawyers. Mr Fraser asked the Respondent whether she understood what she was signed and whether the contract was legal. The Respondent said she didn't but signed anyway. Mr Fraser asked the Respondent if she was moving under duress and she said yes. Mr Fraser asked if the Respondent signed the contract under duress. The Respondent again said yes as there were parts of the contract that were not explained. Mr Fraser asked if the contract was amended. The Respondent said no.
181. Mr Fraser asked the Respondent when she moved in and the Respondent said 7 February. He asked when she received a notice of eviction. The Respondent said two weeks after she moved in based on supposed rent arrears and supposed antisocial behaviour. Mr Fraser asked the Respondent when dealing with Megan Simpson what happened to communications. The Respondent said she could not get in touch with her. The phone was engaged or disconnected and she was not responding to text messages. She did not respond to emails either. The Respondent said she communicated with the landlord registration team. Megan Simpson was registered as a landlord but not as an agent. (During this part of the examination in chief the tribunal refused Mr Fraser's attempt to ask further questions about whether the contract was signed under duress, the Electricity Act and harassment on the basis that these were not disputed issues previously identified.)
182. Mr Fraser asked whether the Respondent had given proper notice to the letting agent about the dogs. The Respondent said she was okay with dogs as she sent a text back saying there was no issue. Mr Fraser asked whether the Respondent got permission for a second dog the Respondent said yes.

183. With regard to rent, the Respondent stated that this continued to be paid. Whilst Mr Simpson said the rent had been stopped in December, the Respondent had contacted the Council and the rent was still "in payment". The Respondent said that payment of rent had stopped temporarily in September 2018 as the Council was carrying out an investigation into harassment and housing benefit was suspended until that investigation was finalised. The Respondent was not sure if housing benefit had been reinstated. The Respondent said that she had asked for the rent to be reinstated until the "appeal" had been determined. The Respondent said the housing benefit was never paid to her but to the letting agent.
184. Mr Fraser sought to have the Respondent give evidence about the condition of the Property which the tribunal refused to allow as there are no disputed issues relative to the repairing standard.
185. Mr Fraser asked the Respondent, relative to the antisocial behaviour, whether there had been contact with the Council. The Respondent said there had been none. He asked the same relative to the criminal charges and the Respondent said there had been none either. Mr Fraser asked how many phone calls had been made about harassment. The Respondent said over 300. Mr Fraser asked about the breakdown in communications with Megan Simpson. The Respondent said that she was told to contact Megan's father. She agreed to do so until she got better. She said Megan Simpson claimed to be unwell and this was untrue. The Respondent said Megan was told things by the Police which were untrue. The tribunal interjected that this line of questioning was not relevant.
186. Mr Fraser asked what the Council's position had been relative to payment of rent and the Respondent said that rent was getting paid until September. He asked how it was that at a previous Case Management Discussion rent was said not to be paid. The Respondent said she didn't know. Mr Fraser suggested that the solicitor in question had not used "due diligence" and the Respondent agreed. The Respondent said she had tried to make several calls to David Gibb of Masson & Glennie and had been abused by him. He said he didn't understand what she was calling about and didn't know who she was. The Respondent said that she had tried to connect with the Applicant's solicitor over 10 times and had left five voicemails but no one got back in touch.
187. The Respondent confirmed that she was in receipt of full housing benefit. As at 16th April 2018 when the second eviction notice was served the Respondent said there were no arrears. That was what the housing department had told her. The Respondent did not know what the housing benefit payment was, simply that the rent was covered. She was told she was getting full housing benefit. The Respondent said she was surprised claims were still being made. The Respondent said there is no shortfall whatsoever.
188. Regarding the antisocial behaviour, Mr Fraser asked whether any legal authority acknowledged any antisocial behaviour. The Respondent said no. Mr Fraser asked whether the Respondent had conducted herself antisocially. She said no. The Respondent said there had been no complaint against her and no one had complained to the Police about her. She said there had been no complaint about anyone at the address. Mr Fraser asked whether she had anything in writing and the Respondent said she did not have anything in writing from the Police but she had a recording. The Council had confirmed there were no complaints in writing. Mr Fraser asked the Respondent if there had been a criminal allegations then the Police would have reported that to the Council. The Respondent said yes.

189. Mr Fraser asked the Respondent about the deposit. The Respondent said that because she is fully exempt from paying Council Tax it had been agreed that the deposit would be waived. It was agreed that the lease would commence on 16th January but that the Respondent would not move in until 17th February. On that basis Megan Simpson would not need to pay Council Tax on the Property for the period of January to February and the rent would be covered. The Respondent said the letting agent therefore skipped payment of Council Tax and got a months rent it from the Council.
190. Mr Fraser asked that the Respondent what her intention is with the Property. The Respondent said she had no idea at present. She wanted to stay but the ongoing harassment meant she would probably move out. She said she had no idea when that might be. The Respondent referred to "doing things at the new property".
191. The Respondent asked if there was any discussion with Megan Simpson about the period of let. The Respondent said it was five years. Within two weeks of moving in she noticed otherwise.
192. Mr Fraser asked if the Respondent had asked for a reduction in rent. The Respondent said she text did John Simpson to ask if there was room for a reduction in rent. When she signed the Tenancy Agreement both exits were clear, now one was obstructed. She said she possibly also contacted him by email. This caused Mr Simpson to "fly off the handle". Mr Fraser asked who it was on the telephone call. The Respondent said she was on the call and Mr Fraser came on to the call briefly to tell Mr Simpson not to speak as he was doing as the Respondent couldn't breathe. She said the phone was on speakerphone. The Respondent said Mr Simpson said to get Mr Fraser out of the Property and not stay another night. Mr Simpson said he would make sure 100% that happened. Mr Simpson told the Respondent not to contact her again and the Respondent has stuck with that. The Respondent said the Police told her they would charge John Simpson after reviewing the footage and she asked them just to tell him not to behave like that.
193. The Respondent said that when Megan Simpson and John Simpson attended the Property on 26th April or May the Police were in attendance. One Constable attended back at the Property after to apologise and asked if she was going to make a complaint about him personally.
194. Mr Fraser asked the Respondent whether the police offered to charge "these people" with offences. The Respondent said the Police were just going to have a word to resolve the issue and referred to mediation. She said they would speak to John Simpson and Megan Simpson to have them put an agent in place to avoid further threats against Mr Fraser and herself.
195. Mr Fraser asked the Respondent whether from 26th April she was waiting on letting agents being put in place and she said yes. She said this was never done. She said there was no communication and no-one to contact regarding the Property. Mr Simpson asked her not to contact him so she didn't do so on the advice of the Police.
196. Mr Fraser asked whether the Respondent had a verbal agreement with Megan Simpson and if so what that included. The Respondent said she had a five year contract with dogs permitted, with front and back access, with the bins being put at the back of the Property, with smoke alarms and normal things that would be found in a house.

197. Mr Fraser asked the Respondent if she had a carer and she said, yes. Mr Fraser asked if he rented a room and she replied, yes. She confirmed that the Council gave the landlord full rent and that a previous anomaly had been covered.
198. Mr Fraser asked the Respondent if there is anything else she wanted to say. She referred to a call with John Simpson approximately 2 months prior to the abusive call already mentioned. She said this took place around mid March roughly when she reminded John Simpson of the things she had discussed with Megan as to why she was moving, as to the 13 years of harassment she has suffered from Police and that her family life had been made hell. Mr Simpson replied "I know it has".
199. The tribunal refused questions at this stage from Mr Fraser relative to the heating within the Property and to the number of addresses of the Respondent over the last 10 years.
200. Mr Fraser asked what the Respondent's experience at the address had been overall and she said that her health and that of her carer had been affected.
201. Under cross examination Mr Mackey referred to the Tenancy Agreement between the parties and asked the Respondent if she accepted that in terms of Clause 29 she was not permitted to keep pets in the Property. The Respondent said she believed that is what is written. However, she did not agree and was given permission for dogs. She said it was not her fault that the lease was not amended.
202. Mr Mackey indicated that it has been the Respondent's consistent position that she had a communication with Megan Simpson which allowed her to have a pet and she had previously been requested by the tribunal to produce the written communication which she referred to. The Respondent said she did not have the means to produce them at the time and they had not been allowed late. Mr Mackey challenged the Respondent that there was no such evidence. The Respondent said she did have the evidence but it was not submitted. The Respondent said that she was supposed to lodge six copies of everything but she was on benefits. Mr Mackey challenged the Respondent that she had had more than six months to produce the communications and she said she had no idea how long had passed. Mr Mackey said her position was not very credible and the Respondent replied that she was on benefits and needed to sustain food bills therefore she did not have funding.
203. With regard to the deposit, Mr Mackey asked the Respondent whether in terms of the lease the Respondent was obliged to pay a deposit of £300 in terms of Clause 10. She said was not obliged, the deposit had been waived but the clause had not been amended. Mr Mackey suggested that the Respondent had produced no evidence to support her position. The Respondent repeated that she did not have the financial means to do so.
204. Mr Mackey asked whether in terms of the Tenancy Agreement she was obliged to pay rent. She agreed that payment of rent was a "fundamental obligation" and a "crucial duty". The Respondent said she paid rent through the Council. Mr Mackey challenged the Respondent that she was not sure of whether there were rent arrears or not. The Respondent said that she did not say that there were rent arrears. The Council confirmed to her there were no rent arrears and that had always been her position. She said that there had been an anomaly at the start that was fixed.
205. Mr Mackey asked the Respondent about the monthly rent of £400 and housing

benefit only being £361.24 as a result of which there is a monthly shortfall. The tribunal interjected at this point to remind Mr Mackey that housing benefit is paid four weekly not monthly.

206. Mr Mackey indicated to the Respondent that the tribunal had heard evidence that there had been no payment of rent since November 2018 as a consequence of which arrears accrued. The Respondent repeated that she had no awareness of any arrears. She had been told that there were no arrears. The Respondent stated that in her view that the landlord was telling lies. She said that the Schedule he had produced was not correct. If there had been an anomaly with the rent then the Council would have informed her.
207. Mr Mackey challenged the Respondent as she had given earlier evidence about an appeal. The Respondent said this was nothing to do with rent and was to do with repairs. Mr Mackey challenged the Respondent had produced no evidence of communications between her and the Council. The Respondent replied with "same answer".
208. Mr Mackey referred to a letter dated 4th December 2018 from Aberdeenshire Council addressed to the landlord indicating that the rental payments had been suspended from 4 December 2018. He asked how she explained that information relative to her position. The Respondent replied that she knew payments had been suspended due to investigations into the landlord. There were no rent arrears. The Respondent said she had no knowledge of the content of that letter.
209. Mr Mackey suggested that if there were no benefits being paid then there would be rent arrears. The Respondent said it was not her issue. There was an investigation as to whether the landlord was a fit and proper person. She did not ask that the rent be suspended. She was told rent would be put into a separate account of until a decision was made as to whether the landlord was a fit and proper person.
210. Mr Mackey said the Respondent had produced no evidence of any such investigation. The Respondent repeated that she had not lodged the evidence and that, as she had intimated several times, she had no finances to do so.
211. Mr Mackey asked whether she had any information as to when the suspension was to be lifted. She said she had sent numerous emails and that she was waiting to find out.
212. Mr Mackey asked about her reference to an appeal and trying to get benefits restored. The Respondent said she was appealing against the landlord not getting rent. She wanted rent restored and paid whilst the investigation took place. She could not remember when the appeal was lodged. Mr Mackey suggested there was no such appeal. The Respondent replied that it was at her request that the landlord was sent a letter about rent not being paid and asked for the reasons for that to be listed. That had not been done and she would take that up with them. Mr Mackey suggested this was not very credible.
213. Under questioning from Mr Mackey the Respondent said she had any no awareness of being reported to the Police about antisocial behaviour and that she had never been investigated, spoken to or charged with dog control offences. She said that was not what she was here for. Mr Mackey questioned whether or not the issue of a dog control notice would constitute antisocial behaviour if dangerous animals were on the loose. The Respondent said she had never been formally charged, that the

matter had been passed straight to the Procurator Fiscal for consideration of a case against her and she said she had never been questioned or cautioned by the Police regarding a breach of a dog control order. She was aware of an investigation by the Procurator Fiscal.

214. Mr Mackey suggested that it was not true that she was not aware of being investigated because she had been charged. The Respondent replied that all she knows is that the case went to the PF. Mr Mackey indicated that the tribunal had heard evidence that there were proceedings before the Procurator Fiscal. The Respondent said yes but not in relation to antisocial behaviour. Mr Mackey asked if she was aware proceedings regarding an alleged breach of a dog control order. She said, yes. Mr Mackey asked whether she considered dog aggressing to be antisocial behaviour. The Respondent said that the only evidence was that he believed the dog to have bitten. Mr Mackey asked whether people being alarmed by dogs and feeling threatened did not constitute anti social behaviour. The Respondent said no, the witnesses did not feel alarmed being around dogs. The issue is of the post lady being bitten. The Respondent's position was that the witnesses were telling lies.
215. Mr Mackey asked whether the Respondent did not think lack of control represented nuisance or annoyance or threats. The Respondent said she had full control of the dogs, the witnesses were nothing but liars and how else would that explain the photos and the dates on them if they were not liars.
216. Mr Mackey asked if the Respondent considered the proceedings "one big conspiracy" and that everything had been made up. The Respondent said yes it was "one big lie". She said she had never lost control of the dogs. She said no one had ever been bitten by a dog. She said the dog had never jumped on anyone and that if anyone says otherwise then it is a lie. She said there was no basis for court proceedings and that it was all just nonsense. The Respondent said the Procurator Fiscal had brought the charge on the basis of evidence which may or may not be true. Mr Mackey asked the Respondent if she could accept that what the witnesses said could be true. She said Lisa, who took the photo, told her that it was all made up and untrue but was scared to come forward.
217. Mr Mackey referred to an extract from the Press and Journal dated 8th October 2018 and suggested that the Respondent was the 30-year-old woman referred to. The Respondent said she had never been charged by the Police only referred to the Procurator Fiscal. She said that there had been no trial regarding a breach of a dog control order. This was to be determined in due course. She that she is the subject of these proceedings still to be determined. The Respondent said she had also been to speak to Detective Sgt Lumsdaine who could not give her a charge date and confirmed that she had not yet been charged.
218. Mr Mackey asked whether during her stay at the Property she had received visits from Police. She said no, all visits were at her behest. Mr Mackey asked whether the Police had not attended in response to concerns of other persons. The Respondents said that they had only once knocked on her door in relation to anything else.
219. On re-examination Mr Fraser asked whether the Police had ever attended to caution and charge the Respondent about antisocial behaviour regarding dog offences. The Respondent said no. The Respondent said that she had never been taken by the Police to a Police Station and formally charged with any dog offences. Mr Fraser stated that it had been reported that the Police were in attendance on 40 occasions. The Respondent said she had made over 300 calls to the Police since mid February

- or March 2018. Mr Fraser asked whether the Police had ever "addressed" him or the Respondent at 7 Dundonnachie Street regarding offences against them. The Respondent said no. She said there was one occasion a woman across the road who was not called as a witness was taking a photo of her.
220. With regard to the appeal, the Respondent explained that she talked to the landlord registration team as there was no one to contact about repairs and there were numerous things wrong with the Property. The Respondent said she had asked for rent to be stopped in March 2018. She said the landlord was not entitled to rent because of repairs and "things not issued" as part of the Tenancy Agreement. As part of that process the rent was stopped in September. The Respondent said she was made aware of the tribunal and allegations of arrears. The Council said there were none and that the housing benefit would be paid into an account and held until the decision was made as to whether the landlord was fit and proper. She said that Megan Simpson and John Simpson might not be entitled to a rent from the start of September. She also said that they were only entitled to payment when the Respondent was physically in the Property and they were paid rent in January 2018 when they were not so entitled. The Respondent said they were not entitled to rent at all due to a fire safety certificate and EICR not having been given and no smoke detection and heat detectors installed. She said the electrics were a major issue. The Respondent said Evelyn Buchanan was dealing with matters. She referred to the Head of the Private Sector Unit putting in the complaint. She also referred to "Elaine" whose surname she could not recall.
221. The Respondent said that the Council paid the landlord directly as she was no good with finances and that had been confirmed by a medical report. She said that she was absolved from responsibility for payment. From September onwards the Respondent said that it was "Elaine" and Evelyn Buchanan who had notified the landlord that he was not entitled to rent.
222. Mr Fraser asked whether the Respondent had made a "submission that raised a compatibility minute". The Respondent said yes and it had been accepted.
223. With regard to the photos and the dates, the Respondent confirmed that these had been produced by David Gibb. The first is dated 20th August and was produced at the third Case Management Discussion which she believed took place in September. The second photograph was submitted with details blacked out when submissions were received. The Respondent said there was only one photo, namely the first one. The time stamp is 11:53. When the second photo was tendered Lisa Balloch's name had been blacked out. She is the daughter of one of the witnesses. Mr Fraser asked the Respondent where the anomaly originated. The Respondent said the photograph had been "doctored" to send to the tribunal and this had been accepted by the Procurator Fiscal.
224. Mr Fraser asked whether the Press and Journal extract produced related to her. She said she didn't know. She was not named in it. She said it could relate to someone else.
225. The Respondent's evidence concluded.
226. Mr Fraser once again made reference to re-calling witnesses. The tribunal refused any application by or on behalf of the Respondent for witnesses to be re-called. Mr Fraser on behalf of the Respondent therefore closed the Respondent's case.



*12 March 2019*

227. When the Hearing continued on 12th March 2019 Mr Mackey was present for the Applicant. The Respondent attended alone. She indicated that Mr Fraser had collapsed after the Hearing the previous day and would not be attending. Accordingly, she would be representing herself that day.

### **Submissions for Applicant**

228. Mr Mackey submitted that if the legal basis for the grounds of eviction detailed in the Applications is established then in terms of Section 51 of the Private Housing Tenancies (Scotland) Act 2016, the tribunal must grant an eviction order.

#### *Application 1244*

##### *(a) Keeping Pets*

229. Mr Mackey submitted that the Respondent has breached the lease by keeping dogs without consent. He referred to Clause 29 of the lease and invited the tribunal to accept the evidence from the Applicant's representative, John Simpson, that no permission had been granted. Mr Mackey reminded the tribunal that no evidence of any sort had been submitted by the Respondent to establish that there had been a written variation of the lease. He referred to the Notes of the Case Management Discussion on 25th September 2018 when the issue was previously canvassed and the Respondent was required by the tribunal to submit any written communications to support her position that the lease had been varied. Despite the explicit direction of the tribunal, no evidence had been produced. Given the absence of contrary evidence Mr Mackey submitted that the ordinary meaning of Clause 29 stands and the Respondent is in clear breach thereof.
230. With regard to reasonableness Mr Mackey submitted that this Application was first made in May 2018 and despite the time that had since elapsed no evidence had been submitted by the Respondent. He said this demonstrates, as a minimum, a disregard by the Respondent of her obligations under the lease and her attitude towards the tribunal not to comply with a clear direction. He said no credence should be given to the Respondent's position as it was not credible or reliable. He said the Respondent had communicated with the tribunal quite liberally and there was no reason why the evidence if it existed had not been produced.
231. Mr Mackey asked that the tribunal to find the ground of eviction established under Ground 11 and exercise its discretion by finding it reasonable for an order for eviction to be granted given the serious ramifications of the presence of the dogs and what had resulted from their presence. He said the breach was therefore a serious one.

##### *(b) Deposit*

232. Mr Mackey referred to the failure by the Respondent to pay the deposit being a breach of the tenancy and a ground of eviction under Ground 11 of Schedule 3 of the 2016 Act. He said that in terms of Clause 10 of the lease, the Respondent had a clear obligation to pay a deposit of £300 at or before the start of the tenancy and that never happened. He referred to the evidence of John Simpson and submitted that no contradictory evidence had been produced as a consequence of which the tribunal should find the deposit never to have been paid in violation of the lease.

233. He also said it was reasonable for the tribunal to find non-payment a ground of eviction. He referred to the Respondent's evidence that the contractual obligation to pay the deposit had been waived. He said the Respondent had failed to produce and put before the tribunal any kind of evidence to support her position that the contractual obligation had been waived and her position was therefore not credible. The issue had been identified at the Case Management Discussion on 2nd August 2018 and she had plenty time to produce evidence if it existed. He said that the Respondent had not fully engaged with the proceedings to bring them to a conclusion or to assist the tribunal.

*(c) Failure to Pay Rent*

234. Mr Mackey referred to the Respondent's failure as being in violation of the lease and a ground of eviction in terms of Ground 12 of Schedule 3 of the 2016 Act. Whilst failure to pay rent is both a mandatory and discretionary complaint he proceeded on the discretionary ground (ground 12(3)) alone. He submitted that the tribunal should find the Respondent to have been in arrears for three or more consecutive months and that it is reasonable to issue an order for the eviction as a result. Mr Mackey referred to the evidence of John Simpson that the level of arrears had increased from November to approximately £1400 and that no further payments had been made since that time. He referred to the evidence before the tribunal that the Respondent's Housing Benefit had been suspended and to the verbal evidence of John Simpson that Housing Benefit had been cancelled with effect from January 2019. The issue of non-payment of rent had been raised at the outset of the proceedings and the Respondent cannot claim ignorance of the position. She was well aware that arrears had accrued and were being pursued as a ground of eviction at the Case Management Discussion in August last year. Mr Mackey said it was a fundamental obligation of a tenancy that rent be paid and the principal obligation lies at the door of the tenant and no one else. The obligation cannot be subcontracted to the Council.
235. With regard to reasonableness the tribunal required to consider whether a delay or failure in payment of housing benefit is referable to an act or omission of the tenant. Mr Mackey said that Housing Benefit does not give the tenant an amnesty from the obligation to pay rent and that the tribunal should not give any credit or exercise its discretion favourably when the tenant contributed by his or her own acts or omissions to delays, suspension or cancellation causing arrears. He said the onus is on the Respondent to satisfy the tribunal that any non-payment of Housing Benefit is not her responsibility and that she failed to discharge that onus. He said the Respondent's position with regard to rent arrears is neither consistent nor credible, that her evidence appeared to fluctuate and that no evidence had been put before the tribunal to contradict the position with regard to the arrears. He said that at some points during the Respondent's evidence she was not sure of the arrears position, at other times she said there were no arrears and on other occasions she said that the Council had not told her of any arrears. He referred to the Respondent's evidence about some kind of appeal. However, despite many months having passed the Respondent had failed to put any evidence before the tribunal. He said that the allegations of an investigation had not been put to John Simpson when his evidence was given. He said the Respondent's position was not credible and invited the tribunal to find the Respondent to be in arrears by three or more consecutive months and that it was reasonable for an eviction order therefore to be granted.

*(a) Access for inspections*

236. Mr Mackey referred to Clause 19 of the lease which deals with access for repairs, inspections and valuations. He said the tribunal heard evidence that the Applicant had tried to exercise its contractual right to carry out inspections. The required notifications were provided to the Respondent in advance on two occasions by recorded delivery post and then by Sheriff Officer. He said there was no room for ignorance on the part of the Respondent. There was a clear condition in the lease that the Applicant was entitled to inspect. The Respondent refused to give access and he asked the tribunal to find John Simpson's version of events credible and reliable. He said it was an important condition of any tenancy that a landlord be able to inspect after notification is given. In this instance the Applicant had received reports of items being removed and it was legitimate to inspect which was obstructed.
237. In relation to reasonableness, when set against the background of other multiple breaches, he said it was symptomatic of the Respondent to disregard her obligations under the lease. He said it was clear that the Respondent had failed to comply and that the tribunal should exercise its discretion and find it reasonable to grant an eviction order. No contradictory evidence had been offered by the Respondent.

*(b) Failure to take care of reasonable care of landlords property*

238. Mr Mackey indicated that it was an implied condition of the lease that the Respondent is under a duty to take reasonable care of property belonging to the Applicant. He referred to evidence heard and photographs exhibited which demonstrated that a number of pieces of furniture in situ when entry was taken had been removed and deposited to the rear of the Property and to the front in plain view. Again he said this was a consistent pattern and symptomatic of the Respondent's disregard of her obligations. Mr Mackey invited the tribunal to find that the Respondent failed to comply with her obligations under the tenancy and to find it reasonable to grant an eviction order in the circumstances.

*(c) Domestic rubbish dumped in the neighbour's garden*

239. Mr Mackey said this was a breach of Clause 20 of the lease which sets out in detail prohibitions on the Respondent and required her to have respect for others by not engaging in antisocial behaviour towards, amongst others, neighbours. Mr Mackey referred to the definition of antisocial behaviour provided in the lease and to there being explicit reference to the Respondent not leaving rubbish in inappropriate places and at inappropriate times. He said the Respondent was responsible for dumping domestic rubbish into the neighbour's garden causing distress and alarm to the neighbours who had to involve Environmental Health and who had been reluctant to confront the Respondent. He said the resultant distress, alarm and annoyance qualifies as nuisance. He said that the incidents not only breached the Respondent's obligations under the lease but also qualified as antisocial behaviour. Mr Mackey referred to Ground 14 and sub-paragraphs two and three thereof. He submitted that conditions (b) and (c)(i) were satisfied. With regard to the threshold of relevancy, he said there were two sub conditions namely who the behaviour is in relation to and where the behaviour occurred. He said that given that the incident was relative to an adjoining neighbour and within the neighbour's property that test was satisfied. He said there is an immediacy between the Respondent and the

neighbour. He asked the tribunal to hold the incident as qualifying antisocial behaviour. He submitted that the evidence of the neighbour, Kathleen Balloch, was credible and reliable and that no contradictory evidence had been heard. He submitted that given the explicit requirement in the lease to be respectful to neighbours reinforces and complements the provision on antisocial behaviour. He invited the tribunal to find the Respondent both breached Clause 20 and that it was reasonable to grant an eviction order on that basis. He also said that the dumping of rubbish qualified as antisocial behaviour as defined in Ground 14.

*(d) Failure to control dogs*

240. Mr Mackey reminded the tribunal that it had heard evidence that a number of incidents concerning the dogs had taken place and of the Respondent's difficulties in controlling the dogs specifically in relation to Mrs McGhee, the post lady. He referred to Mrs McGhee, whilst going about her duties, having been within the vicinity of the Property and being aggressed by one of the Respondent's dogs who jumped upon her. This incident left the post lady extremely shaken and frightened and she gave evidence that previous concerns about the dogs had been reported to her superiors which has led to post no longer being delivered to the Property. He referred to Mrs McGhee having suffered a subsequent attack by one of the dogs leaving her with a serious bite wound that required stitches. She gave evidence that the Respondent was in the vicinity but had lost control. He submitted that at the time the Respondent had a duty to control her dog and he invited the tribunal to find the evidence of Mrs McGhee to be credible and reliable along with the evidence of the other witnesses for the Applicant. He submitted that the Respondent's failure to control the dog resulted in an attack which qualified as antisocial behaviour in relation to another person all in terms of Ground 14(3). He said the Respondent was reckless as to how she handled the dog and allowed it to attack Mrs McGhee, doing nothing to stop the attack. He submitted that there can be no doubt that the attack caused alarm, distress, nuisance and annoyance to Mrs McGhee with the repercussions and effect it had on her.
241. Mr Mackey said the tribunal required to consider who the antisocial behaviour took place in relation to and where the antisocial behaviour occurred. He said the failure to control the dog resulted in the attack on a post lady who was a well-known member of the community going about her lawful business. She was entitled to expect that she would be safe and that property owners would ensure that animals were properly controlled and that she would be protected from the possibility of such an attack. The attack happened in the vicinity of Dundonnion Street and with regard to reasonableness he referred the tribunal to the attack not being an isolated incident, previous incidents having taken place and steps having been put in place to try to safeguard Mrs McGhee.
242. He said the Respondent could not claim to be ignorant of all of this and that she had previously confronted the post lady as to why the post had stopped. He said the Respondent had ill feelings towards the post lady.
243. With regard to reasonableness Mr Mackey referred the tribunal to the evidence of other witnesses about the Respondent's ability to control the dogs and the evidence that demonstrates that at the time of the attack relevant dog control orders were in place requiring that the dogs be muzzled. Mr Mackey said the Respondent flagrantly breached those requirements demonstrating a lack of respect for her obligations. He said no contradictory evidence had been presented. He said the Respondent, in her evidence, had simply tried to characterise the whole incident as a grand conspiracy,

as a plot against her and that all witnesses were liars. In the Respondent's view the incident simply never happened. Mr Mackey said the Respondent's position lacks any credibility. He said the Respondent accepted that that some form of criminal proceedings are pending in relation to the incident. Mr Mackey submitted that the Respondent had engaged in relevant antisocial behaviour and the ground had therefore been established.

*(e) Antisocial Behaviour*

244. Mr McKee referred to evidence of antisocial behaviour in relation to Mr Fraser. He submitted that Mr Fraser can be considered to be an associate of the Respondent in terms of Ground 15(4). He resides or lodges in the Property or at least has been admitted by the Respondent on more than one occasion. Evidence was heard from witnesses that they had heard banging on walls and the voice of Mr Fraser giving verbal abuse on more than one occasion. The tribunal interjected that there was no ground of eviction narrated in either application relative to the behaviour of Mr Fraser. The Applicant's solicitor accepted the position.

*(f) Police Attendances*

245. Mr Mackey referred to the Police having attended on as many as 40 occasions.

*(g) CCTV*

246. Mr Mackey confirmed that in relation to Clause 26 of the lease and the installation of CCTV, that he was not insisting upon that ground.

**Respondent's submissions**

247. Prior to making her submissions the Respondent asked again for Mr Mackey to recuse himself from the proceedings. The tribunal refused such a suggestion.
248. The Respondent also asked the tribunal if it had received all emails previously sent by her or on her behalf during the progress of the applications. The tribunal advised the Respondent it had substantial files for the applications with numerous such emails and it was for the Respondent in the course of her submissions to identify those emails to which she wished the tribunal to have regard in reaching a decision on the applications. (In the event she referred to no such emails.)
249. The Respondent opened her submissions by referring to Section 57(2) of "the Scotland Act". The tribunal asked which Act the Respondent was referring to. She could not provide any further details. (The tribunal speculates that the Respondent intends to refer to the Scotland Act 1998). She stated that the tribunal is a public body acting "in breach of Article 6, paragraph 1" which provides her with a right to an impartial tribunal. She submitted that the tribunal is not impartial and that despite having asked several times whether the tribunal dealt with all law or only housing law, that question had not been answered. The Respondent narrated that the tribunal had acted in breach of the requirement to act impartially "due to unwarranted restrictions on legal points" which had been ignored and not dealt with.
250. The Respondent referred to a "legal submission" presented the previous day (being an email sent by the Respondent to the tribunal office on 11th March 2019). She submitted that there was "wilful blindness" on the part of the tribunal that points raised therein were not addressed. The tribunal asked the Respondent to state

precisely what she was suggesting had not been dealt with by reference to her email of 11th March. She said the tribunal had not dealt with the recusal of the solicitor acting for the Applicant.

251. The Respondent referred to a contravention of the Promissory Oaths Act 1868, and submitted that the tribunal could not offer any effective redress or remedy or accountability.
252. The Respondent stated that with regard to Article 6, paragraph 3 she was entitled to equality of arms and had no equal standing in these proceedings. She referred again to "all legal points raised" having never "gone through the proper procedures" with answers back within five days. She indicated these points had not been dealt with by the tribunal in accordance with the provisions of "the Tribunal Act".
253. The Respondent referred again to "yesterday's legal points" and suggested that the tribunal had not allocated time to hear them or had ignored them. She submitted that the tribunal had never been impartial and referred to maladministration.
254. The Respondent said that solicitor acting for the Applicant "has no right of audience" and has no valid contract with Megan Simpson not being registered and therefore never in a position to "validate the contract". She said the contract had been signed illegally and that no Certificates had been given as a consequence of which the contract could not stand. The Respondent began to refer to electrical and gas safety Certificates, to "the Carbon Monoxide Act 2015" and to the fire in the Property being more than 20 years old. However, the tribunal reminded the Respondent that these were not disputed issues before the tribunal and could not be taken into account.
255. The Respondent submitted that the Scottish Ministers had not given the tribunal statutory authority to act in the way that it had and that the tribunal was "now subject to a devolution minute". The tribunal asked the Respondent what she meant. The Respondent said the tribunal had shown wilful blindness to all issues raised, not responding within five days, and had allowed a solicitor to act on hearsay with "all evidence falsified". She said that if the solicitor had done due diligence the case would not be before the tribunal.
256. The Respondent stated that all provisions and acts relating to the Housing and Property Chamber had been denied leaving her with no fair trial.
257. The Respondent said that the solicitors involved for the Applicant, Masson & Glennie, had been reported under the Legal Profession and Legal Aid (Scotland) Act 2007 and were also to be reported and held accountable "on private and commercial liability". She said a private action "will be getting raised". Any reporting of the solicitors or possibility of proceedings being raised against them is not of relevance to the tribunal.
258. The Respondent stated that the Scottish Ministers have prescribed that in the Act pertaining to the Housing and Property Chamber that the tenant must have six months in a property before any notice for eviction can be served. The tribunal asked the Respondent to confirm the statutory provision forming the basis for that submission. The Respondent said she could not do so. The Respondent said that the first notice received was within 30 days and the second within the fifth month of the tenancy commencing thus making the applications to the tribunal and all hearings null and void.

259. The Respondent also stated that the legal member of the tribunal had not checked whether the Respondent had another property to go to before considering eviction. The tribunal does not require to do so.
260. The Respondent said that when giving evidence she had suggested that the proceedings were borne out of harassment whereby the Police had told that John Simpson that Mr James Fraser was a paedophile. There had been no rebuttal and no questions by the solicitor to address that issue and why John Simpson had changed towards them.
261. The Respondent also referred to a call made by Mr John Simpson whereby she told him that the Police had made life difficult for herself and Mr Fraser as child abuse victims. There had been no rebuttal by Mr Simpson and no questions by his solicitor.
262. The Respondent said there was no contract between herself and Mr Simpson whatsoever. She said the solicitor has no case in any Court or tribunal which presented John Simpson as landlord. The contract is with Megan Simpson. She said that the contract was therefore "under duress at the point of signing". She said that "High Court authorities" indicate that she has an assured tenancy with security of tenure until the original contract is remedied. The tribunal asked the Respondent what authorities she was referring to. She said she did not have them to hand, that they had been "clear for many years" and that she had an assured tenancy with security of tenure.
263. The Respondent referred to Mr James Fraser as an entitled resident allowing him to remain in the Property with all entitlements so that even if an eviction order was granted, Mr Fraser would remain in occupation.
264. The Respondent stated that the tribunal could not consider rent payments as the letting agent, Megan Simpson, is under investigation and if she is found to have breached obligations then there is no entitlement to any rent whatsoever. The Respondent also said that Megan Simpson is not entitled to rent as she is not registered as a letting agent.
265. The Respondent said that on the solicitor's own admission, the grounds of eviction relative to antisocial behaviour and dogs had not been established and could not be taken into account by the tribunal.
266. With regard to the alleged rent arrears the Respondent said there were no arrears. The Respondent said that the Scottish Ministers had made provision in the "Rent Scotland Act 2017" that where the rent entitlement is afforded by state benefits and for reasons is not paid either by way of an anomaly with the Council or an investigation into the landlord then this cannot be relied upon. There is no such Act.
267. With regard to the "verbal binding agreement" the Respondent said that her "firm belief" is that the only means of knowing the contents of the agreement is by calling Megan Simpson as a witness and that this was the only reason that she had attended the previous day to hear Megan Simpson's evidence and to cross-examine her.
268. The Respondent stated that in order for a verbal tenancy agreement to exist it must have three essential elements. The Respondent referred to the case of Johnston v Party but was unable to give any citation therefore. The Respondent said the tribunal would be able to find it. The tribunal was unable to do so.

269. The Respondent stated that she had a legally binding verbal tenancy for 60 months with permission to keep dogs, with front and back access, with the Property being of a tolerable standard and with no deposit being due. She said that offer was accepted and that she had a full recording of the facts.
270. The Respondent stated that some payment, known as consideration, had to be paid and as Megan Simpson had received money from the Council this created a binding contract. Megan Simpson gave no notice of backing out and therefore the contract still stands. The Respondent said she had 24 hours to back out the agreement and did not do so. The tribunal enquired as to where the 24 hour period referred to arose and the Respondent referred again to the case of Johnston v Party and said it was "written in numerous different contract laws".
271. She said the written agreement had not been amended to take into account the verbal agreement and said that if the tribunal acted on the written agreement alone her argument would be that John Simpson and Megan Simpson are in breach of the written contract and are not entitled to rent. She referred to not having been provided with the Easy Read Notes and to no electrical certificates. The tribunal indicated that it would not consider any reference to the Easy Read Notes or to certificates as these had not previously been highlighted as disputed issues for consideration. She said there had been numerous things not given to her and the written contract could not stand and therefore there was no entitlement to any rent whatsoever.
272. The Respondent said that John Simpson is not the landlord, that he is only the owner of the Property and that the action cannot therefore go ahead. The Respondent said it was clear that John Simpson was lying and that the reason evidence was not submitted to the tribunal and intimated is to show a blatant attempt to put in any grounds to evict. She said that the grounds of eviction had changed from the first application resulting in the second application.
273. She said she had no means to submit copy documents, she might have been able to submit two copies but not six as required. She stated that because she is in receipt of benefits some sort of arrangement ought to have been put in place and was not done.
274. The Respondent stated that during his evidence Mr John Simpson stated that that he had no problem with her, only with James.
275. With regard to the evidence of the post lady, the Respondent said her statements did not match the Affidavit previously given and there was an anomaly over dates on photographs which had been signed in the sworn Affidavit as submitted by David Gibb and signed in front of a witness. She said that David Gibb, the witness or Linda McGhee should have noticed the date stamp on signing. On submitting the two photographs Linda McGhee could not tell why the date stamp was there and avoided questions as to why the date stamp had been removed. When shown the photographs Linda McGhee said that the wound was gushing with blood which had miraculously congealed within seconds of the incident.
276. She said Kathleen Balloch's evidence contradicted that of Linda McGhee. Kathleen Balloch made no mention of blood whatsoever or that her daughter had been present to take the photograph. The Respondent referred to Kathleen Balloch as having a guilty mind.



277. With regard to Mandy Watson's evidence the Respondent could not see any reason as to why she had been asked to be a witness. She had no issue with the Respondent or James Fraser. Her only evidence was that she was scared of the dogs due to what she had heard not seen and therefore her evidence was all hearsay. The only reason why she had attended according to the Respondent was to portray antisocial behaviour by suggesting the Respondent had been abusive to her and her husband. During cross examination it was established that Mandy Watson and her husband, Stewart, had been charged by the Police.
278. With regard to the evidence of Police Constable Dewar, the Respondent said that during cross examination he could not recall the day he attended at the Property and when informed that the Respondent was in Falkirk he said it could be another day at a different time. The Respondent said the Police Officer "started panicking" saying that he needed to check the Storm system. She said it was only when pointed out to him that in order to bring criminal charges he would have to defer to his notebook. He referred to the date he claimed the dogs acted aggressively towards him but he stated he arrived in the afternoon. The Respondent's point was that on this occasion he ought to have recorded everything but there was no recording.
279. The Respondent again sought to take issue with the solicitor representing the Applicant making reference to "petitions". The tribunal indicated that it was not prepared to hear such remarks.
280. The Respondent indicated that the contract was "in duress", that no rent arrears can be established until the Council has finalised the investigation therefore no eviction order could be granted until established if the landlord is entitled to rent or not.
281. The Respondent said that in order to establish a verbal contract Megan Simpson must be brought to give evidence.

#### Final remarks

282. In response to the Respondent's submissions, Mr Mackey briefly referred to the evidence of Linda McGhee saying that she did not attest to the photograph in evidence taken in the aftermath of the incident and invited the tribunal to accept her evidence as credible. He said it was farcical for the Respondent to suggest a conspiracy with regard to the bite of the post lady.
283. The Respondent remarked that at no time had she "rebutted that Linda McGhee might have been bitten" only not by her dog. She said it was clear from the date stamp that it was not her dog.
284. The Respondent also stated that Lisa Balloch would have attended to give evidence but had been intimidated.

#### **Reasons for Decision**

##### *Preliminary Matter*

285. Subsequent to the conclusion of the Hearing the Respondent sent to the tribunal numerous emails purporting to make further representations. Given that those representations have been made after the Hearing had concluded thereby giving the Applicant no opportunity to respond thereto, these representations have not been considered by the tribunal in reaching its decision.

## Legislation

286. Section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act") states:-

### **"51 First-tier Tribunal's power to issue an eviction order**

- (1) *The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.*
- (2) *The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.*
- (3) *The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.*
- (4) *An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order."*

287. The grounds of eviction are contained with Schedule 3 of the 2016 Act. Application 1244 proceeds on the basis of grounds 11 and 12 of Schedule 3. Application 2430 proceeds on the basis of grounds 11, 14 and 15 of Schedule 3. The grounds relevant to these applications state:-

### **"11 Breach of tenancy agreement**

- (1) *It is an eviction ground that the tenant has failed to comply with an obligation under the tenancy.*
- (2) *The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—*
  - (a) *the tenant has failed to comply with a term of the tenancy, and*
  - (b) *the Tribunal considers it to be reasonable to issue an eviction order on account of that fact.*
- (3) *The reference in sub-paragraph (2) to a term of the tenancy does not include the term under which the tenant is required to pay rent."*

### **"12 Rent arrears**

- (1) *It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.*
- (2) *The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—*

*(a) at the beginning of the day on which the Tribunal first considers the application for an eviction order on its merits, the tenant—*

*(i) is in arrears of rent by an amount equal to or greater than the amount which would be payable as one month's rent under the tenancy on that day, and*

*(ii) has been in arrears of rent (by any amount) for a continuous period, up to and including that day, of three or more consecutive months, and*

*(b) the Tribunal is satisfied that the tenant's being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.*

*(3) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—*

*(a) for three or more consecutive months the tenant has been in arrears of rent, and*

*(b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.*

*(4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.*

*(5) For the purposes of this paragraph—*

*(a) references to a relevant benefit are to—*

*(i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),*

*(ii) a payment on account awarded under regulation 91 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."*

## **"14 Anti-social behaviour**

*(1) It is an eviction ground that the tenant has engaged in relevant anti-social behaviour.*

*(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—*

*(a) the tenant has behaved in an anti-social manner in relation to another person,*

*(b) the anti-social behaviour is relevant anti-social behaviour, and*

*(c) either—*

*(i) the application for an eviction order that is before the Tribunal was made within 12 months of the anti-social behaviour occurring, or*

*(ii) the Tribunal is satisfied that the landlord has a reasonable excuse for not making the application within that period.*

*(3) For the purposes of this paragraph, a person is to be regarded as behaving in an anti-social manner in relation to another person by—*

*(a) doing something which causes or is likely to cause the other person alarm, distress, nuisance or annoyance,*

*(b) pursuing in relation to the other person a course of conduct which—*

*(i) causes or is likely to cause the other person alarm, distress, nuisance or annoyance, or*

*(ii) amounts to harassment of the other person.*

*(4) In sub-paragraph (3)—*

*"conduct" includes speech,*

*"course of conduct" means conduct on two or more occasions,*

*"harassment" is to be construed in accordance with section 8 of the Protection from Harassment Act 1997.*

*(5) Anti-social behaviour is relevant anti-social behaviour for the purpose of sub-paragraph (2)(b) if the Tribunal is satisfied that it is reasonable to issue an eviction order as a consequence of it, given the nature of the anti-social behaviour and—*

*(a) who it was in relation to, or*

*(b) where it occurred.*

*(5) In a case where two or more persons jointly are the tenant under a tenancy, the*

*reference in sub-paragraph (2) to the tenant is to any one of those persons."*

**"15 Association with person who has relevant conviction or engaged in relevant anti-social behaviour**

*(1) It is an eviction ground that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour.*

*(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—*

*(a) a person who falls within sub-paragraph (4)—*

*(i) has received a relevant conviction as defined by paragraph 13(3), or*

*(ii) has engaged in relevant anti-social behaviour,*

*(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, and*

*(c) either—*

*(i) the application for an eviction order that is before the Tribunal was made within 12 months of the conviction or (as the case may be) the occurrence of the anti-social behaviour, or*

*(ii) the Tribunal is satisfied that the landlord has a reasonable excuse for not making the application within that period.*

*(3) In sub-paragraph (2)(a)(ii), "relevant anti-social behaviour" means behaviour which, if engaged in by the tenant, would entitle the Tribunal to issue an eviction order on the basis that the tenant has engaged in relevant anti-social behaviour.*

*(4) A person falls within this sub-paragraph if the person—*

*(a) resides or lodges in the let property,*

*(b) has sub-let the let property (or part of it) from the tenant, or*

*(c) has been admitted to the let property by the tenant on more than one occasion.*

*(6) In a case where two or more persons jointly are the tenant under a tenancy, the references in sub-paragraphs (3) and (4) to the tenant are to any one of those persons."*

**Decision on Application 1244**

### *Permission to keep dogs*

288. The terms of Clause 31 of the Tenancy Agreement are clear. In the Notes of the Case Management Discussion which took place on 25 September 2018 relative to Application 1244 the tribunal records consideration of the Respondent's letter to the tribunal dated 1 August 2018 in which she stated that she had permission from the Applicant's agent, Megan Simpson, to keep dogs at the Property and that this permission was given on 11 January and 20 January 2018 and was recorded in a text message (also referred to in the Notes as an email) from Megan Simpson.
289. The Notes of the Hearing Discussion on 14 November 2018 relative to both Applications 1244 and 2430 record that the parties were directed by the tribunal to lodge any productions to be relied upon no later than 14 days before the next Hearing date (being the Hearing then assigned to commence on 28 January 2019).
290. At the Hearing the Respondent did not call Megan Simpson to give evidence. The Respondent did not produce to the tribunal a copy of any text or email message from Megan Simpson giving permission for the keeping of dogs at the Property despite having been directed to do so.
291. The tribunal did not consider the Respondent's evidence to be credible. Given the clear terms of the signed Tenancy Agreement and the credible testimony of Mr John Simpson the tribunal is satisfied that the presence of the Rottweiler dogs in the Property is without the Applicant's consent (written or otherwise) and therefore constitutes a breach of Clause 31 of the Tenancy Agreement. Having regard to the nature of the breach of the Tenancy Agreement the tribunal considered it reasonable to issue an eviction order in terms of ground 11 of Schedule 3 to the 2016 Act.

### *Failure to pay the deposit*

292. The terms of Clause 10 of the Tenancy Agreement are clear. The Respondent's position is that Megan Simpson waived payment of the deposit and that payment is not therefore due. The Respondent did not call Megan Simpson to give evidence nor did she produce any other supporting evidence to satisfy the tribunal that payment of the deposit had been waived. Given the terms of the Tenancy Agreement which the Respondent signed and the credible testimony of Mr John Simpson which, on the balance of probabilities, the tribunal prefers to the evidence of the Respondent, failure to pay the deposit constitutes a breach of the Tenancy Agreement. Having regard to the nature of the breach of the Tenancy Agreement the tribunal considered it reasonable to issue an eviction order in terms of ground 11 of Schedule 3 to the 2016 Act.

### *Rent arrears*

293. The Applicant seeks an eviction order on a discretionary basis under ground 12(3) of Schedule 3 to the 2016 Act. In terms thereof the tenant requires to be in rent arrears for three or more consecutive months and the tribunal must be satisfied that it is reasonable on account of that fact to issue an eviction order.
294. Mr Simpson gave evidence for the Applicant relative to rental payments. It was clear to the tribunal that Mr Simpson did not understand the position regarding housing benefit payments nor was he sure of the arrears accrued. He referred to there being a shortfall of £31 each month between rent due and housing benefit received. That position is simply not correct. Housing benefit was paid by the local authority at

£369.24 every 4 weeks in accordance with normal practice. Rent of £400 is due monthly. Over 12 months, housing benefit payments would total £4,800.12, being 13 payments of £369.24. Over 12 months the rent due would total £4,800, being 12 payments of £400. Accordingly the tribunal did not accept the suggestion that the rent was short each month by £31.

295. Furthermore, Mr Simpson could not confirm whether housing benefit had been paid or not in November 2018. Accordingly, whilst he gave clear evidence that housing benefit had been suspended in December 2018 and therefore no rent had been paid in December 2018 or January 2019, the tribunal was not satisfied that rent had been in arrears for 3 or more consecutive months.
296. As at 1 November 2018 the sum said to be due by the Respondent per the statement lodged by the Applicant was £433.40 which included the unpaid deposit of £300. The outstanding rent was therefore only £133.40 which, in fact, is not technically rent arrears but simply a reflection of the manner in which housing benefit is paid and would level out over the course of a year.
297. On the basis of the foregoing, even although it could be said that there were rent arrears for 3 or more consecutive months, it is not reasonable to issue an eviction order on that basis.
298. Whilst, in her evidence, some time was spent by the Respondent describing an apparent investigation being undertaken by the local authority into the Applicant's entitlement to receive housing benefit, in light of the views of the tribunal as described above, it is not necessary for the tribunal to form a view on that matter.

### **Decision on Application 2430**

#### *Depositing of rubbish.*

299. In the Notes of the Case Management Discussion that took place on 24 October 2018 relative to Application 2430 it is recorded that the Respondent admitted to the tribunal that she had indeed "placed" bags of rubbish in a neighbour's garden but that she had an explanation for doing so. During the course of the Hearing no explanation was provided by the Respondent. Mrs Kathleen Balloch's evidence was that the bags of rubbish were thrown into her garden and that she required to take steps to have the local authority clear them away.
300. The Respondent's actions in throwing bags of rubbish into the garden of Mrs Balloch's property constituted antisocial behaviour in terms of Clause 20 of the Tenancy Agreement being behaviour which caused nuisance or annoyance to Mrs Balloch. Indeed, Clause 20 of the Tenancy Agreement specifically provides that "leaving rubbish in unauthorised places" constitutes antisocial behaviour.
301. The tribunal therefore considered the Respondent's actions to constitute "relevant antisocial behaviour" in terms of ground 14(5) of the 2016 Act as a consequence of which it is reasonable to issue an eviction order.

#### *Police attendance*

302. The Applicant pursues the eviction of the Respondent on the ground that the Respondent or persons residing with her are guilty of antisocial behaviour in that Police Scotland have, on as many as forty occasions since the commencement of the Tenancy Agreement, been required to attend the Property following complaints from

neighbours.

303. The Notes of the Case Management Discussion that took place on 24 October 2018 elaborate on the Applicant's position and the disputed issue is noted to be the extent to which alarm and distress was caused to neighbours by the number of Police visits to the Property. At that CMD the Respondent explained that there had been Police visits. However, these were at her behest.
304. Whilst the tribunal was satisfied that the Police attended Dundonnachie Street on many occasions, the tribunal could not determine that the number of Police visits caused alarm and distress to neighbours per se. There was no evidence heard to that effect.

The tribunal was not therefore satisfied that this ground of eviction was established and determined that no order is appropriate in that connection.

#### *Attack of post lady*

305. The tribunal found the post lady, Mrs Linda McGhee to be an entirely credible and reliable witness. The tribunal was in no doubt that Mrs McGhee had been jumped upon and, on a separate occasion, bitten by one of the Rottweiler dogs whilst in the control of the Respondent.
306. Whilst some time at the Hearing was taken up by the parties looking at photographs of the injury sustained by Mrs McGhee and debating the date of the incident, the tribunal is entirely satisfied that, on the balance of probabilities, the incident when Mrs McGhee was bitten took place on or around 6 September 2018. The Respondent's position was that Mrs McGhee was not bitten by the Rottweiler dog at all. The tribunal did not find the Respondent at all credible in that respect.
307. The attacks of the post lady by the Rottweiler dog whilst in the Respondent's control constitutes antisocial behaviour in terms of Clause 20 of the Tenancy Agreement being behaviour which caused alarm and distress to Mrs McGhee. Indeed, Clause 20 of the Tenancy Agreement specifically provides that "failure to control pets" constitutes antisocial behaviour.
308. The tribunal therefore considered the Respondent's actions to constitute "relevant antisocial behaviour" in terms of ground 14(5) of the 2016 Act as a consequence of which it is reasonable to issue an eviction order.

#### *Breach of Dog Control Order*

309. The Notes of the Case Management Discussion on 24 October 2018 record that the tribunal allowed the Applicant to add an additional allegation that the Respondent breached the terms of a dog control order placed upon her by the authorities on numerous occasions. Whilst not recorded in the Notes this allegation is capable of consideration by the tribunal under and in terms of Section 52(5)(b) of the 2016 Act.
310. There was no evidence of a dog control order having been placed upon the Respondent. The evidence was to the effect that dog control orders were in place in respect of each of the Rottweiler dogs, Cole and Toby, and the email from Aberdeenshire Council dated 11 September 2018 records that the dog control orders are in place against Mr Fraser not the Respondent.
311. On that basis the tribunal does not find this ground of eviction established.



### *Access to Property by Applicant*

312. The tribunal heard evidence that on 24th August 2018 the Applicant's solicitors, Masson & Glennie, wrote to the Respondent by letter dated 24th August 2018 regarding access for an inspection of the Property on 28th August 2018. The letter was sent by recorded delivery post, receipt of which was refused by the Respondent. (The tribunal notes in passing that notices from the Applicant to the Respondent ought to have been served by email in terms of Clause 3 of the Tenancy Agreement.)
313. On 24th October 2018 the Applicant's solicitors, Masson & Glennie, again wrote to the Respondent regarding an inspection of the Property on 29th October 2018.
314. In terms of section 52(5) of the 2016 Act, the tribunal may not consider whether an eviction ground applies unless (a) it is a ground which is stated in the notice to leave accompanying the landlord's application for an eviction order or (b) has been included with the tribunal's permission in the landlord's application as a stated basis upon which an eviction is sought.
315. The correspondence from the Applicant's solicitors to the Respondent dated 24 August and 24 October 2018 asking to inspect the Property both post-date the Notice to Leave dated and served on 7 August 2018. The correspondence dated 24th August and 24 October 2018 cannot therefore form the basis for the statement made in the Notice to Leave dated 7 August 2018 that the Respondent is in breach of Clause 19 of the Tenancy Agreement in that she has refused the Applicant access to the Property despite the relevant contractual notice being given. The tribunal heard no evidence of any contractual notice being given to the Respondent by the Applicant that pre-dated the Notice to Leave of 7th August 2018.
316. On the basis that the tribunal is not satisfied that a ground for eviction existed at the time that the Notice to Leave was served and has not been requested by the Applicant to give permission to allow the ground to, nonetheless, be included in the Applicant's application, the tribunal did not consider an eviction order could be granted against the Respondent relative to a refusal to allow the Applicant access.

### *Installation of CCTV*

317. The Applicant did not pursue the eviction of the Respondent based on the installation of CCTV at the Property and no evidence was heard by the tribunal in that connection. The tribunal therefore did not consider this matter further.

### *Failure to Take Reasonable Care of Furniture*

318. Whilst the tribunal heard evidence that fittings and furnishings had at some stage been removed from the Property by the Respondents, there was no evidence heard that those items had been ruined as the Applicant suggests in the Application. The tribunal does not therefore find this ground of eviction established.

### *Other matters*

319. The tribunal has determined that there are various breaches of the Tenancy Agreement by the Respondent that, individually, form the basis for an eviction order being issued under ground 11 of Schedule 3 of the 2016 Act. For the avoidance of doubt the tribunal determines that these breaches, collectively by reference to

Application 2430, also form the basis for an eviction order under ground 11.

*Notices to Leave – competency.*

320. The Respondent appeared to suggest that the Notices to Leave served by the Applicant were incompetent. The tribunal did not accept that suggestion. The Notices have been issued in accordance with the 2016 Act.

*Case-law*

324. In her submissions the Respondent referred to one case without any citation being given for the benefit of the Applicant or the tribunal. The Respondent did not produce a copy of the case. The tribunal has been unable to identify that case in the absence of any citation. It is not for the tribunal to search out cases to which a party wishes the tribunal to have regard.

*Fair Trial/Equality of Arms*

325. The Respondent made passing reference to the tribunal not being impartial and not having had "a fair trial". She also said she did not have equality of arms in these proceeds. The tribunal rejected these inspecific submissions.

**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.**

Ms Gillian Buchanan

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

2/5/19.  
\_\_\_\_\_  
Date