Statement of decision (incorporating reasons) of the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal")

Chamber references:

FTS/HPC/PR/18/0005	**under sections 36(3) and 37 of the Housing (Scotland) Act 1988 ("1988 Act")**
FTS/HPC/PR/18/0006	**under regulations 9 and 10 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 ("2011 Regulations")**
FTS/HPC/CV/18/0007	**by virtue of section 16 of the Housing (Scotland) Act 2014 ("2014 Act")**
Re:	**13 Baird Road, Newbridge, Edinburgh, EH28 8RU ("the Property")**

Parties:

Mr Nicholas Fraser, 51 Kings Avenue, Longniddry, East Lothian, EH32 0QN ("the Applicant")

Mr Richard Calveley, c/o 4 Sillerknowe Court, Biggar, South Lanarkshire, ML12 6AR ("the Respondent")

Tribunal Members:

Pamela Woodman (Legal Member)
Linda Reid (Ordinary/Housing Member)

The hearing (**"Hearing"**) was held at 10.15am on Monday 23 April 2018 in room D10, George House, 126 George Street, Edinburgh EH2 4HH.

Present (in addition to the Tribunal Members):

The Applicant was not present at the Hearing and had not informed the Tribunal that he would not be attending. The Respondent was represented by his father, Mr Stephen Calveley (**"the Respondent's Representative"**). The Respondent's Representative confirmed that the Respondent was not currently in the United Kingdom and was working overseas. Also present at the Hearing was Alan Kerr in the capacity of clerk to the Tribunal.

Decision of the Tribunal in respect of each application:

FTS/HPC/PR/18/0005	under sections 36(3) and 37 of the 1988 Act – REFUSED
FTS/HPC/PR/18/0006	under regulations 9 and 10 of 2011 Regulations – ORDER FOR PAYMENT OF £850 GRANTED
FTS/HPC/CV/18/0007	by virtue of section 16 of the 2014 Act – REFUSED

Background

1. The Applicant made three applications to the Tribunal (with the case reference numbers and under the respective pieces of legislation referred to above), all in terms of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (**"HPC Rules"**) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended, (**"2017 Regulations"**).

2. More specifically, the applications were made in terms of:

    a. rule 69 of the HPC Rules (*Application for damages for unlawful eviction*) with case reference FTS/HPC/PR/18/0005 – in terms of which the Applicant sought an order for (i) payment of £2,500, which he stated was "a reasonable quantification of the compensation due for the financial loss, distress and anxiety caused to [the Applicant] by the unlawful eviction" and (ii) "payment of expenses";

    b. rule 103 of the HPC Rules (*Application for order for payment where landlord has not paid the deposit into an approved scheme)* with case reference FTS/HPC/PR/18/0006 – in terms of which the Applicant sought an order for payment against the Respondent of £2,550 (being three times the amount of the tenancy deposit of £850) in terms of section 10 of the 2011 Regulations, together with "an award of expenses"; and

    c. rule 70 of the HPC Rules (*Application for civil proceedings in relation to an assured tenancy under the 1988 Act*) with case reference FTS/HPC/CV/18/0007 – in terms of which the Applicant sought an order for (i) payment of £196, which he stated was "overpaid rent", (ii) "return of all of [the Applicant's] belongings as listed in the... inventory [attached to the application] within a period of 7 days, failing which payment in the sum of... £1575..., being the value of the said belongings" and (iii) "payment of expenses".

3. The three applications were accepted by the Tribunal by notices of acceptance all dated 12 January 2018.

4. A case management discussion (**"CMD"**) had been held on Friday 23 February 2018 in relation to all three applications. Detailed notes (incorporating directions) were prepared by the Legal Member following the CMD (**"CMD Notes"**), recording key facts which were agreed during the CMD by both the Applicant and

the Respondent's Representative (on behalf of the Respondent) and also setting out certain other submissions made. Details set out in the CMD Notes are repeated in this statement of decision only to the extent that they are essential to understand the decisions taken by the Tribunal Members at the Hearing.

5. The directions issued to the parties as a result of the CMD (and as recorded in the CMD Notes) were in the terms set out below (*emphasis added by the use of italics and underlying with regard to key points of note*):

"DIRECTIONS

In terms of rule 16 of the [HPC] Rules, the Tribunal hereby directs the parties as follows:

a. on or before (but no later than) Friday 16 March 2018, the Respondent must submit to the Tribunal:

i. written confirmation of the dates on which the Respondent will be in the United Kingdom in April 2018 and any of such dates on which the Respondent would not be available to attend a hearing in person;

ii. written confirmation from the local authority of the Respondent's landlord registration number and the date of registration (or the date of the most recent renewal of it);

iii. written submisssions regarding the Respondent's failure to pay the tenancy deposit into an "approved scheme" (as defined in the 2011 Regulations) within 30 working days of the beginning of the tenancy (or thereafter);

iv. a schedule of rental payments, including (for each monthly payment due as at the 7th of the relevant month as per the tenancy agreement) the date payment was made, the amount due to be paid on that date, the amount actually paid, who made the payment and any arrears or overpayments;

v. a copy of the text messages sent by [Ms Morgan Armstrong-Caswell (**"the Other Tenant"**)] to the Respondent (including evidence of the date of sending) which preceded those which had been provided with the Respondent's written submissions and which related to the Other Tenant's request to terminate the tenancy; and

vi. any additional written submissions which the Respondent wishes to make (except only those to be made in response to any submissions made by the Applicant with regard to details of the amount of damages sought by the Applicant (as referred to in paragraph b.ii. below), which submissions by the Respondent must be made in accordance with the timescale set out in paragraph c. below).

b. on or before (but no later than) Friday 16 March 2018, the Applicant must submit to the Tribunal:

i. *if the 3 bin liner bags of the Applicant's belongings have not been handed over to the Applicant and the Applicant wishes to pursue an order for payment in terms of the application with reference FTS/HPC/CV/18/0007 in respect of such belongings*, (a) written proof of purchase (including proof of the purchase price paid) or other proof of ownership by the Applicant (and evidence of how much it would cost to purchase) in respect of each item which the Applicant had placed in one of the 3 bin liner bags which the Applicant left in the Property and which is, as a result of doing so (and for no other reason), no longer in the possession of the Applicant, and (b) written confirmation from the Applicant addressed to the Tribunal that each such item was in one of the 3 bin liner bags which the Applicant had packed and left in the Property on 25 October 2017 and that such item has not been returned by the Respondent;

ii. details of the amount of damages sought based on section 37 of the Housing (Scotland) Act 1988 in respect of the loss of the right to occupy the premises (*if the Respondent wishes to pursue the application with reference FTS/HPC/PR/18/0005*);

iii. evidence of the Respondent having granted prior written consent to the Applicant permitting the Applicant to have a dog in the Property (or of what the Applicant believes constitutes such consent); and

iv. any additional written submissions which the Applicant wishes to make.

c. on or before (but no later than) the date falling 16 (sixteen) calendar days after the date on which the Tribunal sends (by post and/or e-mail) to the Respondent (or the Respondent's Representative) the details provided by the Applicant (if any) of the amount of damages sought by the Applicant (as referred to in paragraph b.ii. above), the Respondent must submit any written submissions he wishes to make in that respect."

6. The Tribunal Members were not provided with any response from the Applicant and so the Tribunal Members determined that the Applicant had failed to comply with some of the directions with which he was required to comply. Two of the directions were framed in such a way as to require the Applicant to respond only if he wished to pursue the relevant application.

7. The Tribunal Members were provided with two letters from the Respondent, each dated 14 March 2018 which had been sent to the Tribunal on 16 March 2018 and which dealt with some (but not all) of the directions with which the Respondent was required to comply. Accordingly, the Tribunal Members determined that the Respondent had failed to comply with some of the directions.

8. The Respondent's Representative also provided the Tribunal Members with a copy of an e-mail exchange which culminated in an e-mail dated 23 March 2018 from the Respondent to the Tribunal's administration team confirming that that exchange was to be considered as part of his written representation. The

Tribunal Members noted that the e-mail exchange was dated after the deadline for compliance with the directions (namely 16 March 2018) but also noted that they had not previously seen it. The Hearing was adjourned in order to allow the Tribunal Members to consider this e-mail exchange. They did so and determined that it did not contain any additional information which would have a bearing on their consideration of the three applications but that a copy should be provided to the Applicant, for completeness, by the administration team of the Tribunal after the Hearing.

9. By letters from the Tribunal dated 4 April 2018, each of the Applicant and the Respondent was respectively advised of the date, time and place of the Hearing.

The proceedings, namely the Hearing on 23 April 2018

10. As noted above, neither the Applicant nor the Respondent was present. However, the Respondent was represented by the Respondent's Representative.

11. The Respondent's Representative was asked about each of the directions (as recorded in the CMD Notes) with which the Respondent was required to comply. Taking each of the directions in turn:

    a. The Respondent had advised that he had "no definitive dates of return to the UK, but aim[ed] to come back at some point in April/May of this year". The Respondent's Representative confirmed that the Respondent had not been in the United Kingdom in the period between the CMD and the Hearing.

    b. No evidence had been provided prior to the Hearing with regard to the Respondent's registration as a landlord. The Respondent's Representative confirmed that the Respondent had not applied for registration as a landlord until after the applications by the Applicant had been received. The Respondent's Representative showed e-mails to the Tribunal Members on his phone which confirmed that the Respondent's landlord registration was approved on 19 February 2018. Whilst copies of these e-mails had not been provided to the Applicant prior to the date of the Hearing (as part of the Respondent's written submissions), the Tribunal Members did not consider that there was any prejudice to the Applicant as a result of the Tribunal Members having seen them.

    c. The Respondent had confirmed that he had not lodged the tenancy deposit in an "approved scheme" but had not provided an explanation as to why he had not done so, other than that "there was no requirement to do so" when he had "previously rented the property out in 2007, 2008, 2009, 2010" and that he had confirmed to the Other Tenant, who had entered into the tenancy agreement as a joint tenant of the Applicant, that the Respondent "would return the deposit within 30 days of departure". The Respondent's Representative added that the Respondent worked overseas and was not aware of the changes in the legislation but he acknowledged that ignorance of the law was not an excuse. The Respondent's Representative confirmed that, in light of the circumstances which transpired in this case, the tenancy deposit had not been repaid and

that the Respondent felt himself to be the "aggrieved party". It was also noted that the Other Tenant had indicated by text message on 7 October 2017 that, after having spoken to the Applicant and as "an amicable solution", the Respondent could "keep the £850.00 deposit" as a result of the Respondent being given insufficient notice of the Other Tenant and the Applicant leaving the Property. The Tribunal Members noted that, by text message on 10 October 2017, the Respondent had appeared to indicate that this was not agreed in that he had "not accepted this yet".

d. A schedule of rental payments had not been provided prior to the Hearing. The Respondent's Representative was not in a position to explain why this had not been provided by the Respondent.

e. The Respondent had provided copies of further text messages between him and the Other Tenant, but had not been able to provide the e-mail from the Other Tenant which apparently first indicated an intention to leave the Property because it was on an e-mail system of his former employer to which he no longer had access.

f. The Respondent provided two letters with written submissions, many of which repeated submissions made prior to the CMD.

12. With regard to the directions with which the Applicant was required to comply, the Respondent's Representative confirmed that the 3 bin liner bags of the Applicant's belongings (which had been left in the Property when the Applicant left the Property) had not been handed over to the Applicant. The Respondent's Representative showed the Tribunal Members text messages between himself and the Applicant during March 2018 which related to attempts to arrange a date, time and place for handover, but no agreement had been reached. Those messages indicated that the Respondent's Representative required the Applicant to collect those belongings from Lanark and that he would meet the Applicant there but the Applicant indicated that he did not have transport to get to Lanark. The Respondent's Representative noted that he had been in hospital for much of the last 2 to 3 months. The last text message which was shown to the Tribunal Members appeared to be from the Respondent's Representative to the Applicant and to which, the Tribunal Members were told, the Respondent's Representative had not received a reply. Whilst copies of these text messages had not been provided to the Applicant prior to the date of the Hearing (as part of the Respondent's written submissions), the Tribunal Members did not consider that there was any prejudice to the Applicant as a result of the Tribunal Members having seen them, particularly in light of the Applicant not providing the details relating to his belongings in response to direction b.i. (as recorded in the CMD Notes and reproduced above).

13. The Respondent's Representative confirmed that the Property was currently not rented out and that the Respondent would make a decision whether to re-let or to sell the Property once the applications had been determined by the Tribunal.

Decision (incorporating reasons) - case reference FTS/HPC/PR/18/0005 under rule 69 of the HPC Rules

14. The application with reference FTS/HPC/PR/18/0005 was stated to be made under rule 69 of the HPC Rules. As explained to the Applicant during the CMD, rule 69 of the HPC Rules related to section 36(3) of the 1988 Act. Rule 69 of the HPC Rules provided that one of the mandatory requirements for lodgement of an application under rule 69 was that "the details of the amount of damages sought based on section 37 of the 1988 Act in respect of the loss of the right to occupy the premises" be provided. Such details did not appear to have been provided with regard to application number FTS/HPC/PR/18/0005 in the application form or the accompanying documentation. Nonetheless, the application had been accepted by the Tribunal under rule 69 of the HPC Rules.

15. Section 37 of the 1988 Act is in the following terms:

"37 The measure of damages.

(1) The basis for the assessment of damages referred to in section 36(3) above is the difference in value, determined as at the time immediately before the residential occupier ceased to occupy the premises in question as his residence, between—

(a) the value of the landlord's interest determined on the assumption that the residential occupier continues to have the same right to occupy the premises as before that time; and
(b) the value of the landlord's interest determined on the assumption that the residential occupier has ceased to have that right.

(2) For the purposes of the valuations referred to in subsection (1) above, it shall be assumed—

(a) that the landlord is selling his interest in the premises on the open market to a willing buyer;

(b) that neither the residential occupier nor any member of his family wishes to buy; and

(c) that it is unlawful to carry out any substantial development of any of the land in which the landlord's interest subsists or to demolish the whole or part of any building on that land.

(3) Subsection (8) of section 36 above applies in relation to this section as it applies in relation to that.

(4) Section 83 of the Housing (Scotland) Act 1987 (meaning of "members of a person's family") applies for the purposes of subsection (2)(b) above.

(5) The reference in subsection (2)(c) above to substantial development of any of the land in which the landlord's interest subsists is a reference to any development other than—

(a) development for which planning permission is granted by a general development order for the time being in force and which is carried out so as to comply with any condition or limitation subject to which planning permission is so granted; or

(b) a change of use resulting in a building on the land or any part of such a building being used as, or as part of, one or more dwelling-houses;

and in this subsection "general development order" has the same meaning as in section 40(3) of the Town and Country Planning (Scotland) Act 1972 and other expressions have the same meaning as in that Act."

16. At the CMD, the Legal Member had directed the Applicant to provide the details required in terms of section 37 of the 1988 Act "*if the Respondent wishe[d] to pursue the application with reference FTS/HPC/PR/18/0005*" (such direction being recorded as direction b.ii. in the CMD Notes).

17. The Tribunal Members were not provided with any response from the Applicant to such direction b.ii. (or to any other direction for that matter). Therefore, the Tribunal Members found that the application for damages under section 36(3) of the 1988 Act could not succeed.

18. In addition, in light of the phrasing of the direction, the Tribunal Members were entitled to find that the Applicant's failure to provide such details indicated that he did not wish to pursue that application.

19. Therefore, the Applicant's application for an award of damages, in the form of an award for payment of £2,500, under case reference FTS/HPC/PR/18/0005 was refused.

Decision (incorporating reasons) - case reference FTS/HPC/PR/18/0006 under rule 103 of the HPC Rules

20. The order sought from the Tribunal was an order for payment of three times the amount of the tenancy deposit as a result of the Respondent (as landlord) not having paid the tenancy deposit into an "approved scheme" (as defined in the 2011 Regulations). It had been agreed at the CMD that the tenancy deposit paid was £850.

21. With regard to case reference FTS/HPC/PR/18/0006, the key relevant legal provisions are as follows:

    a. Regulation 9(1) *(Court orders)* of the 2011 Regulations is in the following terms:

        "A tenant who has paid a tenancy deposit may apply to the sheriff for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit."

b. Regulation 3(1) *(Duties in relation to tenancy deposits)* of the 2011 Regulations is in the following terms:

> "A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy –
>
> (a) pay the deposit to the scheme administrator of an approved scheme; and
>
> (b) provide the tenant with the information required under regulation 42."

c. Regulation 9(2) *(Court orders)* of the 2011 Regulations is in the following terms:

> "An application under paragraph (1) must be made by summary application and must be made no later than 3 months after the tenancy has ended."

d. Regulation 10 *(Court orders)* of the 2011 Regulations is in the following terms:

> "If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff –
>
> (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and
>
> (b) may, as the sheriff considers appropriate in the circumstances of the application, order the landlord to –
>
> (i) pay the tenancy deposit to an approved scheme; or
>
> (ii) provide the tenant with the information required under regulation 42."

e. With effect from 1 December 2017, the functions and jurisdiction of the sheriff on matters arising out of the 2011 Regulations (and various other civil matters) in relation to any "assured tenancy" (as defined in section 12 of the 1988 Act) were transferred to the Tribunal by virtue of section 16 of the 2014 Act.

22. The Tribunal Members were satisfied, on the balance of probabilities and based on the documentation provided, that:

a. The application related to an "assured tenancy" (as defined in section 12 of the 1988 Act) and so the Tribunal had jurisdiction to hear the case.

b. There was a landlord (i.e. the Respondent, who was not a local authority, registered social landlord or Scottish Homes) who had received a tenancy

deposit in connection with a relevant tenancy (the Applicant being an "unconnected person" relative to the Respondent and the use of the Property not falling within any of the types set out in section 83(6) of the Antisocial Behaviour etc. (Scotland) Act 2004, as amended). This was all relevant in order to allow the Tribunal Members to find that regulation 3 of the 2011 Regulations was applicable in the particular circumstances of this case.

23. For the purposes of regulation 9(2) of the 2011 Regulations, the Tribunal Members found that the application was made "in time" by being "made no later than 3 months after the tenancy has ended". Notwithstanding that the requisite legal formalities had not been complied with, the Tribunal Members noted that the parties had agreed (as recorded in the CMD Notes) that the tenancy had ended on 25 October 2017 (**"Termination Date"**). The application was accepted by the Tribunal on 12 January 2018.

24. The reasons for the decision reached by the Tribunal Members (as set out below) were as follows:

    a. The 2011 Regulations were intended (amongst other things) to put a landlord and a tenant on an equal footing with regard to any tenancy deposit which was paid in connection with the grant of a tenancy and also to provide a mechanism for resolving any dispute between them with regard to whether a tenancy deposit was to be returned to a tenant or retained by a landlord, and that whether in whole or in part.

    b. The Respondent had admitted that the tenancy deposit had not been paid into an "approved scheme" within 30 working days of the beginning of the tenancy (or at all) and so the Respondent had also not provided the Applicant with the information required under regulation 42 of the 2011 Regulations. Accordingly, the Tribunal Members were satisfied that the Respondent had not complied with the duties on a landlord as set out in regulation 3(1) of the 2011 Regulations. The 2011 Regulations provide for strict liability for non-compliance with the regulation 3 duties and so the Tribunal "must order the landlord to pay the tenant an amount not exceeding", in this particular case, £2,550.

    c. The exact amount of such an order for payment was then a matter for the discretion of the Tribunal. Sheriff Welsh, sitting in Edinburgh Sheriff Court in January 2015 in the case of Marcus Jenson v Giuseppe Fappiano which also involved the 2011 Regulations, found that there should be "a fair, proportionate and just sanction in the circumstances of the case". The Tribunal Members agreed with such an approach.

    d. In determining what would be a "fair, proportionate and just sanction" in the circumstances of this particular case, the Tribunal Members:

        i. Accepted that the Respondent was a so-called "amateur" landlord;

        ii. Found that, by failing to pay the tenancy deposit into an "approved scheme", the Respondent had deprived the Applicant (and, for that

matter, the Respondent) of the free dispute resolution mechanism which would otherwise have been available;

iii. Noted that the Respondent had failed to register as a landlord until after the applications by the Applicant had been intimated to the Respondent (which was after the Termination Date), and so had failed to comply with the requirements and follow the proper process in more than one respect with regard to the tenancy with the Applicant and the Respondent's position as a landlord;

iv. Noted that, as accepted by the Respondent's Representative, ignorance of the relevant law was not an excuse;

v. Noted that the Respondent had retained the tenancy deposit; and

vi. Took into account that (i) the period between the commencement of the tenancy (i.e. 7 May 2017) and the Termination Date (i.e. 25 October 2017) was approximately 5½ months and (ii) the period between the deadline for paying the deposit into an "approved scheme" in terms of regulation 3 of the 2011 Regulations (i.e. 19 June 2017) and the Termination Date, was approximately 4⅓ months and (iii) the period between the deadline for paying the deposit into an "approved scheme" and the date of the Hearing, was approximately 9 months. Therefore, as at the date of the Hearing, the non-compliance by the Respondent with his duties in terms of regulation 3 of the 2011 Regulations had continued for approximately 9 months, during which time the tenancy deposit had not been protected in an "approved scheme".

25. The Tribunal Members decided that a fair, proportionate and just sanction in the circumstances of this particular case (with case reference FTS/HPC/PR/18/0006) was for the Respondent to be ordered to pay the Applicant an amount equivalent to the tenancy deposit, namely £850 *(eight hundred and fifty pounds sterling),* as a result of the Respondent's failure to comply with his duties in regulation 3 of the 2011 Regulations. Accordingly, the Respondent was ordered to do so.

26. The order (in terms of case reference FTS/HPC/PR/18/0006) referred to in paragraph 25 was intimated orally to the Respondent's Representative (on behalf of the Respondent) during the Hearing (after it resumed following a short adjournment).

Decision (incorporating reasons) - case reference FTS/HPC/CV/18/0007 under rule 70 of the HPC Rules

27. The application with reference FTS/HPC/CV/18/0007 was stated to be made under rule 70 of the HPC Rules.

28. With regard to the part of the application seeking an order for a refund of "overpaid" rent:

a. As agreed between the Applicant and the Respondent's Representative (on behalf of the Respondent) at the CMD:

   i. the monthly rent was £850 per month;

   ii. in respect of the period up to 6 October 2017, the full rent payable under the tenancy agreement had been paid;

   iii. the Respondent had not agreed to reduce the rent payable in terms of the tenancy agreement from 7 October 2017 onwards; and

   iv. the tenancy had ended and the Respondent had moved out of the Property on 25 October 2017.

b. The Applicant's position (as set out in the application form) was that his last payment of rent, on 8 September [sic] 2017, had been £490. He considered that he had paid for 12 days during which he was "deprived of occupation of the property".

c. The Tribunal Members noted that the "INTERPRETATION" section of the tenancy agreement on page 11 provided that "where there are two or more persons included in the expression "the tenant" the obligations and conditions incumbent upon and expressed to be made by "the Tenant" including payment of the rent, shall be held to bind all such persons jointly and severally".

d. Accordingly, the Tribunal Members found that the rent due to be paid in terms of the tenancy agreement on 7 October 2017 was £850.

e. The Termination Date had been agreed between the parties as 25 October 2017. On that basis, the Tribunal Members considered the proportion of rent which would have been payable for the period from 7 October 2017 to 25 October 2017 (both dates inclusive) and determined that, if calculated based on the number of days in a month, it would have been £520.97 (i.e. 19/31 x £850) or, if calculated based on the number of days in a year, it would have been £530.96 (i.e. 19/365 x £10,200, which is 12 x £850). Either of these two amounts was greater than the £490 confirmed by the Applicant as having been paid.

f. Accordingly, the Tribunal Members did not consider that there had been any overpayment of rent and so the part of the the Applicant's application relating to an award for payment of £196 under case reference FTS/HPC/CV/18/0007 was refused.

29. With regard to the part of the application seeking an order for payment in respect of the belongings stated to be in the 3 bin liner bags:

   a. The Respondent's Representative had confirmed that the 3 bin liner bags had not been handed over to the Applicant yet.

b. At the CMD, the Legal Member had directed the Applicant to provide further details of the belongings in the 3 bin liner bags and their value "*if the 3 bin liner bags of the Applicant's belongings ha[d] not been handed over to the Applicant and the Applicant wishe[d] to pursue an order for payment in terms of the application with reference FTS/HPC/CV/18/0007 in respect of such belongings*" (such direction being recorded as direction b.i. in the CMD Notes).

c. The Tribunal Members were not provided with any response from the Applicant to such direction b.i. (or to any other direction for that matter).

d. In addition, in light of the phrasing of the direction, the Tribunal Members were entitled to find that the Applicant's failure to provide such details indicated that he did not wish to pursue that application.

e. The Applicant had failed to provide sufficient evidence to substantiate the application for an order for payment in lieu of return of his belongings and so the part of the the Applicant's application relating to an award for payment of £1,575 under case reference FTS/HPC/CV/18/0007 was refused.

30. Therefore, the Applicant's application under case reference FTS/HPC/CV/18/0007 was refused in its entirety.

Decision – no award of expenses - reason

31. Each of the three applications made by the Applicant also sought an award of, or payment of, expenses. In terms of rule 40 of the HPC Rules, the Tribunal "may award expenses...against a party but *only* where that party through unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense." The Tribunal Members were not satisfied that there had been any such behaviour on the part of the Respondent (or the Applicant for that matter). In particular, it could not be known by the Applicant (at the time of making the application) whether or not the Respondent would behave in such a way. Accordingly, it was not appropriate to make any award, or order for payment, of expenses and so none was granted.

Miscellaneous

32. In the circumstances, the Tribunal Members were not required to make any decision as to whether or not there had been an unlawful eviction of the Applicant from the Property by the Respondent. A number of submissions were made by each of the parties in relation to the circumstances surrounding the tenant's departure from the Property. Based on the written submissions made to the Tribunal by the Respondent, the Respondent appeared to consider that his actions (including using keys to access the Property and changing the locks) were justified and permissible. The Tribunal Members observed that there was a well-established legal process which required to be followed by a landlord in order to recover possession of (previously) tenanted property, including in a situation where a tenant had served notice to quit which had expired and the

tenant had then remained in possession of the property. They further observed that this legal process did not appear to have been followed in this case.

33. During the course of the Tribunal process, various matters were raised by each of the Applicant and the Respondent which were not the subject of the applications with the case references referred to above and so on which no decision was made by the Tribunal. For the avoidance of any doubt (but subject always to rule 8 of the HPC Rules *(Rejection of application)*), the decisions set out in this statement of decision relate only to the specific applications made and so do not prevent any legal remedy being sought in relation to such other matters raised (but on which no decision has yet been sought from or made by the Tribunal).

Right of appeal

In terms of Section 46 of the Tribunals (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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

PAMELA WOODMAN

23 April 2018

Legal Member/Chair **Date**