



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies)(Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/23/1959**

**Re: Property at Clubscross Farmhouse, Blakhills, Peterhead, AB42 3LJ (“the Property”)**

**Parties:**

**Mr Harry Thomson, Miss Polly Saltmarsh, Clubscross Farmhouse, Blakhills, Peterhead, AB42 3LJ (“the Applicant”)**

**KER-AN-PROPERTIES, KER-AN-PROPERTIES, Blackhouse Circle, Blackhouse Industrial Estate, Peterhouse, AB42 1BN (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be dismissed.**

**Background**

1. The Applicants lodged an application on 13<sup>th</sup> June 2023 under Rule 111 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) that the Tribunal make orders a) allowing them to have a maned account directly with the electricity supplier in line with clause 26 of the Private Residential Tenancy Agreement and b) for all previous bills to be recalculated to a domestic tariff and overpayments refunded.
2. Lodged with the Application were:
  - a. Private Residential Tenancy Agreement showing a commencement date of 2<sup>nd</sup> September 2020 and a rent of £600 per month
  - b. Numerous electricity bills from Dales Farms Scotland Limited
  - c. Various emails with organisations and with the Respondents attempting to resolve matters to the Applicants’ satisfaction

3. The Application was well presented and clearly set out. The Applicants tenant a farmhouse, and the Respondents are a property company who rent the property to the Applicants. Two of the Respondent's directors are also directors of Dales Farms Scotland Limited.
4. The Applicants had, since the outset of the tenancy, been billed for electricity by Dales Farms Scotland Limited, and had paid the bills. The Applicants discovered, when electricity prices rose, that the supply of electricity was to the farm as a whole and was supplied on a business, rather than a domestic, tariff. The Applicants had enquired of the Respondents if the supply could be rearranged so that they could have their own supply and could source a domestic tariff. The correspondence lodged showed that initially the Respondents had tried to assist, but that they had been told that any such move could affect the supply to the farm.
5. The Applicants quote section 26 of their tenancy agreement, which states as follows:

*"The Tenant undertakes to ensure that the accounts for the supply to the Let Property of gas, electricity, telephone, TV licence, internet/broadband are entered in his or her name with the relevant supplier. The Tenant agrees to pay promptly all sums that become due for these supplies relative to the period of the tenancy.*

*The Tenant agrees to make the necessary arrangements with the suppliers to settle all accounts for these services at the end of the tenancy.*

*The Tenant has the right to change supplier if he or she pays the energy supplier directly for gas or electricity. This includes if the Tenant has a prepayment meter. The Tenant agrees to inform the Landlord if they choose to change the utilities supplier, and to provide the Landlord with details of the new supplier.*

*If the Tenant allows the meter to be changed from or to a pre-payment meter during the tenancy, the Tenant is responsible for the reasonable cost of changing the meter back over at the end of the tenancy, unless the Landlord wishes it to remain."*

6. The Applicants' contention is that the section allows them to the right to change supplier.
7. On 17<sup>th</sup> November 2023 the Respondent's solicitor lodged a lengthy submission setting out the position of the Respondents, in that the property forms part of a working farm, the farm and property have separate electricity meters which are both charged at business rates due to the supply to the farm. The utility bills are issued to Dales Farms Scotland Limited, who pay them direct and then invoice

the Applicants for the sum it has been charged in respect of supply to the property.

8. The submissions say that the Respondents investigated the position but from its discussions with EDF was not left confident that the supply could be split without the risk of disruption and confusion over the farm supply. The Respondents submit that if the supply is split the Applicants may end up being principally liable for the farm supply and would be required to invoice the Respondent, and that this is not practical, creates risk for the Respondent and does not serve the Applicants well.
9. The Submissions say that the Respondents offered to reduce the tariff as long as the Applicants paid outstanding invoices within 30 days, but that the Applicants refused.
10. The Submissions also raised issues of competency as follows:

*“13. The applicants seek orders under section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016 and Rule 111 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017. What their application appears to seek is a payment order for an unspecified sum following a recalculation of the sums invoiced by the respondent and an order requiring the respondent to allow the applicants to have their own meter in order that they can contract directly with an energy supplier of their choosing. The respondent does not believe that either order can be competently made.*

*14. Section 71(1) deals with the First Tier Tribunal’s jurisdiction and provides that the Tribunal has whatever competence and jurisdiction a sheriff would have. The Sheriff Court does not have the power to make the first order sought by the applicants. The order sought by the applicants is one akin to specific implement however the applicants do not have a legal basis, contractual or otherwise for seeking such an order. As set out above Clause 26 of the Lease does not entitle the applicants to hold utility accounts in their own name.*

*15. The second order is also incompetent. While the Tribunal has power to make a payment order, the applicants’ claim is not quantified. They do not seek an order for a specific sum. The respondent has now provided the information sought by the applicants. The applicants should accordingly withdraw the current application and, if they still believe they have been over-charged by the respondent, submit a fresh application seeking payment of a specified sum.”*

## **Case Management Discussion**

11. The Case Management Discussion (“CMD”) took place by teleconference. The Applicants were both present and the First Named Applicant made submissions

on their behalf. The Respondent was represented by Miss Walker of Ledingham Chalmers, Solicitors.

12. The Chairperson introduced everyone and explained the purpose of a CMD in terms of Rule 17.
13. The Chairman told the Applicants that their application was clear and well set out. She summaries the position as per paragraphs 3,4,5 and 6 of this document. She asked them if they had anything they wished to add. They did not have anything.
14. The Chairperson confirmed with the Applicants that they had seen and read the submission from the Respondents. They confirmed that they had. The Chairperson told them that the Respondent had made submissions about the competency of the Application, and explained that this meant that they were challenging whether the Tribunal had the authority to grant an order in the terms sought. The Chairperson explained that this was a preliminary point and had to be determined before the rest of the Application could be considered.
15. The Chairperson asked Miss Walker to address the Tribunal on the preliminary point. Miss Walker referred to paragraphs 13, 14 and 15 of the Respondent's written submission. She said that she could see nothing in the Tribunal's Rules which allowed the Tribunal to grant the order sought. She said that Section 71(1) of the Private Housing (Tenancies)(Scotland) Act 2016 deals with the First Tier Tribunal's jurisdiction and provides that the Tribunal has whatever competence and jurisdiction a sheriff would have. She said that the order sought by the Applicants is one akin to specific implement but that she could not see that the Applicants had a legal basis, contractual or otherwise for seeking such an order. She said that clause 26 of the lease deals with utilities. She said that the rights of the tenant narrated in that clause are contingent on them paying utilities direct to the supplier, which is not the case here.
16. Miss Walker said that the second order sought was also incompetent. She said that while the Tribunal has power to make a payment order, the Applicants' claim is not quantified. They do not seek an order for a specific sum. She invoked the "fair notice" principle and said that the Applicants could raise a separate action once a sum had been calculated.
17. The Chairperson explained to the Applicants in layman's terms the points that Miss Walker had made. She asked them to direct her to any legal or contractual basis on which she could grant the orders they were seeking.
18. The First Named Applicant said that they had been advised by CAB, Shelter and the local authority to bring an action to the Tribunal. None of them had given any indication of the need for a legal or contractual basis to bring the application.
19. The Chairperson said that she was inclined to accept the Respondent's argument regarding clause 26 of the tenancy agreement, as it said "*The Tenant*

*has the right to change supplier if he or she pays the energy supplier directly for gas or electricity.*" The implication was therefore that if they did not pay it direct they had no right to change supplier. The First Named Applicant said that as the tenancy agreement did not specify that they were to pay the landlord for the electricity supply there was an implied term in the lease that they would be entitled to choose their own supplier. He said that standard conditions should apply.

20. The Chairperson asked if this had been discussed with the Respondent when the Applicants entered in to the tenancy. The First Named Applicant said that the lease was set up through a friend of a friend. They were not asked for a deposit.
21. The First Named Applicant said that they did not accept that the Respondent had offered a discount. He said they had offered a deal with strings attached. He said that the Applicants were not going to be forced in to agreeing with something when it was not a fair deal.
22. The Applicants could not provide a legal or contractual basis on which the Tribunal could grant the order that they sought.

## **Findings In Fact**

- i. The Applicant entered in to a tenancy agreement for the property on 2<sup>nd</sup> September 2020;
- ii. The tenancy agreement is a Private Residential Tenancy Agreement in standard terms;
- iii. The property is situated on a working farm;
- iv. There is no clause in the tenancy agreement which deals with how electricity is to be paid for;
- v. Electricity is supplied to the farm as a whole on a business tariff, and the company which owns the farm bills the Applicants for their consumption;
- vi. There is no term in the tenancy agreement which the Applicants can invoke to justify the Tribunal granting the order they seek regarding splitting the electricity supply;
- vii. There is no basis in stature of common law to allow the Tribunal to grant the order they seek regarding splitting the electricity supply;

## **Reasons for Decision**

23. The Applicants submitted a very full and well presented application to the Tribunal. It was clear what they wanted the Tribunal to do. However, the Tribunal agreed with the arguments of the Respondent regarding competency in relation to the Applicants' request for an order that the supply should be split.
24. Section 71 of the Private Housing (Tenancies)(Scotland) Act 2016 states as follows:

*(1) In relation to civil proceedings arising from a private residential tenancy—*

*(a) the First-tier Tribunal has whatever competence and jurisdiction a sheriff would have but for paragraph (b),*

*(b) a sheriff does not have competence or jurisdiction.*

*(2) For the purposes of subsection (1), civil proceedings are any proceedings other than—*

*(a) the prosecution of a criminal offence,*

*(b) any proceedings related to such a prosecution.*

25. The Tribunal has jurisdiction to deal with any dispute arising from a tenancy agreement, this having been transferred from the Sheriff Courts. However, the Tribunal does not have competence if the Sheriff would not have had competence.
26. The Respondent is correct in saying that the Applicants are seeking an order akin to specific implement. However, specific implement relates to the implement of a contractual provision, and there is not one in this case. There is no basis either in common law or statute to allow the Tribunal to make the order. The Application is therefore incompetent.
27. The Tribunal expressed some sympathy with the position of the Applicants, but just because something seems unfair it doesn't make it unlawful.
28. As a matter of note, if the Tribunal had not agreed the first part of the Respondent's argument regarding competency it would have rejected the second argument and would have been prepared to deal with the case as a two stage process.

## **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.**

**8<sup>th</sup> December 2023**

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**Legal Member/Chair**

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**Date**