



**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/23/4186**

**Re: Property at 2 Burnend Cottages, Dufftown, Banffshire, AB55 4BU (“the Property”)**

**Parties:**

**Glenrinnes Estate, The Estate Office, Inkersall Farm, Inkersall Lane, Bilsthorpe, Newark, NG22 8TL (“the Applicant”)**

**Mr Marley Atkins, Ms Samantha Box, 2 Burnend Cottages, Dufftown, Banffshire, AB55 4BU (“the Respondents”)**

**Tribunal Members:**

**Andrew Upton (Legal Member) and Mike Scott (Ordinary Member)**

**Decision (in absence of the Respondents)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that (i) the Respondents are liable to make payment to the Applicant in the sum of SIX HUNDRED AND FOUR POUNDS AND ONE PENCE (£604.01) STERLING, and (ii) the Respondents are liable to the Applicant in the expenses associated with preparation for and attendance at the Hearing.**

**Statement of Reasons**

1. This Application called for a Hearing by teleconference call on 29 August 2024. The Applicant was represented by Miss Daley. The Respondents were neither present nor represented. The Tribunal was satisfied that the Respondents had received notification of the Hearing, and determined that the Hearing should proceed in the absence of the Respondents under Rule 29 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”).

2. In this Application, the Applicant seeks payment from the Respondents in the sum of £604.01. That sum is the aggregate of sums said to have fallen due in respect of a private water supply. In particular, the sum of £343.01 relates to charges for the supply of water, and £261 relates to charges incurred by the Applicant to Moray Council for the testing of the suitability of the private water supply for human consumption. The Applicant contends that it is permitted to recover those sums under Clause 26 of the Private Residential Tenancy Agreement between the parties.
3. At the previous Case Management Discussion, the first named respondent disputed that Clause 26 of the PRT, as agreed by him, did not include the wording founded upon by the Applicant. The Tribunal therefore fixed a Hearing restricted to the question of whether Clause 26 of the PRT was, at the date of commencement of the PRT, in the terms founded upon by the Applicant. The Applicant noted at the CMD that it intended to seek the expenses associated with the Hearing in the event that the Respondents failed to produce evidence to support their case.
4. The only party represented at the Hearing was the Applicant. Miss Daley asserted that the PRT submitted by the Applicant to the Tribunal with the Application was the only PRT between the parties. She relied upon clause 26 thereof, which is in the following terms:-  
  
*“Your water supply is provided by the Landlord as there is no public supply serving the property. You are not required to pay the water charges usually charged by the Local Authority as part of your Council Tax bill but you agree to pay a similar amount to the Landlord based on the Council tax band for the property payable by equal monthly instalments on the rent date. This is intended as a contribution to the cost of providing and maintaining the private supply. Further, under the Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017, the Local Authority may test your water supply reporting the results to you and you agree to pay the test charge whether invoiced to you or to the landlord.”*
5. In the absence of contrary evidence, the Tribunal found that clause 26 of the PRT, as relied upon by the Applicant, was a contractual term of the PRT between the parties at the commencement of the PRT, and continues to be binding upon them. Having so found, the Tribunal was satisfied that the Respondents were liable to make payment to the Applicant in the sum claimed, and granted a payment order in the sum of £604.01.

### Expenses

6. Miss Daley renewed the Applicant's motion for expenses. Her submission was that the defence presented was a delaying tactic, had no real prospect of success, and that the additional expenses incurred in preparation for and attendance at the Hearing was unnecessary and unreasonable.
7. In terms of Rule 40 of the Rules:-

#### **“40.— Expenses**

- (1) The First-tier Tribunal may award expenses as taxed by the Auditor of the Court of Session 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.
  - (2) Where expenses are awarded under paragraph (1) the amount of the expenses awarded under that paragraph must be the amount of expenses required to cover any unnecessary or unreasonable expense incurred by the party in whose favour the order for expenses is made.”
8. In this case, the Tribunal is satisfied that the Respondents have acted unreasonably. The Respondents knew, or ought to have known, that they were under contractual obligation under the PRT to make payments in respect of the private water supply. That notwithstanding, they insisted on putting the Applicant to proof on the terms of the PRT at commencement of the tenancy. Having presented that defence, they then failed to attend the Hearing to insist upon it. That is unreasonable behaviour in the context of a litigation.
  9. The Applicants have been put to unnecessary expense in the preparation for and attendance at the Hearing. The Tribunal finds that the Applicants are entitled to recovery of that expense.
  10. The Tribunal directs the Applicants to prepare and lodge, within 28 days, an account detailing the expenses that they seek to recover, together with vouching in support of that expense, for the Tribunal to consider before the order for payment of expenses is issued.

#### **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.**

**Andrew Upton**

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**Legal Member**

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**Date:26/08/2024**

