



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/24/2523

Re: Property at Mill House, Newmachar, Aberdeenshire, AB21 0RD (“the Property”)

Parties:

Mr Martin Kelly, Mrs Sharon Travers, Arnha, Newmachar, Aberdeenshire, AB21 0QD (“the Applicant”)

Dr Andrew Collins, Straw Bales, Newmachar, AB21 0RD (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Angus Anderson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to refuse the application and make no order.

Background

- 1 This is an application for a payment order under rule 111 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) and section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). The Applicants sought to recover heating and hot water costs arising from the private residential tenancy between the parties. The Applicants also sought an award of compensation. The total sum claimed by the Applicants was £1990.
- 2 The application was accepted and referred to a case management discussion (“CMD”) which took place on 10 February 2025. A Direction was issued to parties following the CMD requiring the Applicants to provide written submissions addressing the formation of the contract between the parties, the parties’ obligations under that contract, how specifically the Respondent was in breach of those obligations, and on what basis they considered the Tribunal to

have jurisdiction. The Respondent was directed to provide submissions in response. Both parties provided responses to the Direction.

- 3 The second CMD took place on 16 July 2025. The Applicants and the Respondent were in attendance. The Tribunal noted the facts agreed between the parties and the issues to be resolved which were:-
 - (i) The reason for the discrepancy in the meter readings before and after the meter was installed;
 - (ii) The size of the discrepancy; and
 - (iii) Who is liable for the discrepancy.
- 4 The Tribunal therefore referred the application to an evidential hearing.

The hearing

- 5 The hearing took place at Aberdeen Sheriff Court on 6 February 2026. The Applicants were both in attendance. The Respondent was accompanied by his son, Nick Collins.
- 6 The tribunal heard evidence from the parties on the issues to be resolved. Both parties were given the opportunity to cross-examine the other. The following is a summary of the key elements of the evidence and not a verbatim account.

The Applicants

- 7 Ms Travers spoke to the formation of the tenancy agreement between the parties. Whilst she had been an employee of the Respondent's letting agent at the time, she had not had any involvement in a professional capacity. The agreement was drawn up by a colleague. She had asked her now former colleague to attend the hearing to give evidence but the colleague had refused. The heating and hot water was agreed verbally. The Applicants paid the heating and hot water bills until they realised something was wrong. It took some time for the Applicants to discover the issues. The Applicants were willing to pay the bills but the information had to be correct and transparent.
- 8 Mr Kelly spoke to the discrepancies in the heating bills. He directed the Tribunal to the spreadsheet he had prepared, which was based on estimates. He confirmed that Respondent's letting agent had attended the property in March 2024 to carry out a test of the system. This was evidenced in the documents produced. There had been no heat demand on the system as the property was empty over the weekend of 1 to 4 March 2024, however readings showed usage. Mr Kelly noted the Respondent's position that the frost temperature control would have been activated by low temperatures, however there was no factual evidence of the temperature readings on site. Mr Kelly spoke to the functionality of the heating and hot water system, and the installation of a new meter and a bypass valve, the latter of which appeared to have resolved the problem. Mr Kelly confirmed that the £1990 sought was for the period up until the bypass valve was fitted and reflected the discrepancy between what should

have been charged and what was charged. Mr Kelly explained that the only factual evidence he had in support of his estimates was the testing done by the Respondent's letting agent in March 2024. He explained in detail how he had calculated the figures in his spreadsheet, describing how he would estimate based on how long it would take for the hot water tank to heat up, and the usage for daily activities, such as using the shower. It was the Applicants' position that they had been overcharged at the rate of 30kWh per day.

The Respondents

- 9 Both the Respondent and his son Nick Collins gave evidence. Mr Collins spoke to the deposit adjudication process, in terms of which the scheme had determined the Respondent was not entitled to the deposit to cover an outstanding heating and hot water bill. He submitted that this was due to a failure by the Respondent's letting agent to submit the necessary evidence which was not before the Tribunal. Mr Collins highlighted correspondence between the parties, in terms of which the Applicants had quoted a different figure for compensation. There was no specification to the claim and no evidence as to how they had calculated the figures quoted. If it was due to overcharging because of a fault with the system, the Applicants had provided no expert evidence in support of this. The Respondent believes this was a retaliatory act arising from the deposit dispute.
- 10 Mr Collins spoke to the testing that had taken place in March 2024 which the Respondent had arranged on the request of the Applicants. The Respondent's letting agent who had carried out the testing referred to the property being very cold, which was supported by the weather reports at that time. The frost thermometer had activated due to the low temperature. The Applicants had provided no evidence to contradict this position. He explained how the heating and hot water system functioned, with reference to the meters and valves. He confirmed that when the meter was installed, there was a discrepancy in the readings between the meter for the property and the workshop, part of which was accounted for by allowable heat loss in transit. The Respondent had refunded the Applicants 50% of the difference between the readings.
- 11 The Respondent spoke to the formation of the tenancy agreement, and his reliance upon his letting agent to fully manage the property, which included drawing up the terms of the tenancy agreement. The Respondent felt there had been a breakdown in the boundaries between the Applicants and the Respondent, given that Ms Travers was an employee of the Respondent's letting agent when the tenancy commenced.

Submissions

- 12 Mr Kelly made closing submissions on behalf of the Applicants. He asked the tribunal to accept the data contained within the spreadsheet produced, which was based on the testing carried out in March 2024. He accepted that it was not an exact science, but believed that it was possibly 90 to 95% accurate. He

asked the tribunal to make an order for payment in the sum of £1990, pointing to the decision of the deposit scheme which went in the Applicants' favour.

- 13 The Respondent made closing submissions. He believes he has acted in good faith. He set up the heating and hot water system in 2012 as an alternative to fossil fuels. He has complied with the requirements of the Heat Network (Metering and Billing) Regulations. The invoices were transparent. There was no standing charge, only the cost of the wood pellets. The Respondent did not charge the Applicants when the system was not working and refunded 50% of the meter discrepancy. The Respondent invited the Tribunal to dismiss the application and make no order.

Findings in fact

The following facts were agreed between the parties:-

- 14 The Applicants were the tenants of the property in terms of the lease between the parties.
- 15 The lease was a private residential tenancy in terms of section 1 of the Private Housing (Tenancies) (Scotland) Act 2016.
- 16 The Respondent and Nick Collins are named as landlords on the lease.
- 17 The title of the property is Land Certificate ABN101161. The heritable proprietors of the property are the Respondent, Benedict Collins, Simon Collins and Nicholas Collins.
- 18 The tenancy between the parties commenced on 30 July 2021.
- 19 The tenancy ended on 31 October 2024.
- 20 The heating and hot water supply for the property is provided by a communal biomass boiler.
- 21 The boiler is situated in a workshop owned by the Respondent which is situated approximately 20 or 30 metres from the property. The workshop adjoins the Respondent's property.
- 22 A separate meter was installed on 27 February 2024 to independently meter the consumption of heat and hot water to the property.
- 23 The zone valve was installed after the meter had been fitted.
- 24 The tenancy agreement does not contain an agreement between the parties in relation to the supply of heating and hot water to the property from the biomass boiler.

- 25 The parties entered into a verbal agreement regarding the charge for the biomass boiler electricity on 20 July 2021, the day the Applicants received the keys for the property.
- 26 The said verbal agreement was in the following terms:
- (i) Heating and hot water will be provided to the Applicants for the duration of the tenancy by the Respondent.
 - (ii) The system that will provide this heating and hot water will be the biomass wood pellet burner and hot water storage tank located in the workshop adjacent to the landlord's property. Heating and hot water can be accessed by the Applicants, through use of the central heating programmer located in the property on the kitchen wall.
 - (iii) The Respondent will provide the Applicants with a bill for the heat and hot water they have used. The Applicants' usage will be recorded by the Respondent on a dedicated heat meter located in the boiler room, on the pipework to the property.
 - (iv) To calculate the cost of each kWh of heat used by the Applicants, the Respondent will refer to the Nottingham Energy Partnership.
- 27 The Applicants made a repairing standard application to the Tribunal dated 15 January 2024 stating that they required a meter to be fitted to their property. No order was made by the Tribunal as the separate heat meter had been installed by the date of the inspection and hearing.
- 28 The Applicants made a repairing standard application to the Tribunal dated 1 June 2024 stating that the heating system feeding the property from the Respondent's property had proved to supply heating water and increment the heating meter even when no demand supply was requested from the property. The cause of the issue was believed to be either a system design error, or heat leach. The decision of the Tribunal stated that whilst the Applicants were not aware that a non return valve had been fitted by the Respondents until they received the Respondent's written submissions on 1 September 2024, by the hearing on 22 October 2024 the Applicants had not carried out any tests, rudimentary or otherwise, to identify if the installation of the non return valves had resolved their complaint. No order was made as the Tribunal did not have any evidence to establish a breach of the Repairing Standard.

The tribunal made the following findings in fact

- 29 The Respondent and the Respondent's letting agent observed meter readings in the property during the period from 1 March to 4 March 2024 when the property was unoccupied.
- 30 On 1 March 2024 the usage was 240630 kWh.

- 31 On 2 March 2024 the usage was 240630kWh.
- 32 On 3 March 2024 the usage was 240630kwh.
- 33 On 4 March 2024 the usage was 240648 kWh at 7am and 240668 kWh at 9am.
- 34 The increase in usage on 4 March 2024 was due to the activation of the frost temperature control because of low temperatures in the property.

Reasons for decision

- 35 The tribunal carefully considered all documentary and oral evidence from the parties in reaching its decision on the application. The documents are referred to for their terms and reflected in the tribunal's findings in fact.
- 36 The Applicant's claim arises from a verbal contract between the parties at the commencement of the tenancy. It is a matter of agreement that there was no mention of the arrangements for the provision of heating and hot water in the tenancy agreement, and that this formed part of a discussion when the Applicants took entry. Whilst both parties gave their views on what had transpired when the lease was signed, there did not appear to be any dispute as to what had been discussed and agreed regarding the heating and hot water provision. The tribunal further noted the Applicants' tacit consent to the arrangements as evidenced by the fact they had continued to occupy the property for the next three years, and for most of that period had paid the bills issued by the Respondent without objection.
- 37 The claim has arisen from the Applicants' belief that they were overcharged by the Respondent for heating and hot water between July 2021 when the tenancy commenced, and March 2024 when a zone valve was installed. They believe based on their estimates that there was a discrepancy of 30kWh per day. Their calculations arose from testing carried out by the Respondent's letting agent over the period of 1st to 4th March 2024, which showed an increase in usage whilst the property was unoccupied. The Applicants' believe this evidenced a fault in the system which caused heat loss and led to overcharging.
- 38 The tribunal however preferred the Respondent's evidence on this point. On the balance of probabilities, it accepted that the logical explanation for the increase in usage on the 4 March 2024 was due to the activation of the frost temperature control. The Applicants had provided no evidence which would support any other explanation, other than their belief that the system was not functioning correctly. There was however insufficient evidence for the tribunal to make a finding in that regard.
- 39 The tribunal did not therefore accept the basis of the Applicant's calculations of the claim. It did not find that the Respondent had acted in breach of the verbal contract agreed between the parties. The tribunal determined from the evidence produced that where issues had arisen with the system, the Respondent had taken action, such as arranging to refund partial payments to

the Applicant. The tribunal concluded that the Applicants had failed to evidence any breach by the Respondent of the contract between the parties that would give rise to a claim for compensation.

- 40 The tribunal had regard to the decision of the deposit scheme. However, that decision is not binding on the tribunal in any way. The tribunal has to make its decision based on the evidence before it.
- 41 The tribunal also considered the Heat Network (Metering and Billing) Regulations 2014 which had been raised by the Tribunal during these proceedings. The Regulations impose statutory duties upon heat suppliers in respect of the installation of meters and the provision of bills and billing information for consumers. The tribunal determined that the Applicants had failed to provide sufficient evidence to suggest any breach of the Regulations on the part of the Respondent. Furthermore, there is no statutory right to compensation under the Regulations. Therefore the claim is founded upon the verbal contract between the parties. For the reasons set out above, the tribunal was unable to find the Respondent in breach of that contract.
- 42 The tribunal therefore determined to refuse the application and make no order.
- 43 The decision of the tribunal was unanimous.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

R O'Hare

18 May 2026

Legal Member/Chair

Date