

SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE AT KIRKCALDY

[2026] SC KDY 34

KKD-SG738-25

NOTE OF SHERIFF JOHN A MACRITCHIE SSC

in the cause

YOUR HOME PARTNERS

Claimant

against

MICHAEL WILLIAM KELLICHAN

First Respondent

and

MICHELLE HOOD

Second Respondent

**Claimant: Party**

**First Respondent: Party**

**Second Respondent: Party**

Kirkcaldy, 19 January 2026

**Background**

[1] In this simple procedure claim, the claimant David Meek and Leslie Meek, as partners and trustees for the firm of Your Home Partners, want the respondents Michael William Kellichan and Michelle Hood to be ordered by the court to pay them rent arrears of £5,000. The claim arises from a now terminated private residential tenancy agreement between the parties.

[2] In the claim form the claimant submits that as the tenancy is not ongoing, the claim does not fall within the jurisdiction of the First-tier Tribunal (Housing and Property

Chamber) (“FtT”) and that the claimed rent arrears are recoverable under simple procedure in the sheriff court.

[3] Having considered the claim form in terms of rule 3.9(3)(c) of the Simple Procedure Rules, I instructed the sheriff clerk to reject it on the basis that the claim should be made to the FtT being the body having jurisdiction to deal with it.

[4] In response the claimant emailed the sheriff clerk expressing their “clear understanding” that, where a tenancy has ended and where the claimant seeks only to recover a sum of money, “the correct route” is through a simple procedure claim in the sheriff court rather than through the FtT.

[5] I then instructed the sheriff clerk to explain to the claimant that I had instructed that the claim be rejected as section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) provides that, from 1 December 2017, for civil proceedings “arising from” a private residential tenancy, the FtT has whatever competence and jurisdiction a sheriff would have had, that a sheriff now has no such competence or jurisdiction, and that the application should therefore be made to the FtT as, whether the lease has ended or not, the claim for rent arrears arises from the private residential tenancy.

[6] The sheriff clerk notified the claimant accordingly and again rejected the claim form.

[7] Of even date, the claimant in very detailed further submissions contended that my interpretation of section 71(1) of the 2016 Act was incorrect as:

- (i) once the tenancy had lawfully ended, there was no longer a “private residential tenancy” within the meaning of section 1 of the 2016 Act; and
- (ii) any remaining rent arrears were a “simple debt” rather than a tenancy dispute.

[8] The claimant contended that their position was supported by:

- (i) Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (SSI 2017/448), which it was submitted required an application to relate to an existing tenancy; and
- (ii) Multiple FtT determinations (quoting, in particular, references FTS/HPC/CV/19/3145 and FTS/HPC/CV/20/0624), where it was claimed that the FtT had expressly declined jurisdiction once the tenancy had ended and directed applicants to pursue recovery through the sheriff court using simple procedure.

[9] The sheriff clerk again sought my further direction. I formed the view that as the claimant purported to have these contrary case precedents (although not binding on me), they were entitled to address the court on this and to refer me to the same for full consideration. Whilst I could not locate reports of the referenced FtT decisions, I considered that such could be unreported and somehow otherwise available to the claimant as landlords. Accordingly, to allow the claimant access to justice and the opportunity to address the court, I assigned a discussion.

[10] I, however, ordered the claimant to lodge with the court a copy of the referenced FtT decisions (together with copies of section 41A of the Small Claims (Scotland) Rules and section 1 of the Interest on Debts (Scotland) Act 1985, which Acts the claimant had also referenced in the documentation lodged, but which legislation did not appear to me to exist). I also directed the claimant to consider before the discussion the cases of *Parker v Inkersall Investments Ltd* [2018] SC DUM 66, paras [5]-[8] and [33]-[37] and *Anderson v Stark* [2019] UT 48, paras [8]-[14] and provided online links to these.

[11] I appointed the sheriff clerk to ascertain if the decisions referenced by the claimant were available from the FtT. The sheriff clerk was, however, advised by the FtT that there were no cases with these references.

[12] The claimant then lodged further submissions which essentially replicated that which had already been submitted.

[13] The claimant also lodged what they proffered as extracts from the “Small Claims (Scotland) Rules – Section 41a” and the “Interest on Debts (Scotland) Act 1985 – Section 1”. While the tenor of the issues dealt with in these purported extracts are the subject of other legislation, the referenced rules and Act, and naturally therefore the quoted extracts, simply do not exist.

[14] The claimant then lodged a “Statement in Support of Jurisdiction” which essentially again reiterated the earlier submissions but without the case references. This was stated to be “in place of the Tribunal cases” previously ordered to be produced.

[15] I then heard from both partners of the claimant at the assigned discussion, who adopted their previous submissions.

### **Contempt of Court**

[16] On being advised that the FtT decisions referenced in their submissions did not exist, the claimant indicated that they had also contacted the FtT who had likewise indicated to the claimant that that the FtT “did not know of” these decisions, Accordingly, the claimant indicated that they were no longer relying on these.

[17] The claimant indicated that they had obtained these case references and the purported statutes and relative statutory extracts using online Artificial Intelligence in good

faith, and that they had not knowingly lodged these references to non-existent decisions, rules and a statute.

[18] The lodging of false legal references has the potential to obstruct justice. Indeed, my understanding of the position was so clear that I would not have assigned a discussion in this matter had it not been maintained by the claimant that there existed these referenced cases said to support a view contrary to my understanding.

[19] Accordingly, I have given consideration as to whether I am required to commence contempt of court proceedings. In *R(Ayinde) v Haringey LBC (DC)* [2025] 1 WLR 5147, paragraph 7 (per Dame Victoria Sharp P) the court stated:

“Those who use artificial intelligence to conduct legal research notwithstanding [the] risks have a professional duty therefore to check the accuracy of such research by reference to authoritative sources, before using it in the course of their professional work (to advise clients or before a court, for example)”.

[20] There is no reason why that duty should not also apply to lay persons, as otherwise the management of cases in courts and therefore the course of justice could be significantly obstructed. However, having heard from the claimant, I am satisfied that the claimant has not knowingly attempted to interfere with the administration of justice in this manner, by wasting court time and misleading the court. However, there was a degree of recklessness in the claimant delaying verifying that the references produced by Artificial Intelligence were genuine, until only after the relative submissions were lodged.

[21] There is a fine line in this instance between whether the claimant and its individual partners, even as lay persons, have shown contempt for the court by not reasonably checking that such references were genuine before using them in this manner, or otherwise.

[22] In the foregoing circumstances, where I am satisfied that the claimant has acted in good faith and essentially withdrawn the references before the discussion, I have

determined that the claimant and the individual partners' conduct does not, in this instance, pass the relevant threshold for a contempt of court to have been committed and therefore that contempt proceedings do not require to be initiated.

### **Claimant's submissions**

[23] The claimant continued to submit that as there was "no housing matter" this was "a fixed civil debt" recoverable in the sheriff court.

[24] The claimant indicated that sheriff officers had advised them that the sheriff court had jurisdiction.

[25] The claimant wanted the claim to call before the sheriff court as they perceived that it would be quicker.

[26] The Scottish Government's Revised Explanatory Notes to the Private Housing (Tenancies) (Scotland) Bill, refer to civil disputes which might arise "**during the course of a tenancy - such as an action for payment of rent arrears**" [emphasis added] being dealt with under the new Act by the FtT. This could be viewed as consistent with the claimant's submissions.

### **Legislation**

[27] Section 1 of the 2016 Act provides that:

- "(1) A tenancy is a private residential tenancy where—
  - (a) the tenancy is one under which a property is let to an individual ('the tenant') as a separate dwelling,
  - (b) the tenant occupies the property (or any part of it) as the tenant's only or principal home, ...
- (2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied."

[28] This makes no reference to a private residential tenancy which has been terminated being excluded from the provisions of the 2016 Act. On the contrary, it prescribes that a tenancy which is a private residential tenancy does not cease to be one by reason only that the tenant no longer occupies the property as the tenant's only or principal home.

[29] Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 states under the heading "Application for civil proceedings in relation to a private residential tenancy":

"Where a person makes any other application to the First-tier Tribunal by virtue of section 71(1) (First-tier Tribunal's jurisdiction) of the 2016 Act, the application must—

- (a) state—
  - (i) the name and address of the person;
  - (ii) the name and address of any other party; and
  - (iii) the reason for making the application;
- (b) be accompanied by—
  - (i) evidence to support the application; and
  - (ii) a copy of any relevant document; and
- (c) be signed and dated by the person."

[30] Again, this makes no reference to the application being relative to an "existing" tenancy as was submitted by the claimant.

[31] The relevant legislative provisions are found in section 16 of the Housing (Scotland) Act 2014 for regulated and assured tenancies and in this instance in section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 for private residential tenancies.

[32] Section 71 of the 2016 Act provides:

- "(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.”

[33] This section is clear that if the civil proceedings “arise” from a private residential tenancy the FtT has competence and jurisdiction.

[34] There is again no indication, that where a private residential tenancy has been terminated but where rent arrears have arisen from that terminated tenancy, the FtT no longer has jurisdiction, as was the claimant’s submission.

### Case Law

[35] In *Parker v Inkersall Investments Ltd*, *supra*, Sheriff Jamieson considered an action which had been dismissed because it was brought in the wrong forum, namely in the sheriff court rather than the FtT.

[36] Sheriff Jamieson stated obiter dictum:

“[35] Thus, as there is nothing to suggest that either section 16(1)(c) of the 2014 Act or section 71(a) of the 2016 Act restricts the transfer of the sheriff’s civil jurisdiction to the [FtT] in respect of any matter arising from assured and private residential tenancies, its civil jurisdiction may well extend to any remedy within the sheriff’s jurisdiction, provided the action or civil proceeding arises from an assured or private residential tenancy ...

[37] A more cautious interpretation might be to limit the transferred jurisdiction to contractual disputes arising from the tenancy itself (including rent arrears ...), as only these directly arise from the tenancy in question.”

[37] In the Upper Tribunal in *Anderson v Stark* [2019] UT 48, [2019] the now Sheriff Principal Ross, allowed an appeal and found that the FtT had jurisdiction in a case based on a personal guarantee relating to obligations under a tenancy. When referring to

whether a dispute is “arising from” a private residential tenancy the learned now

Sheriff Principal stated:

[8] “It is noteworthy that the starting point is to award the [FtT] the whole of the powers of a sheriff, and then limit these by reference to those arising from a [private residential tenancy]. The tenor is that the [FtT] is given such powers as is necessary for the purposes of dealing with a particular subject area and, just as significantly, the sheriff is deprived of those powers. It appears that the traditional narrow approach taken by the courts, in considering exclusion of their own jurisdiction, would in this instance be somewhat at odds with the intention of the legislature”; ...

[10] “I do, however, agree with the sheriff’s views [in *Parker supra*] that the powers transferred to the [FtT] appear to be wide-ranging”; ...

[11] “Whether a dispute ‘arises from’ a [private residential tenancy] depends, in my view, on the individual circumstances of each case. It is a matter of fact and degree. It is unlikely to be enough simply to point to a tenuous casual connection, such as bankruptcy arising through the failure to pay rent and which is not covered”; ...

[14] “... the natural and ordinary effect of the words ‘arising from’ is unrestricted and imprecise, and invites a wide, inclusive approach. It is quite the opposite of a defined award. It tends to show that the legislature intended the [FtT] to deal with all [private residential tenancy-related] events, to the exclusion of the Sheriff Court, and not just the core lease”.

## Discussion

[38] As stated by the learned sheriffs in *Parker* and *Anderson supra*, the powers transferred to the FtT appear to be wide-ranging and include “such powers as [are] necessary for the purposes of dealing with a particular subject area”. While the issue of whether a dispute “arises from” a private residential tenancy depends on the individual circumstances of each case and is a matter of fact and degree, the natural and ordinary effect of the words “arising from” is unrestricted and imprecise, and invites a wide, inclusive approach.

[39] Using a purposive approach to interpret section 71 of the 2016 Act by seeking to give effect to the purpose or underlying objective of the legislation requires that the words are construed in context and considering the statute’s overarching aim. As stated in *R*

*(Quintavalle) v Secretary of State for Health* [2003] UKHL 13 [2003] 2 A.C. 687, 695D (per

Lord Bingham of Cornhill, House of Lords):

“The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment”.

[40] In its full context, the said Scottish Government's Revised Explanatory Notes to the Private Housing (Tenancies) (Scotland) Bill stated:

Para 69 - “The Tribunal offers a more accessible, specialist and consistent form of redress for tenants and landlords on housing matters.”

Para 82 – “Section 56A [now section 71] provides the Tribunal with the jurisdiction to deal with all civil disputes arising from a Private Residential Tenancy. It gives the Tribunal the same jurisdiction that a sheriff would ordinarily have to deal with civil cases, and it does so to the exclusion of the sheriff's jurisdiction. This section ensures that any remaining civil disputes which are not specifically mentioned in the Bill, but which might arise during the course of a tenancy - such as an action for payment of rent arrears - can be dealt with by the Tribunal”.

[41] At first blush, one can see why one could surmise that a reference to civil disputes which might arise “during the course of a tenancy” could be supportive of the claimant's position. However, this is not the case, as the factual and legal reality remains that the rent arrears have still arisen during the tenancy, whether the course of the tenancy itself has later ceased or not.

[42] I noted that paragraph 43 of the Policy Memorandum to the Private Housing (Tenancies) (Scotland) Bill (SP Bill 79-PM) stated:

“The Tribunal is also granted powers under the Bill in relation to private residential tenancies. The Tribunal's main benefits will be specialism, consistency and accessibility, improving access to justice for both tenants and landlords in the sector”.

[43] Applying the natural and ordinary effect of the words “arising from” and in considering parliament's clear purpose from such notes and policy extract, it is clearly intended that “housing matters” in the landlord/tenant sector should be adjudicated upon

by the specialist FtT, and that the FtT has exclusive jurisdiction in respect of claims arising from assured, regulated and private residential tenancies. Whether that tenancy has thereafter ended has no impact on that. There would be no contractual basis for the claim to be made unless it has arisen from the tenancy contract. There is no basis to restrict the interpretation of section 71 to civil proceedings arising from “a continuing private residential tenancy” as submitted by the claimant.

[44] The claimant indicated that when they had contacted the FtT they were advised that the FtT did not know if the FtT had competence and jurisdiction in this matter. It may be that a clerk has simply been unwilling to give any indication unless and until a live application has been made, as opposed to there being any real issue in this respect.

[45] However, I was content to agree with the claimant that I would provide this Note for them, in order that they can be clear as to my decision and so that they can refer to it, in the unlikely event it is required.

### **Decision**

[46] The claim is therefore dismissed as the sheriff court has neither jurisdiction nor competence to make the order sought. What this claim does highlight, is the dangers of a reckless reliance on Artificial Intelligence by any party without verifying that the same is genuine, and the potential for a party being found in contempt of court in circumstances such as these, even if done in good faith.