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16th February, 2016

Dear Sir/Madam

I am writing to apply for a refund of an overcharge that we incurred during the period 6th October, 2010 to 6th September 2013.

Our household of five lived at xxxxxxxxxxxx. We were completely unaware that we were being charged for our consumption of water and electricity at the incorrectly applied, misleadingly named domestic tariff, designed for owners of EMPTY (hence no. of registered occupants = zero) or occasionally used second homes. The property was our PRIMARY residence for 35 months.

In August 2013, my ex landlord took out a garnishee order on our bank account and my salary when we refused to continue overpaying at this incorrectly applied tariff.

Nearly two years later, on the 10th July, 2015, the judgement in the small claims court case was delivered (see attached ). The judgement ruled that the amount in question, which was now 1600.12 euro arrears owed to Arms, should be shared equally between my ex landlord and I. Please see the following for greater detail:

[http://maltatenantsupport.weebly.com/blog/judgement](https://l.facebook.com/l.php?u=http%3A%2F%2Fmaltatenantsupport.weebly.com%2Fblog%2Fjudgement&h=2AQF8r6N8)
[http://maltatenantsupport.weebly.com/blog/did-you-win](https://l.facebook.com/l.php?u=http%3A%2F%2Fmaltatenantsupport.weebly.com%2Fblog%2Fdid-you-win&h=wAQH5BJ1y)

This was welcome news. However, it still remains that we have overpaid by 2 509.66 euro. At the correct residential tariff, over the period of 35 months, we should have been charged 3270.28 euro for our consumption of 17 670 units of electricity and 417 units of water ( see attached JM 7). Instead we were charged 6 580.12 euro at the incorrectly applied domestic tariff.

I have always argued that this matter should never have got to court. In email correspondence with ex Arms CEO, James Davis, dated the 28th January, 2014, and cc’d to Prime Minister Joseph Muscat and Minister for Energy and Health, Konrad Mizzi (see attached JM4a and 4b), I wrote this:

“I would respectfully suggest that Arms accepts that we have been resident in Malta since the 24th September, 2010. I can corroborate this with a considerable paper trail. This would mean that Arms would refund our overpayment of 1 600 euro. And the arrears of about 1 400 euro will be cancelled. This will mean that xxxxxxxxxxxxxxxxxxx, my ex landlord, will have his case dropped and we can have the amount of our garnishee (about 2 000 euro collected over the last 5 months) returned to us.”

Unfortunately the answer was no. I therefore consider that Arms is now liable not only for our overcharge of 2 509.66 euro, but also for my legal and court costs.

This situation has caused my family and I much distress and financial hardship. I had to endure monthly visits to court for which I had to take time off work. All the while I was incredulous that my government chose not to resolve the situation.

I hold Arms totally responsible: our ex landlord would never have been able to garnishee our bank account and my salary if WE had been directly responsible for OUR account with the sole, state owned utility billing company in Malta. As you know, a tenant cannot be an account holder WITHOUT the landlord’s permission (signature on Arms Form F). Tenants are not informed by Arms, the landlord or the letting agent that there is such a complicated billing system. So tenants are unknowingly tied into legally binding contracts to pay at the incorrect tariff for the length of the contract. This is an impossible, extremely unfair situation, which Arms should have done something about years ago. Unfortunately, tenants are not psychic so therefore cannot imagine that such an insane billing system exists. They need to be informed. In my opinion, it is the responsibility of Arms to make sure that everybody living in their primary residence is on the correct tariff. If it’s not possible to ensure this, then it is Arms’s legal and moral responsibility to scrap this discriminatory billing system and start again.

This is NOT law but flawed administrative policy, which I hope is not deliberate on Arms’s part, although I cannot see how it is not. In fact, this behaviour is unconstitutional because it discriminates against all tenants just because they are tenants. Tenants are NOT lesser beings. They should not pay more for their consumption of water and electricity simply because they are tenants.

These are the costs:

Overcharge due to the incorrect implementation of the Arms billing scheme: 2 509.66 euro

Legal costs: 569.85 euro

Court costs (judgement ruled that I had to pay my ex landlord’s costs too): 542.46 euro

My employer’s legal costs, lodging part of my salary to court (which I paid): 179.66 euro

Total cost: 3 801.63 euro

I am copying Marie-Hélène Boulanger, Head of Unit: DG JUST – Directorate-General for Justice and Consumers, into this email. She is dealing with my complaint to the EU Commission, reference CHAP 2013 (02750).

I am also copying Prime Minister Joseph Muscat and Minister for Energy and Health into this email.

I am attaching the following documents:

* Completed Arms Form H1
* JM1: Proof of residence at xxxxxxxxxxxxxxxxx for the period 6th October, 2010 to 6th September, 2013 – my ex landlord’s sworn affidavit informing the court, amongst other things, that we lived in the above property during the period mentioned above.
* JM2: Judgement showing our payment of 800.06 euro of the arrears
* JM3: The cost at the correct residential tariff with 5 registered occupants on Arms Form H
* JM4a, b: My email correspondence with then Arms CEO James Davis
* JM5: Court costs
* JM6a, b, c, d, e: My legal costs: Refalo and Zammit Pace Advocates
* JM7a, b: My employer’s legal costs in lodging my garnisheed salary, which I paid

I look forward to hearing from you soon.

Yours faithfully

Johanna MacRae