



**Decision and Statement of Reasons by First-tier Tribunal made under Rules 118 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 as amended (“the Rules of Procedure”)**

**Case reference FTS/HPC/RN/23/3830**

**Parties**

**Elaine Duthie (Applicant)**

**Olufunke Olubunmi Olaniran (Respondent)**

**18H Crown Street, Aberdeen AB11 6AY (House)**

**Background**

1. On 28 October 2023 the Applicant made a prescribed property costs application to the Tribunal in terms of Rule 115 of the Rules of Procedure.

The Applicant wishes to appeal a decision made by a rent officer issued on 16 October 2023. This appeal is in terms of Section 33C of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”).

The decision which is the subject of appeal relates to a request by the Applicant, who is the landlord of the House, to increase rent above the permitted rate in terms of the Cost of Living (Tenant Protection)(Scotland) Act 2022.

The rent officer’s decision issued on 16 October 2023 increased the current monthly rent by £60 to £1560 per calendar month (“PCM”). However, the Applicant has indicated that whilst she has sought an increase of 6% on the current rent of £1500 PCM, which would result in rent of £1590 PCM, and intimated this proposed increase of £90 PCM to the Respondent who is the tenant in a notice sent on 5 October 2023 and sent a copy of this notice to Rent Service Scotland as part of her application, when she completed the form provided by Rent Service Scotland seeking an increase in

rent, she incorrectly stated in the form that she was seeking a rental increase of £60 per month and not £90 per month. An increase of £60 PCM does not equate to 6% increase in the current rent payable for the House of £1500 per month. A copy of the private residential tenancy agreement for the House confirms the current rent is £1500 PCM.

The Applicant has sought a review of the rent officer's decision based on an error in the form and the rent officer has indicated a lack of power to make any adjustment to her determination.

The rent officer concluded that based on the lower of (1) the sum sought of £60 PCM per the application form; (2) 50% of the increased mortgage costs evidenced in the application; and (3) a 6% increase to the current rent, the rent should be increased by £60 PCM. The starting figure for rent before the increase was applied was taken by the rent officer to be £1500 PCM.

It was against this background that the application was made to the Tribunal under Rule 115 of the Procedure Rules.

2. In term Section 33C(2) of the Act the application to the Tribunal seeking an appeal must be made within 14 days. Accordingly, the appeal by the Applicant has been received timeously by the Tribunal.

3. On 9 November 2023 an order in terms of Rule 117 of the Rules of Procedure was issued by the Chamber President to the rent officer who made the prescribed property costs order to provide a copy of the documentation provided by the Applicant forming her application to Rent Service Scotland which would assist in ascertaining the background. The Applicant was directed by the Chamber President to confirm the date of service of the notice of proposed increased rent to the Respondent which she did by sending a copy of the email with attached notice sent to the Respondent on 5 October 2023.

Initially, the documentation provided by Rent Service Scotland (RSS) in response to the Order did not correspond with all the documentation which the Applicant indicated she had submitted as part of her application to RSS. This was clarified following a further Order by the Tribunal to RSS and the documentation submitted by the Applicant as her application to RSS was confirmed to comprise an email dated 5 October 2023 headed "Rent increase by 6%" sent by the Applicant to the Rent Service Scotland. Attached to this email was the following documents: a completed form in a style provided by Rent Service Scotland, the completed tenancy agreement for the House, mortgage letters relating to the House evidencing the increase in interest charged, notice intimating the proposed increase in rent to the Respondent in terms of Section 33A (3) of the Private Housing (Tenancies) (Scotland) Act 2016, and bank account screenshots.

#### **4. Applicable Legislation in the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”)**

##### **33A Landlord application to rent officer to increase rent above permitted rate**

*(1) A landlord under a private rented tenancy may make an application to the relevant rent officer to increase the rent payable under the tenancy by more than the permitted rate in order to recover up to 50% of the increase in any prescribed property costs that the landlord has incurred during the relevant period.*

*(2) An application under subsection (1) must include—*

*(a) evidence of an increase in any prescribed property costs of the landlord incurred during the relevant period (“relevant period” as defined later in the section means the period of 6 months occurring immediately before the day on which the application under subsection (1) is made), and*

*(b) a statement of—*

*(i) the rent payable under the tenancy, and*

*(ii) the rent that would be payable under the tenancy if the proposed rent increase took effect (“the proposed rent”).*

*(3) The landlord must give notice in writing to the tenant under the private residential tenancy of any application under subsection (1) which must include—*

*(a) a statement of the proposed rent,*

*(b) a statement that the proposed rent would be an increase to the rent payable under the tenancy of more than the permitted rate,*

*(c) a statement that the rent payable under the tenancy is not increased unless and until—*

*(i) the relevant rent officer makes an order determining the rent payable under the tenancy, or*

*(ii) if the order is appealed to the First-tier Tribunal, the Tribunal makes an order determining the rent payable under the tenancy,*

*(d) a description of the prescribed property costs of the landlord that have increased during the relevant period prompting the proposed rent, and*

*(e) where an increase mentioned in paragraph (d) includes an increase in the landlord’s service costs, details of the nature of the increase in the service costs and the amount.*

*(4) In this Chapter, “prescribed property costs”, in relation to a landlord, are—*

*(a) interest payable in respect of a mortgage or standard security relating to the let property,*

*(b) a premium payable in respect of insurance (other than general building and contents insurance) relating to the let property and the offering of the property for let,*

*(c) service charges relating to the let property that are paid for by the landlord but the payment of which the tenant is responsible for (in whole or in part) in accordance with the terms of the tenancy.*

### **33B Rent officer's power to apply rent increase above permitted rate**

*(1) Where a rent officer receives an application under section 33A(1), the rent officer must decide whether the following conditions are met—*

*(a) the rent officer is satisfied that the landlord's prescribed property costs that are specified in the application have increased during the relevant period, and*

*(b) the rent officer is satisfied that the amount of the proposed increase to the rent payable under the tenancy represents no more than 50% of the increase in the landlord's prescribed property costs incurred during the relevant period as specified in the application.*

*(2) If both conditions mentioned in subsection (1) are met, the rent officer must make an order stating that from the effective date the rent under the tenancy is the lower of—*

*(a) the proposed rent, or*

*(b) the rent payable under the tenancy as increased by 6%.*

*(3) If either or both of the conditions mentioned in subsection (1) is or are not met, the rent officer may make an order stating that from the effective date the rent payable under the tenancy is the rent determined by the rent officer.*

*(4) In determining the rent under subsection (3), the rent officer—*

*(a) may not determine that the rent payable under the tenancy from the effective date is an amount that would be an increase to the rent payable under the tenancy of more than an amount representing 50% of the increase in the landlord's prescribed property costs incurred during the relevant period as specified in the application under section 33A(1), and*

*(b) in any event, may not determine that the rent payable under the tenancy from the effective date is more than the rent payable under the tenancy as increased by 6%.*

## **5. Decision and Reasons**

There is no doubt that the initial problem which occurred in this case was caused by the Applicant who provided a completed form as part of the application paperwork to RSS which contained an error, that error being the amount of increased rent being sought by her. However, at the same time as submitting this form the Applicant provided to RSS (1) a copy of the notice to the Respondent specifying the accurate

amount of the proposed rental increase being sought and (2) a covering email to which the documentation was attached. This email to RSS was headed "Rent increase by 6%", which was the accurate increase being sought by the Applicant. The rent officer in the face of these inconsistencies and different increased rental figures did not seek to clarify the correct rental increase being sought before issuing a determination.

Section 33A(2) of the Act specifies the information and attachments required to make an application to the rent officer in terms of Section 33A(1). This includes a statement of the rent payable under the tenancy and the proposed rent if the increase is to proceed. To assist landlords to provide the prescribed information, Rent Service Scotland has created an application form. This is not a form prescribed by statutory regulations. Therefore, it is open to a rent officer to consider all the documents and information submitted to determine if all the prescribed information has been provided. It follows that an omission or error in the form is not fatal if the application paperwork taken as a whole meets the requirements in Section 33A(2). Given the inconsistencies in the paperwork submitted as the application, it is reasonable to expect that the rent officer would have sought clarification on the correct increase in rent being sought.

No application under Rule 115 has been received from the Respondent who is the tenant. The basis of the Applicant's application is that the rent increase applied was not 6% of the current rent as specified in the notice to the Respondent which was before the rent officer before she made a determination.

The documentary evidence submitted supports an increase in the mortgage interest for the House on 1 October 2023, which is within the relevant period of 6 months occurring immediately before the day on which the application was made to Rent Service Scotland on 5 October 2023. Interest on a mortgage over a let property is a prescribed property cost in terms of Section 33A(4)(a) of the Act. It is clear that the conditions in Section 33B(1) are met and an increase must be applied to the rent as required in Section 33B(2). The rent officer has no discretion when applying a rent increase if the legislative conditions are met.

The Applicant has evidenced that monthly mortgage interest payments have increased over £180 per calendar month during the 6 months occurring immediately before the day on which the application was made to Rent Service Scotland on 5 October 2023. 50% of the increased monthly mortgage costs is higher than the increase proposed in monthly rent of £90 detailed within the notice to the Respondent, a copy of which was submitted to the rent officer. A 6% increase on the current rent of £1500 PCM amounts to an increase of £90 PCM.

The legislation in Section 33 of the 2026 Act provides a mechanism for the increase in rents and for appeal to the First-tier Tribunal against the decision made by the rent officer. Section 33A(1) of the Act gives power to the rent officer to increase the rent payable above the rent payable under the tenancy agreement. The appeal provisions

in Section 33C gives power to the Tribunal to reconsider the application paperwork by reference to a prescribed property costs application made to the Tribunal by a landlord or, as the case may be, the tenant and to any evidence obtained under Rule 117 and come to a different decision to the rent officer. Rule 118 of the Procedure Rules states at Rule 118(2) that a prescribed property costs application must be determined by the First-tier Tribunal without written representations and without a hearing. I am satisfied that taken collectively the documents which formed the application before the rent officer amount to an application in terms of Section 33A(2) and that the current rent for the House is £1500. Given the inconsistencies, which existed in the application paperwork before the rent officer, the rental increase being sought should have been clarified before a determination was made. The application before the Tribunal seeks a monthly increase in rent of £90 PCM. Arguably, the inconsistencies within the application paperwork submitted to the rent officer point to the probability that the sum of £90 PCM, being a rent increase of 6%, was most likely increase being sought within the application to RSS. The Respondent has been given notice that the increase in rent proposed for the House is £90 PCM. An increase of £90 PCM is within the statutory limit of a 6% increase in the current rent for the House and is a sum less than 50% of the increase in mortgage interest over the relevant period of 6 months specified aforesaid.

**Since such an application must be determined by the First-tier Tribunal without written representations from parties and without a hearing, I have proceeded to make the determination and an order is made for rent to be paid for the House of £1590.00 per calendar month. This rental amount will take effect from the first rental payment date falling at least 14 days after the day on which this order is made. This is in terms of Section 33C(5) of the Act.**

### **Appeal and Review Provisions**

No appeal lies from this decision in terms of Section 33E of the Act.

Section 33E of the Act and Rule 120 of the Procedure Rules provides that a review may be sought of this decision by the landlord or tenant within 14 days of the date when the decision is made. The legislative provisions can be found at the following link <https://www.legislation.gov.uk/ssi/2017/328/schedule>

# A Devanny

Chamber President

First-tier Tribunal for Scotland (Housing and Property Chamber)  
22 December 2023