



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/CV/23/3285

Property: 53 Gibraltar Gardens, Dalkeith EH22 1EG (“Property”)

Parties:

Slash Property Ltd, Hillside, Alkerton, Banbury, Oxfordshire (“Applicant”)

**Neil Reid Property, 63 Pendreich Avenue, Bonnyrigg EH19 2EE (“Applicant’s
Representative”)**

**Mark Horne and Robert Horne, 53 Gibraltar Gardens, Dalkeith EH22 1EG
 (“Respondent”)**

**Tribunal Members:
Joan Devine (Legal Member)**

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber)
 (“Tribunal”) determined that an order for payment of £483.00.**

Background

1. The Applicant sought an order for payment of £161 in respect of arrears of rent. The Applicant had lodged Form F. The documents produced were: a short assured tenancy dated 27 January 2016; AT5 dated 27 January 2016; copy decision dated 19 May 2023 in case reference FTS/HPC/RS/23/0150; copy rent increase letter dated 22 June 2023; copy emails between the Applicant’s Representative and the Respondent; copy letters from the Applicant’s Representative to the Respondent dated 4 and 12 September 2023; copy email from Scottish Association of Landlords to the Applicant’s Representative dated 20 July 2023 and schedule of rent arrears. A Case Management Discussion (“CMD”) was fixed to take place on 25 January 2024.
2. In advance of the CMD the Applicant’s Representative lodged a copy email to the Respondent dated 28 June 2023 enclosing fact sheet from Scottish Association of Landlords; a copy email to the Respondent dated 23 June 2023;

a written representation and an updated statement of rent arrears showing arrears of £483.

3. In advance of the CMD the Respondent lodged a written representation attaching a copy letter from the valuation rent officer dated 18 July 2023; a written representation attaching an excerpt from the Scottish Government website and a written representation attaching an excerpt from Scottish Association of Landlords website.

CMD

4. A CMD took place before the Tribunal on 25 January 2024 by teleconference. Robert Horne was in attendance. The Applicant was represented by Neil Reid of the Applicant's Representative.
5. The Tribunal noted that the tenancy agreement was a short assured tenancy for the period 27 January 2016 to 29 July 2016 which continued on a month to month basis thereafter. The Tribunal asked if the tenancy agreement had been brought to an end. Mr Reid and Mr Horne said that it had not. The Tribunal noted that in terms of the tenancy agreement the rent was £600 per month. Mr Reid said it had been increased to £650 in January 2021. Mr Horne agreed that was the case. The Tribunal noted that the Applicant had sought to increase the rent from £650 to £750 with effect from 27 July 2023 by rent increase notice dated 22 June 2023 and that the Respondent had referred the matter to the Valuation Rent Officer who had applied the rent cap and fixed the rent at £669.50 with effect from 27 July 2023 on the assumption that the tenancy fell under the Cost of Living (Tenant Protection) (Scotland) Act 2022 ("2022 Act"). The Tribunal noted that the difference in the two rental figures was £80.50 per month and that the Applicant had lodged an updated rent statement which showed that amount as being unpaid for a period of 6 months. The Parties agreed that was the case.
6. Mr Reid submitted that the issue in dispute was whether the tenancy in this case is excluded from the 2022 Act. He said that if it was excluded the rent increase to £750 per month was valid. He said he understood that short assured tenancies were excluded from the 2022 Act. He said that the advice he had from the Scottish Association of Landlords was that as long as there is a rent increase clause in the tenancy agreement, an increased rent can be proposed and the tenancy is excluded from the rent cap provisions of the 2022 Act.
7. Mr Horne said he understood that the rent cap provisions applied to short assured tenancies although he understood that if there was a rent increase clause in the tenancy agreement which set out the mechanism by which the

rent should be increased then the rent could be increased in line with the mechanism. He said that the rent increase clause in this case did not contain a mechanism by which the rent was to be increased and in those circumstances the 2022 Act applied.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a tenancy agreement dated 27 January 2016 ("Tenancy Agreement").
2. In terms of the Tenancy Agreement the rent was £600 per calendar month.
3. The rent was increased to £650 in January 2021.
4. The Tenancy Agreement provides that the landlord may propose to increase the rent after 29 July 2016.
5. The Respondent failed to pay the difference between the rent as set by the Valuation Rent Officer and the increased rent for the period July 2023 to December 2023. The unpaid amount is £483.

Findings in Fact and Law

The Tribunal made the following findings in fact and law :

1. The Tenancy Agreement is a contractual tenancy which makes provision for an increase in rent.
2. The Tenancy Agreement is exempt from the rent cap controls in schedule 1 of the 2022 Act.
3. The rent due in terms of the Tenancy Agreement was increased to £750 with effect from 27 July 2023 by notice dated 22 June 2023.

Reasons for the Decision

8. The Tenancy Agreement is a contractual short assured tenancy. Clause 3 provides that the tenancy will commence on 27 January 2016 and will end on 29 July 2016 and if not brought to an end by either party will continue on a monthly basis. Clause 5.1 provides that the rent is £600 per calendar month. Clause 5.2 states :

“The Landlord may propose to increase the rent after the end date specified in clause 4 above. Under such circumstances the Tenant will be given a minimum of 1 month’s notice in writing of any proposed change before the beginning of the rental period when the change is to start.”

9. The numbering in the Tenancy Agreement has gone awry in that clauses 5.1 and 5.2 should be clauses 4.1 and 4.2 and the reference to “*clause 4 above*” should be to “*clause 3 above*”.
10. The Parties agreed that the rent was £600 and was increased to £650 in January 2021. By notice dated 22 June 2023 the Applicant’s Representative sought to increase the rent to £750 per month. The Respondent sought a determination from the Rent Officer who set the rent at £669.50 per month by applying the rent cap of 3%. The letter from the Rent Officer dated 18 July 2023 states that the determination is based on the assumption that the 2022 Act applies. The question for the Tribunal is whether the rent cap provisions of the 2022 Act apply in this case.
11. Schedule 1 of the 2022 Act deals with the rent cap. Section 2 of schedule 1 deals with the rent cap for assured and short assured tenancies. Section 2(3) inserts a new section 23A into the Housing (Scotland) Act 1988 (“1988 Act”) which states :

“23A Rent cap controls

(1) Except in the case of an exempt tenancy, on or after 6 September 2022, the landlord under an assured tenancy or a short assured tenancy may not increase the rent payable under the tenancy by more than the permitted rate.....

(6) In subsection (1), “exempt tenancy” means –

(a) A statutory assured tenancy which includes a term of the type mentioned in paragraph (a) of subsection (5) of section 24, or

(b) A contractual tenancy which makes provision of the type mentioned in paragraph (b) of that subsection.”

In this case the Tenancy Agreement is a contractual tenancy. In that case section 23A(6)(b) may apply. That requires consideration of section 24 (5)(b) of the 1988 Act which states :

“Nothing in this section

(c) Affects the operation of any term of a contractual tenancy which makes provision for an increase in rent (including provision whereby the rent for a particular period will or may be greater than that for an earlier period).

12. The Tenancy Agreement in this case is a contractual tenancy which makes provision for an increase in rent. In those circumstances it is exempt from the rent cap controls in the 2022 Act. It was Mr Horne’s submission that a tenancy agreement could only be exempt from the rent cap controls if the provision for a rent increase in the contract set out the mechanism by which the rent would be increased. That does not accord with the definition of an “exempt tenancy” in section 24(5)(b) of the 1988 Act.

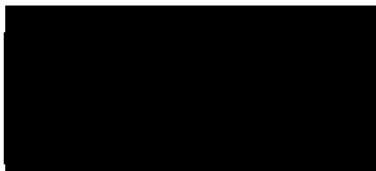
13. The Parties had agreed that the sum in dispute was the difference between the rent set by the Valuation Rent Officer and £750. The difference is £80.50 per month. The Parties had agreed that the up to date rent statement lodged showed this amount as being unpaid for 6 months. The Tribunal determined to allow the Application to be amended to seek payment of 6 x £80.50 which is £483. The Tribunal determined to make an Order for payment in that amount.

Decision

14. The Tribunal grants an order for payment of £483.00.

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.



Legal Member

25 January 2024
Date