

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) in connection with an application made by the Tenants under section 34 (1) of the Housing Scotland Act 1988.

Chamber Ref: **FTS/HPC/RS/24/1737**

Re Property at 126 Lumley Street, Grangemouth, FK3 8BL (“the Property”)

The Parties: -

1. Miss Anne Marshall and Mr. John Goodbrand, residing together at 126 Lumley Street, Grangemouth, FK3 8BL (“Tenants Applicant”) and
2. Mr. Bart Schelfhout and Ms. Rebekah Schelfhout, per their letting agents Messrs. Rentahome (Scotland) Limited, having a place of business at Abbey Mill Business Centre, 12 Seedhill Road, Paisley PA1 1JS (“the Landlords”)

The Tribunal comprised: -

Mr. Andrew Cowan, Legal Member, and
Ms. Sara Hesp, Ordinary Member (Surveyor)

Background

1. The Tenants occupy the Property under the terms of a short assured tenancy dated 27th June 2017. At the date of signing of the tenancy agreement the Landlords of the Property were named in the tenancy agreement as Mr. Bart Schelfhout and Mr. James Leece. Prior to the creation of the tenancy the Landlord’s letting agents had served a form AT5 upon the Tenants. That notice confirmed to the tenants that the tenancy of the Property was a short assured tenancy under section 32 of the Housing (Scotland) Act 1988.
2. The rent payable by the tenants as at the date of entry to the Property was £400 per month.
3. On or around 1st April 2023 the Landlords letting agents served a purported rent increase notice upon the Tenants. That notice was accompanied by explanatory notes which referred to the rent increase notice as having been issued under section 22(1) of the Private Housing (Tenancies)(Scotland) Act 2016. The purported rent increase notice sought to give notice to the Tenants of the

Landlords intention to increase the rent for the Property from £770 per month to £850 per month with effect from 1st August 2024.

4. By an application dated 11th April 2024, the Tenants applied to the First Tier Tribunal Housing and Property Chamber seeking a determination of the rent which, in the Tribunals opinion, the Landlords might reasonably be expected to obtain under the short assured tenancy.
5. The Tenants included with their application: -
 - a. Copy short assured tenancy agreement dated 29th June 2017
 - b. Copy Form AT5 dated 29th June 2017
 - c. A list of the furniture which the Tenants have provided at the Property
 - d. Copy purported rent increase notice dated 1st April 2023
 - e. Copy letters to the Tenants from the Landlords' letting agents dated 10th October 2023 in which the tenants were advised of the Landlords' intention to increase the rent for the Property to £850 per month with effect from 27th December 2023.
6. The Application was accepted by the Chamber President on 18th April 2024 and was referred for this Tribunal's consideration.
7. The Tribunal issued a letter to parties dated 14th June 2024 which required parties to lodge any written representations in relation to the application by 5th July 2024. The letter confirmed that the Tribunal would inspect the Property on 12th July 2024 and would hold a hearing on the same date at Wallace House, Maxwell Place, Stirling. Parties were further advised that the Tribunal will only make a determination of rent for a short assured tenancy if they consider that, from the evidence provided to them by either party or their representative, there is a sufficient number of houses in the locality let on assured tenancies and that the rent payable for the tenancy under consideration is significantly higher than the landlord might reasonably expect to receive having, regard to rent levels of similar tenancies in the area.
8. The Landlords' letting agent lodged written representations dated 19th June 2024 with the Tribunal. Those representations confirmed that the Tenants paid £770 per month rent for the Property as at that date. The Landlords' letting agent also lodged a copy of the Tenant's rent statement, together with short details (including the proposed rent) of a number of "4 bedrooms houses to rent in Falkirk".
9. The Tenants lodged written representations dated 20th June 2024 with the Tribunal. Those written representations included comments from the Tenants on repairs which had been carried out at the Property. The Tenants also commented that properties referred to by the Landlords in their written response were outwith Grangemouth and are "brand new houses".

Inspection and Hearing

10. The Tribunal inspected the Property on the morning of 12th July 2024. The Property is a Four bedroom end terraced dwellinghouse built in the 1970s with

accommodation over three floors – 4 bedrooms; living room; kitchen; bathroom; toilet and garage with gas central heating and double glazing. The Property has a small rear garden.

11. The Tribunal held a hearing in relation to the application on 12th July 2024 at Wallace House, Maxwell Place, Stirling. The first named Tenant, Miss Adele Marshall, attended the hearing and represented both Tenants. She was accompanied by her daughter Miss Courtney Marshall. The Landlords were represented at the hearing by Ms. Lesley Morrison, from the Landlords Letting Agents, Rentahome (Scotland) Limited. She was accompanied by Ms. Pamela Keary from the Landlords' letting agents.
12. At the start of the hearing the Tribunal explained to parties that they could only make a determination of rent for a short assured tenancy if they consider that, from the evidence provided to them by either party or their representative, there is a sufficient number of houses in the locality let on assured tenancies and that the rent payable for the tenancy under consideration is significantly higher than the landlord might reasonably expect to receive having, regard to rent levels of similar tenancies in the area.
13. The Tribunal raised certain preliminary matters with those present at the Tribunal: -
 - a. It appeared that there had been a change in Landlords under the tenancy since the commencement date of the Tenancy between the parties. Ms. Morrison advised the Tribunal that Mr. James Leece was no longer an owner of the Property, and that the Property was now owned jointly by Mr. Bart Schelfhout and Ms. Rebekah Schelfhout. Ms. Morrison advised the Tribunal that Mr. and Ms. Schelfhout were now the landlords in terms of the Tenancy between the parties. Ms. Morrison believed that there was a new tenancy agreement between the parties, but she was not able to confirm this and did not produce a copy of any further tenancy agreement between the parties.
 - b. The Tribunal noted that on 1st April 2023 the Landlords letting agents had served a purported rent increase notice upon the Tenants. That notice was accompanied by explanatory notes which referred to the rent increase notice as having been issued under section 22(1) of the Private Housing (Tenancies)(Scotland) Act 2016. The Tribunal highlighted to Ms. Morrison that any rent increase notice under a short assured tenancy would require to be issued in terms of the Housing (Scotland) Act 1988. Ms. Morrison indicated that the notice dated 1st April 2023 had not been "proceeded with".
 - c. The Tribunal noted that the Landlords letting agents had served letters upon the tenants dated 10th October 2023 in which they had intimated a further rent increase to the Tenants. That increase sought to raise the rent to £850 per month from 27th December 2023. The Tribunal highlighted to Ms. Morrison that this letter did not appear to have been issued in terms of the Housing (Scotland) Act 1988. Ms. Morrison, again, indicated that the increase intimated in that letter had not been "proceeded with".
 - d. The Tenant stated that the rent currently paid under the Tenancy is £850 per month. She highlighted that rent is paid to the Landlord through

housing benefit. Ms. Morrison insisted that the current rent paid by the Tenant is £770 per month. There was therefore no agreement between the parties as to how much rent was currently due to be paid in terms of the Tenancy between the parties.

14. Notwithstanding all these preliminary matters the Tribunal were not satisfied that the parties had provide the Tribunal with sufficient evidence of rents payable in relation to similar houses in the locality which had been let on assured tenancies (whether short assured or otherwise). The properties on the details which the Landlords' letting agent had supplied were not comparable with the Property as they were not in the immediate locality of the Property, and they were not of a similar size/age or type to the Property. The list of properties supplied by the Landlord' letting agents did not give a sufficient range of rents of properties let on an assured tenancy basis against which the Tribunal could compare the current rent due for the Property.

Decision

15. The Tribunal therefore determined that they were unable to make a determination of the Tenants' application as to the were unable to comply with the condition in terms of section 31(1)(a) of the Housing (Scotland) Act 1988.

Right of Appeal

A Landlord, tenant or third-party applicant 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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

A Cowan

Signature: _____

Chairperson: A Cowan

Date: 12th July 2024