

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') issued under section 26 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017.

Chamber Ref:FTS/HPC/RS/24/1735

27 Kirkland Road, Dunlop, KA3 4AQ (the Property')

The Parties:

John Lumb residing at 27 Kirkland Road, Dunlop, KA3 4AQ ('the Tenant')

Steven Clarkson ('the Landlord')

Pennylane Homes, 14-16 Cochrane Street, Barrhead ('the Landlord's Representative')

Tribunal members:

Jacqui Taylor (Legal Member) and Carol Jones (Ordinary Member)

1. Background.

John Lumb is the tenant of the Property in terms of a short assured tenancy granted by the Landlord dated 4th January 2013.

The Landlords' representative provided the Tribunal with a copy of the form AT5 dated 4th January 2013.

The commencement date of the short assured tenancy was 4th January 2013. The initial terms of the tenancy was from 4th January 2013 to 4th July 2013. A subsequent short assured tenancy was entered into for the period 4th March 2014 to 5th September 2014. There was no provision in the lease for the lease to continue after 5th September 2014. The lease was continuing by tacit relocation. The Tenant sent an AT4 application to the Tribunal dated 14th April 2024 which stated that the current rent paid by the Tenant is £535 per month. The Landlord had sent the Tenant a letter dated 5th

April 2024 advising him that the rent would increase to £595 per month with effect from 4th June 2024.

2. By Notice of Acceptance by James Bauld dated 24th April 2024, he intimated that he had decided to refer the application (which application paperwork comprises documents received on 16th April 2024) to a Tribunal.

3. Written Representations by the Landlord’s Representative.

‘Penny Lane Homes received a request from the Landlord to increase the rent. Research was carried out to gauge the current market rent to ensure that the figure was not higher than this. They also kept within the 12% tapering formula. They believe that the increase is fair. They have included the most up to date short assured tenancy agreement. They noted that the copy lease provided by the Tenant was the original agreement. They also included a best price guide which they included as a reference. Clause 3.3 of the tenancy agreement is the rent review clause. It is in the following terms: ‘The Landlord is entitled to increase the rent after the end date specified in clause 1. Under such circumstances the Tenant will be given a minimum of one month’s notice in writing of any proposed change before the beginning of the rental period when the change is to start.’

Extract from Rightmove dated 15th August 2024 of properties to rent in Dunlop:

Address	accommodation	Rent	
Gunshill Farm, Stewarton	Detached 4 bedrooms, 3 bathrooms.	£1650 pcm	
Rigghead Stewarton	2 bedroom top floor flat	£625 pcm	
Cocklebie Road, Stewarton	2 bed unfurnished flat	£695 pcm	
Ailsa View Stewarton	Detached 4 bedrooms, 2 bathrooms.	£1400 pcm	

Farm Cottage Lugton	Detached bedrooms	3	£2000 pcm	Described as stunning, garage
Auchintiber	Detached bedrooms	3	£1550 pcm	

Best Price Guide (Properties marketed between May 2019 and August 2024).

Address	Accommodation	Rent	Date
Livingston Terrace, Dunlop	1 bedroom semi detached	£650 pcm	1 August 2024
Main Street, Dunlop	4 bedroom detached house	£1100 pcm	14 March 2023- 10 April 2023 (let agreed)
Lugton Road, Dunlop	2 bedroom cottage flat	£525 pcm	June 2022 (let agreed)
90 Main Street, Dunlop	3 bedroom terraced house	£700 pcm	Dec 2013 to Sept 2021(let agreed)
Main Street, Dunlop	2 bedroom cottage	£650 pcm	Jan 2007 to Sept 2020 (let agreed)
Main Street, Dunlop	3 bedroom terraced house	£595 pcm	December 2015 to March 2020 (let agreed)

4. THE INSPECTION

On the morning of 30th August 2024 the Tribunal inspected the Property. The Tenant was present at the inspection. The Landlord was not present and was not represented.

The property is a semi detached dormer bungalow which was constructed around the 1950s and is located in the village of Dunlop. This rural village is located around 7 miles north-west of Kilmarnock in East Ayrshire.

The accommodation comprises a living room, one bedroom (currently used as a study), kitchen and bathroom on the ground floor and two double bedrooms on the upper floor. The gross internal floor area is approximately 88 square metres (in terms of the Energy Performance Certificate).

There is a gas central heating system in the Property. The windows throughout the Property are double glazed. There are gardens to the front, rear and side and off road parking is available at the property.

The Landlord provided the cooker and fridge freezer and also the carpets and floor coverings throughout the Property. No furniture had been provided by the Landlords.

The Property is conveniently situated for public transport and local services.

5. THE HEARING

An in-person hearing was scheduled following the inspection at 11.30am on 30th August 2024 at Russell House, Ayr. The parties did not attend the hearing.

6. THE DECISION

The Tribunal had the following documents before them:-

- A copy of form AT4, completed by the Tenant.
- A copy of the 2013 and 2014 tenancy agreements.
- A copy of the form AT5.
- The rental evidence of Private Residential Tenancies provided by the Landlord's Representatives.

The parties had not provided the Tribunal with evidence of other assured or short assured tenancies in the locality.

The Tribunal were unable to find details of any other similar properties let under assured or short assured tenancies in the locality.

In terms of Section 34(3) Housing (Scotland) Act 1988 the Tribunal shall not make a rent determination unless they consider:-

'(a) that there is a sufficient number of similar houses in the locality let on assured tenancies (whether short assured tenancies or not); and (b) that the rent payable under the short assured tenancy in question is significantly higher than the rent which the landlord might reasonably be expected to be able to obtain under the tenancy, having regard to the level of rents payable under the tenancies referred to in paragraph (a) above.'

The Tribunal determined that they were unable to make a determination of the Tenant's application as they were unable to comply with the preliminary condition in the terms of section 34(3)(a) of the Housing (Scotland) Act 1988, as stated.

In reaching this decision the Tribunal has had regard to all the considerations required to be taken into account in terms of Section 34 of the Housing (Scotland) Act 1988.

Accordingly, the Tribunal dismissed the application.

7. 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.

J Taylor

30th August 2024

Legal Member