



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

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

Statement of Reasons for Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber (hereinafter referred to as “the tribunal”) under Section 28 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)

Case Reference Number: FTS/HPC/RN/24/2300

Re property at 188 Motherwell Road Bellshill ML4 2JH

Parties

Ms. Zara Heaney, represented by her letting agents, Premier Properties, 7a Church Street Uddingston, Glasgow G71 7PT (“the applicant”)

Mr. Mark O’Donnell residing at 188 Motherwell Road Bellshill ML4 2JH (“the respondent”)

The Tribunal consisted of:-

Mr James Bauld - Chairperson

Mr. Robert Buchan - Ordinary (Surveyor) member

Introduction:-

1. This is a reference to the tribunal in respect of the property at 188 Motherwell Road Bellshill ML4 2JH. The landlord is Ms. Zara Heaney, represented by her letting agents, Premier Properties, 7a Church Street Uddingston, Glasgow G71 7PT. The tenant is Mr. Mark O’Donnell. The tenancy is a private residential tenancy under the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”).
2. On 3 April 2024 the landlord’s agent served a notice on the tenant under Section 22(1) of the 2016 Act indicating that he intended to increase the rent on the property from £540.00 per calendar month to £595.00 per calendar month with effect from 6 July 2024.



3. The tenant timeously objected to that proposed increase by referring the proposed increase to the Rent Service Scotland.
4. By determination dated 9 May 2024, the rent officer fixed the rent at £587.27 per calendar month. In making that determination the rent officer found that the open market rent was £590 per calendar month and then applied the formula contained in section 31A of the 2016 Act which was inserted into that Act by the Rent Adjudication (Temporary Modifications) (Scotland) Regulations 2024.
5. The landlord's agent appealed the rent officer's determination by application dated 21 May 2024 and the matter was referred to the tribunal and both parties were invited to make written representations.
6. Both parties were also notified that an inspection and hearing would take place and were invited to attend the inspection and hearing. The inspection took place at the property on 11 October 2024 at 10.30 a.m. and a hearing was scheduled to take place at Glasgow Tribunal Centre on the same day at 12.00 noon.

Findings in Fact

7. The property comprises a two bedroom upper flat in four-in-a-block style built between 70 and 90 years ago. The building has rendered outer brick walls with a pitched slated roof and the flat has uPVC double glazed windows and a gas fired central heating system.
8. The accommodation comprises a hall, living room, two bedrooms, , kitchen and bathroom. The gross internal area is approximately 75 square metres.
9. The property is well located for local amenities and public transport.
10. Externally the building is consistent with its age and type of construction and is in reasonable order.
11. Internally the flat is in reasonable decorative condition. It has the usual range of modern facilities
12. The subjects are let unfurnished but with white goods in the kitchen.



The Hearing

13. The hearing was not attended by either party. Both parties had lodged written submissions, each containing suggestions of comparable properties to be used by the tribunal in its deliberations.
14. The landlords agent provided a list of suggested comparable properties which included three within the Bellshill area and three within the Forgewood area of Motherwell which is adjacent and close to Bellshill. The rents in these properties ranged from £595 to £795 per calendar month.
15. The comparable properties suggested by the tenant included properties in Coatbridge, Larkhall and Stonehouse. The rents in the comparable properties provided by the tenant ranged from £495 to £575 per calendar month.
16. The tribunal also checked the available properties for rent within the Bellshill area and noted that there were a number of similar properties available for rent advertised at a range between £595 and £695 per calendar month.
17. The tribunal was of the view that the preponderance of rents was in the range between £600 and £700 per month
18. The tribunal is aware that the two relevant methods of assessing the open market rent in Scotland are
 - (a) determining the open market rent by reference to market rents of comparable properties or
 - (b) determining the open market rent by reference to the anticipated annual return based on the capital value of the property. Neither of these methods is the primary method.
19. The task of determining an open market rent is a composite task which takes account of both of these methods. The appropriate method depends on the facts and circumstances of each case. The observations of the Lord President in *Western Heritable Investment Co Ltd v Hunter* (2004) and also in the case of *Wright v Elderpark Housing Association* (2017) reminds the Tribunal to proceed on the best available evidence and use the other evidence as a cross check, where possible. The predominant method of assessing the open market rent in Scotland is determining the open market rent by reference to the market rents of comparable properties. In this case the tribunal had no evidence of the capital value of the subjects.



The Law

20. The Tribunal is bound to fix an open market rent for the subjects by applying the terms of the 2016 Act. The Tribunal is required to determine the rent at which, subject to certain assumptions in the Act, the Tribunal considers that the subjects might reasonably be expected to achieve if they were let on the open market by a willing landlord to a hypothetical willing tenant under a private residential tenancy.

Discussion and decision

21. The Tribunal accordingly considered a variety of properties which were available for let in the area and which were advertised on various property websites. The tribunal carefully considered the written submissions received from both parties.

22. The Tribunal noted that there were a number of flats advertised online and available within the Bellshill area close to the property with advertised monthly rents ranging from £595 per month to nearly £800 per month. The properties which were advertised included properties which were of a similar nature and size to the subject property.

23. The Tribunal considered this evidence together with the documentation provided by both the landlord and the tenant. The tribunal preferred the submissions made by the landlord. They contained properties within the general local area of the subjects. The comparables submitted by the tenant relate to properties in other towns which are not in the same general locality of the subjects.

24. The Tribunal took the view that the market rent for unfurnished properties comparable to the subject property assuming it was fully modernised and had all the usual facilities associated with such a property would be in the range of £600-£700 per month.

25. In view of the foregoing, the Tribunal decided that the open market rent would be around £650 per month. However the tribunal also noted that, compared to the comparable lets used, the subject property was situated on a main road and was very close to a commercial/ semi-industrial premises currently being run as a garage. Taking that into account the tribunal took the view that the open market rent for the property would therefore be £625 per month.



26. The Tribunal noted that no services are provided by the landlord.
27. In reaching this decision the Tribunal had regard to all the circumstances required to be taken into account in terms of Section 32 of the 2016 Act.
28. The Tribunal having decided that the market rent for this property should be £625 per month then required to apply the current terms of section 31A of the 2016 Act which is in the following terms ...

31A Determination of rent payable

- (1) Where an order maker is to determine the rent payable under section 25(1) or (as the case may be) 29(1), the determination is to be made on the basis that the rent payable is the lowest of—

- (a) the proposed rent,
- (b) the open market rent,
- (c) where the market difference is more than 6%, the permitted rent.

- (2) The permitted rent is—

- (a) where the market difference is less than 24%, the calculated amount,
- (b) where the market difference is 24% or more, 12% more than the current rent.

- (3) The calculated amount is the amount (to the nearest £1) determined using the formula—

$$\text{Amount (£)} = C \times \left(106\% + \frac{(D\% - 6\%)}{3} \right)$$

where—

- C is the current rent,
- D% is the market difference expressed as a percentage.
- (4) In this section—

“the proposed rent” means the rent specified in accordance with section 22(2)(a)(i) in the rent-increase notice which prompted the referral,



“the current rent” means the rent payable under the tenancy immediately before the date on which the rent would have been increased in accordance with section 22(4) had a referral to the rent officer not been made,

“the market difference” means the percentage figure (to the nearest two decimal places) determined using the formula—

$$\text{The market difference expressed as a percentage (D\%)} = \left[\left(\frac{M - C}{C} \right) \times 100 \right] \%$$

where—

- *C is the current rent,*
- *M is the open market rent,*
- *“the open market rent” means the rent determined in accordance with section 32*

29. These current provisions have introduced a cap on rent increases in private residential tenancies where notice of the increase has been given on or after 1 April 2024. The maximum increase allowed is 12% of the current rent.

30. Applying the formula, the tribunal notes that the current rent is £540 per month and that the open market rent is £625. The “market difference” is thus 15.7%. Applying the tapering formula, the maximum rent increase presently permitted is therefore 9.25% which means that the permitted rent is £589.95 per month. The calculated amount is to be rounded to the nearest pound thus making the amount in this case £590.

31. The tribunal therefore determines that the rent to be payable in respect of the property is £590.00 per calendar month and that rent shall apply and take effect from 3 November 2024 taking into account the provisions of section 29(2) of the 2016 Act.

32. The decision of the Tribunal was unanimous

J Bauld

23 October 2024

Signed

Date

James Bauld, Chairperson