



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 24 of the Housing (Scotland) Act 1988

Case Reference Number: FTS/HPC/RS/24/1824

Parties

Dr Shridevi Gopi-Firth and Mr Paul Firth (“the tenants/applicants”)

Mr Stewart Mantell and Mrs. Heather Mantell (“the landlords/respondents”)

The Tribunal consisted of:-

Mr James Bauld - Chairperson

Mrs Sara Hesp - Surveyor member

Introduction:-

1. This is a reference to tribunal in respect of the property at 27A Hartington Place, Edinburgh EH10 4LF.
2. The landlords are Mr. Stewart Mantell and Mrs. Heather Mantell. The tenants are Paul Firth and Dr. Shridevo Gopi-Firth.
3. The tenancy is a Short Assured Tenancy under the Housing (Scotland) Act 1988 (“the Act”). It commenced in July 2016.



4. On 11 April 2024 the landlords' agent served a notice on the tenants under Section 24(1) of the Act indicating that they intended to increase the rent on the property from £1383.35 per month to £1620.86 per calendar month with effect from 15 June 2024.
5. The tenants timeously objected to that proposed increase by referring the proposed increase to the tribunal by lodging Form AT4 dated 21 April 2024.
6. The matter was referred to a tribunal and both parties were invited to make written representations. 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 30 August 2024 at 10.00 a.m. and a hearing took place on the same day at 11.45 a.m.

The hearing

7. The hearing was attended by Mr. Martin Urquhart, a customer relations manager with DJ Alexander who are the letting agent for the landlords. Mr Urquhart represented the landlords. Mr. Firth also attended.
8. The tribunal explained the overriding objective of the tribunal to the parties and noted that both understood that objective and the manner in which the hearing would proceed.
9. The parties indicated to the tribunal that they had been having discussions after the inspection relating to a possible agreement with regard to the rent. It was noted that the tenants had proposed a compromise figure to the letting agent but that he had not yet managed to obtain instructions
10. The tribunal explained to the parties the relevant provisions in the Housing (Scotland) Act 1998, the provisions of the Rent Adjudication (Temporary Modifications) (Scotland) Regulations 2024 (" the 2024 Regulations") and the various factors which the tribunal would require to consider in making a decision.
11. The tribunal also pointed out to parties the relevant terms of the tenancy agreement which allowed a rent increase based on two months' notice and which would "reflect local market rates". The tribunal indicated that clause might require to be interpreted in light of the 2024 Regulations which had introduced a cap on rent increases in certain tenancies. The maximum permitted increase where the 2024 Regulations apply is 12%. The tribunal also advised parties that there



are complex details and nuances contained in both the 1988 Act and the 2024 Regulations which might mean that the current tenancy is not affected by the rent cap contained in the 2024 Regulations. Both parties were advised to seek independent advice on the relevant issues which might arise.

12. The tribunal decided to adjourn the hearing to allow those negotiations to proceed
13. The tribunal issued a note of the hearing which was sent to parties
Reference is made to the note issued after the initial inspection and hearing

The continued hearing

14. The tribunal reconvened on Thursday 10 October at 10:30 am by means of telephone case conference.
15. Mr. Urquhart was again present on behalf of the landlord and both applicants Mr Firth and Dr Gopi-Firth were present on the telephone case conference call.
16. It was noted that parties had not been able to agree a new rent figure
17. The tribunal advised parties that the relevant law contained in Section 34(3) of the Housing (Scotland) Act 1988 only allowed the tribunal to make a determination in respect of the rent in a short assured tenancy in the following circumstances, namely where it considers that
***“ (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)”***
18. Neither party had provided any information to the tribunal which demonstrated the current rent in any existing assured or short assured tenancy within the general area of the property. The information which had been provided in respect of currently advertised rents related to



properties which would be let on private residential tenancies under and in terms of the Private Housing (Tenancies) (Scotland) Act 2016

19. The tribunal could find no information relating to any existing assured or short assured tenancies within the general area. There is no central register of such existing rents provided by any organisation which is available either to the tribunal or to the general public
20. The tribunal indicated to parties that by applying the relevant inflation figures contained in the index available at the Office of National Statistics then the rent for this property, adjusted for inflation since it was initially created in 2016, would be £1639 if the relevant index figures were applied using Q3 from 2016 (101.2) and Q4 from 2024 (132.7). The proposed rental figure in the rent increase notice was lower than that inflation adjusted figure.
21. Even if the tribunal was able to make a determination, it would appear to the tribunal that the open market rent achievable for this property would be at a level where the proposed rent would not be significantly higher than those rents. Conversely, it would appear that market rents in the area for private residential tenancies are higher than the rent proposed at £1620.86
22. In the absence of any information relating to rent for comparable properties on short assured tenancies or assured tenancies in the area, the tribunal is unable as a matter of law to make any determination given the specific provisions of section 34 of the 1988 Act
23. The provisions of the Rent Adjudication (Temporary Modifications) (Scotland) Regulations 2024 (“the 2024 Regulations”) do not apply to this tenancy. These Regulations have introduced a maximum rent increase of 12% in certain circumstances set out more fully in the regulations.
24. Reference is made to a recent Upper Tribunal decision, **Mark & Robert Horne against Slash Property Ltd [2024UT36] UTS/AP/24/0020** . in that decision Sheriff O’Carroll held that the then existing rent cap provisions did not apply

“ where the parties have agreed in a tenancy agreement that the landlord may increase the rent, with or without any restrictions on amount or times or formulae, the (law) does not interfere with that agreement”.



He went on to indicate that the restrictions contained in the 2024 Regulations continued to apply in the same way and that his decision would continue to “be of contemporary relevance”

Decision

25. The application is therefore dismissed and no determination is made.

J Bauld

Signed:

Date: 18 October 2024

James Bauld, Chairperson