

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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**Decision in respect of a referral to the First-tier Tribunal for Scotland Housing and Property Chamber for a Determination of Rent under Section 34(3) of the Housing (Scotland) Act 1988**

**Chamber Ref: FTS/HPC/RA/24/2729**

**Property: 3L, 312 Perth Road, Dundee DD2 1AU (“the Property”)**

### **Parties:**

**Dr Thomas Utz Otto, 3L, 312 Perth Road, Dundee DD2 1AU (“the Tenant”)**

**and**

**SLAC Investments Limited, having their registered office at 26-28 High Street, Dundee DD1 1TA (“the Landlord”)**

**Tribunal members: George Clark (Legal Member/Chair) and Robert Buchan (Ordinary Member/Surveyor)**

### **Background**

1. The lease in the present case is a Short Assured Tenancy, commencing on 25 October 2017, between Pearce Properties as landlords and the Tenant and Karen de Wild, the original rent having been £500 per month. The present Landlord gave notice to the Tenant of their intention to increase the rent from £530 per month to £630 per month from 28 July 2024. The Tenant made an application to the First Tier Tribunal for Scotland Housing and Property Chamber (“the Tribunal”) for a determination of rent under Section 34(1) of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Tenant’s Notice of Referral (AT4) was dated 13 June 2024.

2. In written representations of 13 September 2024, the Tenant expressed his view was that the rent sought was excessive, the increase being 18.9%. The rent had last been increased in 2019. He stated that Scottish Government guidance clearly indicates that under no circumstances can a rent increase exceed 12%. He also asked whether what he regarded as the poor service and maintenance by the Landlord's letting agents could be taken into account by the Tribunal.

3. Prior to the Inspection and Hearing, the Tribunal provided the Parties with details of comparable properties on which they might rely in determining the application, namely:

**2/0 40 Perth Road, Dundee, DD1 4LN** 2 bedroom tenement flat with single glazing and gas central heating. 82 sq.m. Asking rent £1,100pm

**1/2 285 Hawkhill, Dundee, DD2 1DN** 2 bedroom tenement flat with single glazing and gas central heating. 68 sq.m. Asking rent £895pm

**2/2 49 Taylors Lane, Dundee, DD2 1AP** 2 bedroom tenement flat, furnished, with double glazing and electric heating 55 sq.m. Asking rent £750pm

**3L 17 Step Row, Dundee, DD2 1AF** 2 bed tenement flat, furnished, with double glazing and electric heating 51 sq.m. Asking rent £750pm.

**2/3 125 Perth Road, Dundee, DD1 4JD** 2 bedroom tenement flat with double glazing and electric heating 51 sq.m. Asking rent 950pm.

4. A quarterly report by Citylets, a leading letting agency, was also sent to the Parties. Citylets describe themselves as follows: "Citylets has become the leading authority on the private rented sector and has built up a strong reputation for well-informed insightful commentary market analysis and is now a trusted media source on local and national rental issues."

5. In written representations of 13 September 2024, the Tenant raised issues with the condition of the tenement and advised that three flats on the stair had only recently been let out after being empty for more than a year. He understood that, in terms of Scottish Government guidance, the maximum

increase that the Landlord could ask was 12%, which the Tenant would be content to pay. The proposed increase was 18.9%, which he regarded as excessive.

### **The Inspection**

6. The Tribunal inspected the Property on the morning of 18 September 2024. The Tenant was present at the inspection. The Landlord was represented by Mr Billy Baxter of Belvoir Lettings, Dundee.
7. The Property is a top (third) Floor flat in a traditional stone-built tenement, built approximately 1900.
8. The accommodation comprises a living room, two double bedrooms, kitchen and bathroom. The gross internal area is 75 square metres or thereby.
9. The Property has gas central heating, with a combi-boiler, and the windows are timber double-glazed. The windowsills are in poor condition. The bathroom fittings are dated.
10. The Property is let unfurnished and is in good order throughout. The carpets and floorcoverings were provided by the Landlord and are in a worn condition. The kitchen has basic, but serviceable, units. The oven, hob and white goods were provided by the Tenant. The Tenant has carried out redecoration during the tenancy.
11. The Property is situated in an area close to the University of Dundee. It is well served by local shops and bus services. Time-limited on-street parking is available.

### **The Hearing**

12. Following the Inspection, a Hearing was held at Endeavour House, 1 Greenmarket, Dundee. The Tenant was not present. The Landlord was represented by Mr Baxter. He told the Tribunal that his company, the Landlord's letting agents, had very recently rented out three other flats in the Block, two of

them at £900 per month and the other one at £850 per month. They had previously been vacant, as the entire Block was on the market and were re-let by the new owners (the present Landlord).

### **Reasons for Decision**

13. Section 34(1) of the 1988 Act provides that the tenant under a Short Assured Tenancy may make an application to the Tribunal for a determination of the rent which in the Tribunal's opinion, the landlord might reasonably be expected to obtain under the Short Assured Tenancy. The Tenant had stated in his written representations that the Landlord had not used the correct form in their intimation of the intention to increase the rent. The Tribunal noted that the Form used was applicable to Private Residential Tenancies and was not Form AT2, which would have been the correct form to use in respect of the present tenancy. The view of the Tribunal was that, as the Tenant had then applied to the Tribunal for a rent determination, it was an application under Section 34(1) of the 1988 Act, so the fact that the Landlord had intimated a rent increase was not relevant.

14. The Tenant had also asked the Tribunal to take into consideration the fact that the Landlord had been very slow to attend to some repairing issues affecting his enjoyment of the Property. The Tribunal's view was that it was not part of its function to take into account past conduct of the Parties in arriving at a rent determination. Its assessment of rent would be based on the condition of the Property and the general condition of the Block at the date of the Inspection.

15. Section 34(3) of the 1988 Act states that where an application is made to the Tribunal under Section 34(1), the Tribunal shall not make such a determination unless it considers (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).

16. The Tenant's stated at the Inspection was that the rent sought was excessive. It had last been increased in 2019.

17. The Tenant had expressed his understanding that in terms of Scottish Government guidance, under no circumstances could the rent be increased by more than 12%. He was referring to the Rent Adjudication (Temporary Modifications) (Scotland) Regulations 2024 ("the 2024 Regulations"). The 2024 Regulations apply, however, only to Private Residential Tenancies and to Statutory Assured Tenancies. They do not, therefore, apply to a Short Assured Tenancy unless it has become a Statutory Assured Tenancy. In terms of Section 16 of the 1988 Act, after the termination of a contractual tenancy which was an Assured Tenancy, if the person who was the tenant retains possession of the house without being entitled to do so, the arrangement becomes a Statutory Assured Tenancy, as the Tenant's right to occupy the property is no longer based on contract. In the present case, the Short Assured Tenancy Agreement provides that "the lease will commence on 25<sup>th</sup> October 2017 and be for the period to 27<sup>th</sup> April 2019. If the agreement is not brought to an end by either party on the end date, it will continue thereafter on a monthly basis until ended by either party in terms of Clause 28". Clause 28 states that the tenancy may be ended by the Landlord giving notice as required by Section 33 of the 1988 Act, by the Landlord serving a Notice to Quit, by the Tenant giving the Landlord one month's notice or by the Landlord giving the Tenant the required notice in prescribed format of their intention to raise proceedings and subsequently obtaining an order for recovery of possession on one or more of the Grounds set out in Schedule 5 to the 1988 Act. The present tenancy is ongoing and no Section 33 Notice or Notice to Quit has been served, nor has notice been given that the Landlord intends to apply to the Tribunal for an Order for Possession on any of the Schedule 5 Grounds. Accordingly, the tenancy has not been terminated and is not a Statutory Assured Tenancy and the 2024 Regulations do not apply to it.

18. The Tribunal considered carefully all the evidence before it. The Tribunal noted that the latest Citylets Report (Q2 2024) indicates that the average rent for two-bedroom properties in Dundee is £922 and that the average for two-bedroom flats in the DD2 postal area is £920. The proposed rent is also significantly lower than the rental figures of the comparable properties and the three flats in the Block recently rented out. The Tribunal's view was that, even making allowances for the general condition of the Property, the rent sought by the landlord was not excessive in relation to current market figures.

### **Decision**

19. Having taken all factors into account the Tribunal determined that, in terms of Section 24(3) and 34(1) of the Housing (Scotland) Act 1988, there is a sufficient number of similar houses in the locality let on assured tenancies but that the Tribunal could not make a finding that the rent sought 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 those tenancies in the locality. Accordingly, the Tribunal was unable to make a determination of rent in the present case.

George Clark

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(Legal Member/Chair)

Date: 18 September 2024