



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

**Case Reference Number: FTS/HPC/RN/24/3015**

**Re property at 17E Princes Street, Dundee, DD4 6BY**

**Parties**

**Ms. Joanna Gibbings, represented by her letting agents, Front Row Lettings, Castlecroft Business Centre, Tom Johnston Road, Dundee, DD4 8XD (“the applicant”)**

**Mr. Gavin Steven Smith residing at 17E Princes Street, Dundee, DD4 6BY (“the respondent”)**

**Tribunal Members:-**

**Mr Paul Doyle (Legal Member)**

**Mr. David Godfrey (Ordinary (Surveyor) Member)**

**Introduction:-**

1. This is a reference to the tribunal in respect of the property at 17E Princes Street, Dundee, DD4 6BY. The landlord is Ms. Joanna Gibbings, represented by her letting agents, Front Row Lettings, Castlecroft Business Centre, Tom Johnston Road, Dundee, DD4 8XD. The tenant is Mr. Gavin Steven Smith. The tenancy is a private residential tenancy under the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”).

2. On 8 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 £391.40 per calendar month to £450.00 per calendar month with effect from 11 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 7 June 2024, the rent officer fixed the rent at £400.00 per calendar month. In making that determination the rent officer found that the open market rent was £400 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 3 July 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 6 November 2024 at 10.00 a.m. and a hearing took place at Endeavour House, Dundee, at 11.45am. The landlord's Representative, Mr G Wanless, was present at both the inspection and the hearing. The Respondent was present at the inspection only.

### **Findings in Fact**

7. (a) The property is a small, one bedroomed, first floor flatted dwellinghouse entering from a common passage and stair. There is a window missing on the common stair, close to the front door of the property. The rhones and down pipes to the exterior are choked with vegetation. There is a drying green which is overgrown and neglected. The property is in poor condition both internally and externally. The entrance door to the close is broken and lies open. The property is above vacant commercial premises. To the rear of the larger building of which the property forms part there are derelict industrial buildings.

(b) The property is in decoratively poor condition. A central hallway (with a cupboard off) provides access to all the rooms. There is one bedroom to the rear (in which the floorboards have failed) a fitted Kitchen, a living room and a bathroom. The extractor fan in the bathroom does not work. The property has an infestation of rodents.

(c) Smoke and heat alarms and a carbon monoxide detector have been fitted, but they are all fixed in the wrong position. The floor area of the property is 35



square metres. The property has uPVC double glazed windows (which do not fit properly) and a gas fired central heating system.

8. The subjects are let unfurnished but with white goods in the kitchen.

### **The Hearing**

9. Both parties had lodged written submissions, and the tribunal circulated a list of comparable properties prior to the hearing.

10. The landlords agent provided a list of suggested comparable properties. The Applicant has identified properties in the same postcode area as the property suggesting a range of comparable rentals between £470 and £595pcm. In a concise written submission, he says

When we requested the rent increase to £450, I assessed the market rent based on comparable at the time of £500 per month.

11. The Applicant identifies 3 properties as comparable to this property. They are 1 Provost Road, DD3, marketed at £585pcm; Flat 1 Hilltown, DD3, marketed at £550 pcm; and Flat 1 Albert Street, DD4, marketed at £595pcm.

12. The tribunal also checked the properties available for rent within the DD4 postcode area and noted that there were a number of one bed roomed properties available for rent advertised at a range between £390 and £575 per calendar month.

13. The average rent for most one bed roomed flats in the DD4 postcode area is between £500pcm and £550pcm.

14. The tribunal is aware that the two relevant methods of assessing the open market rent in Scotland are determining the open market rent by reference to market rents of comparable properties or 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.

15. 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**

16. 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.

17. The Rent Adjudication (Temporary Modifications) (Scotland) Regulations 2024 provide that if a proposed rent increase is disputed by the tenant, it will be subject to a tapering formula.

(i) If the gap between the current rent and the market rent is 6% or less, then the landlord can increase the rent by the proposed amount, as long as this is not more than market rent.

(ii) If the gap between the current rent and the market rent is more than 6%, the landlord can increase the rent by 6% plus an additional 0.33% for each percent that the gap between the current rent and market rent exceeds 6%.

(iii) The upper limit to the total rent increase cannot exceed 12% of the current rent.

### **Discussion and decision**

18. The Tribunal 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.

19. The Tribunal noted that there were a number of flats advertised online and available within the DD3 and DD4 postcode areas close to the property with



advertised monthly rents ranging from £390 per month to £550 per month, but those properties were larger than the subject property and in much better condition. This property is a poor example of private rented housing and would require a lot of work to make it attractive to the letting market.

20. Taking account of the size and the location of the property, the Tribunal took the view that the market rent for unfurnished properties comparable to the subject property, assuming it was fully modernised, in good condition, and had all the usual facilities associated with such a property would be in the region of £500pcm.

21. The tribunal also noted that, compared to the comparable lets used, the subject property is above an empty commercial property, is small, is in poor condition, and is adjacent to derelict industrial buildings. Taking those factors into account the tribunal took the view that the open market rent for the property would be 20% less than could be expected for larger one bedroomed properties in a better location, with properly fitting windows, and in good decorative order.

22. The Tribunal noted that no services are provided by the landlord.

23. 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.

24. The Tribunal having decided that the market rent for this property should be £400 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

25. 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.

26. Applying the formula, the tribunal notes that the current rent is £391.40 per month and that the open market rent is £400. The “market difference” is thus 2.2%. Applying the tapering formula, the maximum rent increase presently

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permitted is therefore 2.2% which means that the permitted rent is £400 per month.

27. The tribunal therefore determines that the rent to be payable in respect of the property is £400.00 per calendar month and that rent shall apply and take effect from 1 December 2024 taking into account the provisions of section 29(2) of the 2016 Act.

28. The decision of the Tribunal was unanimous

**Legal Member**

Paul Doyle

**Signed**

**Date 7 November 2024**