

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision in respect of a referral to the First-tier Tribunal for Scotland Housing and Property Chamber for a Determination of Rent under Section 28(1) of the Private Housing (Tenancies) (Scotland) Act 1988

Chamber Ref: FTS/HPC/RN/24/3425

Property: 2 Lockerbie Road, Dumfries DG1 3AT (“the Property”)

Parties:

Mr Nelson Brown, 34 Whitesands, Dumfries DG1 2RS (“the Landlord”)

and

Mr Dean Hughes, 2 Lockerbie Road, Dumfries DG1 3AT (“the Tenant”)

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

Background

1. The lease in the present case is a Private Residential Tenancy with a current rent of £618 per month. On 14 May 2024, the Landlord gave notice to the Tenant of his proposal to increase the rent from £618 per month to £700 per month from 18 August 2024. The Tenant referred the rent for determination by Rent Service Scotland and, on 26 June 2024, the Rent Officer determined the open market rent to be £815 per month, As the percentage difference between the current rent and the open market rent was between 6% and 24%, a tapering formula was applied to determine the maximum allowable increase in rent. The tapering formula in the present case was 12% and the Rent Officer

determined that the maximum increase allowed resulted in a monthly rent of £692.16.

2. The Tenant appealed against the rent set by the Rent Officer and, on 29 July 2024, the market rent was determined to be £720. The tapering formula to be applied was 9.5% and the maximum increase allowed after applying the formula resulted in a rent determination of £676.72 per month.
3. On 30 July 2024, the Landlord appealed against the Rent Officer's decision to the Tribunal under Section 28(1) of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act/the Act"). He contended that the first rental figure determined by the Rent Officer was correct, having regard to the size and style of the Property, which, he said, has two large public rooms, two bathrooms, a driveway and garage. He wished the Tribunal to return to the value originally decided by the Rent Officer.
4. 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:

15 Mossbank Avenue, Dumfries, DG1 4PA

2 bed GF flat with gas C/H and DG 56 sq.m. Asking rent £575 pm

36 Clarinda Drive, Dumfries, DG2 0LX

2 bed mid terraced house with gas C/H and DG. 68 sq.m. Asking rent £600 pm.

6 Kirkbank, Dumfries, DG2 8JZ

2 bed mid terraced house with elec heating and DG 91 sq.m. Asking rent £650 pm

4 The Grove, Dumfries, DG1 1TN

3 bed semi-detached house with gas C/H and DG 80 sq.m. Asking rent £600 pm

Whiteside, Brasswell, Dumfries, DG1 3JZ

4 bed detached bungalow with oil C/H and DG 119 sq.m. Asking rent £1,000pm

5. The Landlord provided the Tribunal with a copy of an email from the owner of the flat beneath the Property, which stated that it had last been rented at £550 per month but is not presently let out other than on a short-term basis. It

comprises a lounge, two bedrooms, kitchen and bathroom. The Landlord pointed out that the subject Property has two public rooms, three bedrooms and two bathrooms, a garage and driveway

The Inspection

6. The Tribunal inspected the Property on the morning of 12 December 2024. The Tenant was present at the inspection. The Landlord was not present or represented.

The Hearing

7. Following the Inspection, a Hearing was held by means of a telephone conference call. Neither Party was present or represented and the Tribunal proceeded to determine the application on the basis of the written representations and its findings at the Inspection.

Reasons for Decision

8. Section 29 of the 2016 Act provides that, where an appeal is made to the Tribunal under Section 28(1) of the Act, the Tribunal must make an order stating that from the effective date the rent payable under the tenancy is the rent determined by the Tribunal in accordance with Section 32 of the Act. By Section 29(2) of the Act, the effective date in the present application is the first payment date falling on or after the day on which the Tribunal makes its Order.
9. Section 32 of the Act states that the determination is to be made on the basis that the property in question would be let by a willing landlord to a hypothetical willing tenant under a new tenancy which would (a) be a Private Residential Tenancy, (b) begin on the date on which the rent would have been increased in accordance with the rent-increase notice, had a referral to a Rent Officer not been made, and (c) have the same terms as the tenancy to which the referral or (as the case may be) appeal relates.
10. The Property is a maisonette on the first and top floors of a sub-divided three storey semi-detached villa of traditional stone and slate construction, originally

built about 125 years ago. The conversion of the building to a ground floor flat and the three-bedroom maisonette above is assumed to have been undertaken before Building Control, as there is no formal fire separation, and the top floor is assumed to have been created by conversion of the roof space. The accommodation comprises three bedrooms, lounge, dining room, kitchen, bathroom and separate WC. The internal floor area is 129 square metres or thereby. There is a brick-built garage to the side of the house with a drive and a shared back garden. The Property is let unfurnished and the Tenant provided the cooker and white goods, as well as the vinyl flooring in the kitchen and bathroom.

11. Although the Property occupies a generally good location within the town and is conveniently close to services, the High School and railway station, it is on a particularly busy junction of two arterial routes.
12. There is no public register of rentals in Scotland and valuation is largely by evidence of advertised rentals in the district and by way of the knowledge and experience of the Tribunal Members. The Rent Officer only provides the briefest of detail of comparisons used in their assessment with no specific address, style, floor area or rationale as to how their valuation is arrived at. Accordingly, the Tribunal cannot analyse the Rent Officer's assessment.
13. The subject Property is unusually big for the rental market, being about twice the floor area of the "normal" two-bedroom flat or house most commonly made available to rent in the district. No rental of a comparable three bedroom maisonette of similar size or age could be found in the area and so the assessment by the Tribunal is necessarily based on taking what evidence is available and adjusting for the various differences in age, style, accommodation, floor area and any other relevant differences, such as location, condition, garden, garage, amenity etc., to arrive at a valuation that can be compared with that of the Rent Officer. In such circumstances, the assessment will be based on a range of values and a degree of judgement that is wider than would normally be considered.

14. The Tribunal noted that the Rent Officer had used two comparables in postcode DG1 in arriving at her determination of 29 July 2024. Both had four rooms, excluding kitchen and bathroom and the rents were £670 and £750. The comparables used in the decision on the tenant's appeal were £750 and £900.
15. The subject Property has three bedrooms, but one is very small. In addition to the bathroom, it has a separate WC compartment with a wash hand basin. It does not have exclusive garden ground, and the location of the Property is such that the driveway is of limited use as off-street parking and the garage is of limited value, other than as useful storage for bicycles and garden equipment. There is no space for a car to turn on the drive, so any car must either reverse into the drive or reverse out of the drive from or on to the very busy junction. This is made even less attractive by poor sightlines because of the angle of the drive and the topography of the landscape.
16. Adopting the approach set out in Paragraph 13 of this Decision, the Tribunal determined that the rent decided by the Rent Officer on 26 June 2024 was in line with the Tribunal's conclusions, based on its Members' own experience and all the evidence before it. Of the comparables found and listed in Paragraph 4 above, none are as conveniently located as the subject Property. Two are almost half the size and the only one with a reasonably similar floor area, albeit a detached bungalow, has an asking rent of £1,000 per month. Making the allowances and adjustments for the various differences as described in Paragraph 13 above, leads the Tribunal to band of rental more in keeping with the level of rent first determined by the Rent Officer on 26 June 2024.

Decision

17. The Tribunal determined that an open market rent for the Property compliant with the provisions of Section 32 of the Act would be £815 per calendar month.
18. The Rent Adjudication (Temporary Modifications) (Scotland) Regulations 2024 stipulate that a rent determination is the lowest of (a) the proposed rent (b) the

open market rent and (c) where the market difference is more than 6%, the permitted rent. The “permitted rent” is, where the market difference is 24% or more, 12% more than the current rent.

19. In the present case, the current rent is £618, and the open market rent is determined by the Tribunal to be £815. The difference between the two figures, in percentage terms, is 32% which, in terms of the Regulations is the “market difference” and is more than 24%. Accordingly, the “permitted rent” is £618 plus 12%, namely £692.16. This is lower than the proposed rent and the open market rent. The Tribunal’s determination is, therefore, that the rent for the Property will be £692.16 per calendar month, with effect from the first payment date falling on or after the date of this Decision.

20. The Tribunal’s Decision was unanimous.

21. In terms of Section 30 of the 2016 Act, the Tribunal’s Decision is final and can not be appealed.

G Clark

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(Legal Member/Chair)

Date: 12 December 2024