



**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/24/3196

Re property at 4/6 Clearburn Gardens, Edinburgh, EH16 5ET

Parties

**Mr Anuj Vadher and Ms Aimee Rutherford, residing at 4/6 Clearburn
Gardens, Edinburgh, EH16 5ET (“the applicants”)**

**Mrs. Nicola Hall residing at 18 Ross Gardens, Edinburgh, EH9 3BS (“the
respondent”)**

Tribunal Members:-

Mr Paul Doyle (Legal Member)

Ms Sara Hesp (Ordinary (Surveyor) Member)

Introduction:-

1. This is a reference to the tribunal in respect of the property at 4/6 Clearburn Gardens, Edinburgh EH16 5ET. The landlord is Mrs. Nicola Hall, represented by her letting agents, CMG Residential Ltd. The tenants are Mr Anuj Vadher and Ms Aimee Rutherford. The tenancy is a private residential tenancy under the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”).

2. On 18 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 £849.75 per calendar month to £995.00 per calendar month with effect from 27 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 15 June 2024, the rent officer fixed the rent at £925.49 per calendar month. In making that determination the rent officer found



that the open market rent was £975 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 asked for a review of the rent officer's determination. In a revised determination dated 10 July 2024, the rent officer fixed the rent at £951.72 per calendar month. In making that revised determination the rent officer found that the open market rent was £1,100 per calendar month and then applied the formula contained in section 31A of the 2016 Act.

6. The tenants appealed the rent officer's determination by application dated 12 July 2024 and the matter was referred to the tribunal. Written representations were received from both parties.

7. 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 20 December 2024 at 10.00 a.m. and a hearing took place at George House, George Street, Edinburgh, at 12 noon. Both Tenants were present at the inspection. Mr Vadher came to the hearing. The landlord was neither present nor represented, but the landlord relied on written representations dated 11/11/2024.

Findings in Fact

8. (a) The property is a top floor flatted dwellinghouse entering from a common passage and stair in a post-war block of six of traditional construction with harled walls and a pitched slate roof. Access to the stair is controlled by a secure entry phone system. The front door of the property opens onto a central hallway which provides access to each room. There are two bedrooms, a living room, kitchen, and a bathroom with an electric shower.

(b) The property benefits from gas central heating and UPVC double glazing throughout. The Landlord had provided white goods (washing machine, fridge, freezer and cooker). The bedrooms are carpeted, the remaining floor coverings are a mix of laminate and vinyl covering. The landlord provides some furniture including beds, wardrobes, chests of drawers and bedside cabinets. There is a back green and on street parking.



(c) The floor area of the property is 57 square metres. The subjects are let furnished.

The Hearing

9. The landlord's agent provided a list of suggested comparable properties. The average rental brought out by those comparable figures for a two bedroomed property in Clearburn Gardens is £1125pcm. A broader search of the EH16 postcode area brings out an average rental of £1265pcm.

10. The Applicant has not identified any properties as comparable to this property.

11. Each of the properties in Clearburn Gardens identified by the landlord's representative are more desirable properties than the landlord's property. One of the comparable properties relied on by the landlord is a main door flat, the second is an upper villa in a block of four. The upper villa has a rental value of £1,150pcm. The main door property has a rental value of £1100pcm

12. The tribunal checked for properties available for rent within the EH16 postcode area and could not find any other reliable comparisons.

13. We find that the average rent for a top floor, two bedroomed, flat in a block of six in Clearburn Gardens is £1,000pcm.

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 EH16 area but found that the properties in the EH16 postcode are of mixed quality and differing values. The property in Clearburn Gardens is not of the highest value or greatest amenity in the EH16 area. The fairest way to determine the correct level of rental is to take comparative figures from Clearburn Gardens alone. The tribunal carefully considered the written submissions received from both parties.

19. Taking account of the size and the location of the property, the Tribunal took the view that the market rent for furnished properties comparable to the subject



property, assuming it was, in good condition, and had all the usual facilities associated with such a property would be in the region of £1,000pcm.

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

21. 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.

22. The Tribunal having decided that the market rent for this property should be £1,000 per month then applied section 31A of the 2016 Act, which says:

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

23. These 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.

24. Applying the formula, the tribunal notes that the current rent is £849.75 per month and that the open market rent is £1,000. The “market difference” is thus 17.7%. Applying the tapering formula, the maximum rent increase presently permitted is therefore 9.9% which means that the permitted rent is £933.87 per month.

25. The tribunal therefore determines that the rent to be payable in respect of the property is £933.87 per calendar month and that rent shall apply and take effect from 27 December 2024 taking into account the provisions of section 29(2) of the 2016 Act.

26. The decision of the Tribunal was unanimous

Signed P Doyle
Legal Member

Date 20 December 2024