

# 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 28(1) of the Private Housing (Tenancies) (Scotland) Act 1988**

**Chamber Ref: FTS/HPC/RN/24/3779**

**Property: 14(2F3) Dalmeny Street, Edinburgh EH6 8RA (“the Property”)**

### **Parties:**

**Mr Robert Raithbie and Miss Melanie Cargie, both Flat 2F3, 14 Dalmeny Street, Edinburgh EH6 8RA (“the Tenants”)**

**and**

**Miss Mara Cortellessa, 9 Almond Court West, 3 Braehead Park, Edinburgh EH4 6AY (“the Landlord”)**

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

### **Background**

1. On 13 May 2024, the Landlord gave notice to the Tenants of her proposal to increase the rent in a Private Residential Tenancy from £700 to £950 per month from 1 September 2024. The Tenants referred the rent for determination by Rent Service Scotland and, on 2 July 2024, the Rent Officer determined the open market rent to be £1,230 per month. A tapering formula, introduced by the Rent Adjudication (Temporary Modifications) (Scotland) Regulations 2024, was applied to determine the maximum allowable increase in rent. The tapering formula was 12% and the Rent Officer determined that the maximum increase

allowed resulted in a monthly rent of £784. The comparables used were both three room flats, namely Dickson Street, at £1,060 per month, and Sloan Street, at £1,400 per month. The Landlord appealed the Rent Officer's decision, but, on 6 August 2024, another Rent Officer who reviewed the appeal set the rent at £784 per month, applying the same tapering formula to an open market rent of £1,230. The comparables used in determining the market rent were another flat in Dickson Street, at £1,025, and a three room flat in Dalmeny Street at £1,450.

2. On 15 August 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"). She contended that the Tenants' application to the Rent Officer had been made outwith the 21-day deadline for referring the Notice of Increase. She also stated that the Tenants had not notified her of the application, as they were required to do. She had been unaware of the referral until she received a letter from Rent Service Scotland on 15 June 2024, which was 31 days after the date on which the Tenants were deemed to have received the Notice of Increase of Rent. She pointed out that the amount she was seeking was still considerably lower than the open market rent but would go some way to helping cover her increased expenses. It is one of six rental properties that she owns, three of which are subject to buy-to-let mortgages. Over the last year, her mortgage repayments had gone up from just under £600 per month to £1,500 per month and that, coupled with increased insurance premiums and higher maintenance costs, she was struggling to keep the Property on. She had not increased the rent for two years but had spent £10,000 on the Property during that period, including a new kitchen and shower room.

### **The Inspection**

3. The Tribunal inspected the Property on the morning of 16 January 2025. The Tenants were present at the inspection. The Landlord was not present or represented.

## **The Hearing**

4. Following the Inspection, a Hearing was held at George House, 126 George Street, Edinburgh EH2 4HH. The Tenant, Mr Raithby, and the Landlord were both present.
  
5. The Tenant produced evidence to the Tribunal that his application to the Rent Officer had been made on or before 28 May 2024, the evidence being an automated reply of that date intimating that his application had been received. He accepted that he had not realised that he had to formally intimate the referral to the Landlord but stated that there had been informal text communication between the Parties at the time. He confirmed that the Tenants have been paying the rent set by the Rent Officer (£784) since 1 September 2024. The Tribunal had before it the latest (Q3 2024) Citylets report on rentals, which indicated that the average open market rent for a 2-bedroom flat in the EH6 postcode is £1,363 per month. The Landlord restated the increased financial cost to her of retaining the Property for private rental. The Tribunal advised the Parties that, under Scottish Government policy, the maximum rent increase that could be imposed was 12%.

## **Reasons for Decision**

6. Section 24(3) of the 2016 Act states that a referral of a Notice of Increase of Rent to a Rent Officer must be made before the end of the day falling 21 days after the tenant receives the notice and that it must be intimated by the tenant to the landlord in prescribed manner.
  
7. The Tribunal noted that the Rent Office had acknowledged the Tenants' referral of the Notice of Increase of Rent on 28 May 2024. This was within the 21-day period stipulated in Section 24(3) of the Act. Accordingly, the Tribunal held that the referral had been made timeously.
  
8. The Tenants accepted that they had not intimated the referral to the Landlord in prescribed manner and the Tribunal considered whether this failure was fatal to the referral. The view of the Tribunal was that the Landlord had become aware of the referral only 10 days after the 21-day time limit and in

ample time to allow her to make any representations to the Rent Officer that she wished. She had not objected to Rent Service Scotland at that stage or after the first determination by the Rent Officer. One of the overriding objectives of the Tribunal, set out in Rule 2 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 is to deal with proceedings justly. The Tenants had made a procedural error, but the Tribunal did not regard the Landlord as having been prejudiced by the omission, given the fact that she was made aware of the referral on 15 June 2024 and was not, therefore, denied the opportunity to make representations to the Rent Officer. The date on which she became aware of the referral was also well in advance of the date on which the rent increase was due to come into effect. The Tribunal decided, therefore that it would not be necessary in the interests of justice to make a finding that the referral was invalid from the outset.

9. 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.
10. 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.
11. The Property is a second floor flat in a traditional stone-built tenement erected about 130 years ago. It is located within a mixed commercial/residential area close to the centre of the city, with good access to local shops and to bus and

tram services. The accommodation comprises a living room, kitchen, bathroom and two double bedrooms. The gas hob, oven and white goods were provided by the Landlord as are the carpets and floorcoverings. Heating is by gas central heating and the electrical system has a modern consumer unit. The windows are upvc double glazed units. The gross internal floor area is 63 square metres or thereby. There is a shared back green and on-street parking is available by residents' permit or by metered parking provided spaces.

12. There is no public register of rentals in Scotland and valuation is largely by evidence of advertised rentals in the district and the application 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 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 factors, such as location, condition, garden, garage, amenity etc., to arrive at a valuation that can be compared with that of the Rent Officer. With the Property being centrally located in an area where there are many rentals advertised, there is a good number of comparables available to enable a reasonably accurate banding of values to be determined,

## **Decision**

14. Adopting the approach set out in Paragraphs 12 and 13 of this Decision, the Tribunal determined the rent on the basis of its Members' own experience and all the evidence before it. The Tribunal noted the four comparisons used in the Rent Officers' decisions. They were all in close proximity to the subject Property and they ranged from £1,025 to £1,450 per month.

15. Having considered carefully all the evidence before it, the Tribunal determined that it could find no reason to upset the Rent Officer's assessment of open market rent at £1,230 per calendar month.

16. Section 31A of the 2016 Act, introduced by The Rent Adjudication (Temporary Modifications) (Scotland) Regulations 2024 makes the following provisions:

**“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—**

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.]**

17. In the present case, the current rent is £700, and the open market rent is determined by the Tribunal to be £1,230. The market difference between the two figures, in percentage terms, is 75.71% which, being more than 24%, means that the “permitted rent” increase is restricted to 12%. Applying these figures to the formula above produces a permitted rent of £784. 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 £784 per calendar month, with effect from the first payment date falling on or after the date of this Decision.

18. The Tribunal’s Decision was unanimous.

19. 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)

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Date: 16 January 2025