

Housing and Property Chamber

First-tier Tribunal for Scotland



**Decision
of the**

First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') issued under section 26 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017.

Chamber Ref: FTS/HPC/RR/24/3370

Property: Flat 2/2, 11 Watt Street, Greenock PA16 8JN ('the Property')

The Parties:

Cloch Housing Association, 19 Bogle Street, Greenock PA15 1ER ('the Landlords')

Mr and Mrs O'Donnell, Flat 2/2, 11 Watt Street, Greenock PA16 8JN ('the Tenants')

Tribunal members:

George Clark (Legal Member/Chairperson) and Donald Wooley (Ordinary/surveyor Member).

Background

The tenancy is a regulated tenancy in terms of the Rent (Scotland) Act 1984. The current rent is £4,562.64 per annum (£380.22 per month). The Landlords applied for the rent to be increased to £5,299.32 per annum (£441.61 per month). The Rent Officer registered a rent of £5,100 per annum with effect from 17 July 2024. The Landlords referred the determination to the First-tier Tribunal on 24 July 2024. They stated that they are facing ongoing financial challenges. This was reflected in their average rent increases over the last three years, which had been considerably higher than those for the previous three years from 2019 to 2021. In fairness to all their tenants, they wished the rent to be set in line with their Rent Setting Policy, as per their application. Their rents were set well below the private rented sector and the Local Housing Allowance.

The Inspection.

The Tribunal Members inspected the Property on the morning of 3 December 2021. The Tenant, Mrs O'Donnell was present at the inspection. The Landlords were neither present nor represented. The Tenants had, however, provided written representations dated 15 November 2024, in which they stated that they had lived in the Property for 37 years and, over the past decade there has been minimal improvement within the Property. The kitchen and windows have not been updated, but the kitchens in all the other flats in the tenement were replaced by the Landlords last year. In written representations received by the Tribunal on 18 November 2024, the Landlords repeated that they are facing financial challenges around increasing costs and wanted to find the right balance between keeping their rents affordable and still delivering key services and investing in their homes. Their Rent Setting Policy outlines how they ensure rents are kept affordable for most of their tenants. The rent applied for is in line with that policy.

The Property is a second floor attic flat entered by a common passage and stair in a traditional sandstone tenement under a pitched roof. The tenement lies in a predominantly residential street. The accommodation comprises a living room, leading to a kitchen, a good-sized double bedroom to the rear with a large walk-in cupboard, a second, heavily coombed-ceilinged bedroom and a bathroom. The only natural light in the second bedroom is from a small, high level, velux window with a glazed area of 0.3 square metres. It has plain white bathroom units, approximately 15 years old, a bath with a mixer shower tap fitted by the Tenants, a wash hand basin and wc. The internal walls are stud-partition. The windows of the Property are timber double-glazed, about 32 years old, and there is gas central heating, with hot water provided by a combi condenser boiler. The wiring is approximately 20 years old, but the system is fitted with residual current devices (RCDs). The internal floor area is approximately 62 square metres, calculated to 1.5 metres headroom and excluding, therefore, coombed elements. The Kitchen units are dated but functional, being 17-20 years old. The white goods, cooker and floorcoverings were all provided by the Tenants. No services are provided by the Landlords. There is a shared drying green (which the Tribunal Members were unable to inspect) to the rear and on-street parking.

The Hearing

Neither party was in attendance or represented at the Hearing, which took place at the Glasgow Tribunals Centre, 20 York Street, Glasgow on the afternoon of 3 December 2024, following the Inspection.

4. Decision

The Tribunal had the following documents before it:-

- (i) a copy of form RR1, the Landlords' application for registration of the rent.
- (ii) a copy of the Rent Officer's determination.
- (iii) a copy of the Landlords' letter of 24 July 2024 objecting to the rent registered by the Rent Officer.

The Tribunal considered these documents and rental evidence.

The Tribunal Members were mindful of the terms of section 48(1) of The Rent (Scotland) Act 1984, which requires the Tribunal 'to have regard to all of the circumstances (other than personal circumstances) and in particular to apply their knowledge and experience of current rents of comparable property in the area, as well as having regard to the age, character and locality of the dwelling house in question and to its state of repair and, if any furniture is provided for use under the tenancy, and to the quantity, quality and condition of the furniture'. Also, Section 48(2) requires them to 'assume that the number of persons seeking to become tenants of similar dwelling-houses in the locality on the terms (other than those relating to rent) of the regulated tenancy is not substantially greater than the number of such dwelling-houses which are available to let on such terms.'

The Tribunal recognised that the three methods of assessing the rent in Scotland are (1) determining the fair rent by reference to comparable registered rents in the area. (2) determining the fair rent by reference to market rents of comparable properties allowing for appropriate deductions for scarcity and (3) determining the fair rent by reference to the anticipated annual return based on the capital value of the property. They acknowledged that none of these methods is the primary method. The task of determining a fair rent is a composite task which takes account of these three methods. The appropriate method depends on the facts and circumstances of each case. The

Tribunal also gave consideration to the observations of the Lord President in *Western Heritable Investment Co Ltd v Hunter* (2004) and also the case of *Wright v Elderpark Housing Association* (2017) which requires the Tribunal to proceed on the best available evidence and use the other evidence as a cross check, where possible.

The Tribunal considered the evidence of recent registered rents in the Fair Rent Register.

The Tribunal identified a number of three-roomed properties in Greenock with registered fair rents:

Flat 1/2, 27 Regent Street. First floor flat. 62 square metres. Rent £5,299.32 effective from 29 July 2024.

Flat 1/2, 22 Nelson Street. First floor flat. 84 square metres. Rent £4,851.48 effective from 21 January 2025.

Flat 0/2, 24 Nelson Street. Ground floor flat. 63 square metres. Rent £4488.24 effective from 21 January 2025.

Flat G/R, 64 Dempster Street. 76 square metres. Rent £4,889.76 effective from 25 October 2024.

Flat G/L, 69 Dempster Street. 51 square metres. Rent £4,402.32, effective from 24 March 2023.

Scarcity

As already noted, when the Tribunal fix a fair rent they must do so on an assumption that the number of persons seeking to become tenants of similar properties in the locality of the Property is not substantially higher than the number of similar dwelling houses which are available for lease. The Tribunal was satisfied from the evidence before it that there was a reasonable balance between supply and demand in the area and that scarcity was not, therefore, an element which affected the rental levels. A number of flats were presently available for rent in Greenock, including a two-bedroomed flat at Mearns Street, advertised at a reduced rent of £475 per month.

The Tribunal considered whether it was appropriate to use a return on the capital valuation of the Property. The Parties had not provided any evidence of capital valuations of the Property and the Tribunal was mindful that the capital valuation method has been described as notoriously unreliable 'normally to be used only as a

last resort' (Western Heritable Investment Co Ltd v Husband 1983 SC (HL) 60, 73). Given the strong evidence of comparable fair rents and market rents and the absence of evidence of capital valuations the Tribunal determined that it was appropriate to proceed to assess the fair rent of the Property without using the capital valuation method.

The Tribunal regarded the flat at 27 Regent Street as the best comparable property. It is owned/managed by Cloch Housing Association and the registered Fair Rent was £5,299.32 per annum effective from 29 July 2024. It is, however, a first floor flat and does not have the disadvantage of the coombed ceilings, restricted floor space and limited natural light from a small high level velux window within the second bedroom, all of which are factors having a bearing on the value of the subject property.

The Tribunal also noted that when considering other registered rents in the immediate area, particularly in those properties owned and managed by a different housing association, they were in general, at a slightly lower level than that adopted by Cloch Housing Association.

The Tribunal is mindful that fixing the rent is a composite task and consequently after consideration of all these factors the Tribunal decided that a fair rent for the Property is £5,000 per annum (£416.67 per month). In arriving at this figure, the Tribunal took into account that it is an attic flat, with coombed ceilings significantly affecting the second bedroom and limiting the direct natural light to this area, the kitchen is dated, and the Tenants have provided the white goods, cooker and floorcoverings

In reaching this decision the Tribunal have had regard to all the considerations required to be taken into account in terms of Section 48 of the Rent (Scotland) Act 1984.

This decision takes effect from 7 January 2025.

G Clark

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7 January 2025

Chairperson