

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 34(3) of the Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/RA/24/2929

Property: 97 King Street, Broughty Ferry DD5 1EY (“the Property”)

Parties:

Mr Duncan Bates, 97 King Street, Broughty Ferry DD5 1EY (“the Tenant”)

and

Rockford Properties Limited, having their registered office at 50 Castle Street, Dundee DD1 3AQ (“the Landlords”)

Tribunal members: George Clark (Legal Member/Chair) and Angus Anderson (Ordinary Member/Surveyor)

Background

1. The lease in the present case is a Short Assured Tenancy, commencing on 26 January 2022, but the Tenant has occupied the Property under a series of successive Short Assured Tenancy Agreements since 2007. On 3 June 2024, the Landlords gave notice to the Tenant of their intention to increase the rent from £525 per month to £700 per month from 7 July 2024. The Tenant made an application to the First Tier Tribunal for Scotland Housing and Property Chamber (“the Tribunal”) for a determination of rent under Section 34(1) of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Tenant’s Notice of Referral (AT4) was dated 25 June 2024.

2. Prior to the Inspection and Hearing, the Landlords provided the Tribunal with details of comparable properties on which they sought to rely. These are considered in more detail in the Reasons for Decision.

The Inspection

3. The Tribunal inspected the Property on the morning of 27 November 2024. The Tenant was present at the inspection. The Landlords were represented by Miss Hazel Young and Mrs Natalie Robertson.
4. The Property is located in a mixed residential and commercial area within Broughty Ferry, around two miles west of Dundee city centre. It is conveniently located for local services and amenities. It is a self-contained ground floor flat within a two-storey and attic mid-terraced tenement
5. The accommodation comprises lounge, with direct access from the street, kitchenette on open plan with the lounge, an inner hall with access to the bathroom and bedroom to the rear.
6. The kitchen is equipped with a range of wall and base cabinets and laminate worktops. The electric hob and oven, washing machine and refrigerator belong to the Tenant. The bathroom is equipped with a white suite comprising bath and wc. The basin, vanity unit and over-bath shower were installed by the Tenant and replaced a white basin and electric shower that had become unserviceable. There is no fixed heating system. The front windows are timber framed and double glazed. The rear window is PVC framed and double glazed. Hot water is via an electric immersion heater. The floor coverings, window dressings, lampshades, white goods and other furniture belong to the Tenant. The Property has not been redecorated by the Landlords since the outset in 2007. Internal decorations are fair to poor, with uneven wall finishes in places. Internal decorations are the responsibility of the Tenant.
7. The gross internal floor area extends to 31.4 square metres or thereby.

The Hearing

8. Following the Inspection, a Hearing was held at Endeavour House, 1 Greenmarket, Dundee. The Tenant was present. The Landlords were again represented by Miss Young and Mrs Robertson.

9. The Tenant confirmed that the rent had been increased from £455 to £525 in June 2023 and that he was quite happy with rent at that level. The Landlords' agents referred to a comparable flat in Church Street, which had been advertised at £650 per month. It is similar to the present Property with a sort of open-plan kitchen. It appears, however, to be furnished. A comparable at Lawrence Street had been let at £700 per month, unfurnished. The experience of the agents was that the difference between furnished and unfurnished lets was about £50 per month and that, historically, rents for Short Assured Tenancies were dragging behind current market rents.

10. The Tenant referred the Tribunal to another flat in Church Street, on the market at £650 per month. It has gas central heating and comes with white goods. He had seen that flat and it was much bigger, he said, than the present Property. He also provided anecdotal evidence that a flat next door to his, with a similar floor area had been rented at £485 per month for the last two years and that a flat at 107 King Street, again similar, had a rent increase from £395 to £450 per month from 1 August 2024. The Tenant regarded the proposed increase as excessive. He could not afford it and would become homeless if the rent went up to £700 per month.

Reasons for Decision

11. Section 34(1) of the 1988 Act provides that the tenant under a Short Assured Tenancy may make an application to the Tribunal for a determination of the rent which in the Tribunal's opinion, the landlord might reasonably be expected to obtain under the Short Assured Tenancy.

12. Section 34(3) of the 1988 Act states that where an application is made to the Tribunal under Section 34(1), the Tribunal shall not make such a determination unless it considers (a) that there is a sufficient number of similar houses in the locality let on assured tenancies (whether Short Assured Tenancies or not) and (b) that the rent payable under the Short Assured Tenancy in question is significantly higher than the rent which the landlord might reasonably be expected to be able to obtain under the tenancy, having regard to the level of rents payable under the tenancies referred to in paragraph (a).
13. The Tribunal considered carefully all the evidence before it. From comparing the information within the list provided by the letting agent with Google Street View, historical advertisements mainly on Zoopla and the Scottish EPC Register, the Tribunal was able to identify most of the properties on the list and ascertain the specific location, listed accommodation (sometimes with room sizes), floor area, overall appearance/condition, type of heating, and extent of furnishings. The comparisons were from the period from September 2023 to September 2024. The Landlords' agents had admitted in evidence that in their experience, there had not been a significant change in rental levels within the 12-month period up to September 2024. The agents also confirmed that in their experience, asking rents in the locality were usually the same as rents agreed. The comparable rental figures ranged from £525 to £800 per month. From studying the individual properties, it was apparent that the asking rents reflected the differing qualities of the individual properties, as listed above, ie location, quality, furnishings, etc. Taking account of the relatively small floor area, location and accommodation/layout of the subject Property, a rental figure of £575 would seem appropriate, on an unfurnished basis. However, the Property has some further drawbacks that are not reflected in the comparable evidence. It is completely unfurnished, that is to say, without white goods, floorcoverings or even window dressings, as are usually provided in an unfurnished property. The Tenant has provided the hob and oven fitted within the kitchen and the shower unit within the bathroom. The Property has no form of space heating, this being provided by the Tenant's own free-standing electric heaters, whereas the comparables had

either gas central heating or electric central heating. No redecoration has been undertaken by the Landlords during the tenancy, any work having been carried out by the Tenant or at the Tenant's expense. There are no comparables available of properties let with these specific drawbacks, as the reasonable and normal practice is to provide these essential items. In order to equate these costs to align with the comparables, the Tribunal has allowed the following costs, with straight line depreciation:

Provision of oven, hob and shower unit say £600 over 10 years = £60pa

Provision of central heating £5000 over 15 years = £333pa

Redecoration £1500 over 5 years = £300pa

Floorcoverings and window blinds say £2000 over 5 years = £400pa

Total £1093pa or £91.08 per month

Therefore, the market rent of the Property, reflecting the various characteristics and specific drawbacks is £575 less £91.08 = £483.92, say £485 per calendar month.

Decision

14. Having taken all factors into account the Tribunal determined that, in terms of Section 24(3) and 34(1) of the Housing (Scotland) Act 1988, it was unable to verify that there is a sufficient number of similar houses in the locality let on assured tenancies. The rent sought is significantly higher than the rent which the landlord might reasonably be expected to be able to obtain under the tenancy, having regard to the level of rents payable under the tenancies in the locality identified by the Tribunal as possible comparables, but the Tribunal could not ascertain whether or not any of them were Assured Tenancies, as opposed to Private Residential Tenancies created after the coming into force of the Private Housing (Tenancies) (Scotland) act 2016 on 1 December 2017 . Accordingly, the Tribunal was unable to make a determination of rent in the present case.

15. The Tribunal's Decision was not unanimous and was, therefore, made on the casting vote of the Legal Chair. The Ordinary/surveyor Member dissented, on the basis that there is no material difference in the likely rent achievable, whether the comparables are Assured Tenancies under the 1988 Act or Private Residential Tenancies under The Private Housing (Tenancies) (Scotland) Act 2016 and that, in the circumstances of the present case, there is no workable appeal process, so no protection from an unreasonable rent increase notice. That is incompatible with the intention of Section 34 of the 1988 Act.

16. Although the Tribunal was unable to make a determination, it expresses the hope that the Landlords, whose agents saw the Property at the Inspection, will reconsider the rent level that they are seeking, to bring it more into line with the Tribunal's view, having considered the available comparable evidence.

G Clark

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(Legal Member/Chair)

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Date: 8 January 2025