

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 and Section 48 of the Rent (Scotland) Act 1984.

Chamber Ref: FTS/HPC/RR/24/2895

Flat 3/1, 19 Vine Street, Glasgow, G11 6BB (“The Property”)

The Parties:-

Mr James Kerr, residing at Flat 3/1, 19 Vine Street, Glasgow, G11 6BB (“the Tenant”)

Legesgain Investments Limited c/o Redpath Bruce LLP, 152 West Regent Street, Glasgow, G2 2RQ (“the Landlord”)

Background

1. The Tenant has been the tenant in the Property since 1 January 1989. The tenancy is therefore a regulated tenancy and governed by the terms of the Rent (Scotland) Act 1984. The current rent of the Property was £4620 per annum. The Landlord wished to increase the rent to £5640 per annum. The Rent Officer had registered the rent at the £5640 per annum level with effect from 7 June 2024. There did not appear to any amount provided for services within the rental set (and there did not appear to be any services provided). The Tenant was dissatisfied with the Rent Officers decision and applied to the Tribunal for the determination of a fair rent under the provisions of s48 of the Rent (Scotland) Act.

Inspection & Hearing

2. An inspection of the Property took place by the Tribunal on the morning of 22 November 2024, followed by a hearing at the Glasgow Tribunals Centre. The Tribunal was comprised of Mr E Miller (Chair and Legal Member) and

Mrs S Hesp (Ordinary Member). At the inspection, the Tenant was present and represented himself. The Landlord was neither present nor represented. At the hearing neither party was present or represented.

Description/Inspection of the Property

3. The Property comprised a top floor flat in a traditional pre-1919 tenement of 8 properties. The tenement was situated at the end of Vine Street in the Partick area of Glasgow.. The tenement overlooked the local railway and bus stations and was adjacent to a large supermarket. The general locale was very busy with a large amount of people and traffic. The tenement and communal areas appeared to be in reasonable order.
4. The Property itself was comprised of a lounge, bedroom, kitchen and bathroom, all leading off a small hallway. The Property had gas central heating, which the Tenant confirmed had been installed by the Landlord. The Property had double glazing throughout which, whilst dated, was serviceable. The Property was in generally good decorative order throughout. The Tenant had been a decorator to trade and had carried out all the decorative works in the Property himself.
5. The lounge was a reasonable size with an outlook to the front of the Property. The lounge was laid with good quality laminate, as was the rest of the Property. The Tenant confirmed he had paid for and installed all the flooring himself.
6. The bedroom overlooked the rear of the tenement was a reasonable size. There were fitted wardrobes which the Tenant had paid for and installed.
7. The kitchen was small and had no windows. The Tenant advised that the Landlord had installed the kitchen near the commencement of the tenancy. Whilst the kitchen was still serviceable, it was beginning to show its age.
8. The bathroom overlooked the front of the Property and was quite long and narrow. There was a sink, toilet and bath with shower over. The Tenant advised that the bathroom suite that was present when he moved in had been dated. A few years ago, with its condition deteriorating, he had asked the Landlord to replace it but, he advised, they had refused to do so. The Tenant had paid for and installed it himself as he felt he could not continue with the existing bathroom. The bathroom suite was in good, modern condition.
9. Generally, the Tribunal noted that there was limited storage within the Property. Overall the Property was in good decorative order and well looked

after by the Tenant. The only other additional works the Tenant highlighted he had carried out was the installation of more modern plugs and light switches at various points.

Documentation

10. The Tribunal had before it the following documentation:-

- ROCAS Rent register page for the Property;
- Notification of Appeal by the Tenant of the rent dated 25 June 2024;
- Form RR1 from the Landlord seeking the rent of £5640 dated 2 May 2024;
- Notification to both parties of the date and time of the inspection and hearing;
- Information obtained by the Tribunal itself on (a) other fair rents in the G11 postcode area and (b) similar properties for let on the open market in the G11 postcode area;
- The Citylets Q3 Report on the letting market in Scotland

Submissions

11. The Tribunal had circulated the details of other fair rents, open market properties and the Citylets Report in advance of the inspection and hearing. The Landlord had made no submissions to the Tribunal to consider. The Tenant had not reviewed the information but was aware of a couple of other fair rents in the area which he mentioned at the inspection and which are covered below. Beyond that, the Tenant submitted that he felt the rent increase was too much of a jump but indicated he would let the Tribunal reach the decision they felt appropriate otherwise.

The Legislation/Tests to be applied

12. The Tribunal 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'*. Disrepair or defects attributable to tenants should be disregarded as should any improvements made by tenants, otherwise than

in pursuance of the terms of the tenancy (Section 48(3)). Improvements by the Landlord are to be taken in to account.

13. The Tribunal were also mindful of Section 48(2) and the concept of scarcity which requires them to *'assume that the number of persons seeking to become tenants of similar dwellinghouses 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.'*
14. The Tribunal recognised that the three methods of assessing the appropriate fair 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.
15. None of these methods is the primary method, although it is accepted that the return against capital value is to be a measure of last resort. 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 recent 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.
16. The Tribunal had no evidence available to it on capital valuation whereas there was good evidence of both comparable fair rents and market rents. The Tribunal therefore resolved to consider both methods separately to ascertain the rental value that each method led to.

Fair Rent Comparison

17. The Tribunal compared the current registered rents for comparable properties in the area. All had been registered in 2024 and so were a relatively accurate snapshot:-

- 2/2 19 Vine Street - £7080
- 1/3 6 Vine Street - £4466
- 2/1 6 Vine Street - £5359
- 31 Dowanhill Street - £4529
- 22 Gardner Street - £4912

The Tribunal considered these existing fair rents. The Tribunal noted that there was a fairly wide band, given the similarity in size and location of the properties. The Tribunal did, however, note that other than 19 Vine Street, the landlord for the other properties was a housing association who would, to a degree, have a different policy and view on setting rents. The landlord for 2/2 19 Vine Street, was the same Landlord as in this case, Legesgain Limited. This was a property in the same block as the Property. The rent in that case had not been appealed however.

The Tribunal was of the view that the 2/2 19 Vine Street property needed to be treated, to a degree, as an outlier given it was significantly higher than any other fair rent. That said, it was in the same block as the Property and so was the most obvious comparison. The Tribunal noted that the average fair rent of the above properties was in the region of £5300. The Tribunal was satisfied that it would not be inappropriate for the Property to be assessed at above the average rent. That said, it would not be appropriate to use 2/2 19 Vine Street as the sole comparator and that a position nearer the average was appropriate. The Tribunal considered that £5800 would be a reasonable assessment looking at comparable fair rents

Open Market Comparison

18. The Tribunal considered the open market comparisons available to it online.

There were many traditional 1 bed pre-1919 tenement properties to let in the immediate area, particularly on Dumbarton Road, which the Property led to. Generally, they were letting in the £800-1000 per calendar month range, with those at the upper end of the range tending to be more modern properties. A good number of these were, however, furnished, which the Property was not. The Tribunal was also conscious that the Property was on the top floor of the Property, which is historically viewed as less attractive than lower floors. Taking the above in to account the Tribunal was of the view that the open market rent for a similar property in the wider area would be at the lower end of the range - £850 per calendar month. This gave an annual open market rent of £10,200.

19. Whilst the Property had good amenities available nearby, the Tribunal felt, in this particular case, the closeness of the car park of the large supermarket combined with the immediate presence of the busy bus and railway stations would act as a deterrent due to the large amount of traffic and noise in the area. The Tribunal was of the view that the specific location of the Property would further reduce the rental achievable by approximately 10% in comparison to other properties in the wider area. This would then give a monthly rental of £765 and an annual open market rent of £9,180.

20. The Tribunal was, however, conscious that any improvements made by the Tenant also errequred to be discounted. The Tribunal, in the absence of any evidence to the contrary, was content to accept the information from the Tenant as to the works he carried out as set out in paras 3-9. He had come across as honest and credible during the inspection.
21. The indication was that the bathroom was not new when the Tenant took occupation in 1989. Given that a further 35 years had passed since then, the Tribunal was satisfied that if the replacement bathroom had not been installed that the previous bathroom would now have been in very poor condition and would act as a drag on the rent that would be achieved to the order of £100 a month.
22. The Tribunal also noted that the Tenant had installed good quality flooring, fitted wardrobes and generally kept, at his expense, the Property to a good standard. Without those improvements there would be a further negative effect on the rent achievable in the open market of around £50 per month
23. Therefore, disregarding the improvements carried out by the Tenant would make the Property materially more difficult to rent in comparison to the general market standard and would mean an open market rent of £615 per calendar month and a per annum rent of £7380.
24. The Tribunal then gave consideration to the concept of scarcity as required by s48(2). This concept means that a tenant under a regulated tenancy should be protected from excessive increases in rent where the demand for properties is significantly higher than the available supply. The concept of scarcity is one of the fundamental differences between a fair rent against an open market rent. It requires the Tribunal to assess the appropriate rent in a neutral market.
25. The Tribunal noted the terms of the Citylets Q3 2024 Report for the Glasgow area. Whilst rental growth was not as pronounced as in the previous couple of years, there was still an increase of 5% in rental levels in 2024 for 1 bedroom properties. This was on the back of almost 50% increases over the last 5 years, a rate well above inflationary levels. In addition, another key metric, that of the “time to let” also indicated continued high demand. The average length of time to let a property had fallen over the last 3 consecutive quarters. This was particularly pronounced in the 1 bed flats statistics which had the shortest time to let of 15 days on average.
26. The Tribunal was also aware from its own knowledge of the market that the Partick area continued to be in high demand for rentals and student rentals

in particular. The closeness of the University of Glasgow had driven demand out to the Partick area for rentals. In 2017 the University had 26000 students whereas it was now in the region of 43,000 students. This had impacted demand levels. The concept of scarcity was, in the view of the Tribunal, precisely to protect regulated tenants from being priced out of an area by high demand such as this.

27. Taking all of the above in to account, the Tribunal was satisfied that scarcity was applicable in the Partick/G11 postcode and that a reduction of 25% should be applied to the open market rent. This would bring out an annual fair rent of £5,535 per annum.

Decision

28. The Tribunal considered both the evidence of the average of existing comparable fair rents of around £5800 per annum against the open market rent (after discounting for improvements and scarcity) of £5535 per annum.

29. There was a relatively narrow gap between the two numbers and, as noted previously, a composite approach can be taken. The Rent Officer's figure of £5640 was approximately in the middle of the Tribunal's assessment using the two methodologies. There is always a tolerance or margin for error in making assessments of rental properties, particularly when the Tribunal only sees the subject property itself.

30. Considering all of the circumstances the Tribunal was of the view that the Rent Officer had reached a fair rent, taking in to account the different methodologies available. On that basis, the Tribunal saw no reason to amend the Rent Officer's original decision of £5640 per annum as being a fair rent for the Property.

31. The rent increase shall take effect from 22 November 2024 being the date of determination

Right of Appeal

32. In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Effect of section 63

33. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed **E Miller** Chairperson

Date 5 February 2025