

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 28(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/RN/24/3589

Property: Flat 30, 21 Hesperus Crossway, Edinburgh EH5 1SL (“the Property”)

Parties:

Jaime Maestre Lopez, Flat 30, 21 Hesperus Crossway, Edinburgh EH5 1SL (“the Tenant”)

and

Harbour Homes Limited, 108 Constitution Street, Edinburgh EH6 6AZ (“the Landlords”)

Tribunal members: George Clark (Legal Member/Chair) and Sara Hesp (Ordinary Member/Surveyor)

Background

1. On 27 April 2024, the Landlords gave notice to the Tenant of their proposal to increase the rent in a Private Residential Tenancy between the Parties from £630.35 per month to £661.87 per month from 1 August 2024. The Tenant referred the rent for determination by Rent Service Scotland and, on 20 June 2024, the Rent Officer determined the open market rent to be £950 per month. This figure was confirmed by the Rent Officer on 23 July 2024, following an appeal by the Tenant. The Rent Officer determined that, as the proposed rent was under the maximum allowed, the rent should be set at £661.87. The

comparables used were Waterfront Park, Edinburgh EH5 at £1,050 per month and Hesperus Crossway, Edinburgh EH5, also at £1,050 per month. In the original decision, the Rent Officer had used as comparables Hesperus Crossway, Edinburgh EH5 (£808.25 per month), Arneil Drive, Edinburgh EH5 (£950 per month) and Granton Park Avenue North, Edinburgh EH5 (£975).

2. On 5 August 2024, the Tenant 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"). He stated that his rent is a mid-market rent and that comparables should therefore, be sought from within the category of properties on mid-market rents. The Tenant offered as comparables Tytler Gardens, Abbeyhill (£625 per month at November 2023), Buchanan Street (£601 at November 2023), Wardlaw Street (£615 at January 2024) and Drummond Street (£600 at January 2024).
3. On 29 January 2025, the Landlords' agents, Harbour Letting Limited, lodged written representations. They stated that rent increases are set depending on growing costs and current inflation rates. They do their utmost to keep rents low. The proposed increase, at 5%, was less than the maximum of 6% set by the Scottish Government and about 50% below open market rents. It was in line with other mid-market rental properties in similar locations. They provided details of similar modern flats in Winterburn Place, Wester Hailes and in Baileyfield Road, both on the market at a mid-market rent of £735 per month.

The Inspection

4. The Tribunal inspected the Property on the morning of 19 February 2025. The Tenant was present at the inspection. The Landlords were not present or represented.

The Hearing

5. Following the Inspection, a Hearing was held at George House, 126 George Street, Edinburgh. The Tenant was present, and the Landlords were represented by Mr Mark Hastie.

6. The Landlords' representative told the Tribunal that, in assessing rents, the Landlords use a guide figure that is no higher than 80% of the Local Housing Allowance, which had remained unchanged for four years until 2024. Given ever-increasing costs of maintenance, labour and materials, they had had no option but to increase rents when permitted to do so after the Scottish Government's rent freeze ended, but they were still 13% below the Local Housing Allowance. They also look at rents being charged by other mid-market providers, and take stock of the cost of the development and predicted maintenance costs. As a Housing Association, they do not budget to make profits and any surpluses they do make are applied to fund more affordable housing. The development had been completed in December 2023.

7. The Tenant told the Tribunal that his tenancy began in early January 2024 and, three months later, he had received his notification of a rent increase. At that time there was a rent cap of 3%. His view was that the Landlords were trying to extract as much as possible from their tenants and continuing annual increases would work towards making unaffordable a development that was built as affordable housing. This view was refuted by the Landlords' representative who pointed out that during the COVID-19 pandemic, they had, as a goodwill gesture, not increased rents at all and in 2023/2024 had increased them by 2.5%, when inflation was running at 10%. The first opportunity to increase them by more than 3% had been in April 2024. They had to bring rents up to a level that was more affordable for them, allowing them to continue trading and to provide the services that tenants expect and deserve. They had to serve notice of 3 months and 2 days on tenants, so had changed their annual rent increase date to 1 August.

8. The Tenant referred to another application he had made to the Tribunal in respect of failure to meet the repairing standard in relation to water ingress to the Property which had taken a long time to repair. The Landlord's representative accepted that there had been delays but explained that the block was under a 12-months defects warranty, which meant that it was the builders who had been responsible for carrying out the necessary remedial work.

9. The Tenant provided at the Hearing details of another flat' in West Bowling Green Street. Leith which had been marketed by the Landlords at £612 per month, a figure lower than his present rent. The Landlord's representative responded that this was in one of their older developments, which had started off at a much lower figure. It was a development of only 8 flats, so was not comparable to the present Property, which is part of a very large and very recently completed development.

Reasons for Decision

10. 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.
11. 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.
12. The Property is a fourth floor flat in a large development, completed in late 2023. Local amenities are a distance away, but the Property is close to bus links to Leith and the centre of Edinburgh. The accommodation comprises a combined living area, dining area and kitchen area, a double bedroom and a bathroom containing a bath with shower fitting over, a wash hand basin and wc. The gas hob and electric oven were provided by the Landlords, as were the carpets and floorcoverings. Heating is by gas central heating, with a combi boiler also providing hot water. The windows are upvc double glazed units.

The gross internal floor area is 54.5 square metres or thereby. There is on-street car parking.

13. The Tribunal determined the rent on the basis of its Members' own experience and all the evidence before it. The Tribunal noted that rental evidence for Hesperus Crossway provided by the Parties indicated rents between £808.25 and £1,050 and the Tribunal's own enquiries had identified two flats in the locality presently to let at £1,200 per month (East Pilton Farm Crossway) and £1,350 per month (Hesperus Crossway) although the latter had two bedrooms. The other comparables in EH5 were £950 and £975. These were all open market rents. The comparables offered by the Tenant were mid-market rents, but the only one that might be a useful guide was Tytler Gardens at £625 per month in November 2023. This was 9 months before the proposed rent for the present Property was due to apply. The other properties offered by the Tenant were traditional tenement flats, so did not offer suitable comparisons.

14. The Tribunal noted that the Property is let at a mid-market rent, but the function of the Tribunal in an application under Section 28(1) of the 2016 Act is to determine an open market rent and then, at present, to apply the tapering formula in the Rent Adjudication (Temporary Modifications) (Scotland) Regulations 2024.

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 the open market rent for the Property at £950 per calendar month.

16. Section 31A of the 2016 Act, introduced by The Rent Adjudication (Temporary Modifications) (Scotland) Regulations 2024 ("the 2024 Regulations") 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—

$$\text{The market difference expressed as a percentage (D\%)} = \left[\left(\frac{M - C}{C} \right) \times 100 \right] \%$$

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.]

17. In the present case, the current rent is £630.35, and the open market rent is determined by the Tribunal to be £950. The market difference between the two

figures, in percentage terms, is 50.71% 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 £705.99. This is higher than the proposed rent and lower than the open market rent. The 2024 Regulations provide that 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, and (c) where the market difference is more than 6%, the permitted rent. In the present case, it is the proposed rent that is lowest.

18. The Tribunal’s determination is, therefore, that the rent for the Property will be the proposed rent of £661.87 per calendar month, with effect from the first payment date falling on or after the date of this Decision.

19. The Tribunal rejected the Tenant’s contention that any increase should be limited to the 3% rent cap imposed by the Scottish Government. The proposed rent increase was to come into effect after the rent cap was replaced by the provisions of the 2024 Regulations.

20. The Tribunal’s Decision was unanimous.

21. 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)

Date: 19 February 2025