



**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:** Reference number: FTS/HPC/RS/24/4031

**Property:** 63 Durward Rise, Livingston, West Lothian, EH54 6HU ("The property")

**Parties:**

Lisa Grant, residing at 63 Durward Rise, Livingston, West Lothian, EH54 6HU ("the Applicant")

and

Nicholas Thirgood, residing at 14 Farquhar Square, Blackridge, Bathgate, West Lothian, EH48 3RW ("the Respondent")

**Tribunal Members**

**Paul Doyle (Legal member) and David Godfrey (Ordinary (surveyor) member)**

**Decision**

**No valid notice of intention to increase rental has been served. There cannot be an increase in rental based on a notice which is defective in form.**

**Background**

1. Parties entered into a Short-Assured Tenancy on 28/08/2017. On 18/04/ 2024, the Landlord gave notice to the Tenant of intention to increase the rent from £650 per month to £1100 per month from 01/08/2024.
2. The Landlord did not use form AT2 to give notice of intention to increase the rental. Instead, he used a form prescribed by The Private Housing (Tenancies) (Scotland) Act 2016.
3. 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 29/08/ 2024.

4. On 26 March 2025 the tribunal directed both parties to provide the Tribunal with details of comparable properties on which they sought to rely. Neither party responded to that direction.

### **The Inspection**

5. The Tribunal inspected the Property at 10am on 06/05/2025. The Tenant was present at the inspection. The Landlord was neither present nor represented.

### **The Hearing**

6. A hearing took place by telephone conference at 12.30pm on 06/05/2025. The tenant was present and unrepresented. The landlord was nether present nor represented.

### **Findings in fact**

7. Parties entered into a Short-Assured Tenancy on 28/08/2017.

8. On 18/04/2024 the Respondent served a notice under the Private Housing (Tenancies) (Scotland) Act 2016 seeking to increase the rental from £650pcm to £1100pcm. The notice incorrectly told the tenant that she could challenge the proposed rent increase by applying to the Rent Officer.

9. On 29/08/2024 the Applicant served form AT4 and applied to the Tribunal for a determination of the rental.

10. The property is an end terraced property on two floors. It has gardens to the front and rear. The property has four bedrooms, a living room, dining room, and kitchen. It benefits from gas central heating and double-glazed window units. It has a bathroom (with a three-piece sanitary suite) and a separate WC.

11. The landlord provided the washing machine, the cooker, and the fridge/freezer. The property is otherwise let unfurnished.

12. The seals on some of the double-glazing units are compromised. The tenant says that some windows are cracked and cannot be opened, that an extractor fan is broken, that the central heating system has faults and is unreliable.

13. Two of the tenant's neighbours have purchased their properties They now make mortgage payments of between £650 and £800 per month.

14. Neither the landlord nor the tenant provided any comparable rental figures for similar properties in the neighbourhood.

### **Reasons for Decision**

15. This is a tenancy under The Housing (Scotland) Act 1988 (The 1988 Act). Rent increases are governed by s.24 of the 1988 Act which requires the landlord to serve a notice of intention to increase rental in the prescribed form. The prescribed form is a form AT2.

16. The lease between the parties is a short assured tenancy. Clause 2 of the lease provides for increase in rental but does not set out a mechanism for increasing rental. That clause only requires the landlord to give not less than one month's written notice of any proposed change in rental. The terms of the lease are no more than a declarator that the rental can be increased. There is not a clause which makes provision for an increase in rent. The landlord is therefore obliged to serve a notice in the form prescribed by s.24(1) of the 1988 Act (i.e. an AT2).

17. The notice of intention to increase rental was served by reference to The Private Housing (Tenancies) (Scotland) Act 2016 and incorrectly advised the tenant that she could challenge the notice by referring the notice to the Rent officer.

18. The notice of increased rental should have been served under The Housing (Scotland) Act 1988. The notice refers to the wrong statute and does not advise the tenant of her appeal rights. The notice is defective in form and so is invalid.

19. No valid notice of intention to increase rental has been served. There cannot, therefore, be an increase in rental.

20. If a valid notice of intention to increase rental had been served, we would turn to s.34(3) of the Housing (Scotland) Act 1988, which says

34 (3) Where an application is made to the First-tier Tribunal under subsection (1) above with respect to the rent under a short-assured tenancy, the First-tier Tribunal shall not make such a determination as is referred to in that subsection 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) above.

21. The tribunal can only set a rent if it finds there are enough assured tenancies in the locality with which to compare the property, and if it finds (from reliable evidence) that the Respondent's proposed rent is significantly higher than rents for other such properties.

22. The tribunal must refuse the application to determine a market rent if it does not have enough reliable evidence of assured tenancies in the locality with which to compare the property.

23. Despite issuing a direction alerting parties to the terms of s.34 of the 1988 Act, neither party offers any evidence of assured tenancies in the locality. Neither party offers evidence of comparable rental figures.

24. The Tribunal is unable to verify that there are similar houses in the locality let on Assured Tenancies. The Tribunal cannot determine whether other let properties in the area are Assured Tenancies, as opposed to Private Residential Tenancies created after the Private Housing (Tenancies) (Scotland) Act 2016 came into force on 1 December 2017. Accordingly, even if a valid notice of intention to increase rental had been served, the Tribunal would be unable to make a determination of rent in the present case.

## **Decision**

**No valid notice of intention to increase rental has been served. There cannot be an increase in rental based on a notice which is defective in form.**

# P Doyle

Legal member of the tribunal  
Dated: 6 May 2025