

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/24/4852

Property: 46 Bishops Park, Inverness IV3 5SZ (“the Property”)

Parties:

Mr David Thomas and Mrs Joanne Thomas, both 32 Conicavel, Forres IV36 2TU (“the Landlords”)

and

Mr Eamon Kirkland and Dr Ceri Honey-Jones, both 46 Bishops Park, Inverness IV3 5SZ (“the Tenants”)

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

Background

1. The lease in the present case is a Private Residential Tenancy with a current rent of £825 per month, commencing 4 September 2023. On 5 August 2024, the Landlords gave notice to the Tenants of their proposal to increase the rent from £825 per month to £865 per month from 4 December 2024. The Tenants referred the rent for determination by Rent Service Scotland, and, on 23 September 2024, the Rent Officer determined the open market rent to be £840 per month.
2. The Landlords appealed against the rent set by the Rent Officer, and, on 9 October 2024, the open market rent was determined by another Rent Officer to

be £840. As the percentage difference between the current rent and the determined rent was less than 6%, the tapering formula did not apply, and the rent could be increased up to the value of the open market rent.

3. On 21 October 2024, the Landlords 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"). They contended that the extent of the comparable information taken into consideration by the Rent Officers appeared to be very limited and that it was unclear whether the comparable properties were let furnished or unfurnished, nor was there any indication as to when their rents took effect. The Landlords said that it appeared there had been strong rental growth since the tenancy commenced and provided a number of comparisons. These are summarised later in this Decision.
4. On 26 March 2025, the Tenants provided written submissions, in which they said that when they received the Rent Increase Notice, they offered to pay £850 per month, but this was declined. They thought that Rent Officer's determination was fair and were happy to pay £840 per month. For work reasons, they would be unable to attend the Inspection or Hearing.

The Inspection

5. The Tribunal inspected the Property on the morning of 15 May 2025. The Tenants were not present at the inspection, but had agreed in advance that the Landlords could admit the Tribunal Members to the Property. The Landlord, Mr David Thomas, was present.

The Hearing

6. Following the Inspection, a Hearing was held at Inverness Justice Centre, Longman Road, Inverness. The Tenants were not present or represented. The Landlord, Mr David Thomas was present.

Reasons for Decision

7. 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.

8. 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.
9. The property is in a mixed residential and commercial area around half a mile south-west of Inverness city centre. The property is conveniently located for local services and amenities, and particularly the Royal Northern Infirmary.
10. The subject property is a second floor flat within a three-storey purpose-built block containing a total of five flats. The building forms part of a larger development of similar flats which was built around 2004. The main outer walls appear to be of timber framed construction, with an outer leaf of rendered blockwork. The roof is pitched and tiled.
11. The Accommodation comprises:
 - Ground floor: communal entrance hall and staircase to all floors with door entry and stair lighting systems.
 - Second floor: entrance hall, lounge, with kitchen off, bathroom and two bedrooms.
 - Outside, there are communal grounds, an allocated parking space and visitors' parking.

The kitchen is equipped with a range of wall and base cabinets and laminate worktops and incorporates gas hob, oven, extractor fan, fridge freezer and washer-dryer; the fittings appear to date from the time of construction. The

bathroom is equipped with a white suite comprising bath with shower over, basin and wc; these fittings also appear to date from the time of construction. Space heating and hot water is provided by a gas fired combi boiler located in the kitchen with radiators throughout the flat. The windows are timber framed and double glazed. The floor coverings, window dressing, lampshades, and white goods are provided by the landlord. There are also various items of furniture including lounge suite, coffee table, kitchen table and chairs and two beds provided by the Landlords. Internal decorations and furnishings are of a reasonable standard and in a reasonable state of repair. The gross internal floor area extends to 58 square metres or thereby.

12. There is no public register of rentals in Scotland and valuation is largely by evidence of advertised rentals in the district and by way of the knowledge and experience of the Tribunal Members. The Rent Officer only provides the briefest of detail of comparisons used in their assessment with no specific address, style, floor area or rationale as to how their valuation is arrived at. Accordingly, the Tribunal cannot analyse the Rent Officer's assessment.
13. The Tribunal considered carefully all the evidence before it. The Landlords had supplied a list of comparables with links to archived online advertisements, which could be viewed by the Tribunal. These advertisements related exclusively to properties within the same development and were therefore directly comparable in terms of location, proximity to amenities and local services, as well as being of a similar design, age and construction. The advertisements contained a description and limited photographs. No comparable evidence was submitted by the Tenants.
14. Property 1 related to a first floor flat within the development which had an additional en-suite shower room and appeared to be offered on a part furnished basis (floor coverings, window dressings and white goods but also had some basic furniture). Otherwise, it was similar in terms of standard of furnishings and fittings. The property had been listed at £895pcm on 08/08/2024, some two months before the review date of the subject property. Property 2 related to a second floor flat within the development which was

near identical property in terms of size, accommodation and standard of fittings. The property had been listed at £800pcm on an unfurnished (carpets/curtains and white goods) basis on 28/03/2024, some eight months prior to the review date and five months after the subjects were let at £825. In the submissions, the Landlords described this property as “sub-optimal”, with dated or worn floor coverings and fittings. Property 3 related to a ground floor flat within the development which had an additional en-suite shower room and appeared to be offered on a part furnished basis (floor coverings, window dressings and white goods but also had some furniture). Otherwise, it was similar in terms of standard of furnishings and fittings. The property had been listed at £850pcm on 13/03/2024, some nine months before the review date of the subject property. Property 4 related to a flat within the development which had an additional en-suite shower room and was offered on an unfurnished basis (floor coverings, window dressings and white goods). Otherwise, it was similar in terms of standard of fittings. The property had been listed at £875pcm on 01/12/2023, some twelve months before the review date of the subject property. Property 5 related to a ground floor flat within the development which had an additional en-suite shower room and was offered on a fully furnished basis. Otherwise, it was similar in terms of standard of fittings. The property had been listed at £825pcm on 24/10/2023, some fourteen months before the review date of the subject property, but close to the initial letting date. Despite having an en-suite and being fully furnished, it had been let at the same rent as the subjects. Property 6 is the subjects. The property had been listed at £825pcm on 22/08/2023 and from the lease on file, let on a part furnished basis from 04/09/2023. Property 7 related to a second floor flat within the development which had an additional en-suite shower room and was offered on a furnished basis. Otherwise, it was similar in terms of standard of fittings. The property had been listed at £800pcm on 03/08/2023, some sixteen months before the review date, but close to the initial letting date of the subject property. Despite having an en-suite, it had been let some £25 per month below the subjects. Property 8 related to a flat within the development which had an additional en-suite shower room and was offered on an unfurnished basis (floor coverings, window dressings and white goods). Otherwise, it was similar in terms of

standard of fittings. The property had been listed at £830pcm on 14/03/2023, some six months before the subject property was let. Property 9 related to a flat within the development which had an additional en-suite shower room and appeared to be offered on an unfurnished basis (floor coverings, window dressings and white goods). Otherwise, it was similar in terms of standard of furnishings and fittings. The property had been listed at £895pcm on 05/02/2025, some three months after the review date. Property 10 related to a second floor flat within the development which had an additional en-suite shower room and appeared to be offered on a fully furnished basis. Otherwise, it was similar in terms of standard of furnishings and fittings. The property had been listed at £875pcm on 30/01/2025, some two months after the review date. Property 11 appeared to be comparable Property 2, re-listed at £825pcm on 06/11/2024, showing a £25 uplift since 28/03/2024. Property 12 appeared to be comparable Property 3, re-listed at £895 on 31/10/2024, showing a £45 uplift since 13/03/2024.

15. In response to questions from Tribunal members during the Hearing, the Landlord Mr Thomas stated that he ran a lettings agency with approximately 200 properties on their books, as well as owning a number of residential properties in his own right. In his experience, published asking rents were usually the same as rents agreed within the tenancy agreement. Regarding the comparable evidence, only one property was directly comparable in terms of accommodation/size, that being property 2/11. There was some discussion regarding the difference in rental levels of a property with an en-suite and one without, with the Landlord Mr Thomas asserting that there was little difference in rents achieved. To an extent, this is borne out by the rental evidence (Properties 7 and 5), despite the perceived additional convenience and the difference in overall floor areas (a floor plan contained within comparable 8 showed that the floor area of that two-bathroom flat was 75 square metres, some 10 square metres bigger than the subjects).

16. In terms of furnishings, the comparable evidence contained a mixture of unfurnished (floor coverings, window dressings and white goods), part furnished and fully furnished. With regards to the effect on rental levels, the

Landlord Mr Thomas stated that unfurnished properties had become more common due to landlords' preference as they desired to avoid empty council tax, but also in response to tenant preference, as the average age of tenants had increased in recent years and it was more common now for tenants to have their own furnishings, especially those with families. Mr Thomas asserted that there was little or no effect on rents achieved. When questioned about the types of advertisements on the website from where the evidence was sourced, he stated that it was a mixture of agent and direct landlord adverts.

17. Analysis of the rental evidence shows that there is a degree of inconsistency at times and some counter-intuitive transactions. These could be explained by the imperfections of the property market, such as the parties' level of market knowledge. The motivations and costs of individual landlords may vary, with asking rents based on the previous (historic) rent, or set at a lower level as they are not bearing the cost of an agent, or they may prefer to have a choice between a selection of prospective tenants. However, there is a clear trend of increasing rents over the period covered by the transactions and clear evidence of uplift in rents of two of the comparable properties. The average rent for the 2023 transactions is £831, £853 for the 2024 transactions and £885 for the two 2025 rents. The 2024 transactions include two significantly lower rents (£800 and £825) relating to property 2/11.
18. The applicant referred to Quarterly Reports for the third and fourth quarters of 2024, published by Citylets. These had shown annualised growth of 7.6% and 6.8% respectively, for two bedroomed properties across Scotland as a whole. However, the data within these reports shows that local market performance varies significantly across the cities and zones. There is no subset for Inverness to offer guidance on local market conditions and performance. In fact, at the time of writing, the Citylets website does not include any properties currently advertised for let in the Highland area. It is the Tribunal's view that these reports carry little weight in determining the appropriate rent in this case where there is sufficient rental evidence from within the immediate locality.

19. Having regard to the particulars of the subject flat, the market evidence and market trends, it is the Tribunal's decision that the Landlords' proposed rent of £865.00 per calendar month is appropriate

Decision

20. The Tribunal determined that an open market rent for the Property compliant with the provisions of Section 32 of the Act would be £865 per calendar month.

21. The Rent Adjudication (Temporary Modifications) (Scotland) Regulations 2024 stipulate that a rent determination 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. The "permitted rent" is, where the market difference is 24% or more, 12% more than the current rent.

22. In the present case, the current rent is £825, and the open market rent is determined by the Tribunal to be £865. The difference between the two figures, in percentage terms, is 4.8% which, in terms of the Regulations is the "market difference" and is less than 6%. Accordingly, the tapering provisions do not apply and the Tribunal's determination is, therefore, that the rent for the Property will be £865 per calendar month, with effect from the first payment date falling on or after the date of this Decision.

23. The Tribunal's Decision was unanimous.

24. In terms of Section 30 of the 2016 Act, the Tribunal's Decision is final and cannot be appealed.

George Clark

(Legal Member/Chair)

Date: 9 June 2025