



First-tier Tribunal for Scotland (Housing and Property Chamber)

Determination by First-tier Tribunal for Scotland (Housing and Property Chamber)

Statement of Reasons for Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber (hereinafter referred to as “the tribunal”) under Section 28 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”)

Case reference FTS/HPC/RN/24/4134

Parties

Mr Raymond Stubbs (Applicant)

Crucible Residential Properties Limited (Respondent)

88 Stoneywood Brae, Aberdeen, AB21 9DZ (House)

The Tribunal consisted of:-

Mr James Bauld - Chairperson

Mr. David Godfrey - Ordinary (Surveyor) member

Introduction:-

1. This is a reference to the tribunal in respect of the property at 88 Stoneywood Brae, Aberdeen, AB21 9DZ. The landlord is Crucible Residential Properties Limited. The tenant is Mr. Raymond Stubbs. The tenancy is a private residential tenancy under the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”).
2. On 24 May 2024 the landlord’s agent served a notice on the tenant under Section 22(1) of the 2016 Act indicating that he intended to increase the rent on the property from £630.00 per calendar month to £706.00 per calendar month with effect from 28 August 2024.
3. The tenant timeously objected to that proposed increase by referring the proposed increase to the Rent Service Scotland.



4. The Rent Officer issued a draft decision on 2 August 2024 and fixed the rent at £695.20 per calendar month. In making that determination the rent officer found that the open market rent was £750 per calendar month and then applied the formula contained in section 31A of the 2016 Act which was inserted into that Act by the Rent Adjudication (Temporary Modifications) (Scotland) Regulations 2024.
5. The tenant requested a review of that draft decision.
6. By determination dated 22 August 2024, the rent officer fixed the rent at £686.87 per calendar month. In making that determination the rent officer found that the open market rent was £725 per calendar month and then applied the formula contained in section 31A of the 2016 Act which was inserted into that Act by the Rent Adjudication (Temporary Modifications) (Scotland) Regulations 2024.
7. The Tenant appealed the rent officer's determination by application dated 5 September 2024 and the matter was referred to the tribunal and both parties were invited to make written representations.
8. Both parties were also notified that an inspection and hearing would take place and were invited to attend the inspection and hearing. The inspection took place at the property on 19 May 2025 at 12 noon. and a hearing was scheduled to take place at AB1, 47 Huntly Street Aberdeen on the same day at 1.30 p.m..

Findings in Fact

9. The property comprises a single apartment studio flat in a modern purpose built block which is approximately ten years old.
10. The accommodation comprises a living area, a bed area, kitchen area and shower room. The gross internal area is approximately 27.9 square metres.
11. The property is well located for local amenities and public transport.
12. Externally the building is consistent with its age and type of construction and is in reasonable order.
13. Internally the flat is in reasonable decorative condition. It has the usual range of modern facilities



14. The subjects are let with some furnishings and with white goods in the kitchen. Wi-Fi is included with the rent and the property has an allocated parking space in a basement car park.

The Hearing

15. The hearing was attended by the applicant but not by the respondent. Both parties had lodged written submissions. The respondent had indicated they were happy to accept the rent determined by the rent officer.
16. The applicant stated that he had lodged with his submissions a spreadsheet detailing every rent adjudication case in Scotland since 2018. That spreadsheet was not available to the tribunal members at the hearing
17. The tribunal also checked the available properties for rent within the area and noted that there were apparently identical properties available for rent in the same development advertised at a range between £785 and £795 per calendar month. During the hearing, the tribunal asked various questions of the applicant. The tribunal explained to the applicant that it was required to fix the rent based on the concept of market rent and explained the legal definition to the applicant.
18. The tribunal noted that the applicant had agreed a tenancy of this property in September 2018 at a rent of £675. The tribunal asked the applicant to confirm whether he accepted that this agreement in September 2018 confirmed that the market rent for his property at that time was £675. The applicant did not seem to wish to agree that proposition.
19. The applicant's written submissions contained a number of claims regarding certain issues relating to the property and its maintenance, none of which have any bearing upon the tribunal's duties in respect of rent determination. He also complained that one of the apartments in his building had been used as an Airbnb let.
20. He also seemed to complain that certain apartments in the development are being let to persons who he described as "black and minority ethnic". He attempted to lodge further written submissions which were briefly viewed by the legal member but which had not been intimated to the landlord in advance of the hearing. The legal member indicated to the applicant that these written submissions could not be



received although effectively they were simply the issues he had raised orally.

21. The applicant could not provide any evidence of specific comparable properties nor did he accept that the rents being advertised in respect of the identical properties were actually being achieved. He stated that when he had first moved into the property in 2016 he had agreed a reduction on the advertised rent with the landlords.
22. It was indicated to the applicant that the rent which had been determined by the rent officer was effectively less than £14 a month higher than the rent which he had agreed in 2018. The applicant did not accept that the rent officer's decision had been based on proper comparable properties. There were two properties listed in the decision, one at the development itself showing a market rent of £785 and one at an address called Persley Den Road in the same postcode at a rate of £665. The rent officer had seemingly taken an average of those two rents and had decided that the open market rent was £725. That proposed open market rent was higher than the rent proposed in the rent increase notice from the landlord of £706. The rent officer had then applied the appropriate tapering formula contained within the existing rent Regulations and determine the Rent to be £686.87 per month
23. The Applicant did not accept that the newly proposed rent was correct but could not provide any evidence supporting a lower market rent than any of the comparables contained within the rent officer's decision or provided by the tribunal. The Applicant did provide a list of other decisions made by Rent Service Scotland throughout Scotland however there was no rationale given as to why these were comparable.
24. Subsequent to the hearing the applicant lodged further emails with the tribunal which have been reviewed and considered by the members but have not been sent to the landlord. There is nothing in these emails which add anything to the written submissions previously lodged or the oral submissions made at the hearing.

The Law

25. The Tribunal is bound to fix an open market rent for the subjects by applying the terms of the 2016 Act. The Tribunal is required to determine the rent at which, subject to certain assumptions in the Act,



the Tribunal considers that the subjects might reasonably be expected to achieve if they were let on the open market by a willing landlord to a hypothetical willing tenant under a private residential tenancy.

Discussion and decision

26. The tribunal is aware that the two relevant methods of assessing the open market rent in Scotland are
 - (a) determining the open market rent by reference to market rents of comparable properties or
 - (b) determining the open market rent by reference to the anticipated annual return based on the capital value of the property. Neither of these methods is the primary method.
27. The task of determining an open market rent is a composite task which takes account of both of these methods. The appropriate method depends on the facts and circumstances of each case. The observations of the Lord President in *Western Heritable Investment Co Ltd v Hunter* (2004) and also in the case of *Wright v Elderpark Housing Association* (2017) reminds the Tribunal to proceed on the best available evidence and use the other evidence as a cross check, where possible. The predominant method of assessing the open market rent in Scotland is determining the open market rent by reference to the market rents of comparable properties. In this case the tribunal had no evidence of the capital value of the subjects
28. The Tribunal accordingly considered a variety of properties which were available for let in the area and which were advertised on various property websites. The tribunal carefully considered the written submissions received from both parties.
29. Subsequent to the hearing the tribunal have obtained from the Citylets database a list of agreed rentals for studio flats within the same development. These agreed rentals range from £785 per month to £810 per month over a date range from October 2024 to January 2025
30. The applicant during his submissions had referred to an online valuation which he had obtained from the Citylets website which indicated that the market rate for his property was £775 per month which exceeded the rent fixed by the rent officer



31. The Tribunal considered this evidence together with the documentation provided by both the landlord and the tenant. The tribunal noted that the open market rent chosen by the rent officer was £725. The tribunal notes that the preponderance of evidence would suggest that the market rent may be higher than the figure chosen by the rent officer. However the tribunal also noted that the respondent has stated they do not wish to challenge the rent fixed by the rent officer.
32. In view of the foregoing, the Tribunal decided that the rent determined by the rent officer as the open market rent of £725 should be accepted.
33. In reaching this decision the Tribunal had regard to all the circumstances required to be taken into account in terms of Section 32 of the 2016 Act.
34. The Tribunal having decided that the market rent for this property should be £725 per month then required to apply the current terms of section 31A of the 2016 Act which is in the following terms ...

(a) 31A 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

35. These provisions, although now repealed, introduced a cap on rent increases in private residential tenancies where notice of the increase has been given on or after 1 April 2024. The maximum increase allowed is 12% of the current rent.
36. Applying the formula, the tribunal notes that the rent officer has correctly applied the tapering formula, the maximum rent increase permitted is therefore 9.035% which means that the permitted rent is £686.87 per month.
37. The tribunal therefore determines that the rent to be payable in respect of the property is £686.87 per calendar month and that rent shall apply and take effect from 21 September 2024 taking into account the provisions of section 29(2) of the 2016 Act.



38. The decision of the Tribunal was unanimous

James Bauld

Signed

Date 6 June 2025

James Bauld, Chairperson