



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 24 of the Housing (Scotland) Act 1988

Case reference FTS/HPC/RA/24/4376

Parties

Ms Fiona Mackay (Applicant)

Mr Alan Malcolm (Respondent)

Flat 5, 2 The Maltings, Falkirk, FK1 5BX (House)

The Tribunal consisted of:-

Mr James Bauld - Chairperson

Ms Sara Hesp - Ordinary member

Introduction:-

1. This is a reference to the tribunal in respect of the property Flat 5, 2 The Maltings, Falkirk, FK1 5BX
2. The landlord is Mr. Alan Malcolm. The tenant is Ms. Fiona Mackay
3. The tenancy is an Assured Tenancy under the Housing (Scotland) Act 1988 (“the Act”). It commenced on 1 November 2014.



4. On 26 June 2024 the Landlord's agent served a notice on the tenant indicating that they intended to increase the rent on the property from £509.85 per month to £795.00 per calendar month with effect from 1 October 2024.
5. The Landlord's agent did not use form AT2 to give notice of intention to increase the rental. Instead, they used a form prescribed by The Private Housing (Tenancies) (Scotland) Act 2016
6. The tenant objected to that proposed increase by referring the proposed increase to the tribunal by lodging Form AT4 dated 21 April 2024.
7. The matter was referred to a 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 23 May 2025 at 10.00 a.m. and a hearing took place on the same day at 11.45 a.m.

The hearing

9. The hearing was attended by the applicant. Neither the landlord nor anyone from the letting agency attended.
10. The tribunal explained the overriding objective of the tribunal to the applicant and noted that she understood that objective and the manner in which the hearing would proceed.

Findings in fact

11. The parties entered into an assured Tenancy on 1 November 2014.
12. On 26 June 2024, the Respondent's agent served a notice under the Private Housing (Tenancies) (Scotland) Act 2016 seeking to increase the rental from £509.85 per month to £795.00 per month with effect from 1 October 2024.
13. The notice incorrectly told the tenant that she could challenge the proposed rent increase by applying to the Rent Officer.
14. On 17 September 2024, the Applicant served form AT4 and applied to the Tribunal for a determination of the rental.



15. The property is a flat on the second floor of a modern block. The property has two bedrooms (one with an en-suite bathroom), a through living room/kitchen and shower room. It benefits from gas central heating and double-glazed window units.
16. The landlord provided the washing machine. Other appliances were integrated.
17. Neither the landlord nor the tenant provided any comparable rental figures for similar properties.

Reasons for Decision

18. The tenancy is an assured tenancy under the Housing (Scotland) Act 1988 ("the 1988 Act"). Although the tenancy agreement purports to be a short assured tenancy, it is not. The initial period is stated to run from 1 November 2014 until 1 April 2015. That is a period of less than six months and thus the tenancy created cannot be a short assured tenancy in terms of the provisions of section 32 of the 1988 Act.
19. Rent increases in assured tenancies are governed by section 24 of the 1988 Act which requires the landlord to serve a notice of intention to increase rent in the prescribed form. The prescribed form is a form AT2.
20. There is no clause in the tenancy agreement which makes provision for an increase in rent. The landlord is therefore obliged to serve a notice in the form prescribed by section 24(1) of the 1988 Act (i.e. an AT2).
21. The notice of intention to increase rent was served by reference to The Private Housing (Tenancies) (Scotland) Act 2016, using the form prescribed by that Act in relation to private residential tenancies and incorrectly advised the tenant that she could challenge the notice by referring the notice to the Rent officer.
22. The notice of increased rent 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.
23. No valid notice of intention to increase rent has been served. There cannot, therefore, be an increase in rental.



24. Neither the landlord nor any agent appeared at the hearing to make any submissions relating to the validity of the notice served
25. The tribunal indicated to the applicant at the hearing that a brief decision would be issued stating that the appropriate legal process to increase rent had not been followed and that the purported increase was invalid and of no effect.

Decision

No valid notice of intention to increase rent has been served. The proposed increase in rent is based on a notice which is legally defective in form and is thus invalid and cannot be enforced.

James Bauld

Signed

Date 5 June 2025

James Bauld, Chairperson