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/24/5090

Parties

Mr. Daniel Sewerynski (Applicant)

Mr. Peter Armstrong and Mrs. Vicky Armstrong (Respondents)

2/2, 19 Springfield Gardens, Glasgow, G31 4HT (House)

The Tribunal consisted of:-

Mr James Bauld   - Chairperson

Ms. Carol Jones   - Ordinary (Surveyor) member

Introduction:-

1. This is a reference to the tribunal in respect of the property at 2/2, 19 Springfield Gardens, Glasgow, G31 4HT. The landlords are Mr. Peter Armstrong and Mrs. Vicky Armstrong. The tenant is Mr. Daniel Sewerynski. The tenancy is a private residential tenancy under the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act").

2. On 3 September 2024 the landlord's agent served a notice on the tenant under Section 22(1) of the 2016 Act indicating that the landlords intended to increase the rent on the property from £695.00 per calendar month to £778.00 per calendar month with effect from 15 December 2024.

3. The tenant timeously objected to that proposed increase by referring the proposed increase to the Rent Service Scotland.

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4. By determination dated 24 October 2024, the rent officer fixed the rent at £747.80 per calendar month. In making that determination the rent officer found that the open market rent was £770 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 appealed the rent officer's determination by application dated 2 November 2024 and the matter was referred to the tribunal and both parties were invited to make written representations.

6. 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 9 June 2025 at 10.00 a.m. . and a hearing was scheduled to take place on the same day at 11.45 a.m..

Findings in Fact

7. The property comprises a top floor one bedroom flat in a three storey modern purpose built block constructed around 2014 by Bellway Homes.

8. The accommodation comprises a hall, living room with open plan kitchen, one double bedroom with large fitted wardrobe and bathroom. The gross internal area is approximately 50 square metres.

9. The property is located in the Parkhead district of Glasgow, approximately 2.5 miles south-east of the city centre and is well situated for local amenities and public transport.

10. Externally the building is consistent with its age and type of construction and is in reasonable order.

11. Internally the flat is in reasonable decorative condition. It has uPVC double glazed window, gas central heating and the usual range of modern facilities

12. The subjects are let unfurnished with white goods in the kitchen. The applicant has replaced the washing machine with his own. The property has a secure door entry system and an allocated parking space in a car park situated to the rear of the block.

The Hearing

13. The hearing was attended by the applicant and by the first named respondent, Mr. David Armstrong. Both parties called in by telephone and had lodged written submissions including information on properties to let in the locality.

14. The tribunal also checked the available properties for rent within the area and a schedule had been provided in advance to both parties showing nine one bedroom flats available for rent or where a let has been agreed in the local areas and three larger two bedroom flats in the same development. The rents were advertised at a range between £650 and £1,025 per calendar month.

15. During the hearing, the tribunal asked various questions of the parties.. The tribunal explained to the parties that it was required to fix the rent based on the concept of market rent and explained the legal definition to the parties.

16. The tribunal noted that the applicant had agreed a tenancy of this property in February 2022 at a rent of £695. The tribunal asked the applicant to confirm whether he accepted that this agreement in February 2022 confirmed that the market rent for his property at that time was £695.The applicant did not seem to disagree with that proposition. However, he did not accept that the current open market rent was the figure chosen by the rent officer. He indicated that he had provided written submissions showing that he had carried out online research and had found a number of properties within a one-mile radius of his flat, many with much lower rents than his current rent.

17. The tribunal reminded the applicant that in his initial application he had indicated that the average rent for one bedroom unfurnished flats within a one-mile radius of his property was approximately £740. He did not accept that figure could be used as an appropriate figure for the open market rent.

18. In his written submissions, the applicant indicated that he believed the comparisons used by the rent officer were lacking transparency regarding their methodology and provided insufficient evidence, citing only two properties which were not substantially comparable to his own.

19. The tenant was not able to indicate what he believed would be the appropriate rent other than to say it should be less than £770 but he understood it was likely to be more than the current £695.

20. The respondent was then questioned by the tribunal and indicated that the rental increase had been conducted by Rettie & Co. They had indicated to him that the market rent at that time for his property was £795 but they had restricted the rent increase to £778 as the maximum increase allowed at that time owing to the rent cap regulations was 12%.

21. The tribunal pointed out to the respondent that in order to obtain a 12% rent increase under those regulations, a landlord would have to show that the open market rent was 24% higher than the current rent being paid by the tenant. Even if the tribunal accepted the figure of £795 as the correct figure for the open market rent, the amount which would then be allowed using the tapering formula would be just under £760.

22. The respondent indicated that generally speaking he was happy to accept the rent officer' decision. He understood that the valuation of property was effectively the "bread and butter" of the rent officer's job and that they had significant expertise in fixing such valuations

The Law

23. 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

24. 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.

25. The task of determining an open market rent is a composite task that 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

26. 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.

27. Subsequent to the hearing the tribunal obtained from the Citylets database a note of the average agreed rentals for one bedroom flats

within the G31 postcode area for the final quarter of 2024. The average figure was £779 per calendar month.

28. 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 £770. The tribunal notes that the preponderance of evidence would suggest that the market rent may be slightly 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.

29. In view of the foregoing, the Tribunal decided that the rent determined by the rent officer as the open market rent of £770 should be accepted.

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30. 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.

31. The Tribunal having decided that the market rent for this property should be £770 per month then required to apply the then 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

32. 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 and before 1 April 2025. The maximum increase allowed is 12% of the current rent.

33. Applying the formula, the tribunal notes that the rent officer has correctly applied the tapering formula, the maximum rent increase permitted is therefore 7.6% which means that the permitted rent is £747.80 per month.

34. The tribunal therefore determines that the rent to be payable in respect of the property is £747.80 per calendar month and that rent shall apply and take effect from 15 December 2024 taking into account the provisions of section 29(2) of the 2016 Act.

35. The decision of the Tribunal was unanimous

Date …16 June 2025**………..**

James Bauld, Chairperson