

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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**Decision in respect of a referral to the First-tier Tribunal for Scotland Housing and Property Chamber for a Determination of Rent under Section 24 and 25 of The Housing (Scotland) Act 1988**

**Chamber Ref: FTS/HPC/RS/25/1503**

**Property: Flat 6, 7 Crookston Court, Larbert FK5 4XE (“the Property”)**

**Parties:**

**Ms Lindsey Doherty, Flat 6, 7 Crookston Court, Larbert FK5 4XE**

**(“the Tenant”)**

**and**

**Mr William McGuckin, 13 West Craigs Avenue, Edinburgh EH12 8LZ**

**(“the Landlord”)**

**Tribunal members: Rory Cowan (Legal Member/Chair) and Sara Hesp (Ordinary Member/Surveyor)**

### **Background**

1. This is a reference to the tribunal in respect of the Property known as Flat 6, 7 Crookston Court, Larbert FK5 4XE.
2. The landlord is Mr. William McGuckin. The tenant is Ms. Lindsey Doherty.
3. The tenancy is an Assured Tenancy under the Housing (Scotland) Act 1988 (“the 1988 Act”). It commenced on 1 April 2015.
4. On 1 April 2025 the Landlord sent a notice to the Tenant indicating that he intended to increase the rent on the Property to £750.00 per calendar month with effect from 1 May 2025.
5. The Landlord used the form AT2 to give notice of his intention to increase the rental.

6. The Tenant objected to that proposed increase by referring the proposed increase to the Tribunal by lodging Form AT4 dated 8 April 2025.
7. The matter was thereafter referred to a tribunal and both parties were invited to make written representations. Written submissions were lodged by both parties.
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 12 August 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 Tenant. The Landlord did not attend, nor was he represented. The Landlord had indicated in his written submissions that he was not able to attend but that he did not want to seek an adjournment of the inspection or hearing to allow him to do so.
10. The Tribunal explained the overriding objective of the Tribunal to the Tenant, what issues the Tribunal required to address and noted that she understood that objective and the manner in which the hearing would proceed.
11. The Tenant confirmed that notwithstanding the terms of the tenancy agreement where the landlord is described as being "Alexander Taylor Estate Agents Ltd", she always understood that Mr McGuckin was her landlord and that he had signed the tenancy agreement as landlord.
12. The Tenant indicated that, whilst Mr McGuckin was her landlord, she did not believe that he was registered as a landlord with the relevant local authority.
13. She confirmed that, whilst she had received the Form AT2, Notice to Quit and section 33 notice on 1 April 2025, she had received same by email. This had followed a discussion she had had with the Landlord on or around November 2024 that he was thinking about selling the Property and a text message from the Landlord on 31 March 2025 that he intended to increase her rent. The Tenant indicated that she had asked for the rent increase to be in proper form.
14. The Tenant indicated that although the original rent per the lease was £530.00 there had been 2 "informal" rent increases agreed and the rent she was paying now was £600 per calendar month.
15. The Tenant was asked about the rent she was paying for the Property, and she candidly indicated that she was unlikely to be paying market rate. She had no comparators and had no comment to make about the schedule of properties for rent that the Landlord had produced.
16. Prior to the hearing and as part of his written submissions, the Landlord provided examples of what he claimed were comparable properties available for rent currently as Private Residential Tenancies in terms of the Private Housing (Tenancies)(Scotland) Act 2016.

### **Findings in fact**

17. The parties entered into an assured Tenancy on 1 April 2015.

18. The initial term of the tenancy ended on 1 October 2015, and the lease has continued on a month to month “rolling” basis since that date.
19. The rent payable under that lease is £530.00 per calendar month.
20. There is no contractual clause within the tenancy agreement that provides a mechanism for rent to be increased.
21. On 1 April 2025, by email the Landlord sent to the Tenant a form AT2 seeking to increase the rental to £750.00 per calendar month with effect from 1 May 2025.
22. On 1 April 2025, again by email, the Landlord also sent to the Tenant a Notice to Quit and separately a notice in terms of section 33(1)(d) of the Housing (Scotland) Act 1988 seeking to terminate the contractual tenancy on 1 June 2025 and to give notice under section 33(1)(d) to expire on the same date.
23. By Form AT4 dated 8 April 2025, the Tenant gave notice to the Landlord and applied to the Tribunal for a determination of the proposed rent increase.
24. The Property is a flat on the third floor of a modern block. The Property has two bedrooms, a living room, kitchen and bathroom. It benefits from gas central heating and double-glazed window units.
25. The Landlord provided the washing machine, the cooker, and the fridge/freezer, but the Property was otherwise unfurnished.

#### **Reasons for Decision**

26. The tenancy is an assured tenancy under the Housing (Scotland) Act 1988 (“the 1988 Act”).
27. Rent increases in assured tenancies are governed by section 24 of the 1988 Act which requires a landlord to serve a notice of intention to increase rent in the prescribed form, give the required minimum notice period as well as terminating any contractual tenancy that may be in existence. The prescribed form is a form AT2.
28. 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).
29. Whilst no issue was taken by the Tenant with the notices, the Tribunal is a body whose powers derive from the statutes it is set up to adjudicate on. As such, before the Tribunal can competently make any orders or arrive at any decisions, the requirements of the appropriate underlying statute must be complied with. If not, the Tribunal cannot deal with an application before it. Matters of competency are matters the Tribunal must take account of even if neither party seeks to make them an issue.
30. The Form AT2, the Notice to Quit as the section 33 notice were sent to the Tenant by emails on 1 April 2025. Service by email is not a permitted service method for such notices in terms of section 54 of the Housing (Scotland) Act 1988. Nor is service by email a recognised method of service for a Notice to Quit. Whilst it was noted from the Landlord's submissions that he claimed to have, in addition to the emails sent on 1 April 2025 (at 20:56:50 hrs and 20:59:54 hrs) to have “*posted a hard copy through her door on the same date.*” the Landlord was not present to give such evidence and the only “service” acknowledged by the Tenant was by email. The Tribunal therefore accepted the evidence

of the Tenant as being both credible and reliable. As such, and as email is not a valid method of service for either the Form AT2 or the Notice to Quit, there was no valid Form AT2 served on the Tenant or a Notice to Quit and therefore there can be no basis for the Tribunal to consider the Tenant's Form AT4 as no rent increase could competently take effect.

31. Even if the Form AT2 and the Notice to Quit had been served on the Tenant correctly, there are still issues with them. In terms of section 24(2) of the 1988 Act, a landlord is required to give a minimum period of notice of such a proposed rent increase with the Form AT2. That minimum period of notice can be as much as 6 months, but in this case as the lease is "rolling" on a month to month basis, the period of notice is "one month" (section 24(2)(b) of the 1988 Act). "One month" in this context means one month's clear notice, which means that you neither count the day the notices were served, nor the day they expire. Accordingly, even if it were the case that the Form AT2 was served on 1 May 2025, the "one month" notice period would run from 2 April 2025 and expire on 1 May 2025, meaning that in order to give clear notice the effective date of the proposed rent increase could only be on or after 2 May 2025. The period of notice per the Form AT2 is less than statutorily required. As such, even if the Form AT2 was served correctly on 1 April 2025, the Landlord has failed to give the minimum required notice of the proposed increase in rent meaning that, on that basis alone, the Form AT2 would be invalid meaning no rent increase could competently take effect.
32. Further, as the requirement under clause 18.1 of the tenancy agreement is to give "two months prior written notice" to terminate the said tenancy, the same issue applies to the Notice to Quit. The Notice to Quit purports to expire on 1 June 2025. Even if it was served on 1 April 2025, you would count neither the day of service nor the day it expires, meaning that the notice period given is again 1 day short. The Notice to Quit therefore failed to terminate the contractual tenancy meaning no rent increase under section 24 of the 1988 Act could take effect.
33. As such, due defects in the service method and the notice period, the Notice to Quit has not operated to terminate the tenant's contractual tenancy and, as such, no rent increase can competently take effect (section 24(1)(a) of the 1988 Act).
34. Even if that were not the case, no rent increase could take effect on 1 May 2025 as specified in Form AT2 as, at that stage (even in accordance with the Notice to Quit) the contractual tenancy could not have been terminated as the expiry date of same was 1 June 2025 (section 24(1)(a) of the 1988 Act).
35. As such, no valid notice of intention to increase rent has ever been served due to the requirements of section 24 of the 1988 Act having not been met, meaning there has been no valid Form AT2 served on the Tenant and meaning there is therefore no basis or requirement for the Tribunal to determine the Tenant's Form AT4.
36. Had there been a basis for such a determination, the Tribunal would have declined to do so in any event. Neither party had provided any information to the Tribunal which demonstrated the current rent for any existing assured or short assured tenancy within the general area of the Property. The information which had been provided in respect of currently advertised rents related to properties which would be let on a private residential tenancy under and in terms of the Private Housing (Tenancies) (Scotland) Act 2016.
37. The Tribunal could find no information relating to any existing assured or short assured tenancies within the general area. There is no central register of such existing rents provided by any organisation which is available either to the Tribunal or to the general public.

38. In the absence of any information relating to the rent for comparable properties on short assured tenancies or assured tenancies in the area, the Tribunal is unable as a matter of law to make any determination given the specific provisions of section 25 of the 1988 Act.

**Decision**

39. As no valid notice of intention to increase rent has been served, there can be no increase in rent payable by the Tenant for the Property and there is no basis for the Tribunal to determine matters in terms of section 25 of the 1988 Act.

**R Cowan**

**Signed .....**

**Date .....18 August 2025.....**

**Rory A B Cowan, Chairperson**