



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 1988 ("the Act")

Ref: FTS/HPC/RN/24/3794

Property: 4 Mains of Panmure Cottages, Carnoustie, Angus, DD7 6LX ("the Property")

Parties:

Miss Claire Lowe and Mrs Barbara Rose both residing at 4 Mains of Panmure Cottages, Carnoustie, Angus, DD7 6LX ("the Tenant")

and

Mr Michael Mitchell and Mrs Lisa Mitchell t/a M & L Properties, Mains of Panmure Farm, Carnoustie, Angus, DD7 6LX ("the Landlord")

Tribunal members: Ewan Miller (Legal Member/Chair) and David Godfrey (Ordinary Member/Surveyor)

Background

1. On 1 April 2024, the Landlord gave notice to the Tenant of their proposal to increase the rent under a Private Residential Tenancy between the Parties from £650 to £728 per month from 1 August 2024. The Tenant referred the rent for determination by Rent Service Scotland. The Rent Officer provisionally determined the open market rent to be £690 per month on 2 July 2024. A final order purported to be issued on 17 July 2024 confirming the rent at £690. However, subsequent to this, a further final order was issued on 25 July 2024 stating that rent was to be £709.33 per month. The letter referenced a review having been carried out following an appeal by the Landlord. In terms of s26(2) of the Act the Rent Officer can review (rather than consider an appeal as was stated in the order of 25 July 2024) the provisional decision. Although there was no definitive information or timeline before the Tribunal, the assumption was that such a review had been carried out. It



appeared likely that the request for review from the Landlord had arrived at the end of the relevant period and had crossed with the first final order of 17 July, hence the subsequent order of 25 July 2024. A third final order was sent on 6 August 2024 which re-affirmed the rent at £709.33 per month and stated it was being issued for the curing of an error. What the error being cured was not stated, although it appeared to be the effective date being corrected to 1 September 2024 from 1 August 2024 for the rent increase. The Rent Officer had, ultimately, determined that the open market rent for the Property was £750. However, a tapering formula, introduced by the Rent Adjudication (Temporary Modifications) (Scotland) Regulations 2024, was applicable in this instance to determine the maximum allowable increase in rent. The tapering formula was 9.13% and therefore whilst the Landlord had sought £728 per month and the Rent Officer had determined that the open market rent was £750, in terms of the 2024 Regulations, the maximum rent that could be set was a 9.13% increase against the current rent of £650 per month, thus giving the said sum of £709.33. The named comparables used by the Rent Officer in the provisional order were a property at Panmure Street, Carnoustie at £669 per month and a property at Ferrier Street at £720 per month. In the final order the named comparables were an unnamed 2 bedroomed cottage in Carnoustie at £850 per month and a 2 bedroomed cottage in Church Street, Carnoustie at £650 per month.

2. On 18 August 2024, the Tenant appealed against the Rent Officer's decision to the Tribunal under Section 28(1) of the Act. The Tribunal inspected the Property on the morning of 22 May 2025 at 10am. Both the Tenants were present at the inspection. Mr Mitchell of the Landlord was present at the inspection. Following the Inspection, a Hearing was held at Dundee Tribunal Centre, Endeavour House, 1 Greenmarket, Dundee on 22 May 2025 at 11.45am. The Tenants were present and represented themselves. Mr Mitchell of the Landlord was present and represented them.

The Property

3. As stated above, the Tribunal inspected the Property on 22 May 2025. The Property is an end-terraced cottage in a row of 3 similar cottages, likely all formerly farm worker cottages in a pleasant rural location in Angus. The Property is south facing and with a good aspect



over open countryside. The Property is adjacent to a road which quickly connects the Property to nearby facilities in Carnoustie. The A92 dual carriageway is located a couple of minutes away and gives easy access to both Arbroath and a wider range of facilities in Dundee. The Property, in the view of the Tribunal, was ideally located for rural living in a good location whilst retaining easy access to the full range of wider facilities located in nearby conurbations and Dundee. The Property, along with the neighbouring 2 cottages, had been extensively and sympathetically restored by the Landlord in 2020 to a high standard. The Property comprised of a reasonable sized lounge with kitchen incorporated. There were two modestly sized double bedrooms and a modest but good quality bathroom. There was limited storage within the Property. The Property had new, modern windows and doors, good quality flooring and gas central heating. There was garden ground to the front and parking to the rear along with an external stone built store. Overall, the Property had been refurbished to a higher than average standard.

Summary of Submissions

4. The Landlord had submitted papers dated 17 March 2025. These highlighted the rentals he had obtained for Cottages 2 & 3 (being the 2 adjacent properties in the row of 3, the Property being known as Cottage 4). Cottage 2 and the Property were roughly the same size and were 2 bedroomed. Cottage 3 was a little larger and was 3 bedroomed. Cottage 2, the Landlord submitted, had been let in 2020 at £650 per month. The original tenant had passed away and his family had taken over the tenancy at £750 per month in April 2022. An increase to £795 had been agreed from August 2024 he advised. Cottage 3 had been let in September 2020 at £850 per month with the original tenants still residing there. The Landlord had also submitted a copy of his solicitor's review request to the Rent Officer.

5. The Tenants submissions centred to a significant extent around what they felt was the unfairness in the Rent Service process where they were unaware of the Landlord's request for review and what his submissions had been. They were aggrieved that they had not been allowed to rebut these or challenge the comparable properties used. In relation to the rental level itself, they challenged the applicability of the comparable properties, which had separate kitchens rather than a kitchen/lounge that the Property had. They referred to their



previous property in Carnoustie which had been much bigger but had had a similar rental to the Property. They felt that a 12% increase from 2020 to date was excessive given the Landlord had carried out no repairs or investment in the Property in that period. They subsequently submitted comments on 19th May 2025 on the Landlords submission to the Tribunal. These centred around the current rentals achieved by the Landlord. In relation to Cottage 2 they alleged that he had engineered an increase in rent due to the sentimental attachment to the property by the former tenant's family. In relation to Cottage 3, they alleged that the rental achieved was obtained by the tenant's desperation for accommodation at that point in time. They submitted neither rental was reflective of the open market and the rentals should be lower.

The legislative requirements

6. 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.

7. 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.

8. There is no public register of rentals in Scotland and valuation is largely by evidence of advertised rentals in the district and the application 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. The Rent Officer had not inspected the Property. Although the Rent Officer was aware of the rentals for the two adjacent properties, for some reason, the decision notices did not refer to these.

9. The assessment by the Tribunal is necessarily based on taking what evidence is available and adjusting for the various differences in age, style, accommodation, floor area and any other relevant factors, such as location, condition, garden, garage, amenity etc., to arrive at a valuation that can be compared with that of the Rent Officer. In this case, other than the two directly adjacent properties there were few directly relevant and comparable properties available.

Decision

10. Adopting the approach set out above, the Tribunal determined the rent on the basis of its Members' own experience and all the evidence before it. It was unfortunate that the Rent Officer did not have the benefit of seeing the Property. The other comparable properties used by the Rent Officer were of little benefit and indeed could not be identified with any great degree of certainty. The other rental properties beyond Cottages 2 & 3 submitted by the Landlord were of little benefit as they were generally in other locales within the Angus area.

11. The Tribunal was of the view that the most relevant information before it was the evidence of the current rental levels of Cottages 2 & 3. Cottage 2 was let at £750 as at the date of review and Cottage 3 at £850 at the date of review. It was apparent from the exterior view of Cottages 2 & 3 that they had been refurbished in the same manner as the Property and benefited from the same pleasant location and general amenities. The Landlord had submitted that the same internal improvements had been made to Cottages 2 & 3 and this was not challenged by the Tenant. Cottage 2 and the Property were more or less identical and so would command similar rentals. Cottage 3 was higher but that could be justified because of the benefit of the 3rd bedroom. The Tribunal considered the allegations by the Tenant that the rentals on Cottages 2 and 3 were artificially high because of the conduct of the Landlord. The Tribunal could not, however, give these allegations any



credence not least because, other than the Tenant's own submission, there was no external evidence to substantiate this. In any event, Cottage 2 had undergone a change of tenancy, albeit to relatives of the original tenant and had undergone a rental increase. The tenant of Cottage 3 had been there for a good number of years. Either set of tenants could give notice and leave if they so desired but had not done so. The Tribunal was of the view that given its knowledge of the locality and the rental market, the rentals set for Cottages 2 and 3 were fair and reflective of the open market.

12. Both parties in their submissions had made reference to a cottage at Panlathy Farm that had been let at £850. The Tribunal had limited information on this but understood that this property had heating included, which would add value to the rental. It also had a garage and a separate kitchen. Discounting these factors against the Property would likely lead to a similar open market rent of £750.

13. The Tribunal considered the Tenant's submission that an increase of 12% was unreasonable given the fact that the Landlord had had to carry out little or no repairs or make any other investment since the grant of the lease. However, the extent of any cost or investment by a landlord is not a relevant factor in assessing the open market rent. The relevant test is set out in Clause 7 above and is what a willing tenant would pay to a willing landlord for such a property. The rental market in Scotland generally as well as in the Angus area has shown steady growth over the period of the lease. The Tribunal did not view the level of growth as outwith the market norm. The Property was modest in size and had limited storage. It was, of the 3 properties, the one adjacent to the road. These would act as a modest brake on rental. However, overall, the Tribunal was satisfied that the Property was in a good location and had been fitted out to a higher than average standard and was an attractive let. Accordingly, the finding of an open market rental of £750 by the Rent Officer was the correct one in the view of the Tribunal.

14. Touching briefly on the Tenant's submissions regarding the Rent Service process, whilst the Tribunal could understand some of the frustration at the multiple orders and the lack of a chance to see the Landlord's submissions, ultimately the correct outcome had been arrived



at. The Tribunal had looked at the matter afresh and with the benefit of having viewed the Property and having the comparables of the adjacent properties.

15. In relation to the Landlord's submission that a higher open market rent than £750 ought to be given, the Tribunal was content that £750 was the correct amount as at the date of the rent notice. The rental market may have gone a little higher since then but the Tribunal was obliged to assess the rental as at the date of the increase as opposed to now.

16. Following the Hearing, the Tenants submitted information relating to other properties in the area. The Tribunal can only consider evidence presented to it at the Hearing. In any event, the Tribunal was satisfied in relation to the directly comparable evidence of the two adjacent properties

17. In conclusion, having considered carefully all the evidence before it, the Tribunal determined that it could find no reason to upset the Rent Officer's assessment of the open market rent for the Property at £750 per calendar month.

Rent Adjustment

18. Section 31A of the 2016 Act, introduced by The Rent Adjudication (Temporary Modifications) (Scotland) Regulations 2024 introduced caps on the amount of an increase that can be imposed between the old rental and the open market rental. In this case, the increase is 15.38% As the increase falls between 12 and 24%, the Regulation requires the increase to be calculated by deducting 6 from the percentage increase and then dividing it by 3. This number is then added to 106%. In the case this equates to there being a restricted rental increase of 9.13%, which is correctly stated in the Rent Service Decision. There is one minor technical error in the Rent Service Decision in that the Regulations state that the figure should be rounded to the nearest pound so the correct amount is £709 rather than the £709.33 originally ordered.



19.The Tribunal's determination is, therefore, that the rent for the Property will be the proposed rent of £709 per calendar month, with effect from the first payment date falling on or after the date of this Decision.

20.The Tribunal's Decision was unanimous.

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

E Miller

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E Miller (Legal Member)

Date: 30 July 2025