

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision in respect of a referral to the First-tier Tribunal for Scotland Housing and Property Chamber for a Determination of Rent under Section 34(1) of The Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/RS/25/0232

Property: 26 New Road, Kennoway, Leven KY8 5JR (“the Property”)

Parties:

**Ms Rosemary Morris, 26 New Road, Kennoway, Leven KY8 5JR (“the Tenant”)
and**

**Mr William Mitchell, The Elms, The Causeway, Kennoway KY8 5JU (“the
Landlord”)**

**Tribunal members: George Clark (Legal Member/Chair) and David Godfrey
(Ordinary Member/Surveyor)**

Background

1. The lease in the present case commenced on 15 May 2012, the original rent having been £525 every four weeks. The Tenant made an application to the First Tier Tribunal for Scotland Housing and Property Chamber (“the Tribunal”) for a determination of rent under Section 34(1) of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Tenant’s Notice of Referral (AT4) was dated 20 January 2025.
2. The application was accompanied by a copy of what purported to be a Short Assured Tenancy Agreement between the Parties, commencing on 15 May 2012 and copies of letters from the landlord to the Tenant, intimating rent

increases from 1 October 2019 and 1 April 2022. The Applicant subsequently provided the Tribunal with a copy of a letter of 3 February 2025, in which the Landlord gave notice to the Tenant of his intention to increase the rent from £625 per month to £725 per month from 1 July 2025. The Tenant stated that no AT2 Notice had been served in relation to any of the rent increases.

3. The Tenant contended that the tenancy was not a Short Assured Tenancy, as she had not received the necessary Form AT5 document. It was an Assured Tenancy and the rent could, therefore, only be increased following service of a Form AT2.
4. Neither Party provided the Tribunal with details of comparable properties on which they might rely in determining the application.

The Inspection

5. The Tribunal inspected the Property on the morning of 7 October 2025. The Tenant was present at the inspection, as was her son, Mr Martin Ryder, who stays with her. The Landlord was represented by Mr Robert Macdonald of Messrs Robert F Macdonald, solicitors, Kirkcaldy.

The Hearing

6. Following the Inspection, a Hearing was held at Fife Voluntary Action, 16 East Fergus Street, Kirkcaldy KY1 1X. The Tenant was present and was represented by her son, Mr Ryder. The Landlord was represented by Mr Macdonald.
7. The Tribunal Members advised the Parties that, as no comparable rental figures had been offered by them and the Tribunal had also found no comparisons, the Tribunal had no evidence of comparable rents of properties let on an Assured or Short Assured Tenancy basis, and was in the position that, if it determined that the tenancy was a Short Assured Tenancy it would not be able to determine a rent for the property, as it was

unable to decide that there is a sufficient number of similar houses in the area let on Assured Tenancies (whether Short Assured Tenancies or not).

8. The Landlord's representative produced at the Hearing a Form AT5 Notice. It stated the commencement day of the tenancy to be 13 May 2012 and bore to have been signed by both Parties on 6 May 2012. He confirmed that no AT2 Forms had been served intimating rent increases, but contended that it was a Short Assured Tenancy and that such forms would not have been required.
9. The Tenant's representative challenged the authenticity of the Form AT5, contending that the signature did not appear to be that of the Tenant.
10. The Tenant told the Tribunal that she always reads documents before she signs them and that she read the Minute of Lease before signing it. She did, however, accept that she might not have noticed the final paragraph of Clause (NINTH), which states "By execution hereof the Tenant acknowledges receipt of Form AT5 being notice under Section 30 of the said Act that a Short Assured Tenancy is being offered to which notice a copy of Parts I and U of Schedule 5 to said Act was attached." She was, however, certain that she had not been given a Form AT5. She had only met the Landlord on the day she signed the Minute of Lease and was given the keys. That was on 14 May 2012, the day on which she viewed the Property. The lease was already typed up before the viewing and meeting.

Reasons for Decision

11. The Property is an end-terraced house on two storeys. The accommodation comprised sitting room, kitchen with dining area, and toilet on the ground floor and, on the upper floor, three double bedrooms (one with an en-suite shower room) and a bathroom. Central heating and hot water are provided by a modern gas boiler and there are radiators in all of the rooms. The windows are upvc double glazed units. The kitchen units are dated and the carpets provided by the Landlord are very worn. The Landlord provided the gas hob and oven, but the white goods belong to the Tenant. There is a

good-sized garden to the rear of the Property, accessed by double doors off the kitchen/dining area. There is on-street parking outside the Property.

12. The first point the Tribunal had to determine was whether the Minute of Lease is an Assured or a Short Assured Tenancy. The document is headed "MINUTE OF LEASE (SHORT ASSURED TENANCY)". Clause (NINTH) begins "It is understood that this tenancy is to be a Short Assured Tenancy" and ends with the Paragraph set out in full in Paragraph 9 of this Decision. The Tenant signed the lease at the foot of each page, including immediately below the final Paragraph of Clause (NINTH). The Tribunal Members have no expertise in handwriting, but it was clear that the Tenant's signature on the Form AT5, whilst very similar to her signatures on the Minute of Lease, was not identical to any of them, and the Tribunal concluded that her signature had not been "cut and pasted" from the Minute of Lease on to a Form AT5.
13. The Tribunal accepted that there was an issue regarding the date given on the Form AT5 (6 May 2012) and that the commencement date was stated to be 13 May 2012, but noted that the Minute of Lease must have been prepared and printed before the Parties met and regarded it reasonable to assume that the Form AT5 had also been prepared in advance. The Tribunal decided, therefore, on the balance of probabilities, made a finding in fact that the Form AT5 was genuine and that the Minute of Lease was a Short Assured Tenancy.
14. Section 34(1) of the 1988 Act provides that the tenant under a Short Assured Tenancy may make an application to the Tribunal for a determination of the rent which in the Tribunal's opinion, the landlord might reasonably be expected to obtain under the Short Assured Tenancy.
15. Section 34(3) of the 1988 Act states that where an application is made to the Tribunal under Section 34(1), the Tribunal shall not make such a determination unless it considers (a) that there is a sufficient number of similar houses in the locality let on assured tenancies (whether Short

Assured Tenancies or not) and (b) that the rent payable under the Short Assured Tenancy in question is significantly higher than the rent which the landlord might reasonably be expected to be able to obtain under the tenancy, having regard to the level of rents payable under the tenancies referred to in paragraph (a).

16. The Tribunal had no comparable evidence of other properties in the locality, so was unable to determine that there is a sufficient number of similar houses in the area let on Assured Tenancies (whether Short Assured Tenancies or not) and had no evidence before it of rental figures for any comparable properties let on assured tenancies.

Decision

17. Having taken all factors into account the Tribunal determined that, in terms of Section 24(3) and 34(1) of the Housing (Scotland) Act 1988, it could not find that there is a sufficient number of similar, or at least comparable, houses in the locality let on assured tenancies and that, as a result, the Tribunal could not make a finding that the rent sought is significantly higher than the rent which the Landlord might reasonably be expected to be able to obtain under the tenancy, having regard to the level of rents payable under assured tenancies in the locality. Accordingly, the Tribunal was unable to make a determination of rent in the present case.

18. The Tribunal's Decision was unanimous.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them

G Clark

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(Legal Member/Chair)

Date: 7 October 2025