Housing and Property Chamber
First-tier Tribunal for Scotland

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/25/0404

Re: Property at 61A Main Street, Colinsburgh, KY9 1LS ("the Property")

Parties:

Fay Gooding, Glen Morris, 13 Main Street, Kilconquhar, KY9 1LF ("the Applicant")

Vanessa Robertson, 6 Inzievar Courtyard, Dunfermline, KY12 8HB ("the Respondent")

Tribunal Members:

Joel Conn (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be refused.

1. This is an application by the Applicant for civil proceedings in relation to an assured tenancy in terms of rule 70 of the *First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended ("the Rules"). The application sought repayment of rent allegedly overpaid. The tenancy in question was a Short Assured Tenancy of the Property by the Respondent to the Applicant commencing on 27 January 2017.

2. The application was dated 31 January 2025 and lodged with the Tribunal on that date. The application sought a payment of £1,000 said to be made up of overpayments of £20 per month "over 4 years 2 months" from 27 May 2021 (the date of the first of two requests by the Respondent for increases to the passing rent) to 27 July 2025 (the termination date of the Tenancy).

3. The application was accompanied by voluminous papers, of which further papers and responses were lodged by both parties in advance of the case management conference ("CMD") (though materially in connection with a conjoined application

on unlawful eviction under reference PR/25/0464). Within these papers were the following:

a. A copy of the Tenancy Agreement which included:
   i. At clause 3, the passing rent of £650 per month; and
   ii. At clause 9.2.1, a rent review provision permitting annual increases in line with RPI, subject to a minimum of £5 per month or 3%, whichever is greater.
b. A copy of a Rent-Increase Notice, referring to the *Private Housing (Tenancies)(Scotland) Act 2016*, addressed by the Respondent's letting agents (Martin & Co) to the Applicant dated 24 February 2021 proposing an increase in the rent from £650 to £675 from 27 May 2021, along with a copy of the Applicant's response dated 24 February 2021 accepting that increase.
c. A copy of a further Rent-Increase Notice, also referring to the 2016 Act, addressed by the Respondent's same letting agents to the Applicant dated 19 April 2023 proposing an increase in the rent from £675 to £695.25 from 27 July 2023, along with a copy of the Applicant's response dated 19 April 2023 accepting that increase.

The Hearing

4. On 17 September 2025 at 14:00, at CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting remotely by telephone conference call, I was addressed by both parties.

5. I noted the application, response, and further papers from both parties. I sought further oral submissions. The Applicant confirmed that she signed to accept both the 2021 and 2023 rent increases, and only queried them (by email with Martin & Co) in 2024 when she received eviction papers that referred to the Tenancy being a Short Assured Tenancy. She had believed, on the basis of the 2021 and 2023 documentation referring to the 2016 Act, that the Tenancy had become a PRT but in 2024 she was told by Martin & Co that the Tenancy remained a Short Assured Tenancy. She was of the view that such erroneous documents, even if issued by a landlord's agent, were the responsibility of the landlord to check. As erroneous notices were issued, she did not regard the rent increases as valid, and she sought repayment of increased rent paid by her. (No submissions were provided on the quantification of the £1,000 which I noted appeared significantly less than the additional rent paid further to the two increases.)

6. The Respondent stated that she relied on Martin & Co to serve the correct notices but accepted that the two notices issued in 2021 and 2023 were erroneous as they should not have been documents under the 2016 Act. In submissions, she referred to the Tenancy Agreement including a rent review provision. She said that she had not availed herself of annual contractual increases, and only increased the rent when she felt it was falling far behind the market rate. When asked by me what she would have done had the 2021 or 2023 notice been challenged at the time, she said that she thought it likely that she would have double-checked everything and she hoped that she would then have noticed that she did not require a notice at all, and would have simply have issued a letter

intimating a rent increase in terms of the rent review clause. The Respondent submitted that the Applicant was in no way prejudiced by any error. The Respondent's submissions included a table setting out that the level of rent that the rent review clause would have permitted, which table showed she had sought less rent in the notices than permitted under the rent review clause. (The Applicant conceded the arithmetic followed the rent review clause and that it did indeed bring out a higher figure than was sought in 2021 or 2023.) Finally, the Respondent submitted that – even though the notices were the wrong notices – the terms of the notices provided the Applicant with three options: agree the increase, propose an alternative figure, or object and refer to the Rent Officer. The Applicant made no contact other than to accept the rent increase in both cases. (I noted that the option of negotiating a different amount is not actually set out in the form. The second of the three options in the forms is to the dispute the date that the increased rent is to start from. There is, however, implicitly an option for parties to seek to negotiate an alternative rent figure.)

7. In regard to further procedure, both parties proposed that a decision be made at the CMD without a further continuation or witness evidence. I considered this appropriate in the circumstances given the material agreement on the factual background and the detailed submissions and documentation provided.

8. No motion was made for expenses by either party.

Findings in Fact

9. By written lease dated 27 January 2017, the Respondent let the Property to the Applicant by lease with a start date of 27 January 2017, running until 26 July 2017 and thereafter on the basis that it "shall continue on a monthly basis" ("the Tenancy").

10. Under clause 3 of the Tenancy, the Applicant was to make payment of £650 per month in rent.

11. On or about 24 February 2021, the Respondent's agent, Martin & Co, served on the Applicant a Rent-Increase Notice, referring to the *Private Housing (Tenancies)(Scotland) Act 2016*, proposing an increase in the monthly rent from £650 to £675 from 27 May 2021.

12. On or about 24 February 2021, the Applicant signed and returned the said form to the Respondent's agent accepting the increase in rent to £675 per month from 27 May 2021.

13. On or about 19 April 2023, the Respondent's agent, Martin & Co, served on the Applicant a Rent-Increase Notice, referring to the *Private Housing (Tenancies)(Scotland) Act 2016*, proposing an increase in the monthly rent from £675 to £695.25 from 27 July 2023.

14. On or about 19 April 2023, the Applicant signed and returned the said form to the Respondent's agent accepting the increase in rent to £695.25 per month from 27 July 2023.

Reasons for Decision

15. The application was in terms of rule 70, being an order for civil proceedings in relation to assured tenancies. The application and supporting documents provided were detailed, as was the response and its supporting papers, and the further submissions at the CMD from both parties.

16. The Respondent accepted that her agent had used an incorrect form. Notwithstanding the form, however, a Tenancy – even a highly regulated one – is a contract. Parties are able to agree variations of such contracts, such as changes in the passing rent. The incorrect notice amounts to an offer to vary the rent. The response agreeing the varied rent amounts to an acceptance of the proposed variation. The contract was accordingly varied by the parties in 2021 and again in 2023. No further legal analysis is required. The Applicant is bound by her agreement and cannot now seek repayment on the basis of the forms being incorrect. The Applicant's remedy for incorrect forms being used was to refuse the proposed rent increase at the time. She did not and she positively agreed to the increased rent.

17. I further note that the Applicant did not argue any remedy that may permit reduction of the contractual variations. I give no view on whether any such remedies could have been open to her in the circumstances but, had they been argued, the Applicant would have needed to address that payment of the increased rent was made by her and that both parties acted to their prejudice by proceeding on the strength of there being a mutually agreed variation, twice. I do not require to consider any other hypothetical situations, such as whether the Applicant may have a remedy if she had not responded at all to the notices at the time (but then made payment of the increased rent). She clearly and unequivocally accepted the increases on both occasions.

18. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal and I was satisfied to make a decision to refuse the application.

Decision

19. In all the circumstances, I was satisfied to make the decision to refuse the application.

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.

Joel Conn

17 September 2025

Legal Member/Chair **Date**