

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 28(1) of the Private Housing (Tenancies) (Scotland) Act 1988

Chamber Ref: FTS/HPC/RN/24/3474

Property: 17 Railway Gardens, Crieff PH7 3FT (“the Property”)

Parties:

M P C, 17 Railway Gardens, Crieff PH7 3FT (“the Tenant”) and Kingdom Initiatives Limited, registered in Scotland under the Companies’ Acts (SC383963) and having their registered office at Saltire Centre, Pentland Drive, Glenrothes KY6 2DA (“the Landlord”)

Tribunal members: George Clark (Legal Member/Chair) and Robert Buchan (Ordinary Member/Surveyor)

Background

1. On 26 April 2024, the Landlords gave notice to the Tenant of their proposal to increase the rent in a Private Residential Tenancy between the Parties from £698.10 to £753.95 per month from 1 August 2024. The Tenant referred the rent for determination by Rent Service Scotland and, on 23 July 2024, the Rent Officer determined the open market rent to be £900 per month. A tapering formula, introduced by the Rent Adjudication (Temporary Modifications) (Scotland) Regulations 2024 (“the 2024 Regulations”), was applied to determine the maximum allowable increase in rent. The tapering formula was

12% and the Rent Officer determined that, as the proposed rent was lower than the maximum increase allowed, the rent should be set at £753.95. The comparables used were Parkside, Auchterarder at £995 per month and Banks Crescent, Crieff at £800 per month.

2. On 30 July 2024, the Tenant appealed against the Rent Officer's decision to the Tribunal under Section 28(1) of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act/the Act"). She stated that the Property is one of 8 identical houses, all owned by the Landlords and managed by Kingdom Housing Association. All of them had received notice of a proposed 8% rent increase. The Rent Officer had decided that an 8% increase was fair, but the Tenant had since discovered that a neighbour had appealed the Rent Officer's decision and had ended up with an increase of 6%. The Rent Officer who had inspected the neighbour's house at the appeal stage had, the neighbour had reported, commented that any other owners who appealed would have their rent increases restricted to 6%.
3. The Tenant pointed out that her rent is a mid-market rent and that comparables should therefore, be sought from within the category of properties on mid-market rents. The comparisons used by the Rent Officer were not applicable. Her primary concern, however, was the disparity between tenants with identical properties. She contended that, as well as the neighbouring house to which she had referred, there are properties the same size as hers, managed by Kingdom Housing Association in Crieff, whose rents are still £698.10 per month. The proposed increase had been intimated to the Tenant only 4 months after the tenancy began on 13 December 2023. If such steep increases can occur so soon after moving in, it raised questions about future affordability, should further increases, potentially in excess of 8%, be sought.
4. On 13 December 2024, the Landlords' representatives lodged written representations on their behalf. They emphasised that the rent increase being sought was less than the increase permitted when the tapering formula provided by the 2024 Regulations was applied and, as such, ought to be granted. They accepted that there was a disparity between the Rent Officer's

determination in relation to 21 Railway Gardens, but added that this was not created by the Landlords, who had issued the same rent increase notices to all properties in Railway Gardens, as they are the same size. The 2016 Act requires the Tribunal to determine an open market rent and the position of the Tenant, namely that the Tribunal should compare mid-market rents, was entirely baseless.

5. On 9 January 2025, the Landlords' representatives lodged details of six comparable properties, four of which were in Crieff, with one in Auchterarder and one in Perth. One, in Railway Gardens, had been advertised at £754 mid-market rent per month in November 2024. A three-bedroom semi-detached house in Croftnappoch Place, Crieff was £900 per month in November 2023, a refurbished 3-bedroom flat in Comrie Street, Crieff was advertised at £925 per month in October 2023 and an older 3-bedroom terraced house at Cornton Place, Crieff was advertised at £900 per month in November 2022. A modern 3-bedroom terraced house at Parkside, Auchterarder was advertised in March 2023 at £995 per month. The property in Bertha Park, Perth had two bedrooms and was on the market in November 2024 at an asking monthly rent of £1,050.

The Inspection

6. The Tribunal inspected the Property on the morning of 16 January 2025. The Tenant was present at the inspection. The Landlords were not present or represented.

The Hearing

7. Following the Inspection, a Hearing was held by means of a telephone conference call on the afternoon of 16 January 2025. The Tenant was present and the Landlords were represented by Mrs Claire Mullen of TC Young solicitors, Glasgow. The Tenant referred to the fact that she was faced with a huge increase within a few months of entering into the Tenancy Agreement and wanted to know why the rent of an identical property in Railway Gardens was lower. The Landlords' representative told the Tribunal that all the properties were intended to have the same rent, but the Rent Officer has assessed the open market rent of one of them to be £760 which, when

tapering was applied, produced an increase of 6.72%. The house advertised in November 2024 had been at the figure the Landlords had sought for all their properties at Railway Gardens, rounded up for the purposes of the advertisement, to £754, this being a mid-market rent. There were still some houses in the development rented out at £698.10 per month, but these were cases in which the tenancy had begun so soon before the Notices of Increase were due to be issued that the Landlords regarded it as unfair to seek increases at so early a stage in the tenancy.

Reasons for Decision

8. 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.
9. 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.
10. The Property is an end-terraced two-storey house in a small development and was completed in late 2023. It is located close to the centre of the town, with good access to local shops and public transport services. The accommodation comprises a living room, kitchen and cloakroom, with wc and wash hand basin, on the ground floor and, on the upper floor, a bathroom containing a bath with shower fitting over, wc and wash hand basin, two double bedrooms and one single bedroom. The gas hob, oven and white goods were provided by the Landlord as were the carpets and floorcoverings. Heating is by gas central heating. The windows are upvc double glazed units. The gross internal floor

area is 81 square metres or thereby. There is a back garden area to the rear. There is unallocated car parking to the front of the Property, which is in a terrace of four identical properties, with a further four located directly opposite.

11. 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.

12. 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 there are few comparables available and the assessment necessarily includes using properties from neighbouring towns and involves using a range of values that is wider than would normally be considered.

Decision

13. Adopting the approach set out in Paragraphs 11 and 12 of this Decision, the Tribunal determined the rent on the basis of its Members' own experience and all the evidence before it. The Tribunal noted in particular that another house at Railway Gardens had been advertised very recently at what was clearly stated to be a mid-market rent of £754. With the exception of 12 Railway Gardens, where the Rent Officer had set the open market rent at £760, all the other comparable properties had rents of £900 or more. These were open market rents, and the function of the Tribunal in an application under Section 28(1) of the 2016 Act is to determine an open market rent and then, at present, to apply the tapering formula in the 2024 Regulations.

14. 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 £900 per calendar month.

15. Section 31A of the 2016 Act, introduced by The Rent Adjudication (Temporary Modifications) (Scotland) Regulations 2024 makes the following provisions:

“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—

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.]

16. In the present case, the current rent is £698.10, and the open market rent is determined by the Tribunal to be £900. The market difference between the two figures, in percentage terms, is 28.92% which, being more than 24%, means that the “permitted rent” increase is restricted to 12%. Applying these figures to the formula above produces a permitted rent of £781.87. This is higher than the proposed rent and lower than the open market rent. The 2024 Regulations provide that 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, and (c) where the market difference is more than 6%, the permitted rent. In the present case, it is the proposed rent that is lowest.

17. The Tribunal’s determination is, therefore, that the rent for the Property will be the proposed rent of £753.95 per calendar month, with effect from the first payment date falling on or after the date of this Decision.

18. The Tribunal’s Decision was unanimous.

19. In terms of Section 30 of the 2016 Act, the Tribunal’s Decision is final and can not be appealed.

.....G.Clark.....
(Legal Member/Chair)

Date: 16 January 2025