



**First-tier Tribunal for Scotland (Housing and Property Chamber)**

**Determination by First-tier Tribunal for Scotland (Housing and Property Chamber)**

**Statement of Reasons for Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber (hereinafter referred to as “the tribunal”) under Section 28 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”)**

**Case reference FTS/HPC/RN/25/4134**

**Parties**

**Lisa Rourke (Applicant)**

**Thomas Bennie & Margaret Bennie (Respondent)**

**2 Spittal Barn, Mye Road, Buchlyvie, Stirling FK8 3LY (House)**

**The Tribunal consisted of:-**

**Mr Rory Cowan - Chairperson**

**Ms Sara Hesp - Ordinary member**

**Introduction:-**

1. This is a reference to the tribunal in respect of the property at 2 Spittal Barn, Mye Road, Buchlyvie, Stirling FK8 3LY.
2. The Respondents are Thomas and Margaret Bennie. The Applicant is Lisa Rourke.
3. The tenancy is a Private Residential Tenancy (PRT) under the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”). It commenced on 19 January 2019.
4. A Rent Increase Notice was served by the Respondents’ agents dated 14 July 2025 indicating that the Respondents intended to increase the rent on the House from £1,002.40 per month to £1,450.00 per calendar month with effect from 19 October 2025.



5. The Respondents' agent used the form prescribed by 2016 Act.
6. The Applicant timeously objected to that proposed increase by referring the proposed increase to Rent Service Scotland (RSS).
7. By determination dated 29 August 2025, RSS fixed the open market rent for the House at £1450.00 per calendar month. The Applicant sought a review of that decision. By review dated 15 September 2025, a different rent officer fixed open market rent for the House at £1,450.00.
8. The Applicant appealed RSS's determinations by application dated 24 September 2025 and the matter was referred to the tribunal, and both parties were invited to make written representations.
9. Both parties were also notified that an inspection and hearing would take place and were invited to attend the inspection and hearing. The original inspection and hearing were postponed at the Applicant's request. An inspection subsequently took place at the House on 29 May 2026 at 10.00a.m. and a hearing took place on the same day at 11.45 a.m.

### **The Inspection**

10. The inspection took place at 10.00 a.m. on 29 May 2026. A Simon Rourke, the Applicant's spouse and representative, was present and allowed the tribunal members access to the House. Kevin Valentine, the Respondents' letting agent was also present on behalf of the Respondents as their representative.

### **The hearing**

11. The hearing was attended by Simon Rourke on behalf of the Applicant and by the Respondents along with their representative Kevin Valentine. In advance of the inspection and hearing submissions and comparables were submitted by the parties to the tribunal.
12. There was no dispute between the parties regarding the background to this appeal and the history of rent increases. It was a matter of agreement that the Applicant's PRT for the House commenced on 19 January 2019 and that the original rental figure was £895.00. The Applicant and her family were the first occupants of the House after it



had been developed by the Respondents. It was a matter of agreement that there had been a rent increase in October 2024 where a rent officer had determined open market rent at £1,200 per calendar month, but due to the temporary restrictions in place at that time had fixed the rent for the House at £1002.40 per calendar month.

13. It was also a matter of agreement that rent was due on the 19<sup>th</sup> of each month and that the House had been let on an unfurnished basis, although the Respondents had supplied white goods such as the washing machine, dishwasher and cooker. It was also a matter of agreement that the light fittings within the House were supplied by the Applicant with the exception of the lounge/sitting room and any recessed spotlights in the House. Further, the Applicant has installed the electric vehicle charging point at the front of the House, installed all the garden fencing to the rear and side as well as the wooden shed to the side of the House (painted pink and used to keep rabbits). It was also a matter of agreement that the Applicant had carried out internal decoration, with the consent of the Respondents, in all rooms except the kitchen, the lounge/sitting room and the stairwell from the kitchen up to the lounge/sitting room. It was also a matter of agreement that, in addition to the parking immediately in front of the House (where the electric vehicle charge was located), the House came with 2 additional parking spaces across the gravel driveway as well as access to an use of a storage shed at the end of a graveled area to the East of the House.
14. Where the parties diverged in relation to their positions related to question of the “shared” garden to the front of the House as well as in relation to some issues of claimed disrepair.
15. The Applicant’s position was that the “shared” garden was part of their tenancy albeit the grass had been “killed” by the Respondents in that the Applicant had not agreed to its removal from her tenancy. The Respondents’ position was that the “shared” garden ground had been “removed from the tenancy” on or around 20 February 2025 following a hearing on another matter in front of a different tribunal. Mr Rourke on behalf of the Applicant also listed claimed issues of disrepair being:
  - a) The patio doors in the kitchen diner that lead out to the back garden are not wind and watertight.



- b) There is a cracked work top in the kitchen. That it had been repaired by the Applicant and was being caused by heat expansion due to the dishwasher that sat below the crack.
- c) The standard of decoration within the House shows signs of wear including ames taping coming away in the ceiling of the lounge/sitting room.

16. In response, Mr Valentine indicated that the crack in the worktop was due to tenant neglect. He also indicated that the patio door had been inspected by a builder who had indicated that it was wind and watertight. It was also claimed on behalf of the Respondents that where the ames taping had come away was as a result of the Applicant flooring the attic within the House, but in any event Mr Valentine was of the view that this was not really a “Repairing Standard issue”.

17. Mr Rourke set out his view on the appropriate rent for the House. He suggested that the appropriate rent would be £1295.00 per calendar month. His position was (and as reflected in the written submissions for the Applicant dated 15 May 2026) that the rent that was originally agreed for the House was linked to the rent that the Applicant paid for her former rental property at East Arivain, Mye Road, Buchlyvie. It was explained that this property achieves a rental at £1,295 per calendar month. The position therefore adopted was that, as a result, the rent for the House should be the same. He referred to what he claimed were the most comparable properties at East and West Arivain as well as Arivain Stables. He specifically referred to Arivain Stables, which he claimed was advertised recently for £1,295.00 per calendar month but that had been let for only £1,195.00. He stated that this was a 3-bedroom property of a similar size and had been finished to a similar standard. It had a wood-burning stove and electrical heating but there was no EPC rating available. He did say that he thought East Arivain possibly had a “C” EPC rating. Mr Rourke also referred to the various other properties set out in the application including Inchgarth, Gartmore, properties at Wester Auchentroig including the “Midden” although he indicated these were not directly comparable but were referred to in order to give a view of the local market generally and what rents could be achieved.

18. On behalf of the Respondents Mr Valentine started with a concession that there were “no direct comparables” to the House. He did refer to a property at Gartness Road, Drymen which was listed in the initial response by the Respondent (dated 20 February 2026), but then took a



broader approach indicating that he managed “700 properties” and that he “had a good feel for the market” and that he felt the market would “support a value at £1,600”, and that the market would “comfortably” support a rental at £1,450 per calendar month. He then cited a property he called “the Stables” 32 Birkhill Road, Torbrex, Stirling as a potential comparable. He accepted it was not a rural property unlike the House although it had 3 bedrooms with parking but no garden. He explained that this let at £1,700 per calendar month. There was then a discussion about the various properties (17 in total) referred to in the Respondents’ submission dated 13 May 2026. It was explained that, whilst these were not directly comparable, they had been included because they were in the catchment of Balforn High School and were 3-bedroom properties and some were semi-detached and some were detached. Mr Valentine also made the point that, if the House achieved a rent at £895 per calendar month in 2019, a rent of £1,450 per calendar month now was “not unrealistic” and there had been “significant movement in the market” since 2019.

19. In response Mr Rourke indicated that, of the properties referred to by the Respondents “a lot were furnished” and some were short-term lets.

### **Findings in fact**

20. The parties entered into a Private Residential Tenancy which commenced on 19 January 2019 at an initial rent of £895 per calendar month.
21. On or around October 2024 open market rent was determined by the Rent Service Scotland at £1,200 per calendar month, but due to the temporary restrictions in place at that time had fixed the rent at £1002.40 per calendar month.
22. On 14 July 2025, the Respondent’s agent served a notice, under and in terms of the Private Housing (Tenancies) (Scotland) Act 2016 seeking to increase the rental from £1002.40 per month to 1,450.00 per month with effect from 19 October 2025.
23. The Applicant timeously objected to that proposed increase by referring the proposed increase to Rent Service Scotland.



24. By determination dated 29 August 2025, Rent Service Scotland fixed the open market rent for the House at £1450.00 per calendar month.
25. After review dated 15 September 2025, the Rent Service Scotland again fixed open market rent for the House at £1,450.00.
26. The House is a semi-detached 2-storey house of modern construction located in a rural area with open countryside views.
27. The total floor area for the House is 142 square metres or thereabouts.
28. It has 2 double bedrooms and a further smaller room, currently used as a television room which is accessed off the large lounge/sitting room and through a bathroom shared with one of the double bedrooms. The House has an open plan dining kitchen with patio doors out to the private garden with a separate utility room and a further “shower room downstairs accessible to a double bedroom and the utility room.
29. The House has at least 3 allocated parking spaces, a private garden, storage shed at the end of a shared driveway as well as access to common areas.
30. The House is very energy efficient and achieves a “B” energy performance rating and benefits from an air source heat pump and underfloor heating.
31. East Arivain, Mye Road, Buchlyvie is a 3-bedroom property of 133 square metres with parking and a private garden and an energy efficiency rating of band “D”.

### **Reasons for Decision**

32. 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.



33. 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.
34. The task therefore of determining open market rent requires the tribunal to proceed based on the best available evidence and use other evidence to cross reference where possible. The predominant method of assessing open market rent in Scotland is by reference to the market rents and advertised rents of comparable properties although it can be determined by reference to the capital value of the subjects.
35. Both parties provided written submissions and suggested comparables for the House, although it was accepted by the respective parties that few were comparable with the House.
36. Whilst there was a dispute between the parties as to certain issues of disrepair and whether or not the “common” garden at the front of the House was still included in the tenancy for the House, none of these issues had any particular influence on the tribunal’s determination of open market rent for the House. That said, the Respondents’ suggestion that in some way they could unilaterally remove parts of what had originally been let under the tenancy for the House without the Applicant’s agreement is not a sound proposition in law. However, as already mentioned, in the Tribunal’s view, whether or not the “common” garden was included or not had no impact on the assessment of open market rent.
37. The tribunal in their assessment of open market rent also discounted the Applicant’s improvements such as redecoration and her fixtures and fittings such as the light fittings she supplied, the electric vehicle charger, garden fencing and the pink shed.
38. The tribunal considered carefully all the evidence before it. Whilst parties had provided written submissions and details of properties, it was clear that there are no direct comparables to the House standing its location, size, type and energy efficiency rating. The most appropriate comparable properties were those in the same locality (on the same street as the House) and the most similar in terms of size and energy efficiency. These were East Arivain and Arivain Stables, both



Mye Road, Buchlyvie. Whilst one of the closest comparables, Arivain Stables, does have material differences. Although apparently finished to a high standard, Arivian Stables is significantly smaller than the House (being 80 square metres), has electric radiators, is in a less attractive location and has an energy efficiency rating of band “E”. That being the case, the tribunal took the view that it was not the most helpful of the comparables. The tribunal therefore broadly agreed with the submissions on behalf of the Applicant that, of all the properties, the best comparable to the House was therefore East Arivain, Mye Road, Buchlyvie. It is a similar sized property (133 square metres) and semi-detached. It is on the same road as the House, albeit perhaps in a less desirable location. The House also has a more generous garden than East Arivain, but that is not, in the Tribunal’s view, a factor that impacts rental values more generally and therefore not a factor that affected the assessment of open market rent either way. The evidence before the tribunal is that the current rental for East Arivain is £1,295 per calendar month. However, there is a significant difference between East Arivain and the House and that is in relation to their energy performance rating. East Arivain has an energy efficiency rating of band “D” against the House’s “B” rating. This in the view of the tribunal is a significant factor impacting on the assessment of the open market rent for the House. The increased energy efficiency and therefore lower running costs for the House would attract a rental premium of at least 10 per cent over that of less energy efficient properties such as East Arivain. Whilst parts of the Applicant’s submissions focused on the overall percentage increase in the rent that is now being sought as compared the current rent, the rent set by the Rent Service Scotland in October 2024 was artificially depressed by the temporary restrictions that were in place at that time and the figure for open market rent at that stage was £1,200 per calendar month.

## **Decision**

Having considered all the available evidence before the tribunal, the tribunal determines the open market rent for the House at £1,425.00 per calendar month.

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**Signed ...**

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**Date** .....10 June 2026.....

**Rory Cowan, Chairperson**