

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 71 of the Private Housing
(Tenancies) (Scotland) Act 2016**

Chamber Ref: FTS/HPC/CV/25/3906

**Re: Property at 4 MAINS OF PANMURE FARM, COTTAGES, CARNOUSTIE,
ANGUS, DD7 6LX (“the Property”)**

Parties:

**M & L Properties, M & L Properties, Mains of Panmure Farm, Carnoustie, Angus,
DD7 6LX (“the Applicant”)**

**Ms BARBARA ROSE, Ms Claire Lowe, UNKNOWN, UNKNOWN (“the
Respondents”)**

Tribunal Members:

Shirley Evans (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment against the Respondent in favour of the Applicant in the sum of SEVEN HUNDRED AND EIGHT POUNDS (£708) STERLING. The order for payment will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondents.

Background

1. This is an action for recovery of backdated payments for adjusted rent of £708 raised in terms of Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).
2. A previous Case Management Discussion (“CMD”) proceeded on 23 March 2026. At that CMD the Applicant was present and represented himself. The Respondents were not present. The Applicant referred to the previous CMD dated 31 July 2025, under case reference FTS/HPC/RN/24/3794 (“the appeal decision”). This decision related to an appeal under section 28 of the Private

Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) by the Respondents on a rent determination made by the Rent Officer. The Applicant submitted he is entitled to the increased amount of rent from 1st August 2024, that as this was a decision under Section 29(1) of the 2016 Act, Section 31 of the 2016 Act applies. In his submission the Respondents therefore were obliged to pay the difference between the old rent and the new rent. The Tribunal was of the view that the appeal decision set the date of the rent as per Section 29(2)(b) which states that the effective date is the first payment date falling on or after the day on which the First-tier Tribunal makes its order. The Tribunal decided to allow the Applicant an opportunity to make full legal submissions and to take legal advice and to continue this case to allow the Chair from the appeal decision to hear this case as that Chair will be fully aware of the intention of that previous Tribunal. The Tribunal issued a Note on the CMD which is referred to.

3. On 27 May 2026 the Applicant submitted a response to the Note and re-iterated his position that Section 31 of the 2016 Act was triggered.
4. On 19 June the Tribunal advised parties by email that the continued CMD would proceed on 22 July 2026. This paperwork was also served on the Respondents by advertisement in terms of Rule 6A of the Rules, their current whereabouts being unknown. A copy of the Executions of Service was received by the Tribunal administration and placed before the Tribunal.
5. On 15 July 2026 the Applicant also lodged a rent statement to the end of the tenancy.

Continued Case Management Discussion

6. The Tribunal proceeded with the continued CMD on 22 July by way of teleconference call. The Applicant, Mr Mitchell appeared on his own behalf. There was no appearance by or on behalf of either Respondent despite the CMD starting 10 minutes late to allow them plenty of time to join the call. The Tribunal was satisfied the Respondents had received notice under Rule 24 of the Regulations and accordingly proceeded with the CMD in his absence.
7. The Tribunal confirmed with the Applicant it had read the appeal decision under case reference FTS/HPC/RN/24/3794, the Note from the CMD and the Applicant’s response. The Tribunal asked the Applicant to take it through his position.
8. The Applicant referred to paragraph 6 of the appeal decision to increase the rent to £709 per month which made under Section 29(1) of the 2016 Act on 31 July 2025. The Applicant submitted that Section 31(1) of the Act then applies which means that Section 31(3) applies. He submitted the Respondents should pay the difference between the old rent of £650 and the new rent of £709 for the period between the “originally proposed effective date” (1 August 2024) and the “actual effective date” (1 August 2025) on the Tribunal’s decision. He referred to the rent statement and submitted arrears had accrued by £59 per month from 1 August 2024 to 1 August 2025 amounting to £708. From 1 August 2025 the Respondents

had paid the new rent of £709 until the tenancy terminated on 8 October 2025. He was not critical of the appeal decision as the Tribunal had not been required to consider Section 31, but he submitted the legislation applies regardless meaning the Respondents are responsible for the back payment in the difference in rent.

Reasons for Decision

9. The Tribunal considered the appeal decision, the 2016 Act, the submissions of the Applicant. The Tribunal also had before it emails from the Respondents to the Applicant disputing that they were liable to pay the difference in the rent.

10. With regard to the 2016 Act, Section 29 of the 2016 Act provides: -

(1) Where an appeal is made to the First-tier Tribunal under section 28(1), the First-tier Tribunal must make an order stating that from the effective date the rent payable under the tenancy is the rent determined by the First-tier Tribunal in accordance with section 32.

(2) For the purpose of subsection (1), the effective date is—

(a) where the First-tier Tribunal makes its order on or before the original effective date, the original effective date,

(b) otherwise, the first payment date falling on or after the day on which the First-tier Tribunal makes its order.

(3) In an order made under subsection (1), the First-tier Tribunal must record the amount of the rent that is fairly attributable to the provision of services, unless the amount is negligible or no amount is so attributable.

(4) In subsection (2)—

“original effective date” means 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, and

“payment date” means a date on which a rent payment falls to be made in accordance with the terms of the tenancy.

Section 31 of the 2016 Act provides for over or underpayment of rent as follows: -

(1) This section applies where—

(a) the rent payable under a private residential tenancy has been changed by an order made under section 25(1) or 29(1),

(b) the effective date stated in the order (“the actual effective date”) falls later than the date on which the rent would have been increased in accordance with section 22(4) had a referral to a rent officer not been made (“the originally proposed effective date”), and

(c) the rent payable from the actual effective date (“the new rent”) differs from the rent payable immediately before that date (“the old rent”).

(2) If the new rent is less than the old rent, on the date the order is made the landlord becomes liable under this subsection to pay the tenant the difference between—

(a) the amount actually paid in rent between the originally proposed effective date and the actual effective date, and

(b) the amount that would have been payable in rent during the same period had the new rent been the rent payable from the originally proposed effective date.

(3) If the new rent is more than the old rent, on the date the order is made the tenant becomes liable under this subsection to pay the landlord the difference between—

- (a) the amount that would have been payable in rent between the originally proposed effective date and the actual effective date had the new rent been the rent payable from the originally proposed effective date, and*
- (b) the amount that should have been paid in rent during the same period (whether or not it was actually paid).*
- (4) Subsection (5) applies if, at the end of the day falling 28 days after a tenant's liability under subsection (3) arose, that liability is (in whole or in part) still outstanding.*
- (5) For the purposes of paragraph 12 of schedule 3, the liability mentioned in subsection (4) is to be regarded as a sum that fell to be paid by way of rent on the day the liability arose.*
- (6) In this section, a reference to a period between two dates includes both of those dates.*

Further Section 32 of the 2016 Act provides that: -

- (1) Where an order maker is to determine the rent under section 25(1) or (as the case may be) 29(1), 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 section 22(4) had a referral to a rent officer not been made,*
- (c) have the same terms as the tenancy to which the referral or (as the case may be) appeal relates.*

11. The issue before the Tribunal was essentially a legal point stemming from the appeal decision made on 31 July 2025 with reference to the 2016 Act.
12. The appeal decision was made under Section 29 of the 2016 Act. That being the case Section 31 of the 2016 is triggered. The Tribunal accept the Applicant's submissions in this regard. As the new rent of £709 is more than the old rent of £650 the Respondents are liable under Section 31(3) to pay the Applicant the difference between the amount that would have been payable in rent between the originally proposed effective date and the actual effective date had the new rent been the rent payable from the originally proposed effective date, and the amount that should have been paid in rent during the same period (whether or not it was actually paid).
13. The originally proposed effective date in terms of Section 29 (4) of the 2016 Act is 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, and the amount that should have been paid in rent during the same period whether or not it was actually paid. In this case the original effective date was 1 August 2024. The actual effective date in terms of Section 29(2)(b) of the 2016 Act, is the first payment date falling on or after the day on which the First-tier Tribunal makes its order. In this case the actual effective date is 1 August 2025, being the first payment date after 31 July 2025.
14. The difference in rent between the original effective date and the actual effective date is £59 per month totalling £708. The Tribunal is satisfied that Section 31 (3) applies and that the Respondents are liable to pay the difference in rent between the original effective date and the actual effective date.

Decision

15. The Tribunal made an order for payment of £708 in favour of the Applicant.

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.

Shirley Evans

Legal Member

Date: 22 July 2026