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 34 of the Housing (Scotland) Act 1988 ("the 1988 Act")

Case Reference Number: FTS/HPC/RS/26/1939

Re: Property at 56 Bank Street, Cambuslang, G72 7PP ("the Property")

Parties:

Thomas Nelson, 56 Bank Street, Cambuslang, G72 7PP ("the Applicant")

Lowther Homes, 25 Cochrane Street, Glasgow, G1 1HL ("the Respondent")

Tribunal Members: Joel Conn (Legal Member) and Kingsley Bruce (Ordinary (Surveyor) Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") is unable to make a determination. The application is therefore dismissed.

Background

1. This is a reference to the Tribunal in respect of the property at 56 Bank Street, Cambuslang, G72 7PP ("the Property"). The Respondent is the landlord and the tenant is the Applicant.

2. The Tenancy is a short assured tenancy under the *Housing (Scotland) Act 1988* ("the Act") which commenced on 1 August 2016 with an end date of 28 February 2017. The application papers did not include any Notice to Quit or AT5, but parties were agreed that the Tenancy was a short assured tenancy and that parties had agreed in clause 4.2 of the Tenancy Agreement that the Respondent was entitled to provide the Applicant with two months' written notice of any proposal to increase the rent.

3. On 20 April 2026, the Respondent served an AT2 notice by a landlord for increase of rent on the Applicant, indicating that the Respondent intended to increase the rent on the property to £655.07 per calendar month with effect from 1 August 2026. It was a matter of agreement between the parties that the rent at that time was £617.99/month, and it had increased to that amount on 1 August

2025. The proposed rent increase at 1 August 2026 was thus an increase of 6% after one year at the previous rent.

4. The Applicant timeously objected to the proposed increase by referring it to the Tribunal by lodging a Form AT4 dated 29 April 2026.

5. In advance of the inspection and hearing, both parties provided written submissions.

The inspection

6. The inspection took place at the Property on 28 October 2026 at 10:00. The Applicant was present and provided access for the inspection. The Respondent was represented at the inspection by Katie Graham, solicitor for Wheatley Homes (the Respondent's parent organisation) and Ross Walker, Residential Letting Agent for the Respondent.

7. The Property is a first-floor flat in a modern, purpose-built flatted development near Main Street, Cambuslang. There is unallocated parking to the front and rear, as well as a basement parking area. Controlled door entry leads to a common close from which the Property is accessed up a main close stairwell.

8. The Property is a three-apartment property, comprising a small hallway from which is accessed: a main bedroom with en-suite toilet and shower; a second bedroom; a bathroom; and a living area with kitchen alcove. The Property was in reasonable decorative condition. We noted no material wants of repair (and during the Hearing the Applicant confirmed there were none, other than two damaged internal doors).

9. During the Hearing, parties agreed that the Property had been let unfurnished bar white goods (as a fridge/freezer, cooker and hob had been supplied).

The Hearing

10. A Hearing was held at Glasgow Tribunal Centre on 28 October 2026 at 11:30. It was attended by the Applicant and by the Respondent's representatives Katie Graham and Ross Walker.

11. The Tribunal considered the written representations of the parties and sought submissions on matters arising from the submissions and inspection. (During the early stages of the Hearing that the Applicant confirmed that he agreed the Tenancy was a short assured tenancy, and that he took no issue with the validity of the notice to increase the rent.)

12. The Tribunal noted that its powers in setting or determining rents under assured or short assured tenancies are limited by the terms of the Act. We noted that the Respondent's submissions referred to the terms of s34(3) of the Act, and the provisions within that the Tribunal shall only make a determination if there are a sufficient number of houses in the locality let on assured tenancies and the rent payable under the tenancy is significantly higher than the rent which a landlord might reasonably be expected to be able to obtain under the tenancy, having

regard to the level of rents payable under those comparable tenancies. (The Respondent's submission was that there were neither a sufficient number of house to make a determination nor would the rent be significantly higher than a reasonable rent.) We sought confirmation from the Applicant whether he disputed that section 34(3) applied, or held that a different test or interpretation applied. Though the Applicant made material submissions in support of his application, we did not take any of them to dispute the terms or applicability of section 34(3).

13. We noted the following submissions from the Applicant, both in his written submissions in the application papers and at the Hearing:
    a. He did not dispute that the proposed £655.07 was likely a suitable market rent. He had sought independent advice from a local letting agent who, though lacking knowledge of the Respondent's stock, said that he believed "£650 is in line with the current amounts being charged in my area to rent property".
    b. Through a part-time job he had, he came into contact with a number of tenants in social housing and visited their homes. They would tell him of steps being taken by their landlords to improve the housing stock, such as new windows, redecoration, and installation of replacement bathrooms and kitchens. The Respondent had, however, undertaken no such work at the Property during his ten years of occupation. A door that was damaged when he moved in was still dented, and the only replacements had been of a fridge-freezer and panel heater which had both broken. He felt the Property was tired and needed redecoration, and perhaps replacement of the bathrooms and kitchen. He did not have any specific issue with any item (except the damaged internal doors) however.
    c. He had contacted the Respondent to seek a discount on the basis of being a loyal tenant, but had not received any discount.
    d. His personal income was now lower than when he moved into the Property, having taken early retirement on health grounds. His son lived with him and currently contributed to the outgoings, but intended to leave the Property in the coming year to move in with his partner.
    e. His rent was now "almost 50%" higher than when he moved in (which we could see from the application papers was an initial rent of £450/m). He questioned why he should sustain annual increases in rent, when there was no investment in the Property. He further raised the issue of his own personal circumstances, and the greater strain the increased rent was placing upon him while his income had been reduced.

14. The Respondent's solicitor relied upon the written submissions, and in particular the submission that no determination should be made due to the lack of comparables. She further relied upon the Applicant's own submission that the increased rent was market rent.

15. We confirmed with both parties whether they were satisfied for a determination to be made without further documentation or evidence. Both were so satisfied and we concluded the Hearing on the basis that a written determination would be issued.

Consideration and reasons for decision

16. The Applicant did not dispute the terms of the statutory test, though made no effort to address it. He failed to provide evidence of comparable properties in the area which were let on assured or short assured tenancies, and candidly submitted that he had been advised that the increased rent was likely market rent. The Respondent provided no comparables of its own, holding that it was a responsibility placed upon the Applicant. In preparation for the Hearing, we noted that private rented properties were advertised for rent on major letting websites though, by definition, none of these properties would be being offered as assured or short assured tenancies. We did however note that the proposed increased rent of £655.07 was lower than the proposed rent in any of the listings.

17. The Applicant's position is not one that engages with the legal test but addresses a sense of unfairness. He sees the rent increasing annually, and regards himself as a loyal and reliable tenant, but feels the Property is deteriorating and his good performance as a tenant has not been reciprocated by improvements to the Property. He feels that this is unfair. None of this, however, is directly addressed by his application. Though the condition of the Property may have been relevant if the Property was in a poor condition (which we did not find), the application is not to consider the Repairing Standard nor any other provision regarding any obligations of the Respondent towards repairs or maintenance. The Applicant is free to consider such matters separately or seek his own independent advice if he believes a different form of application may be advanced by him regarding the Respondent's lack of refurbishment works. (We stress we make no comment on whether the Applicant would have any such claim.) Overall, our impression of the Applicant's position was that he resents annual increases in the rent without there being additional benefits to him (such as a replacement bathroom). This misconstrues the nature of rental increases. Rent costs (generally) increase as the cost of living (generally) increases.

18. Turning to the statutory test in section 34(3), neither party had provided any information to the Tribunal which demonstrated the current rent for any existing assured or short assured tenancy within the general area of the Property. We can find no information ourselves relating to any existing assured or short assured tenancies within the general area as there is no public register for such information available either to the Tribunal or to the general public. (It may have been useful to have had the Respondent's own internal information on any rents it may be charging for similar properties on assured or short assured tenancies, but we accept that the principal obligation is on the Applicant to provide evidence in support of his own application.)

19. In the absence of any information relating to rent for comparable properties on assured or short assured tenancies in the area, we are unable as a matter of law to make any determination given the terms of section 34 of the Act. We would say, however, that we would have been very surprised if any such data would have led us to consider that the "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" (as per the second part of the s34(3) test). The Applicant conceded that the proposed

increased rent was likely market rent, and our informal investigations suggested it may have been below market rent. The Applicant would have required to provide substantial further information and analysis to support any submission that £655.07/m was "significantly higher" than could be reasonably expected by a landlord. For the avoidance of doubt, we do not see that the Applicant's personal financial circumstances or length of time as a tenant are relevant considerations under the statutory test in s34(3).

Determination

20. In all the circumstances, we make no determination and refuse this application.

21. No motion for expenses was made by either party and none is made.

Right of Appeal

In terms of section 46 of the Tribunals (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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

J Conn

28 October 2026

Legal Member/Chair **Date**