



Decision and Statement of Reasons by First-tier Tribunal made under Rules 118 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 as amended (“the Rules of Procedure”)

Case reference FTS/HPC/RN/23/2875

Parties

Umali Ltd (Applicant)

Ms Charlotte Aitchison, Ms Suzanne Ruddock (Respondents)

DJ Alexander (Applicant’s Representative)

7 Bryan Street, Hamilton, Lanarkshire, ML3 0JW (House)

Background

1. On 23 August 2023 the Applicant’s representative made a prescribed property costs application to the Tribunal in terms of Rule 115 of the Rules of Procedure.

The Applicant wishes to appeal a decision made by a rent officer issued on 9 August 2023 in terms of Section 33C of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”).

The decision which is the subject of appeal relates to a request by the Applicant, who is the landlord of the House, to increase rent above the permitted rate in terms of the Cost of Living (Tenant Protection)(Scotland) Act 2022.

The rent officer’s decision issued on 9 August 2023 rather than increasing the current rent has determined to reduce the current rent payable for the House by £5 per calendar month (“PCM”). This outcome has arisen as the Applicant’s representative incorrectly completed the application form which was submitted to Rent Service Scotland and referred to the wrong property, wrong tenants and wrong monthly rental

figure which applied at the time. The rent officer observed that some of the information submitted in the form sent by the Applicant's representative was incorrect and raised this with the Applicant's representative, who submitted the correct private residential tenancy agreement for the House to the rent officer around 19 June 2023. This private residential tenancy submitted around 19 June 2023 showed the correct monthly rental but the rent officer failed to notice that the rent stated in the application form was incorrect according to this correct private residential tenancy agreement.

The Applicant has sought a review of the rent officer's decision based on an obvious error and the rent officer has indicated a lack of power to make any adjustment to her determination.

The rent officer concluded that based on the lower of (1) the sum sought of £45 PCM per the application form; (2) 50% of the increased mortgage costs evidenced in the application; and (3) a 6% increase to the current rent, the rent should be increased by £45 PCM. However, the starting figure for rent before the increase was applied was taken by the rent officer to be the erroneous figure of £750 PCM in the application form rather than the correct figure for rent shown in the private residential tenancy for the House of £800 PCM.

It was against this background that the application was made to the Tribunal under Rule 115 of the Procedure Rules.

2. In term Section 33C(2) of the Act the application to the Tribunal seeking an appeal must be made within 14 days. Accordingly, the appeal by the Applicant has been received timeously by the Tribunal.

3. On 29 August 2023 an order in terms of Rule 117 of the Rules of Procedure was issued by the Chamber President to the rent officer who made the prescribed property costs order to provide information and clarification was sought from the Applicant on certain information which assisted in ascertaining the background.

4. Applicable Legislation in the Private Housing (Tenancies) (Scotland) Act 2016 ("the Act")

33A Landlord application to rent officer to increase rent above permitted rate

(1) A landlord under a private rented tenancy may make an application to the relevant rent officer to increase the rent payable under the tenancy by more than the permitted rate in order to recover up to 50% of the increase in any prescribed property costs that the landlord has incurred during the relevant period.

(2) An application under subsection (1) must include—

(a)evidence of an increase in any prescribed property costs of the landlord incurred during the relevant period (“relevant period” as defined later in the section means the period of 6 months occurring immediately before the day on which the application under subsection (1) is made), and

(b)a statement of—

(i)the rent payable under the tenancy, and

(ii)the rent that would be payable under the tenancy if the proposed rent increase took effect (“the proposed rent”).

(3)The landlord must give notice in writing to the tenant under the private residential tenancy of any application under subsection (1) which must include—

(a)a statement of the proposed rent,

(b)a statement that the proposed rent would be an increase to the rent payable under the tenancy of more than the permitted rate,

(c)a statement that the rent payable under the tenancy is not increased unless and until—

(i)the relevant rent officer makes an order determining the rent payable under the tenancy, or

(ii)if the order is appealed to the First-tier Tribunal, the Tribunal makes an order determining the rent payable under the tenancy,

(d)a description of the prescribed property costs of the landlord that have increased during the relevant period prompting the proposed rent, and

(e)where an increase mentioned in paragraph (d) includes an increase in the landlord’s service costs, details of the nature of the increase in the service costs and the amount.

(4)In this Chapter, “prescribed property costs”, in relation to a landlord, are—

(a)interest payable in respect of a mortgage or standard security relating to the let property,

(b)a premium payable in respect of insurance (other than general building and contents insurance) relating to the let property and the offering of the property for let,

(c)service charges relating to the let property that are paid for by the landlord but the payment of which the tenant is responsible for (in whole or in part) in accordance with the terms of the tenancy.

33B Rent officer’s power to apply rent increase above permitted rate

(1)Where a rent officer receives an application under section 33A(1), the rent officer must decide whether the following conditions are met—

(a)the rent officer is satisfied that the landlord’s prescribed property costs that are specified in the application have increased during the relevant period, and

(b) the rent officer is satisfied that the amount of the proposed increase to the rent payable under the tenancy represents no more than 50% of the increase in the landlord's prescribed property costs incurred during the relevant period as specified in the application.

(2) If both conditions mentioned in subsection (1) are met, the rent officer must make an order stating that from the effective date the rent under the tenancy is the lower of—

(a) the proposed rent, or

(b) the rent payable under the tenancy as increased by 6%.

(3) If either or both of the conditions mentioned in subsection (1) is or are not met, the rent officer may make an order stating that from the effective date the rent payable under the tenancy is the rent determined by the rent officer.

(4) In determining the rent under subsection (3), the rent officer—

(a) may not determine that the rent payable under the tenancy from the effective date is an amount that would be an increase to the rent payable under the tenancy of more than an amount representing 50% of the increase in the landlord's prescribed property costs incurred during the relevant period as specified in the application under section 33A(1), and

(b) in any event, may not determine that the rent payable under the tenancy from the effective date is more than the rent payable under the tenancy as increased by 6%.

5. Decision and Reasons

There is no doubt that the problems which occurred in this case are caused by the Applicant's representative who provided erroneous information to the rent officer in the original application submitted on 3 May 2023 and then, on questions being raised by the rent officer, he submitted the correct private residential tenancy agreement but in doing so failed to amend the application form already submitted to the rent officer in some sections. The Applicant's representative accepts his culpability in this regard.

Section 33A(2) of the Act specifies the information and attachments required to make an application to the rent officer in terms of Section 33A(1). This includes a statement of the rent payable under the tenancy and the proposed rent if the increase is to proceed. To assist landlords to provide the prescribed information, Rent Service Scotland has created an application form. This is not a form prescribed by statutory regulations. Therefore, it is open to a rent officer to consider all the documents and information submitted to determine if all the prescribed information has been provided. It follows that an omission or error in the form is not fatal if the application paperwork taken as a whole meets the requirements in Section 33A(2).

The rent officer had the correct tenancy agreement before her when she considered the application for an increase in rent and the conditions in Section 33B(1). That being the case the rent officer should have been aware that the rent payable in terms of the tenancy agreement lodged with Rent Service Scotland on or around 19 June 2023 showed the rent as £800 PCM and not £750 PCM as shown on the application form.

The notice to the Respondents as tenants advising them of the increase at least 3 months in advance must state that the current and proposed rent in the notice. This is a requirement in terms of Section 33A(3) of the Act. The Applicant has confirmed that the correct figures were included in that notice which was provided to the Respondents by email on 3 May 2023. That notice indicates the existing rent to be £800 PCM and the proposed monthly increase to be £48. I note that a copy of the notice to tenants is not a required document when an application is submitted by to the rent officer in terms of Section 33A(2) and, consequently, the information in this notice was not before the rent officer when she made her determination. The rent officer had, unlike the information on current monthly rent, only the information in the application form for the proposed rent increase sought by the Applicant. That being the case the rent officer understandably considered that the increase proposed was £45 PCM as detailed in the form.

In this instance there is no dispute with regard to conditions in Section 33B(2) being met. No application under Rule 115 has been received from the Respondents who are the tenants. The basis of the Applicant's application is the reduction in rent from its current level and the lack of an increase in rent to the level proposed.

The documentary evidence submitted supports an increase in mortgage payments for the House in the period from 15 December 2022 to 15 March 2023, which is within the relevant period of 6 months occurring immediately before the day on which the application was made to Rent Service Scotland on 3 May 2023. Interest on a mortgage over a let property is a prescribed property cost in terms of Section 33A(4)(a) of the Act. It is clear that the conditions in Section 33B(1) are met and an increase must be applied to the rent as required in Section 33B(2).

The Applicant has evidenced monthly mortgage interest payments have increased over £100 per calendar month during the 6 months occurring immediately before the day on which the application was made to Rent Service Scotland on 3 May 2023. 50% in monthly mortgage costs is higher than the increase proposed in monthly rent of £45 detailed within the application form submitted to the rent officer by the Applicant's representative. 6% of an increase on the current rent of £800 PCM would amount to an increase of £48 PCM.

The legislation in Section 33 of the 2026 Act provides a mechanism for the increase in rents and for appeal to the First-tier Tribunal against the decision made by the rent officer. The legislation gives no power to the rent officer to reduce the rent payable

below the rent payable under the tenancy agreement at the time the application is made in terms of Section 33A(1) of the Act. The appeal provisions in Section 33C gives power to the Tribunal to reconsider the application paperwork and come to a different decision to the rent officer. Rule 118 of the Procedure Rules states at Rule 118(2) that a prescribed property costs application must be determined by the First-tier Tribunal without written representations and without a hearing with consideration being given to the application submitted to rent officer and any evidence obtained by the Tribunal. I am satisfied that taken collectively the documents which formed the application before the rent officer amount to an application in terms of Section 33A(2) and that the current rent for the House is £800 and a monthly increase of £45, as stated in the application form and not contradicted by other documents before the rent officer, is being sought. This increase is within the limit of a 6% increase in the current rent and is less than 50% of the mortgage interest increase over the relevant period of 6 months specified aforesaid.

I am not applying a rental increase of £48 PCM as that was not sought as the proposed rent within the application documents before the rent officer. Detailing the proposed rent is a necessary requirement of an application to the rent officer in terms of Section 33A(2)(b)(ii) of the Act.

Accordingly, I consider that the paperwork provided to the Tribunal by the Applicant's representative can be considered an application in terms of Rule 115 of the Rules of Procedure and, given the information provided, can be accepted for determination.

Since such an application must be determined by the First-tier Tribunal without written representations from parties and without a hearing, I have proceeded to make the determination and an order is made for rent to be paid for the House of £845.00 per calendar month. This rental amount will take effect from the first rental payment date falling at least 14 days after the day on which this order is made. This is in terms of Section 33C(5) of the Act.

Appeal and Review Provisions

No appeal lies from this decision in terms of Section 33E of the Act.

Section 33E of the Act and Rule 120 of the Procedure Rules provides that a review may be sought of this decision by the landlord or tenant within 14 days of the date

when the decision is made. The legislative provisions can be found at the following link <https://www.legislation.gov.uk/ssi/2017/328/schedule>

A Devanny

Chamber President
First-tier Tribunal for Scotland (Housing and Property Chamber)
27 September 2023