

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') issued under section 26 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017.

Chamber Ref: FTS/HPC/RR/20/1946

72/BF2 Pitt Street, Leith, Edinburgh, EH6 4DB ('the Property')

The Parties:

Port of Leith Housing Association Limited, 108 Constitution Street, Edinburgh, EH6 6AZ ('the Landlord')

John Wilson, 72/BF2 Pitt Street, Leith, Edinburgh, EH6 4DB ('the Tenant')

Tribunal members:

Paul Doyle (Legal Member) and David Godfrey (Ordinary Member).

BACKGROUND

1. The Tenant has rented this property from the Landlord since 1 August 1983. The tenancy is a statutory protected tenancy in terms of the Rent (Scotland) Act 1984. The rental from October 2017 to October 2020 was £4,500.00 per annum (£375.00 per month). The Landlords applied for the rent to be increased. The Rent Officer registered a rent of £5,156.18 per annum (£429.68 per month) with effect from 14 September 2020. The Tenant referred the determination to the First tier Tribunal.

2. To determine the fair rent for the Property the Tribunal are required to consider the rentals of comparable properties and whether there is a scarcity of supply of rental properties in the locality. The Tribunal found the following rental information:

- (a) Details of 12 comparable properties being advertised for lease within EH6 in July 2021
- (b) Details of Fair rent properties within EH6 from the Fair Rent eRegister.
- (c) An extract from the Citylets report for Q1 of 2021

3. The parties were asked to provide the Tribunal with representations and any further information with regards to the said rental information of comparable properties and whether there is scarcity of supply of rental property in the locality. The tenant made written representations on 3 September 2021. The Landlord did not provide the Tribunal with any representations.

THE INSPECTION

4. At 11am on 30 September 2021 the Tribunal inspected the Property. The Tenant was present at the inspection. The Landlords were not present and were not represented.

5. The property is a basement flat in a 3-storey and attic tenement which dates from the 19th century. There is a security entry system to the tenement that was working correctly. The front door of the property opens onto a central hallway, which provides access to a living room, two bedrooms (one of which was smaller than the other), and a small, dark, internal shower room containing shower, wash hand basin, and WC. To the rear of the property there is a kitchen entered from the living room. The only heating in the property is a gas fire in the living room. The internal floor area is approximately 63 square metres.

6. The windows throughout the Property are UPVC double glazed windows. The Tenant provided the carpets and floor coverings throughout the Property. No white goods or furniture has been provided by the Landlords.

7. There is a small communal garden area at the rear of the Property where the drying area was located. On-street parking is available outside the Property. No services are provided by the Landlords.

THE HEARING

8. The tenant attended the hearing. The landlord was neither present nor represented.

THE DECISION

9. The Tribunal had the following documents before them:-

1 A copy of form RR1, the Landlords' application for registration of the rent.

2 Rental evidence listed at paragraph 2, above:

10. The Tribunal observed that the Property is a small, two-bedroom property. They considered the particular features of the Property. This property is a basement flat

lacking natural light and with no views/a poor outlook. The property does not benefit from central heating.

11. The Tribunal obtained details of comparable fair rents of one and two bedroom properties from the Fair Rent eRegister and also obtained details of the size of the properties from the EPC register, where an EPC had been registered for the properties.

Address	Postcode	Bed Rooms	Date registered	Rent	Size	Services
24 (1F3) Lorne Street, Edinburgh	EH6 8QP	2	13/08/2021	£4,795.07	76m2	
2 (1F1) Seafield Road, Edinburgh	EH6 7LD	1	24/05/2021	£4,740.00	42m2	
10 Academy Street (2F3) Leith Edinburgh	EH6 7EF	1	11/05/2021	£4,800.00	39m2	
3 Cadiz Street [2F2] Edinburgh	EH6 7BJ	2	25/02/2021	£5294.40	56m2	
133/ 22 Constitution Street Leith Edinburgh	EH6 7AD	1	19/02/2021	£5151.60	40m2	
2/11 Elbe Street Edinburgh	EH6 7HG	1	19/02/2021	£4995.30	45m2	£176.40
2/10 Elbe Street Edinburgh	EH6 7HG	1	19/02/2021	£4995.30	46m2	£176.40
35 (2F2) Prince Regent Street Edinburgh	EH6 4AR	1	18/01/2021	4,728.40	43m2	
3/4 Hopefield Terrace Edinburgh	EH6 4AA	3	18/01/2021	6,011.78	86m2	52.80
2(1F1) Baltic Street, Edinburgh	EH6 7BW	2	14/10/2020	5,388.77	86m2	
1/7 Timberbush Edinburgh	EH6 6QR	2	14/09/2020	5548.02	55m2	163.20

11. The tribunal also obtained details of one bedroom and two bedroom properties available for rent in the post code area EH6 throughout July, August and September 2021. The details are:

Address	Postcode	Bed Rooms	Rent	Size	Comments
Ashley Place, Bonnington	EH6	2	£850 pcm		
Elbe Street, Edinburgh	EH5	2	£850 pcm		Private parking
Western Harbour View, Newgaven, Edinburgh	EH6	2	£850 pcm (£8400 pa)		
Mulberry Place, Trinity Edinburgh	EH6	2	£850pcm		
Fox Street, The Shore, Edinburgh	EH6	2	£850pcm		
Great Junction Street, Leith	EH6	2	£850pcm		
Jameson Place, Leith	EH6	2	£875pcm		
Sheriff Park, Leith	EH6	2	£875pcm		
Lindsay Road, The Shore, Edinburgh	EH6	2	£860pcm		
Hermitage Park, Leith	EH6	2	£850pcm		
Balfour Place, Leith Walk, Edinburgh	EH6	2	£850pcm		Modern block

12. The Tribunal considered the said documents and rental evidence. The Tribunal were mindful of the terms of section 48(1) of The Rent (Scotland) Act 1984, which requires the Tribunal ‘to have regard to all of the circumstances (other than personal circumstances) and in particular to apply their knowledge and experience of current rents of comparable property in the area, as well as having regard to the age, character and locality of the dwelling house in question and to its state of repair and, if any furniture is provided for use under the tenancy, and to the quantity, quality and condition of the furniture’. Also section 48(2) which requires them to ‘assume that the number of persons seeking to become tenants of similar dwelling-houses in the locality on the terms (other than those relating to rent) of the regulated tenancy is not substantially greater than the number of such dwelling-houses which are available to let on such terms.’

13. The Tribunal recognised that the three methods of assessing the rent in Scotland are (1) determining the fair rent by reference to comparable registered rents in the area. (2) determining the fair rent by reference to market rents of comparable properties allowing for appropriate deductions for scarcity and (3) determining the fair rent by reference to the anticipated annual return based on the capital value of the property. They acknowledged that none of these methods is the primary method. The task of determining a fair rent is a composite task which takes account of these three methods. The appropriate method depends on the facts and circumstances of each case. The Tribunal also gave consideration to the observations of the Lord President in *Western Heritable Investment Co Ltd v Hunter* (2004) and also the more recent case of *Wright v Elderpark Housing Association* (2017) which requires the Tribunal to proceed on the best available evidence and use the other evidence as a cross check, where possible.

Registered Rents

14. The Tribunal considered the evidence of registered rents in the Fair Rent Register.

15. The properties at 133/ 22 Constitution Street, 2/11 Elbe Street, 2/10 Elbe Street, 3/4 Hopefield Terrace and 1/7 Timberbush, are all in modern blocks with better insulation and efficient heating. They have lower running costs so that the rental price per square metre is predictably higher than the property under consideration.

16. The properties at 2 (1F1) Seafield Road, 10 Academy Street (2F3), and 35 (2F2) Prince Regent Street, are single bedroom properties and so the rental price per square metre is higher than the property under consideration (because of inverse quantum).

17. The properties at 24 (1F3) Lorne Street, 3 Cadiz Street [2F2], 2(1F1) Baltic Street, Edinburgh are the most comparable because of a similarity in age of construction, character and the number of rooms.

18. An analysis of the rental price per square metre for the properties at 24 (1F3) Lorne Street, 3 Cadiz Street [2F2], 2(1F1) Baltic Street, Edinburgh indicates that the average comparable rental price is £74 per square metre.

19. The rent officer applied a rate of £84 per square metre. This property is a basement flat lacking natural light and with no views/a poor outlook. The property does not benefit from central heating. Taking account of the features, amenities, location, and character of the property, it is realistic to apply a 10% discount to the figure used by the rent officer, which reduces the rental price to £73 per square metre. Applying that rental price to the floor area of the property (63m²) gives a rental value of £4,599 per annum.

20. The Tribunal determined that a comparable rent for the Property using the evidence of registered fair rents, reasonably adjusted to reflect the size of the property, is £4,599.00 per annum.

Market Rents

21. The Tribunal also considered the evidence of market rents.

22. The annual rents for the properties advertised for rental in the EH6 area in the three months to the date of hearing are in the region of £10,200 per annum. These comparable properties are two-bedroom properties with living room, kitchen, bathroom, floor coverings, furnishings and appliances provided by the Landlords.

23. The Tribunal considered that an adjustment was required to reflect the fact that the Landlords of 72/BF2 Pitt Street, Edinburgh did not provide any furnishings, appliances, decoration, or floor coverings. Taking an estimate of the cost of upgrading the subject property to the standard of the comparable properties marketed for rental in the three months to the date of hearing, and taking a straight line depreciation over 5 to 10 years for the different elements of the cost of decoration and providing the furnishings and appliances, the Tribunal considered that a deduction of £500 per annum was reasonable to reflect these differences.

24. The Tribunal considered the open market rent to be £10,200; deducting the cost of fitting out, decoration, furnishing, and white goods estimated at £500, a comparable open market rental would be £9,700.

Scarcity

25. When the Tribunal fix a fair rent they must do so on an assumption that the number of persons seeking to become tenants of similar properties in the locality of the Property is not substantially higher than the number of similar dwelling houses which are available for lease. Case law has determined that when considering the question of scarcity, a large area must be considered to avoid an increase in demand being caused by specific local amenities. The Tribunal considered it reasonable to consider the City of Edinburgh when assessing the question of scarcity. The parties did not make representations to the Tribunal on the question of scarcity.

26. The time taken to let properties and rent increases are factors that contribute to determining if scarcity exists. The City lets report for Q1 2021 includes the following market trends for the lease of one and two bedroom properties

One Bedroom	Average Rent	Rent Change 1 year	Rent change 5 years	Rent change 10 years	Av TTL (days)	Let within 1 week	Let within 1 month
Edinburgh	£758	-4.4%	11.8%	41.9%	46	11%	36%
Scotland	£607	0.3%	8.0%	27.5%	8	18%	50%
Two Bedroom	Average Rent	Rent Change 1 year	Rent change 5 years	Rent change 10 years	Av TTL (days)	Let within 1 week	Let within 1 month
Edinburgh	£986	-5.2%	13.3%	42.1%	47	10%	38%
Scotland	£780	3.4%	10.8%	7.7%	38	19%	51%

27. These figures show that both one and two bedroom properties in Edinburgh have seen a significantly higher rent increase over five years and shorter time to let periods than the rest of Scotland, but in the private sector prices have levelled off. There is now oversupply of rented accommodation in Edinburgh close to university (because fewer students are returning to Universities and colleges), but not a large student population in Leith. Leith has a more consistent market.

28. Private housing and social housing are two strands of the same market for rental properties. Social landlords' records disclose that for each property advertised in 2019 and 2020 there were between approximately 300 and 500 bids per property. There is a huge imbalance in the social housing strand of the market where supply is overwhelmed by demand. There is therefore a significant demand for social housing in the Leith area, which can best be interpreted as a scarcity of social housing.

29. The Tribunal determined that there is still a strong demand for private rented accommodation in Edinburgh. The number of people seeking to become tenants of such properties in Edinburgh is higher than the number of houses available and that the demand is substantially higher than the supply.

30. Taking an holistic view of all the available evidence, the tribunal finds that there is scarcity amounting to 50%.

31. The Tribunal determined that a comparable market rent for the Property using the evidence of market rents, after deduction of the adjustment of £500 and the 50% scarcity deduction of £4,850, results in a net comparable market rent of £4,850 per annum.

Return on the capital valuation of the Property

32. The parties have not provided any evidence of capital valuations of the Property. The Tribunal were mindful that the capital valuation method has been described as notoriously unreliable '*normally to be used only as a last resort*' (*Western Heritable Investment Co Ltd v Husband* 1983 SC (HL) 60, 73). Given the strong evidence of comparable fair rents and market rents and the absence of evidence of capital valuations the Tribunal determined that it was appropriate to proceed to assess the fair rent of the Property without using the capital valuation method.

33. The comparable fair rent is £4,599 and the comparable adjusted market rent is £4,850.

34. The Tribunal are mindful that fixing the rent is a composite task and consequently after consideration of all these factors the Tribunal determine that the fair rent for the property is £4,850.00 per annum.

35. In reaching this decision the tribunal have had regard to all the considerations required to be taken into account in terms of Section 48 of the Rent (Scotland) Act 1984.

36. This decision takes effect from the 14 September 2020.

P Doyle

6th October 2021

Legal Member