

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/22/4128

58 The Grove, Dumfries, DG1 1TW (the Property')

The Parties:

Dalloch Limited, care of Direct Lettings Scotland Limited, 5-6, Melville Place, Edinburgh, EH3 7PR ('the Landlords')

Mrs Deana Reid ('the Tenant')

Tribunal members:

Jacqui Taylor (Chairperson) and Mike Links (Ordinary (Surveyor) Member).

1. BACKGROUND

Mrs Deana Reid has been a tenant of the Property since 28th April 1971. The tenancy is a regulated tenancy in terms of the Rent (Scotland) Act 1984. The current rent is £4560.00 per annum (£380 per month). The Landlords applied for the rent to be increased to £7200.00 per annum (£600 per month). The Rent Officer registered a rent of £5472.00 per annum (£456 per month) with effect from 17th October 2022. The Tenant referred the determination to the First tier Tribunal.

2. DIRECTION

2.1 The Tribunal sent the parties a Direction dated 17th April 2023. The Direction explained that in determining 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 advised that they have sourced the following rental information:

1. Details of eleven Fair rent properties within postcode area DG1 from the Fair Rent eRegister.

2. Details of one three bedroom property available to rent within postcode area DG1 at 8 Whitehill Road, Dumfries, DG1. The property is being advertised by Braidwoods, Solicitors via Zoopla. The rent being charged was £500 per month.

Details were provided to the parties.

The parties were directed 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 by.

2.2 The Tenant did not provide a response to the Direction.

2.3 In response to the Direction the Landlords' Representative sent the Tribunal details of the following rents of comparable properties:

Address	Bed Rooms	Rent	Comments
32 The Grove	mid terraced property, 3 bedrooms	£600 pcm	29.8.22
1 Bloomfield	end terraced property, 3 bedrooms	£650 pcm	1.9.22
2 Bloomfield	mid terraced property, 3 bedrooms	£650 pcm	7.1.23
2 Bloomfield	mid terraced property, 3 bedrooms	£650 pcm	21.3.23

3. THE INSPECTION

On the morning of 12th May 2023 the Tribunal inspected the Property. The Tenant was present at the inspection. The Landlords were not present and were not represented. The property is a three bedroom end terraced property, which dates from the 1940s. The accommodation comprises on the ground floor: living room, kitchen and bathroom/wc. On the upper floor: two double bedrooms and one single bedroom. There is also a conservatory which is accessed from the living room and which was erected by the Tenant. The internal floor area is approximately 88 square metres.

There is a gas central heating system in the Property, which had been installed by the Tenant. During the inspection she confirmed that she paid the cost of maintaining the central heating system and that when she first rented the Property from the Landlords the only heating in the Property was a coal fire. The windows throughout the Property are UPVC double glazed windows. The Tenant had provided the carpets, floor coverings and wall decorations throughout the Property. The kitchen units had been replaced in January 2022 and the Tenant had paid 50% of the cost which amounted to £2427.

No white goods or furniture have been provided by the Landlords.

There is a garden to the front and rear of the Property. The Tenant had constructed a garden shed and a garage to the rear of the Property.

4. THE HEARING

4.1 This case called for a teleconference Hearing at 14.00 on 12th May 2023.

The Tenant did not attend the hearing and was not represented.

Jacqueline McAinch, Property Manager with Direct Lettings Scotland Limited attended the hearing and represented the Landlords.

4.2 At the inspection the Tribunal members gave the Tenant the phone number to enable her to dial into the teleconference hearing. They explained that any oral representations regarding the appeal should be made at the hearing. As she failed to join the conference call at 14.00 the Tribunal clerk phoned her mobile phone but she did not answer.

The Tribunal were satisfied that the terms of Tribunal Rule 29 had been met and proceeded with the hearing.

4.3 Jacqueline McAinch advised as follows:

4.3.1 She acknowledged that the Tenant had contributed the sum of £2427 to the cost of installing the kitchen and she had paid the cost of installing the central heating system.

4.3.2 Dalloch Limited own 56 properties at the Grove and the neighbouring development at Bloomfield, including the eleven fair rent properties listed in the Direction dated 17th April 2023.

4.3.3 She believes there is a scarcity of supply of properties available to rent in the area. When they advertise a property as available to lease they typically receive 100 enquiries and book 20 viewings. They can relet a property within one or two weeks.

4.3.4 The neighbouring development of Bloomfield is more desirable than the Grove development as the properties are more spread out. They charge £50 per month more rent for leases of properties at Bloomfield compared to similar properties at the Grove.

4.3.5 From the list of comparable properties detailed in the Tribunal Direction dated 17th April 2023 the property directly comparable with 58 The Grove is 63 The Grove as it is also an end terraced property and the properties are the same size.

4.3.6 She confirmed that some of the properties at the Grove have a dining room but none of the properties on the list of comparable properties detailed in the Tribunal Direction have dining rooms.

5. THE DECISION

5.1 The Tribunal considered the parties submissions and the documents before them:-

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

5.1.2 A copy of the Rent Register entry for the Property.

5.1.3 The rental evidence provided by the Landlords.

5.1.4 The written submissions by the Tenant being a letter in the following terms:

'I disagree with the proposed registered rent due to two reasons:

First, I currently pay £4560 per annum and the proposed increase of 20% or £912 I feel is an unfair rise in such a short period of time considering the last increase amounted to 25% in 28th April 2019. This is almost a 50% increase in my rent in the last 6 years and far exceeds inflation in the same period of time.

Second, I don't understand how this proposed amount can be justified considering my landlord has made very few improvements to the property during the course of my tenancy other than necessary repairs over the course of the last 5 decades. The majority of improvements to the property were made by myself and my late husband.'

5.1.5 Rental evidence sent to the parties with the Direction dated 17th April 2023.

The details are:

Details of eleven Fair rent properties within postcode area DG1 from the Fair Rent eRegister.

Address	Rooms	Date registered	Rent
41 The Grove	Living rm, 3 beds, Kit, Shower/wc	17.10.22	£5472

	Full central Heating		
16 The Grove	Living rm, 3 beds, Kit, Shower/wc	17.10.22	£5472
39 The Grove	Living rm, 3 beds, Kit, Shower/wc	17.10.22	£5472
54 The Grove	Semi detached, terraced property, Living rm, 3 beds, Kit, Shower/wc Storage heating	17.10.22	£5472
60 The Grove	Living rm, 3 beds, Kit, Shower/wc Full central Heating.	17.10.22	£5472
61 The Grove	Semi detached, Living rm, 3 beds, Kit, Shower/wc	17.10.22	£5472
63 The Grove	Semi detached, Living rm, 3 beds, Kit, Shower/wc	17.10.22	£5472
69 The Grove	Semi detached, Living rm, 3 beds, Kit, Shower/wc	17.10.22	£5472
86 The Grove	5 rooms, Kit, Shower/wc	17.10.22	£5472
3 Bloomfield	Terraced, 4 rooms, Kit, Shower/wc Storage Heating	14.10.22	£5472
5 Bloomfield	Terraced, 4 rooms, Kit, Shower/wc Full central Heating.	14.10.22	£5472

Details of one three bedroom property available to rent within postcode area DG1 at 8 Whitehill Road, Dumfries, DG1. The property is being advertised by Braidwoods, Solicitors via Zoopla.

The details are:

Address	Accommodation	Rent	Date
8 Whitehill Road, Carrutherstown, DG1	2 storey end terraced property, 3 bedrooms, living room, Kit, shower room/ wc.	£6000	30.3.23

5.6 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.’

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 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.

5.7 The Tribunal considered the evidence of registered rents in the Fair Rent Register: They acknowledged the registered rents of the comparable properties had all been fixed at £5472 per annum and that none of these rent determinations had been challenged by the tenants or the landlords. The properties are a mix of semi detached and terraced houses and are directly comparable to the subject Property.

The Tribunal noted that Dalloch Limited are also Landlords of these properties. The Tenant did not provide the Tribunal with any evidence that the standard of accommodation or amenities provided by the Landlords in relation to the comparable properties was different from the standard of accommodation or amenities of the subject Property. The Tribunal found that on the balance of probabilities the standard of accommodation and amenities of the comparable properties will be similar to those of the subject Property. The Tribunal determined that the comparable fair rent is £5472 per annum.

5.8 The Tribunal also considered the evidence of market rents:

The Tribunal did not consider the property at 8 Whitehill Road, Carrutherstown to be situated in a comparable location to the subject Property.

The Tribunal accepted that evidence of Mrs McAinch that the properties within the Bloomfield Development command an additional rent of £50 per month. The Tribunal determined that the market rent of a property at the Grove of a comparable size to the subject property is £7200 per annum (£600 per month).

However, the Tribunal acknowledged that the comparable private residential tenancies at the Grove and Bloomfield, on a balance of probabilities due to the fact that they are modern tenancies, will include a fitted kitchen provided by the landlord, heating provided by the landlord, an up dated bathroom, floor coverings and decoration all provided by the landlord. The Tribunal considered that an adjustment was required to reflect the fact that the lease of the subject Property does not include the provision of heating, an updated bathroom (provided by the Landlords), floor coverings and decoration and also that the Tenant contributed the sum of £2427 towards the installation of the kitchen. Taking an estimate of these costs and taking a straight line depreciation over 5 to 15 years for the different elements the Tribunal considered that a deduction of £1386 per annum was reasonable to reflect these

differences. The Tribunal found the open market rent to be £7200 and deducting this cost of £1386, a comparable open market rental is £5814.

Scarcity

As already noted, 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. The Tribunal in their Direction dated 17th April 2023 had asked the parties to make written representations to the Tribunal on the question of scarcity. The parties did not make any such written representations. At the hearing Mrs McAinch gave evidence that there was scarcity in the availability of rental properties in the Grove and Bloomfield developments. However, she did not give evidence of scarcity in relation to the wider rental market in Dumfries. Consequently, the Tribunal found that there was insufficient evidence to enable them to make a determination that there was scarcity in the rental market in Dumfries.

5.9 The Tribunal considered if it was appropriate to use a return on the capital valuation of the Property:

The parties had 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 evidence of comparable fair rents and market rents and also 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.

5.10 The Tribunal acknowledged that the best evidence was the evidence of comparable registered rents as there was evidence of the rents of eleven comparable properties and the market rent evidence should be used as a cross check.

After consideration of all these factors the Tribunal determined that the fair rent for the property is £5472 per annum

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

This decision takes effect from the 12th May 2023.

6. Appeal

A landlord, tenant or third party applicant 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 Taylor

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Chairperson

12th May 2023