

Housing and Property Chamber
First-tier Tribunal for Scotland



HOUSING (SCOTLAND) ACT 1988, SECTION 25(1)

REGISTER OF RENTS DETERMINED UNDER STATUTORY ASSURED TENANCIES

REFERENCE NO: APPLICATION RECEIVED

PRHP/RS/16/0340 2 November 2016

ADDRESS OF PREMISES

14 Bridge Street, Broughty Ferry, Dundee DD5 2SY

TENANT

Ms Carol Fraser or Williamson

NAME AND ADDRESS OF LANDLORD

The Trustees of the late Mrs Ida Millar Archer,
c/o Blackadders,
30 & 34 Reform Street,
Dundee
DD1 1RJ

AGENT

Blackadders LLP,
6 Bon Accord Square,
Aberdeen
AB11 6XU

RENTAL PERIOD

Monthly

DATE TENANCY COMMENCED

February 2006

DESCRIPTION OF PREMISES

First floor tenement flat in block of four, circa 1936, entrance porch, stair, living room, two bedrooms, kitchen, bathroom, shower compartment, gross internal floor area 77 square metres

SERVICES PROVIDED

None

TRIBUNAL MEMBERS

CHAIRMAN
SURVEYOR

D Bartos, LLB(Hons), FCI Arb
D Godfrey ARICS

PRESENT RENT

£ 6 600 p.a.

RENT DETERMINED	DATE CONSIDERED	EFFECTIVE DATE
£ 6 600 p.a.	2 March 2017	20 May 2017

**Chairman of the Housing and Property Chamber of the First-tier Tribunal
for Scotland**

D Bartos

Date 2 March 2017

Housing and Property Chamber First-tier Tribunal for Scotland



Statement of Reasons for Decision of the Housing and Property Chamber of the First-tier Tribunal for Scotland

(Hereinafter referred to as “the Tribunal”)

Under section 25 (1) of the Housing (Scotland) Act 1988

Case Reference Number: PRHP/RS/16/0340

Re Property at : 14 Bridge Street, Barnhill, Broughty Ferry, Dundee DD5 2SY (“the Property”)

The Parties:

Ms Carol Fraser or Williamson, 14 Bridge Street, Barnhill, Broughty Ferry, Dundee DD5 2SY (“the Tenant”)

The Trustees of the late Mrs Ida Millar Archer, c/o Blackadders, 30 & 34 Reform Street, Dundee DD1 1RJ (“the Landlords”),
represented by Blackadders LLP, 6 Bon Accord Square, Aberdeen AB11 6XU

Background

1. This is a reference by the Tenant of the Landlords’ notice seeking an increase of rent for the Property. Through her reference the Tenant seeks a determination of rent from the Private Rented Housing Committee.
2. The tenancy is an assured tenancy. On 24 October 2016 the Landlords served on the Tenant an AT2 Notice under section 24(1) of the Housing (Scotland) Act 1988 seeking an increase in rental to £ 650 per month with effect from 20 May 2017. By way of form AT4 dated 31 October 2016 the Tenant referred the Landlords’ notice to the Private Rented Housing Committee for a determination of rent under section 24(3) and 34(1) of the said Act.
3. With effect from 1 December 2016 the Committee was replaced by the First-tier Tribunal for Scotland in its Housing and Property Chamber.

Inspection

4. The Tribunal comprising Mr David Bartos (Chairman) and Mr David Godfrey (Surveyor Member) carried out an inspection of the Property on 24 February 2017. The Tenant was present throughout the inspection. Neither the Landlords nor their representatives were present.

Hearing

5. Both parties were given an opportunity to attend a hearing at Caledonian House, Greenmarket, Dundee on 24 February 2017 at 11.30 a.m.. The Landlord was represented by their solicitor Alastair Johntson of Blackadders LLP. The tenant was neither present nor represented.

Description

6. The Property comprises a first floor flat within a four-flat 1936 building in a residential area on the outskirts of Broughty Ferry near the beach. There are local amenities nearby. The Property has an entrance porch, entrance stair, hall, living room, two bedrooms, kitchen, bathroom and separate shower compartment . It has a gross internal floor area of 77 square metres. It has its own pathway leading from the street to the porch and then to its garden to the rear of the building.

7. The Property has double-glazed windows throughout. It has gas central heating.

Documentation

8. The Tribunal had the following documentation before them : -
1. 2 No. forms AT2 as completed by the Landlord (parts 1 and 2) and also as completed by the Tenant (part 3)
 2. Form AT4 completed by the Tenant including a paper apart received by the PRHP on 2 November 2016
 3. Letter by the Landlord to PRHP dated 18 November 2016
 4. Letter from PRHP to the Tenant dated 15 November 2016 with endorsed reply received by PRHP on 7 December 2016
 5. Written Representations by the Landlord's representative dated 19 January 2017
 6. Written Representations by the Tenant dated 22 January 2017 (e-mail)
 7. Lease between Mrs Ida Herron and the Tenant dated 28 February 2006
 8. Form AT5 dated 28 February 2006
 9. Letter containing purported notice to quit dated 17 September 2009
 10. Statement of Decision of the Private Rented Housing Committee dated 2 November 2010
 11. Letting particulars for 26 Dalhousie Road,, Broughty Ferry, 13 Carnbane Drive Broughty Ferry and an unidentified flat in Braemar Gardens Broughty Ferry.

Discussion

9. The Tribunal considered firstly whether the lease was a short assured tenancy. The Landlord conceded that it was not such a tenancy due to a failure in service of the statutory form AT5 at the outset of the tenancy. The Tribunal note that in any event the tenancy was for a duration of one day less than 6 months. For both of these reasons it found that the tenancy was an assured tenancy but not a short assured tenancy.
10. The next task for the Tribunal under section 25 of the 1988 Act was to determine the rent at which the Property might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy beginning on 20 May 2017.
11. The Tribunal were required to carry out the determination applying the test for valuation set out in section 25(1) of the 1988 Act while in terms of section 25(2) disregarding any effect on the rent attributable to (a) the sitting tenant (the Tenant), (b) to any improvement carried out by the Tenant or a predecessor in title except where carried out in pursuance of the terms of the lease, and (c) to any failure by the tenant to comply with the terms of the tenancy.
12. The first question for the Tribunal was whether the tenancy was furnished. The lease was from 28 February 2006. The Landlords' solicitor submitted that it was a furnished tenancy. This submission was based on standard condition 18 of the lease which provided that the "Subjects of Let" included "the whole furniture and furnishings in and upon the Subjects of Let whether useful or ornamental and generally the whole contents of the Subjects of Let". No evidence was put to the Tribunal as to the actual contents of the Property at the outset of the lease. No inventory of contents was put to the Tribunal, despite the further provision of condition 18 holding the Tenant to have acknowledged that furniture and furnishings were detailed in the inventory. The only explanation provided was that the file containing the original lease and inventory had been "misplaced" but he was unable to say whether there had been an inventory in the file or not. While some documents had been stored electronically, including a copy of the lease, these documents did not include the inventory. He submitted that at some point the Tenant had disposed of all the furnishings, including all white goods and replaced them with her own all without the Landlords' consent. Apparently his predecessor as the Landlords' solicitor had spoken to the Tenant after the previous PRHP determinations and this was how the misappropriation of contents had been discovered.
13. On this issue, the Tenant submitted in her AT4 that no furniture had been provided by the original landlord. She submitted further that all furniture, fittings and accessories, all kitchen units, hob, oven, and all white goods and floorings had been supplied by her. This she indicated to the Tribunal during the inspection and added that she had supplied all of the floor

coverings including the carpets, wooden kitchen flooring and vinyl flooring in the bathroom. The Tribunal informed the Landlords' solicitor of this. His response was as stated above.

14. The Landlords' solicitor also stated to the Tribunal that so far as he was aware no inspections had been carried out by the Landlords in the past, certainly since the last PRHP determination. That had taken place in November 2010.
15. The wording in condition 18 was standard wording in a *pro forma* document. Absent an inventory, or evidence from a witness in its place, it was not a reliable indicator that the original lease had included furniture, furnishings or any particular contents. Moving on from the position in 2006, if as the Landlords' solicitor suggested, the Tenant had in fact misappropriated and disposed of the landlord's furniture in the Property one would have expected some evidence to that effect even standing the loss of the file. If such a serious breach of the lease had taken place as, it would be surprising to see the Tenant still in place particularly in an assured tenancy which had been intended as a short assured tenancy. It would also be surprising to find as we were told, that there were no inspections of the Property by the Landlords.
16. In these circumstances the Tribunal concluded that the allegations of the Landlords' solicitor in this respect were entirely unsubstantiated and a wholly unwarranted attack on the Tenant's credibility and honesty. The Tribunal were surprised and disappointed to see such an attack being made without any evidence to back it up. The Tribunal had no hesitation in accepting the Tenant's position. It found the let to have been unfurnished without containing any of the items that the Tenant submitted that she had provided.
17. The second question was whether the Tenant had carried out any improvement to the Property other than in pursuance of the lease. From its inspection the Tribunal found that the Tenant had installed a shower into a former walk-in cupboard off the hallway. This appeared to have been installed since the last PRHP determination. In addition as already noted, the Tribunal found that the Tenant had installed all of the items which she had noted in the AT4 and also the doors of wall cupboards in the kitchen and entrance gate from the street to the pathway leading to the porch.
18. The Landlords' solicitor submitted that the Landlords were unaware of the shower compartment and had not consented to the other alterations. However he conceded that no inspections of the Property had been carried out to his knowledge and he could not comment further. Regardless of the Landlords' knowledge the Tribunal found that the shower compartment, kitchen units, kitchen cupboard doors, and street entrance gate were

improvements which in terms of section 25(2) fell to be disregarded in the assessment of rent.

- 19. Turning to the question of rental levels, the Landlords' solicitor provided the Tribunal with letting details for two-bedroom flats in the Broughty Ferry area. These showed that landlords were asking for £ 650 per month for two-bedroomed flats in that locality that contained modern kitchen fittings and a shower. The solicitor had no submission to make on how the accommodation within these flats compared with the accommodation in the Property with the disregards which the Tribunal had to apply.
- 20. Using their knowledge and experience the Tribunal found that a fully modernised and furnished two-bedroomed flat in the locality of the Property might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy let for £ 650 per month. However the Property was not a furnished let. All moveable contents of the Property fell to be disregarded. In addition the Tenant had carried out the improvements set out above which fell to be disregarded. These would have a material effect on the desirability of the Property to a prospective tenant in the open market. Taking these matters into account the Tribunal and using their knowledge and experience the Tribunal found that the Property might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy let for £ 550 per month.
- 21. During their inspection of the property, the tribunal noted that the property does not have a satisfactory way of detecting fires or for giving warning in the event of a fire or suspected fire.
- 22. There was no Electrical Installation Condition Report or Energy Performance Certificate pertaining to the property available to the Tribunal during their inspection.

Decision

- 23. Taking account of all the relevant circumstances the Committee determined that the rent at which (subject to section 25(2) and (3)) the Property might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy beginning on 20 May 2017 would be a rent of £ 550 per month.

D Bartos

Signed
2017.....

Date...2..March

Chairperson