

# Housing and Property Chamber First-tier Tribunal for Scotland

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**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/RN/22/3145**

13 Lade Braes Ln, St Andrews, KY16 9 ET ('the Property')

## **The Parties:**

Gavin Irvine and Mihkel Vestli, residing at 13 Lade Braes Ln, St Andrews, KY16 9 ET ('the Tenants')

and

John Cuthill, residing at Cherrybank, Brunton, Cupar, Fife, KY15 4NB ("The Landlord")

## **Tribunal members:**

Paul Doyle (Legal Member) and Robert Buchan (Ordinary Member).

## **BACKGROUND**

1. The Tenants have rented this property from the Landlord since June 2018. The tenancy is a Private Residential Tenancy in terms of The Private Housing (Tenancies)(Scotland) Act 2016. The rental from September 2021 was £13,200.00 per annum (£1,100.00 per month). The Landlords applied for the rent to be increased. The Rent Officer registered a rent of £15,600.00 per annum (£1,300.00 per month) with effect from 15 September 2022. The Tenants referred the Rent Officer's determination to the First tier Tribunal.

2. Section 32 of the Private Housing (Tenancies)(Scotland) Act 2016 gives direction on the determination of the open market rent for the Property, as follows

### 32. Determination of open market rent

(1) Where an order maker is to determine the rent under section 25(1) or (as the case may be) 29(1), the determination is to be made on the basis that the property in question would be let by a willing landlord to a hypothetical willing tenant under a new tenancy which would—

(a) be a private residential tenancy,

(b) begin on the date on which the rent would have been increased in accordance with section 22(4) had a referral to a rent officer not been made,

(c) have the same terms as the tenancy to which the referral or (as the case may be) appeal relates.

(2) In determining the open market rent of the property under subsection (1), the order maker is to disregard—

(a) any positive effect on the rental value of the property that is attributable to work paid for or carried out by the tenant or a previous tenant under the same tenancy, unless the work was paid for or carried out pursuant to a requirement under the terms of the tenancy,

(b) any negative effect on the rental value that is attributable to a failure by the tenant or a previous tenant under the same tenancy to comply with the terms of the tenancy.

(3) In a case where two or more persons jointly are the tenant under a tenancy, a reference to the tenant in subsection (2) includes any one of them.

3. The parties were directed to provide the Tribunal with representations and any further information with regards to rental information of comparable properties. The Tenants made written representations on 16/11/2022 and 0/12/2022. The Landlord lodged written submissions on 25/11/2022, which included details of 4 properties marketed for rental in St Andrews.

4. The Rent Officer arrived at her decision after considering rentals of 5 comparable properties in St Andrews. The details provided of those properties (and their annual rental) are

Wardlaw Gardens	St Andrews	KY16	3 Rooms	£1563.00
Playfair Terrace	St Andrews	KY16	3 Rooms	£1400.00
Provost Niven Close	St Andrews	KY16	3 Rooms	£1443.00
Abbey Court	St Andrews	KY16	3 Rooms	£1400.00
Lawhead School House	St Andrews	KY16	3 Rooms	£1550.00

No other details such as the size or condition of these comparable rentals was made available.

### **THE INSPECTION**

5. Just after 10am on 10 January 2023 the Tribunal inspected the Property. The Tenants were present at the inspection. The Landlord was represented by Mr J Sinclair of Thistle Property Letting. During the inspection, the ordinary member took photographs of the property. A schedule of those photographs is annexed hereto.

6. The property is a first floor flat in a stone built block of four flatted dwellinghouses. A dedicated stair door provides access to a flight of stairs leading to the front door of the property. The front door of the property opens onto a central hallway. To the rear of the property there is a kitchen and a utility room, both of which are entered from the living room. To the side and to the front of the property are two bedrooms. A shower room is entered from the central hallway. There are two cupboards in the central hallway and a boxroom off the large bedroom to the front of the property. The property benefits from gas central heating. There are double glazed window units in the front bedroom. The remainder of the windows are a mixture of single, double, and secondary glazing. The internal decoration is old and tired. All parties agree that the property would benefit from refurbishment and redecoration. There is a garden to the front of the property which is maintained by the landlord's agents. The internal floor area is approximately 88 square metres. Only pedestrian access to the property is possible.

7. The Landlord provided the carpets and floor coverings throughout the Property. With the exception of one chest freezer, the white goods and furniture have been provided by the Landlord.

8. The only service provided by the Landlord is monthly lawn cutting.

### **THE HEARING**

9. Both tenants attended the hearing. The landlord was represented by Mr J Sinclair of Thistle Property Letting.

### **THE DECISION**

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

1. A copy of form RR1, the Landlords' application for registration of the rent.
2. Detailed written submissions for both parties.

3. A copy of the lease.

4. Open market comparable rental figures, reproduced at paragraph 12, below, relied on by the Tenants and open market comparable rental figures provided by the landlord at paragraph 14 below.

11. The Property is a first floor two-bedroom property. The fittings and fixtures within the property are tired & worn and will soon need to be replaced. The property would benefit from redecoration. The kitchen and bathroom are dated and approaching the end of their useful lives. The property would be improved if the windows throughout the property were replaced.

12. The Tenants rely on the rental figures for two properties within the larger building of which this property forms part.

(i) 11 Lades Brae Ln is the neighbouring first floor flat. It has the same floor area and two bedrooms, but has been altered so that there are two bathrooms. The annual rental for that property was fixed in August 2022 at £1400.00 per month

(ii) 15 Lades Brae Ln is a ground floor property the layout of which is almost identical to the layout of this property, but with an additional bathroom and direct access to garden ground to the rear of the property. The annual rental for that property was fixed in August 2022 at £1350.00 per month

13. The tenants say that the neighbouring properties are in better condition than the property which is the subject of this appeal, and the additional bathroom in each adds to their rental value.

14. The Landlord provided details of comparable open market rents of two bedroom properties in St Andrews

Address	Postcode	Bedrooms	Monthly Rent
10 Kinnessburn Terrace	KY16	2	£1,450.00
119 South Street (flat 2)	KY16	2	£1500.00
10 Alexandra Court	KY16	2	£1517.00
11b City Road	KY16	2	£1580.00

Both parties were asked to comment on these comparables, which had been publicly advertised. Comparable 1 is on the edge of the town centre and is of similar size and slightly better condition. Comparable 2 is smaller but in better condition. Comparable 3 has parking and is in better condition but smaller (66 sq.m). Comparable 4 is of similar size and in better condition with an extra shower-room.

15. The two relevant methods of assessing the open market rent in Scotland are (a) determining the open market rent by reference to market rents of comparable properties or (b) determining the open market rent by reference to the anticipated annual return based on the capital value of the property. Neither of these methods is the primary method. The task of determining an open market rent is a composite task which takes account of both of these methods. The appropriate method depends on the facts and circumstances of each case. The observations of the Lord President in Western Heritable Investment Co Ltd v Hunter (2004) and also in the case of Wright v Elderpark Housing Association (2017) reminds the Tribunal to proceed on the best available evidence and use the other evidence as a cross check, where possible.

#### Comparable Market Rents

16. The comparable market rents relied on by the Rent Officer range from £1400.00 per month to £1563.00 per month. Each property has 3 rooms. None of the parties make submissions or raise challenges to the comparable figures relied on by the Rent Officer.

17. The evidence of annual rents relied on by the landlord (for properties advertised for rental in St Andrews prior to the date of hearing) range from £1450 to £1580 per month. For the landlord, Mr Sinclair said that these were reasonably comparable recent lets.

18. For the Tenants, Mr Irvine said that the comparable figures relied on by the landlord are for properties in better condition which are aimed at the student market. The Tenants are postgraduates. He argued that because postgraduates are more reliable tenants the student property rental market operates at inflated rental figures.

19. The two comparable figures relied on by the Tenants are £1,350.00 and £1400.00 for almost identical flats in the same building. The tenants say the two comparable properties are in better condition and have a second bathroom.

20. The entire range of all of the comparable figures placed before the tribunal runs from £1350.00 per month to £1580 per month for two bedroomed flats within the same postcode area and no comparables with a rental less than that set by the Rent Officer were provided.

21. Parties agree that the property is tired and requires refurbishment. Mr Sinclair advised that the property would not be relet in its current condition but only after carrying out improvements. These had been planned but the tenants had stayed longer than expected. The Rent Officers figure falls slightly below the lowest comparable rental figure found on the open market in St Andrews. The Landlord wants to accept the Rent Officers determination.

22. The weight of reliable evidence tells us that, after allowing for differences in accommodation, size, condition and location, if the property were offered to a willing tenant in September 2022 the Landlord could realistically expect a rental of at least £1300.00 per month. The Tribunal considered the open market rent to be £1300.00 per month.

23. There is no evidence of either positive or negative effects of the Tenants' actions on the value of the property.

24. Section 29(3) of the Private Housing (Tenancies)(Scotland) Act 2016 says

In an order made under subsection (1), the First-tier Tribunal must record the amount of the rent that is fairly attributable to the provision of services, unless the amount is negligible or no amount is so attributable.

25. The only service provided by the landlord is monthly grass cutting of a small lawn. The amount of rental attributable to the provision of services is negligible. We do not attribute a portion of the rent to services

26. Accordingly the tribunal determined that the open market rent as at September 2022 is reasonably stated at £1300.00 per month.

#### Return on the capital valuation of the Property

27. 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 open market rents and the absence of evidence of capital valuations the Tribunal determined that it was appropriate to proceed to assess the open market rent of the Property without using the capital valuation method.

**28. The Tribunal are mindful that fixing the open market rent is a composite task and consequently after consideration of all these factors the Tribunal determine that the open market rent for the property is £15,600.00 per annum (£1,300.00 per month).**

29. In reaching this decision the tribunal have had regard to all the considerations required to be taken into account in terms of the Private Housing (Tenancies)(Scotland) Act 2016

30. This decision takes effect from the 15 September 2022.

31. Section 30 of the Private Housing (Tenancies)(Scotland) Act 2016 says

30. Finality of First-tier Tribunal's decision

(1) An order under section 29(1) may be reviewed in accordance with this section only.

(2) Accordingly (and without prejudice to the generality of subsection (1)), a decision of the First-tier Tribunal to make an order under section 29(1) may be neither—

(a) reviewed under section 43 of the Tribunals (Scotland) Act 2014, nor

(b) appealed against under section 46 of that Act.

(3) The First-tier Tribunal may review an order under section 29(1)—

(a) at its own instance, or

(b) at the request of the landlord or the tenant under the tenancy to which the order relates.

(4) In a review under subsection (3), the First-tier Tribunal may—

(a) take no action, or

(b) correct a minor error contained in the order.

**P Doyle**

Legal Member

11 January 2023

Photographs taken during the inspection of the property



Front





Kitchen



Utility room



Secondary glazing



Kitchen window



Double glazing



Shower



Condensation in the shower room

