

# 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/20/0689**

**Property: Flat 2/2, 34 Farmeloan Road, Rutherglen, Lanarkshire G73 1DW ('the Property')**

**The Parties:**

**Rutherglen and Cambuslang Housing Association, 16 Farmeloan Road, Rutherglen, Lanarkshire G73 1DL ('the Landlords')**

**Mr James Brennan, Flat 2/2, 34 Farmeloan Road, Rutherglen, Lanarkshire G73 1DW ('the Tenant')**

**Tribunal members:**

**George Clark (Legal Member/Chairperson) and Mike Links (Ordinary/surveyor Member).**

## **1. BACKGROUND**

The tenancy is a statutory protected tenancy in terms of the Rent (Scotland) Act 1984. The current rent is £2,678.40 per annum. The Landlords applied for the rent to be increased to £2,884.64 per annum. The Rent Officer registered a rent of £2,826 per annum with effect from 29 January 2020. The Landlords referred the determination to the First-tier Tribunal.

## **2. THE INSPECTION**

The Tribunal inspected the Property on the morning of 6 October 2021. The Tenant was present at the inspection. The Landlords were neither present nor represented.

The Property comprises a second floor flat in a four-storey polished red ashlar traditionally built tenement building containing eight flats in total. The building is circa

120 years old. The roof is pitched and tiled and the flat has modern UPVC double-glazed windows. The accommodation comprises an entrance hall, living room, bedroom, kitchen and bathroom/wc. There is full central heating with a combi boiler also providing hot water. The internal floor area is approximately 45 square metres. The Tenant provided the carpets and floor coverings throughout the Property and the white goods. No services are provided by the Landlords. The Property is built directly on the frontage of a busy main road.

### **3. THE HEARING**

The Tenant did not attend the hearing and was not represented. The Landlords were not present or represented.

### **4. THE DECISION**

The Tribunal had the following documents before it:-

- (i) a copy of form RR1, the Landlords' application for registration of the rent.
- (ii) a copy of the Rent Officer's determination.
- (iii) a copy of the Landlords' letter of 21 February 2020 objecting to the rent registered by the Rent Officer.

The Tribunal considered these documents and rental evidence. It also took into account the fact that the referral from the Decision of the Rent Officer had been made in January 2020 and that rental levels had risen in the intervening period.

The Tribunal Members 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) 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 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.

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

The Tribunal identified three properties in Rutherglen with registered fair rents. Flat 3/1, 263 Main Street comprises 3 rooms, kitchenette and bathroom and has central heating. A rent of £3,440.70 per annum was registered on 15 April 2021. Flat 2/1, 197 Main Street comprises 2 rooms, kitchenette and bathroom and has central heating. A rent of £3,376.73 per annum was registered on 7 April 2021. Flat 3/1, 27 Victoria Street comprises 2 rooms, kitchenette and bathroom and has central heating. A rent of £3,173.21 per annum was registered on 7 April 2021. In addition, the Tribunal had regard to its inspection, on 4 October 2021, of Flat 2/2, 33 Victoria Street, Rutherglen, which is also rented out by Rutherglen and Cambuslang Housing Association and is also a statutory protected tenancy. The Rent Officer had, in January 2020, made a rent determination of £2,826, the same figure as for the present Property. 33 Victoria Street, however, has a kitchenette, rather than a kitchen and it does not have central heating, although it is in a somewhat better location than the present Property. It is also slightly larger.

*The Tribunal also considered the evidence of open market rents.*

A ground floor studio apartment in Kirkwood Street, Rutherglen with a hall, toilet off, open plan kitchen/lounge/bedroom and a shower room, with gas central heating and double glazing, was being advertised on the Citylets website at £400 per month.

A top floor flat in Wardlaw Drive, also advertised on the Citylets website and comprising hall, lounge/bedroom, kitchen with dining area, and bathroom, with double glazing, gas central heating and a fully fitted kitchen was advertised at £475 per month.

An unfurnished flat at McCallum Avenue, part of a former local authority block, with a lounge, dining kitchen, double bedroom and bathroom, double glazing and gas central heating was advertised on the RightMove website at £450 per month.

An unfurnished ground floor flat in Victoria Street, comprising living room, double bedroom, kitchen and bathroom, with gas central heating, double glazing and a fitted kitchen was being advertised by RightMove at £450 per month and recently let at that amount.

The Tribunal recognised that properties let on the open market will normally have fully fitted kitchens and carpets and floorcoverings provided by the landlord and that it was inevitable that rents for such properties would be significantly higher than could be expected for the present Property, where white goods and floorcoverings were not provided.

### *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 was satisfied from the evidence before it that there was a reasonable balance between supply and demand in the area and that scarcity was not, therefore, an element which affected the rental levels.

*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 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.

**The Tribunal are mindful that fixing the rent is a composite task and consequently after consideration of all these factors the Tribunal determine that there is sufficient evidence to support the rent level sought by the Landlords and, making an allowance for increases in rent levels since the Rent Officer’s determination of February 2020, the Tribunal decided that a fair rent for the Property is £3,000 per annum. The Tribunal found the registered rent for 27 Victoria Street to be the best comparison and made allowance for the fact that the present Property is in a less desirable location, being located on a busy main road.**

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.

This decision takes effect from 1 November 2021.

**G Clark**

.....

Chairperson

6 October 2021