

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') in connection with an application by the Tenant under sections 24(3) and 34(1) of the Housing (Scotland) Act 1988.

Chamber Ref: FTS/HPC/RS/21/3038

9, Ladeside Gardens, Kilbirnie, KA25 6HE ("The Property")

The Parties:-

Jacqueline Bowen and Kirk Bowen residing together at 9, Ladeside Court, Kilbirnie, KA25 6HE ('the Tenants')

Alister Meek, CHAP, 71 Princes Street, Ardrossan, KA22 8GD ('The Tenants' Representative')

Intye Properties, 45 Preston New Road, Blackburn, BB2 6AE ('the Landlords')

The Tribunal members are Jacqui Taylor (Chairperson) and Donald Wooley (Ordinary Member).

1. Background

- 1.1 The parties entered into a Short Assured Tenancy agreement dated 30th June 2014. The lease commenced on 30th June 2014 and was for the initial period of six months and continued thereafter on a month to month basis until terminated. The AT5 Acknowledgement dated 30th June 2014 confirms that the Tenants received Form AT5 before the commencement of the lease. The rent was £695 per calendar month and remained unchanged.
- 1.2 The Landlord had served the Tenant with form AT2 dated 1st September 2021 intimating that they proposed to charge a new rent of £950 per month from 4th December 2021.
- 1.3 The Tenant completed form AT4 dated 30th November 2021, which they submitted to the Tribunal and applied to the Tribunal for a determination of rent under sections 24(3) and 34(1) of the Housing (Scotland) Act 1988.
- 1.4 The Tribunal issued a Direction to the parties dated 14th January 2021 in the following terms:

'Considering the Applicant has submitted an application to the Tribunal for determination of rent under sections 24(3) and 34(1) of the Housing (Scotland) Act 1988 and the Applicant has provided the Tribunal with a copy of a Short assured Tenancy Agreement dated 30th June 2014 and a Copy of Form AT5 dated 30th June 2014 the parties are directed to provide the Tribunal with:

- (1) A copy of any Notice to Quit served on the Applicant.*
- (2) Written representations as to whether the current lease is a statutory assured tenancy.*
- (3) Considering that the section 24(2) of the Housing (Scotland) Act 1988 specifies the minimum period of notice for service of form AT2 as follows:
 - (a) If the assured tenancy is for 6 months or more, 6 months and*
 - (b) If the assured tenancy is for less than 6 months, the duration of the tenancy or one month (which ever is the longer) and*
 - (c) In any case to which section 25A applies, one month.*Written representations as to whether the correct period of notice for service of the AT2 has been given to the Applicant.'*

1.5 The Tenant's representative confirmed to the Tribunal by email that notice to quit had not been served by the Landlord.

2. By Notice of Acceptance by Jacqui Taylor, Convener of the Tribunal, dated 14th January 2022 she intimated that she had decided to refer the application (which application paperwork comprises documents received between 3 December 2021 and 21 December 2021) to a Tribunal.

3. The Tribunal administration sent the parties a letter dated 3rd February 2022 advising them that the Tribunal will only make a determination of rent for a short assured tenancy if they consider that, from the evidence provided to them by either party or their representative, there is a sufficient number of houses in the locality let on assured tenancies and that the rent payable for the tenancy under consideration is significantly higher than the landlord might reasonably expect to receive having regard to rent levels of similar tenancies in the area.

4. The Landlords sent the Tribunal written representations in the following terms:

'The property is a 4 bedroom detached property with a double garage. Properties of the same calibre in the area are achieving this amount and more.'

5. The Tenants' representative sent the Tribunal written representations in the following terms:

'I have received a copy of the Respondents written submission dated 17.2.22 and it describes the tenancy in question as 'a 4 bedroom detached property with a double garage'. The Applicant has advised that their tenancy does not have a garage at all.

May I request clarification from the Respondent that the increase in rent is accurate for the tenancy in question? If the tenancy has been confused with a different property owned by the respondent, should the rent charge be amended to reflect the actual tenancy at 9 Ladeside Gardens?’

6. Inspection

The Tribunal inspected the property at 11am on 10th March 2022. The Tenants were in attendance at the inspection. The property is a detached villa, circa 2008.

The accommodation on the ground floor comprises living room, dining room (currently used as a bedroom); double bedroom; wc and dining kitchen leading to a small utility room.

The accommodation on the first floor comprises four bedrooms (one with en suite attached) and bathroom.

The property is heated with gas fired central heating. The windows throughout the property are double glazed.

There are front and rear gardens, no garage although there is a possible garage space.

7. Hearing

An oral hearing by conference call took place in respect of the application at 3pm on 10th March 2022.

The Tenant attended together with her representative Alister Meek. The Landlords were represented by Suzanne Walsh of Mullberry Homes.

The parties acknowledged that form AT2 had been served by the Landlords in error as the lease is not a statutory assured tenancy. The parties also acknowledged that no rental evidence of similar tenancies in comparable properties had been provided.

8. Decision

The Tribunal considered the oral and written submissions of the parties.

The Tenants had applied to the Tribunal for a determination of rent under sections 24(3) and 34(1) of the Housing (Scotland) Act 1988, by submitting form AT4 to the Tribunal.

Section 24(3) applies where the tenancy is a statutory assured tenancy. The Tenants’ representative had advised the Tribunal that no Notice to Quit had been served by the Landlords. The Tribunal determine that the lease is not a statutory assured tenancy and the form AT2 served by the Landlords on the Tenants is invalid.

Section 34(1) Housing (Scotland) Act 1988 provides that the Tribunal shall not make such a determination of the rent which, in the Tribunal’s opinion, the Landlord might

reasonably be expected to obtain under the short assured tenancy unless they consider—

- '(a) that there is a sufficient number of similar houses in the locality let on assured tenancies (whether short assured tenancies or not); and
- (b) that the rent payable under the short assured tenancy in question is significantly higher than the rent which the landlord might reasonably be expected to be able to obtain under the tenancy, having regard to the level of rents payable under the tenancies referred to in paragraph (a) above.'

The parties have not provided the Tribunal with evidence of other assured or short assured tenancies in the locality.

The Tribunal were unable to find details of any similar properties let under assured or short assured tenancies within Kilbirnie.

The Tribunal determined that they were unable to make a determination of the Tenants' application as they were unable to comply with the preliminary condition in the terms of section 34(1)(a) of the Housing (Scotland) Act 1988, as stated. Accordingly, the Tribunal dismissed the application.

Appeal

A landlord or tenant or 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, 11th March 2022

