

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 29(1) of The Private Housing (Tenancies) (Scotland) Act 2016.

Chamber Ref: FTS/HPC/RN/22/3104

Property: 170/9 (Flat 3/3) Great Junction Street, Edinburgh EH6 5LJ ('the Property')

The Parties:

Ms Kim Ross, Skebokvarnsvagen 265, Bandhagen, Stockholm, 12453 Sweden ('the Landlord')

Mr Stephan Van der Merwe and Ms Chia-Lun Tsai, both 170/9 (Flat 3/3) Great Junction Street ('the Tenants')

Tribunal members:

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

BACKGROUND

The tenancy is a Private Residential Tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). On 30 May 2022, the Landlord issued a Rent Increase Notice to the Tenants, in which she proposed an increase from £850 per month to £900 per month, effective from 25 September 2022. On 16 August 2022, following a referral by the Tenants and a review at the instance of the Landlord, the Rent Officer set the rent at £875 per calendar month, the new rent effective from 25 September 2022. On 29 August 2022, the Landlord appealed the Rent Officer's determination to the First-tier Tribunal in terms of Section 28 of the 2016 Act.

In her application, the Landlord stated that the rent for the present Property had not been increased since the commencement of the tenancy in 2018, the increase she was seeking was from £850 to £900 per month and that, based on current market rents, the proposed increase was modest. She emphasised that the Property has a

shower room as well as a bathroom and two full sized double bedrooms, a large bay windowed lounge with dining room area, high ceiling and original ornate corning and a feature fireplace. It is located within a Category B Listed Building and is two minutes' walk from The Shore in Leith. She provided details of six properties currently advertised and either in Great Junction Street, in an adjacent street or in the EH6 postcode. A two bedroom property directly across from the present Property was on the market at £975 per month. Another two bedroom property in Salamander Court was £970. A flat in Great Junction Street with one double and one single bedroom was £925. A flat with one double bedroom in Bonnington Road was £825. A flat in a modern block at Sheriff Park, with one double bedroom was £875 and a flat at Links Place, with one double bedroom was £825 per month. None of the properties had the additional shower room.

THE INSPECTION

The Tribunal inspected the Property on the morning of 12 December 2022. The Tribunal Members were admitted to the Property by the Tenants. The Landlord was not present.

The Property comprises a top flat in a four storey traditional grey sandstone tenement building, with shops on the ground floor and three flats on each of the three storeys above. The roof is slated, and the windows are double glazed. The accommodation comprises a small entrance hall, living room with a dining recess (presently being used to accommodate a single bed), kitchen, two double bedrooms, one with a shower unit off, and a bathroom, which has a bath, toilet and wash hand basin. Hot water and space heating are provided by a combi boiler and radiators. The gross internal floor area is approximately 70 square metres. The layout is unusual in that, at some point, the original kitchen and scullery have been converted into a second double bedroom with a shower room off, with an internal kitchen also being created, possibly from an original boxroom. The shower room is very small and contains only a shower cabinet with very limited circulation space. The internal kitchen is also very small.

The Property is let unfurnished, although the Landlord provided the white goods. The Property has polished wooden flooring, with tiled flooring in the bathroom. No services are provided by the Landlord.

The Property is close to good local shops and other amenities and to public transport links to the city centre. At present these are subject to restrictions due to the tram extension works on Leith Walk, but this is temporary.

THE HEARING

A Hearing took place later that day, by means of a telephone conference call. The Landlord and the Tenant, Mr Van der Merwe both participated in the Hearing. The Landlord referred the Tribunal to her written representations and emphasised that there had been no rent increase in four years, but costs had risen considerably. She had held back on proposing an increase in 2019, as the Tenants were expecting their first baby, and in 2020, the COVID-19 pandemic had intervened. There had been a considerable increase in market rents since 2018. Two bedroom flats were achieving between £925 and £1,100 at present. The 6% increase which she had proposed was very fair in all the circumstances.

The Tenant, Mr Van der Merwe, questioned whether the bedrooms could be regarded as double bedrooms. He also commented that the written representations of the Landlord as to the current status of the Property should not be considered to be in any way improvements to it, as they describe the Property as it was when the tenancy began. This was accepted by the Landlord. Mr Van Der Merwe also stated that the fact that necessary repairs have been carried should not be regarded as relevant in assessing the rent.

THE DECISION

The Tribunal considered all the rental evidence before it. It had, from its own enquiries, identified 4 properties which might provide comparable rental evidence. Details of those properties had been circulated to the Parties in advance of the Inspection and Hearing:

1. Restalrig Road, Edinburgh, two bedrooms. Electric white meter heating. Modern kitchen and bathroom. In 4-storey traditional tenement. Unfurnished. Gross internal area 54 square metres. Asking rent £925pcm at 7 November 2022.
2. Blackchapel Close, Edinburgh First floor flat in modern building. Two bedrooms. Modern kitchen and bathroom. Gas central heating. Double glazing. Furnished.

White goods. Gross internal area 60 square metres. Private parking. Asking rent £975pcm at 5 November 2022.

3. New Street, Musselburgh, available 28 November 2022. Two bedrooms, kitchen and bathroom, living room and study. Furnished. Washing machine. Double glazing. Asking rent £925pcm.
4. Easter Road, Edinburgh. Two bedroom flat in traditional 4-storey building, with shops on ground floor. Living room, modern kitchen and bathroom. Asking rent £1,100 at 8 November 2022.

The Tribunal noted that the Rent officer had used, as comparables, three apartment flats, one in Bonnington Road at a rent of £825, one in Leith Walk at a rent of £875 and another in Bonnington Road at a rent of £850. The Tribunal also considered all the comparables provided by the Landlord in her written representations.

The Tribunal had to consider the altered configuration of the Property and any impact that might have on the rent. The view of the Tribunal was that the additional shower room adds only minimally to the rental value of the Property, as it is extremely small and does not have a toilet or wash hand basin. The internal kitchen, whilst functional, is very small for a flat of this size. The Tribunal was satisfied that, on any reasonable interpretation, both bedrooms should be classified as double bedrooms.

Taking all the evidence into account, the Tribunal determined, by reference to Section 32 of the 2016 Act, that the increase sought by the Landlord was reasonable and that an open market rent for the Property, if let by a willing landlord to a willing tenant under a new Private Residential Tenancy Agreement beginning on the date on which the rent would have been increased in accordance with Section 22(4) of the 2016 Act had a referral to a Rent Officer not been made, and having the same terms as the present tenancy, should be set at £900 per month.

Section 29 of the 2016 Act provides that the effective date from which the rent determined by the Tribunal becomes payable is, where the Tribunal makes its Order on or before the original effective date, the original effective date, and otherwise, the first payment date falling on or after the day on which the Tribunal makes its Order. The “original effective date” is the date on which the rent would have been increased had a referral to the Rent Officer not been made.

In the present case the original effective date would have been 25 September 2022, so the effective date from which the rent determined by the Tribunal becomes the rent

payable on the first payment date following the day on which the Tribunal made its Order. The Order was made on 12 December 2022. The Private Residential Tenancy Agreement between the Parties states that the rent is payable on the 25th day of the month. Accordingly, the effective date from which the rent determined by the Tribunal becomes payable is 25 December 2022.

The Tribunal's Decision was unanimous.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party 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.

**George Clark
Legal Member/Chair
12 December 2022**