



**First-tier Tribunal for Scotland (Housing and Property Chamber)**

**Determination by First-tier Tribunal for Scotland (Housing and Property Chamber)**

**Statement of Reasons for Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber (hereinafter referred to as “the tribunal”) under Section 24 of the Housing (Scotland) Act 1988**

**Case Reference Number: FTS/HPC/RS/23/0150**

**Re property at 45 Silverbanks Road, Cambuslang, G72 7FJ**

**Parties**

**Mr. Paul Feeney residing at 45 Silverbanks Road, Cambuslang, G72 7FJ (“the applicant”)**

**Mr. Richard Fowler, care of Let’s Let, 37 Cadzow Street Hamilton ML3 6EE (“the respondent”)**

**The Tribunal consisted of:-**

**Mr James Bauld - Chairperson**

**Ms Carol Jones - Ordinary member**

**Introduction:-**

1. This is a reference to tribunal in respect of the property at 45 Silverbanks Road, Cambuslang, G72 7FJ. The landlord is Mr. Richard Fowler. The tenant is Mr. Paul Feeney. The tenancy is a Statutory



Assured Tenancy under the Housing (Scotland) Act 1988 (“the 1988 Act”).

2. On 2 September 2022 the landlord served a notice on the tenant under Section 24(1) of the 1988 Act indicating that he intended to increase the rent on the property from £490.00 per calendar month (£5,880 per annum) to £695.00 per calendar month (£8,340 per annum) with effect from 10 March 2023. The tenant timeously objected to that proposed increase by referring the proposed increase to the First-tier Tribunal for Scotland (Housing and Property Chamber )by lodging Form AT4 dated 16 January 2023.
3. The matter was referred to a tribunal and both parties were invited to make written representations. Both parties were also notified that an inspection and hearing would take place and were invited to attend the inspection and hearing. The inspection took place at the property on 19 April 2023 at 10.00 a.m. and a hearing by conference call on the same day at 2.00 p.m.

### **Findings in Fact**

4. The property comprises a 3 apartment top floor flat located in a 4 storey block constructed around 2006. It is situated in a predominantly residential area close to the main Glasgow Road and around 0.5 mile north-west of the centre of Cambuslang in South Lanarkshire. The building has part facing brick and part rendered outer walls with a pitched tiled roof and this flat has uPVC double glazed windows and a gas fired central heating system.
5. The accommodation comprises a hall, living room, 2 bedrooms, one with an en-suite shower room, kitchen and bathroom. The gross internal area is approximately 69 square metres.
6. The property is well located for local amenities and public transport.
7. Externally the building is consistent with its age and type of construction and is in reasonable order.
8. Internally the flat is in reasonable decorative condition. It has the usual range of modern facilities
9. The subjects are let unfurnished.



## The Hearing

10. The hearing was attended by the applicant and by Mr John Gildea, Solicitor Advocate from John, Jackson and Dick Solicitors, Hamilton, who represented the respondent.
11. The applicant referred the tribunal to his written submissions in which he indicated his position that the proposed increase from £490 per month to £695 per month was rather excessive. He also referred to the “rent cap” provisions in the Cost of Living (Tenant Protection) (Scotland) Act 2022 which currently restricts rent increases in some private sector tenancy regimes.
12. The Applicant also made reference to a list of comparable properties which he said he had found by carrying out an online search. This list showed a range of rents for what the applicant claimed to be similar properties ranging from £460 per month to £600 per month. He also indicated that the properties which he had found appear to be finished to a higher specification than his own.
13. Mr. Gildea for the respondent also referred to his written submissions and to a list of the comparable properties which he had provided to the tribunal. He also referred to another list of comparable properties prepared and submitted by the respondent’s letting agent. It was his position that the rental range for comparable properties was in the region from £650 per month to £750 per month and that the proposed figure in this case fell comfortably within that range.
14. In his written submissions, Mr. Gildea indicated that the predominant method of assessing the open market rent in Scotland is determining the open market rent by reference to the market rents of comparable properties. He made reference to observations by the courts in the cases of ***Western Heritable Investment Company Ltd, v Hunter***(2004) and ***Wright v Elderpark Housing Association*** (2017) .
15. It was agreed between the parties that the current rental level had not changed since 2018 and that the tenant had been in occupation since 2012. The tribunal acknowledges the assistance provided by both parties



## The Law

16. The Tribunal is bound to fix a market rent for the subjects by applying the terms of the Act. The Tribunal is required to determine the rent at which, subject to certain assumptions in the Act, the Tribunal considers that the subjects might reasonably be expected to achieve if they were let on the open market by a willing landlord under an assured tenancy. There is no single preferred method for fixing the market rent. It is for the Tribunal to determine based on the evidence before it the best method to fix the market rent.
17. It should also be noted that the “rent cap” provisions in the Cost of Living (Tenant Protection) (Scotland) Act 2022
18. have no effect in this case.

## Discussion and decision

19. The Tribunal accordingly considered a variety of properties which were available for let in the area and which were advertised on various property websites.
20. The Tribunal noted that there were a number of flats advertised online available within the Cambuslang area close to the property with advertised monthly rents ranging from £600 per month to over £800 per month. The properties which were advertised were all in modern developments and were provided with fully fitted kitchens and bathrooms, appliances, carpets and curtains. Some had master en-suite shower rooms and in a few cases the properties were also furnished. In particular there were advertisements for properties of a similar size in the exact same development for rents of £750 per month and £795 per month.
21. The Tribunal considered this evidence together with the documentation provided by both the landlord and the tenant. The Tribunal took the view that the market rent for properties comparable to the subject property assuming it was fully modernised and had all the usual facilities associated with such a property would be in the range of £650-£800 per month.
22. The Tribunal accordingly took the view that the rent proposed by the respondent was within the range of rents which might be achieved for such a flat and reflected a reasonable open market rent.



23. In view of the foregoing, the Tribunal decided that the open market rent should be increased to £695 per calendar month or £8,340 per annum. The proposed rent was at a level at which the property might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy.
24. The Tribunal noted that no services are provided by the landlord.
25. In reaching this decision the Tribunal had regard to all the circumstances required to be taken into account in terms of Section 25 of the Housing (Scotland) Act 1988.
26. Accordingly, the Tribunal decided that the market rent for this property should be £8,340 per annum and this rent should take effect from 10 May 2023. This is not the date indicated in the Form AT2 submitted by the landlord and served on the tenant. Normally, the rent determined by the Tribunal would take effect from the beginning of the period to which the new rent specified in the AT2 notice relates (in this case 10 March 2023) unless it appears to the Tribunal that this would cause undue hardship to the tenant. In this case the tribunal is exercising the power contained in section 25(6) of the 1988 Act and delaying the effective date of the increase to 10 May 2023 being the date of the tribunal's decision. An increase backdated for two months may, in the tribunal's opinion, cause undue hardship to the tenant.
27. The decision of the Tribunal was unanimous.

**Signed**

.....

**19 May 2023**

..

**Date**

**James Bauld, Chairperson**