

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision with Reasons in respect of a referral to the First-tier Tribunal for Scotland Housing and Property Chamber for a Determination of Rent under Section 34 of The Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/RS/20/2013

Property: 8/2 New Bell's Court, Edinburgh EH6 6RY ("the Property")

Parties:

**Mr John Gordon, 8/2 New Bell's Court, Edinburgh EH6 6RY ("the Tenant")
and**

**Picture Living Investments LP, 80 Cheapside, London EC2V 6EE, per their
agents, Touchstone CPS Ltd, 2 Crescent Office Park, Clarks Way, Bath BA2
2AF ("the Landlord")**

**Tribunal members: George Clark (Legal Member/Chair) and Sara Hesp
(Ordinary Member/Surveyor)**

Background

1. On 22 September 2020, the Tenant made an application to the Tribunal for a determination of rent in respect of the Property, in terms of Section 34 of the Housing (Scotland) Act 1988 ("the 1988 Act"). The rent for the Property was £635 per calendar month (£7,620 per annum). The application was made using the required Form AT2 and was accompanied by a copy of a Short Assured Tenancy between the Tenant and Places for People Ltd, for an initial

period of twelve months from 5 September 2014 to 4 September 2015 and thereafter on a calendar monthly basis.

Written Submissions

2. The Tenant provided the Tribunal with lengthy and detailed written representations, which contained a chronological summary relating to a number of repairs issues that he contended remained unresolved despite, in some cases, having been reported to the Landlord's agents several years ago. He also provided evidence that he had, at his own expense, replaced one of the windows in the living room area. Updated written representations were received by the Tribunal on 22 September 2021. They included a large number of photographs linked to the various items of disrepair and a Form AT2 intimation of the Landlord's intention to raise the rent to £655 per month with effect from 1 May 2021. That intimation post-dated the Tenant's application to the Tribunal. The documentation provided by the Tenant also included copies of previous Form AT2 intimations, indicating that the Landlord had increased the rent on an annual basis.
3. The Landlord did not make any written representations to the Tribunal.

The Inspection

4. The Tribunal inspected the Property on the morning of 29 September 2021. The Tenant was present at the inspection. The Landlord was not present or represented.
5. The Property is a ground floor flat in a modern four-storey block. The accommodation comprises a hall, open-plan fitted kitchen/living room, double bedroom and bathroom. Heating is by means of electric storage heaters. The windows are double glazed casements. The Property is in fair decorative order. The gross internal floor area is 450 square feet or thereby. No services are provided by the Landlord. Off-street parking is available outside the Property, which is located in Leith, close to shops and other amenities, with

good public transport links to the city centre. There was some evidence of black mould on the ceiling of the bathroom, which does not have a window and is ventilated by a basic mechanical ventilator.

The Hearing

6. Following the inspection, the Tribunal held a hearing later that day by means of a telephone conference call. The Tenant was present. The Landlord was not present or represented.
7. The Tenant stated that he expected the Tribunal to have regard to the various repairs issues that had been set out in his written representations and in particular the existence of black mould in the Property. He had spent some £700 in treating it over the years and it was detrimental to his health and that of his teenage son, who lives with him. He added that all of his complaints were in the written representations and that they should all have an impact on the Tribunal's decision on the rent.
8. At the conclusion of the Hearing, the Tenant left the conference call, and the Tribunal considered all the evidence before it, including comparative rental evidence it had obtained from its Members' own research.

Reasons for Decision

9. This is an application under Section 34 of the 1988 Act, namely an application by the Tenant in a Short Assured Tenancy for a determination of the rent which, in the Tribunal's opinion, the Landlord might reasonably be expected to obtain under the Short Assured Tenancy. Section 34(3) of the 1988 Act provides that the Tribunal shall not make such a determination unless it considers (Section 34(3)(a)) that there is a sufficient number of similar houses in the locality let on Assured Tenancies and (Section 34(3)(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 Section 34(3)(a).

10. The Tribunal had identified a number of one-bedroom properties currently or recently advertised for let in Leith. The average monthly rental for these properties was £750-£800. The Tribunal's view was that the rent that might be achieved for the Property was less than those average figures, as it did not have full central heating, and the Tenant had highlighted a number of items of disrepair and had also replaced a window at his own expense. The Tribunal took all of these matters into account but concluded that the test set out in Section 34(3)(b) of the 1988 Act had not been met, as the rent was not significantly higher and indeed was lower than the rental figures for those comparable properties. Accordingly, in terms of Section 34 of the 1988 Act, the Tribunal was unable to make a determination on rent in the present case.

Decision

11. The Tribunal made no determination of rent.

12. The Tribunal's decision was unanimous.

Clark

(Legal Member/Chair)

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Date: 29 September 2021