

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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**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/22/0866**

**Property: 11 Iona Street, Edinburgh EH6 8SG ('the Property')**

**The Parties:**

**Miss Helen Clift ("the Landlord")**

**Ms Danni Oluwashegun, 11 Iona Street, Edinburgh EH6 8SG ('the Tenant')**

**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 10 March 2022, following a referral by the Tenant, the Rent Officer set the rent at £870 per calendar month, with a further sum of £235 per month in respect of services provided by the Landlord, the new rent effective from 17 April 2022. On 13 March 2022, the Tenant appealed the Rent Officer's determination to the First-tier Tribunal in terms of Section 28 of the 2016 Act.

### **THE INSPECTION**

The Tribunal inspected the Property on the morning of 6 September 2022. The Tribunal Members were admitted to the Property by the Tenant. The Landlord was present, but was not permitted by the Tenant to enter the Property.

The Property comprises a main door flat, converted at some time from two flats and a shop, in a four storey traditional tenement building, erected in 1898. The roof is slated, and the windows of the Property have secondary glazing. The accommodation, which

opens directly off the pavement, comprises an entrance vestibule, hall, living room, kitchen/dining room, two double bedrooms and a wet room, which has a walk-in shower, toilet and wash hand basin. There is a further small apartment with a 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 83 square metres.

The Property is furnished. The Landlord provided the white goods and floorcoverings. The bedrooms are carpeted. The remainder of the Property has polished wooden flooring. Services provided by the Landlords comprise gas and electricity, wi-fi and TV connection, with a monthly payment of £10 for building maintenance, covering primarily the cleaning of the common stair of the tenement of which the Property forms part.

The Property is situated directly next door to a public house, with a further public house opposite. It is close to good local shops and other amenities and to public transport, including the extension currently being constructed to the Edinburgh Trams line, west and south to the city centre and Edinburgh Airport.

## **THE HEARING**

A Hearing took place later that day, by means of a telephone conference call. Both Parties participated in the Hearing. The Tenant argued that there should be no increase in the rent, due to the age of the Property, the fact that there had been no upgrading, its location on a very busy road, the quality and condition of the furnishings and the obvious trip hazard caused by the condition of the hall/kitchen flooring. She also advised the Tribunal that there was a rodent infestation and indicated droppings on the floor in several locations. She added that many areas were not completed, including the painting and woodwork in the separate toilet. She also stressed the noise and anti-social behaviour which resulted from the Property being adjacent to two public houses.

In her application, which was accompanied by a large volume of photographs, the tenant explained that, due to COVID-19 restrictions, she had been unable to view the Property prior to accepting the tenancy and had taken it on on the basis of one internal photograph of the living room, and the letting agents' written description. Her view was that the rent had been grossly overpriced at that time, due to health and safety hazards and the very worn state of the Property. The lease that she had signed was a Holiday Let Agreement, when it should have been a Private Residential Tenancy Agreement,

and this had not been rectified until July 2021. There was extensive damage to the wooden floorboards caused by plumbing repairs in November 2021 and February 2022, causing health and safety risks from trips and falls. Water pipes are exposed and uncovered, with the risk of skin burns from hot pipes, painting was not completed in many areas of the Property, which is in need of repainting and refurbishment.

The Tenant provided the Tribunal with a copy of a letter dated 18 March 2022 from a letting agency which stated that they would recommend a rent for the Property as it stands of £700 per month. If the trip hazard on the hallway/kitchen floor were rectified, the rent could be £950-£1,000 per month.

The Tenant respectfully drew the attention of the Tribunal to Section 48(1) of the Rent (Scotland) Act 1984, which required the Tribunal “to have regard to all of the 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 dwellinghouse in question and to its state of repair and, if any furniture is provided for use under the tenancy, to the quantity, quality and condition of the furniture.” She asked the Tribunal to set the rent at £700 per month, exclusive of services, from 17 April 2022.

The Landlord pointed out at the Hearing that there was full disabled access to the wet room, the work having been carried out approximately four years ago. The kitchen was about 15 years old. She could not understand why, if the Tenant was so unhappy in the Property, she continued to live there and she did not accept that the Property was in need of refurbishment. She accepted that repairs were required to the wooden flooring in the hallway/kitchen, but was taking steps to have the work carried out with the agreement of the Tenant.

## **THE DECISION**

The Tribunal considered all the rental evidence before it. It had, from its own enquiries, identified 12 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. Balfour Place EH6 5DW, available from 20 June 2022 at £995 per month. Ground floor, two-bedroom flat. Double glazing, gas heating, white goods. Modern kitchen. Furnished. Internal floor area 66 square metres.

2. Henderson Street, listed 6 June 2022. Ground floor flat with two bedrooms, fridge/freezer and washing machine. Gas central heating. Shower. Double glazing. Rent £995 per month.
3. Pitt Street EH6, listed on 31 May 2022. Maindoor two-bedroom flat with gas central heating and shower. Furnished. Rent £1,175 per month.
4. Pitt Street EH6, listed 26 May 2022. Second floor flat, with two bedrooms, double glazing, modern kitchen, shower and washing machine. Rent £1,100 per month.
5. Annfield Street EH6 4JJ, listed on 22 May 2022 and available 20 June 2022. First floor, two-bedroom flat with double glazing. Rent £945 per month. Floor area 58 square metres
6. Dalmeny Street EH6, listed 23 May 2022 and available 17 June 2022. Maindoor, two-bedroom flat. Part-furnished. Gas central heating. Shower. Rent £1,200 per month.
7. Commercial Street EH6, listed 23 May 2022 and available 15 June 2022. Top floor, two-bedroom flat. Furnished. Double glazing. Electric central heating, Two bathrooms. Rent £1,095 per month.
8. Annfield Street EH6, listed 23 May 2022. Second floor, two-bedroom flat. Furnished. Gas central heating, Double glazing. Washing machine, fridge/freezer, dishwasher. Shower. Floor area 58 square metres. Rent £850. Let agreed.
9. Links Place EH6, listed 20 May 2022, available 23 June 2022. Ground floor, two-bedroom flat. Unfurnished. Shower. Washing machine. Rent £1,075 per month.
10. Dickson Street EH6, listed 20 May 2022. Second floor, two-bedroom flat. Furnished. Gas central heating. Rent £1,150 per month.
11. Lorne Street EH6, listed 20 May 2022, available 22 June 2022. Furnished. Washing machine, dishwasher and fridge/freezer. Rent £1,150 per month.
12. Portland Street EH6, listed 17 May 2022. Second floor, tow-bedroom flat. Furnished. Double glazing. Shower. Fridge/freezer and washing machine. Rent £950 per month. Let agreed.

The Tribunal noted that the Rent officer had used, as comparables, three apartment flats, one in Jameson Place and one in Dickson Street, both at a rent of £895, and

another flat in Jameson Place at £875. Neither of the Parties had provided any comparable rents.

The Tenant had referred the Tribunal to the Rent (Scotland) Act 1984, but in relation to a Private Residential Tenancy, the Tribunal is directed by Section 32 of the Private Housing (Tenancies) (Scotland) Act 2016. The 1984 Act relates to protected and regulated tenancies. Section 32 of the 2016 Act requires the Tribunal to make a determination of open market on the basis that the property would be let by a willing landlord to a hypothetical willing tenant under a new tenancy which would be a Private Residential Tenancy, beginning on the date on which the rent would have been increased in accordance with Section 22(4) of the Act had a referral to a Rent Officer not been made, and having the same terms as the tenancy to which the referral or appeal relates. In arriving at its Decision, the Tribunal will naturally have regard to the property's location and state of repair.

The view of the Tribunal is that the present Property is considerably larger in floor area than typical tenement flats in the area, this being the result of its having been converted rather than being a custom-built flat. The flooring in the hallway/kitchen requires to be repaired, but it is understood that this is now in hand. It is adjacent to two public houses, which does impact on its rental value. It does not have modern double glazing, whereas all the comparable properties were double glazed, but it is furnished. The Tribunal also noted that, in terms of the Private Residential Tenancy Agreement, the services were to include Council Tax, but this is now being paid directly by the Tenant. Taking all the evidence into account, the Tribunal determined, by reference to Section 32 of the 2016 Act, 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 £930 per month, exclusive of services. The Tribunal was content to adopt the Rent Officer's evaluation of the services at £235 per month, taking the total amount payable to £1,165 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 17 April 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 6 September 2022. The Private Residential Tenancy Agreement between the Parties states that the rent is payable on the 17<sup>th</sup> day of the month. Accordingly, the effective date from which the rent determined by the Tribunal becomes payable is 17 September 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  
6 September 2022**

