

Housing and Property Chamber
First-tier Tribunal for Scotland



HOUSING (SCOTLAND) ACT 1988, SECTION 25(1)

**REGISTER OF RENTS DETERMINED UNDER STATUTORY ASSURED
TENANCIES**

REFERENCE NO:

FTS/HPC/RA/22/0013

APPLICATION RECEIVED

17 November 2021

ADDRESS OF PREMISES

125 Long Lane, Broughty Ferry, Dundee, DD5 2AR

TENANT

Mr Robert Maver residing at 125 Long Lane, Broughty Ferry, Dundee, DD5 2AR

AGENT FOR THE TENANT

Mr John Justice, Legal Consultant, 4 Whitehall Street, Dundee

LANDLORD

Ms Linda Conway, 71 Brown Street, Broughty Ferry, Dundee, DD5 1EP

AGENT FOR THE LANDLORD

J Myles & Co., Solicitors, 7-9 South Tay Street, Dundee

RENTAL PERIOD

Monthly

DATE TENANCY COMMENCES

25 November 2002

DESCRIPTION OF PREMISES

Detached cottage dating from around 1850 with double glazing and comprising living room, kitchen, bathroom and bedroom with a small garden to the front.

SERVICES PROVIDED

None

TRIBUNAL MEMBERS

Chairman (Legal)

Mr E K Miller

Ordinary Member (Surveyor)

Mr D Godfrey

PRESENT RENT

£4,200 per annum

RENT DETERMINED

£4,800 per annum

DATE CONSIDERED

27 April 2022

EFFECTIVE DATE

27 April 2022

Legal Member:

E Miller

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Ewan K Miller

Chairman of the Housing and Property Chamber of the First-Tier Tribunal for
Scotland

Date: 8 July 2022

Housing and Property Chamber

First-tier Tribunal for Scotland



STATEMENT OF REASONS FOR DECISION OF THE HOUSING AND PROPERTY CHAMBER OF THE FIRST-TIER TRIBUNAL FOR SCOTLAND

(hereinafter referred to as "the Tribunal")

Under Section 25(1) of the Housing (Scotland) Act 1988

Case Reference Number: FTS/HPC/RA/22/0013

Property at 125 Long Lane, Broughty Ferry, Dundee, DD5 2AR ("the Property")

The Parties:

Mr Robert Maver residing at 125 Long Lane, Broughty Ferry, Dundee, DD5 2AR ("the Tenant") represented by Mr John Justice, Legal Consultant, 4 Whitehall Street, Dundee

Ms Linda Conway, 71 Brown Street, Broughty Ferry, Dundee, DD5 1EP ("the Landlord") represented by J Myles & Co., Solicitors, 7-9 South Tay Street, Dundee

The Tribunal comprised:

Mr E K Miller (Chairman and Legal Member)

Mr D Godfrey (Ordinary Member, Surveyor)

Background

1. This is a reference by the Tenant of the Landlord's notice seeking an increase of rent for the Property. The Tenant seeks a determination from the First-Tier Tribunal of the open market rent for the Property as defined in Section 25(1) of the Housing (Scotland) Act 1988 as at 1 February 2022.
2. The tenancy is an assured tenancy. On 20 July 2021 the Landlord's agent served on the Tenant an AT2 Notice under Section 24(1) of the Housing (Scotland) Act 1988 seeking an increase in rental from £350 per calendar month to £450 per calendar month with effect from 1 February 2022. By way of Form AT4 dated 17 November 2021, the Tenant referred the Landlord's AT2 Notice to the Tribunal for the determination of the said open market rent.

Inspection

3. A Tribunal comprising Mr E K Miller (Chairman/Legal Member) and Mr D Godfrey (Ordinary/Surveyor Member) carried out an inspection of the Property at 10am on 27 April 2022. The Tenant was present throughout the inspection and was accompanied by Mr Justice. Neither the Landlord nor her representatives were present. The Tribunal took the Schedule of Photographs, which is attached to this Statement and incorporated herein.

Hearing

4. The Tribunal held a Hearing by way of telephone conference at 3pm on 27 April 2022. Mr Maver was present and was represented by Mr Justice. Ms Brown was also present and was represented by her solicitor Mr Joe Myles.

Description

5. The Property comprises a detached cottage dating from around 1850. The Property is located in a quiet lane in the attractive suburb of Broughty Ferry. The Property sits end-on to Long Lane and therefore this affords it a greater degree of privacy. There is a small but attractive garden to the front. There is no garden to the rear. The Property is all on one level and comprises a kitchen, leading to a lounge. There is a medium sized bathroom and one medium sized bedroom. Overall, the Property was compact and measured around 47 square metres.
6. The Property was in a good to excellent condition. The kitchen was modern with good quality fixtures and fittings installed. The décor and floorcovering throughout the Property were fresh. The bathroom was very modern and was installed to a very high standard. The Property was double-glazed with a velux window in the bathroom. There was no central heating, the Tenant using oil fires/electric radiators to heat the Property.
7. It was accepted by the parties that the floor coverings throughout the Property had been provided by the Tenant and that he had redecorated throughout. There was no dispute between the parties that the Tenant had installed the current kitchen (a new kitchen had been installed at the start of the tenancy but had since been replaced by the Tenant with a further new kitchen) and had, in essence, refurbished the Property from its original condition at the start of the lease. It was accepted that he had carried out electrical work to the Property. It was accepted that he had installed the bathroom and carried out some works to the garden and drainage within it.
8. However, the parties did not agree entirely on the original condition of the Property at the commencement of the tenancy. It did not appear to be disputed that it was in a dated condition generally but there was a question mark over the kitchen. The Tenant submitted that he had paid for the kitchen albeit the then landlord had installed it. The Landlord submitted that her late partner, who was the original landlord, had both paid for and installed the

kitchen. Beyond that there did not appear to be any material discrepancies between the parties in relation to the condition of the Property.

9. The Tenant, when leading the Tribunal through the Property was able to give fluent and informative answers to the Tribunal. His answers came naturally and did not appear to be forced. He had clearly done a lot of work in the Property over the years and was very familiar with what he had done and the layout of the Property and condition when he had taken it on. The Tenant came across as genuine and the Tribunal had no reason to doubt him. The Tribunal was of the view that the Property, when first occupied by the Tenant, would have been in relatively poor condition with a very dated bathroom, little in the way of useable floorcoverings, poor décor, etc. In relation to the kitchen, which was the only real point of contention between the parties as to the condition of the Property at handover, the Tribunal, on balance, and by a narrow margin, preferred the evidence of the Tenant. As highlighted above, the Tenant appeared to be genuine and was forthright in his answers to the Tribunal. The Landlord's position was based on information that was largely second hand. However her information was, largely, second-hand. The Property had originally owned by her late partner and she had inherited it. It appeared that she had only been in the Property a handful of times over the years and had had limited involvement with any works. She had not been involved with any works since she had inherited the Property. It was not, therefore, that the Tribunal did not find the Landlord credible but simply the information of the Tenant was first hand and appeared to be able to be stated with greater certainty. Accordingly, the Tribunal took the view that the original kitchen had been installed by the Landlord but paid for by the Tenant.

Documentation

10. The Tribunal had the following documentation before it:-

- (1) Form AT2 as completed by the Landlord.
- (2) Form AT4 completed by the Tenant.
- (3) An undated copy of the lease with a commencement dated of 25 November 2002.
- (4) Various invoices for works carried out by the Tenant at the Property as well as a list of all works the Tenant alleged he had carried out since 2002 at an approximate cost of £32,000.
- (5) Copies of a Notice to Quit AT6 served by the Landlord.
- (6) Various exchanges of correspondence between the parties agents.
- (7) Rental valuation report from J&E Shepherd dated 24 June 2021.

Discussion

11. The task for the Tribunal under Section 25(1) of the 1988 Act was to determine the rent at which the Property might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy as at the date of the Hearing.
12. The Tribunal was required to carry out the determination applying the test for valuation set out in Section 25(1) of the 1988 Act while in terms of Section 25(2) disregarding any effect on the rent attributable to (a) the sitting tenant, (b) to any improvement carried out by the Tenant or a predecessor in title except where carried out in pursuance of the terms of the lease, and (c) to any failure by the Tenant to comply with the terms of the tenancy. S25(2)(b) was highly relevant in this matter due to the extent of the works carried out by the Tenant
13. The tenancy was unfurnished. As noted above, it was accepted by the parties that the Property had been significantly improved by the Tenant from its original condition at the start of the tenancy. The house had been rewired and an electric boiler fitted in the attic and had been replumbed throughout. The Tenant had installed new PVC windows and two exterior PVC white doors had been fitted. As discussed above the Tribunal accepted that the kitchen had been paid for by the Tenant albeit it had been fitted by the original landlord as the original landlord was a joiner. In any event the kitchen had subsequently been replaced by the Tenant and a second new kitchen fitted. Even if the original landlord had paid for the original kitchen it would have been very dated by the time of the hearing and would have had a downward effect on the open market rental. The bathroom had been installed to a very high standard including with all the relevant fittings and a velux window fitted in the bathroom roof. The Tenant had created a pleasant garden area and had replaced the drainage pipe work and sewerage pipes to the mains located in the adjacent street. He had fitted insulation in the loft and carried out various roof repairs. In the view of the Tribunal there were significant elements that needed to be disregarded in terms of Section 25(2)(b) in relation to improvements carried out by the Tenant when assessing the market rent. It appeared to the Tribunal that the condition of the Property prior to these improvements would have been a very dated property with a poor quality kitchen and bathroom, no heating and little in the way of floor coverings or other attractive amenities.
14. Turning to the question of current open market rental levels, unfortunately neither party led any evidence of any comparable properties available currently. However, the Landlord had provided a rental valuation report from J&E Shepherd dated 24 June 2021. J&E Shepherd are a reputable, local surveying firm and the Tribunal gave some weight to their report. The report stated that the rental valuation of the Property in its current condition was £600 per calendar month. The rental valuation report had noted the various works that had been carried out by the Tenant and had applied a discount based on the fact that modernisation works had not been carried out. On that basis the hypothetical rental suggested by J&E Shepherd was £450 per calendar month. This was the new rental sought by the Landlord.

15. The Tribunal considered the survey report. The Property was relatively small at only 47 square metres and none of the rooms were particularly large within the Property. However it was in an attractive location and an assessment of various online letting websites indicated that £600 within Broughty Ferry appeared to be an accurate assessment of the open market rental valuation. Accordingly the Tribunal were satisfied that they could accept the J&E Shepherd survey as evidence of the open market rental supplemented by their own knowledge of the local market.
16. It then remained for the Tribunal to take into account the amount of discount to be applied, taking into account the unmodernised stated of the Property when first let by the Tenant. The Tribunal noted that the J&E Shepherd survey report had applied a discount of £150 per calendar month. The Tribunal noted that the extent of the modernisation that has been carried out was significant by the Tenant. The Property, it would appear, had been dated at the time it had been let. The expectations of tenants as to property standards had only risen since the lease was granted. and The location of the Property would still mean that someone would take a lease of the Property in an unmodernised condition, but the Tribunal was satisfied that the discount that the unmodernised condition would have against the open market rental of the Property as it stood was a more significant than that attributed by J&E Shepherd. The Tribunal was satisfied that a discount of £200 per calendar month would be appropriate. Tenants would expect a significant discount for a property with no modern bathroom or kitchen and generally in poor condition.
17. Whilst Mr Maver had submitted that there should be no increase in the rental value, the Tribunal did not see that £350 remained a realistic sum. Rental levels had increased over the years. It did appear to the Tribunal that £350 had perhaps been a little high at the time of the original lease. The Tenant had indicated that this was due to a longstanding arrangement with the original landlord that Mr Maver would be entitled to buy the Property at any point. The original landlord had died and the Property had been inherited by the new Landlord and this arrangement was a matter of some dispute. Ultimately the Tribunal could only work from the rental in the current lease and it appeared that the Tenant had been happy to pay £350 at that point. The Tribunal was satisfied that there would have been some growth from what had been paid at the original time and that parties would pay £400 for the Property in its equivalent unmodernised condition.
18. The Tribunal also sense checked its decision by looking at the overall cost that the Tenant had incurred in modernising the Property. On occasion the Tribunal will consider the likely lifespan of an improvement against the cost paid for it. For example, a kitchen and bathroom would generally last an average of 10 years before requiring to be replaced and so a £10,000 kitchen installed by a tenant would be depreciated over 10 years and so would equate to a £1000 reduction in rent against the open market position. Double glazing would be nearer 15 and more static items such as wiring and plumbing may last as long as 20 in depreciation terms. The Tribunal noted that if the discount per calendar month should be £200 this would mean an annual discount of £2,400. This was set against the £32,000 stated by the Tenant as

having been paid by him (and which appeared to the Tribunal to be a realistic amount. This gave an average depreciation period of 13 years. This appeared to be at the correct level to the Tribunal and gave comfort that their assessment of the discount that should be applied was correct.

Decision

19. Taking into account all of the relevant circumstances, the Tribunal determined the rent at which the Property might reasonably be expected to let on the open market by a willing landlord under an assured tenancy beginning on 27 April 2022 under deduction of the value of the improvements by the Tenant would be a rent of £400 per calendar month. The Tribunal was satisfied that it would be appropriate for the new rental to take effect from the date of the Hearing.

Right of Appeal

20. A landlord or tenant aggrieved by this decision may seek permission from the Tribunal to appeal on a point of law against this decision to the Upper Tribunal and that within 30 days beginning with the date when this decision was sent to the party seeking permission.
21. Unless the lease or tenancy between the parties has been brought to an end, the appropriate respondent in such appeal proceedings is the other party to the proceedings and not the Tribunal which made the decision.

Legal Member:

E Miller

Signed:
Ewan K Miller

Date: 8 July 2022