

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 26 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017.

Chamber Ref: FTS/HPC/RR/22/1163

1A Glebe Road, Edinburgh, EH12 7SF ('the Property')

The Parties:

Kyle Estates Limited (Company number SC190267) a company incorporated under the Companies Acts and having their registered office at Dalblair House, 46 Dalblair Road, Ayr, KA7 1UQ ('the Landlord')

and

Thomas Fraser Ripley, residing at 1A Glebe Road, Edinburgh, EH12 7SF ('the Tenant')

Tribunal members:

Paul Doyle (Legal Member) and David Godfrey (Ordinary Member).

BACKGROUND

1. The Tenant has rented this property from the Landlord (and their predecessor in title) since 10 February 1977. The tenancy is a statutory protected tenancy in terms of the Rent (Scotland) Act 1984. The rental from May 2015 to March 2022 was £5,214.00 per annum (£434.50 per month). The Landlords applied for the rent to be increased. The Rent Officer registered a rent of £7372.00 per annum (£614.33 per month) with effect from 22 March 2022. The Landlord referred the Rent Officer's determination to the First tier Tribunal.

2. To determine the fair rent for the Property the Tribunal are required to consider the rentals of comparable properties and whether there is a scarcity of supply of rental properties in the locality. The Tribunal found the following rental information:

- (a) Details of 7 Fair rent properties within EH12 from the Fair Rent eRegister.
- (b) An extract from the Citylets report for Q3 of 2022

3. The parties were asked to provide the Tribunal with representations and any further information with regards to the said rental information of comparable properties and whether there is scarcity of supply of rental property in the locality. The tenant did not make written representations. The Landlord's solicitor lodged written submissions on 17 June 2022, which included details of 10 properties marketed for rental in the EH4 and EH12 postcode areas.

THE INSPECTION

4. At 10am on 19 October 2022 the Tribunal inspected the Property. The Tenant was present at the inspection. The Landlords were represented by Ms R Virtue of Direct Lettings Ltd.

5. The property is a first floor flat in a stone built block above commercial premises. The larger building of which the property forms part is designed to blend in with an adjacent tenement which dates from the 19th century. A dedicated stair door provides access to a flight of stairs leading to the front door of the property. The front door of the property opens onto a central hallway, which provides access to three bedrooms to the front of the property and a small, dark, internal bathroom containing a white three piece sanitary suite. To the rear of the property there is a kitchen/ dining room and a living room with patio doors leading to a small balcony. There are two cupboards in the central hallway and a cupboard off the living room. The property benefits from gas central heating and UPVC double glazed window units. The internal floor area is approximately 116 square metres.

6. The Landlord provided the carpets and floor coverings throughout the Property. No white goods or furniture have been provided by the Landlords.

7. Limited on-street parking is available outside the Property. No services are provided by the Landlords.

THE HEARING

8. The tenant did not attend the hearing. The landlord was represented by Mr S Nicolson, solicitor.

THE DECISION

9. The Tribunal had the following documents before them:-

1. A copy of form RR1, the Landlords' application for registration of the rent.

2. Rental evidence listed at paragraph 11, below.
3. Mr Nicolson's detailed written submissions.
4. A copy of the lease.
5. Open market figures, reproduced at paragraph 12, below, relied on by the landlord.

10. The Tribunal observed that the Property is a first floor three-bedroom property. They considered the particular features of the Property. The fittings and fixtures within the property are tired & worn and will soon need to be replaced. The property would benefit from redecoration. There are signs of water ingress on the stairs leading to the property's front door.

11. The Tribunal obtained details of comparable fair rents of two, three, and four bedroom properties from the Fair Rent eRegister and also obtained details of the size of the properties from the EPC register, where an EPC had been registered for the properties.

Address	Postcode	Bed Rooms	Date registered	Rent	Size	Services
5/4 Stuart Court Craigmount View East Craigs	EH12 8UU	2	30/09/2022	£5,801.16	59m2	£1592.76
15 North Bughtlin Gate, Edinburgh	EH12 8XL	2	27/05/2022	£5,488.34	80m2	
44 North Bughtlin Gate Edinburgh	EH12 8XL	2	27/05/2022	£5,546.11	78m2	£95.88
70/3 Craigmount Brae Edinburgh	EH12 8XF	3	25/04/2022	£6,190.91	80m2	
66/2 Craigmount Brae Edinburgh	EH12 8XF	2	22/04/2022	£5583.76	65m2	£261.84
46 North Bughtlin Gate Edinburgh	EH12 8XL	4	10/03/2022	£6181.60	78m2	
8 Bughtlin Loan Edinburgh	EH12 8UZ	4	16/02/2022	£6549.36		£92.16

12. The Landlord's solicitor provided details of two, three, and four bedroom properties available for rent in the post code areas EH4 and EH12 in May and June 2022. The details are:

Address	Postcode	Bed Rooms	Rent	Size	Comments
Flat 6 Craigmount Hill, Edinburgh	EH4 8HX	2	£850 pcm		
Clerwood Gardens Edinburgh	EH12	3	£1595 pcm		Semi-Detached House
Carrick Knowe Avenue, Edinburgh	EH12	2	£900 pcm		
Gogarloch Sykee Edinburgh	EH12	3	£1395 pcm		End Terraced Villa
Craigmount Court, Edinburgh	EH4 8HL	Not specified	£1397 pcm		
Hayfield, East Craigs, Edinburgh	EH12	2	£940 pcm		
Alan Breck Gardens, Edinburgh	EH4	3	£1100 pcm		
Victor Park Terrace, Edinburgh		1	£815pcm		
Broombank Terrace, Edinburgh	EH12	2	£795pcm		Upper Villa
Craigs Drive, Edinburgh	EH12	2	£1500pcm		Semi Detached House

13. The Tribunal considered the said documents and rental evidence. The Tribunal were mindful of the terms of section 48(1) of The Rent (Scotland) Act 1984, which requires the Tribunal 'to have regard to all of the circumstances (other than personal 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 dwelling house in question and to its state of repair and, if any furniture is provided for use under the tenancy, and to the quantity, quality and condition of the furniture'.

14. Section 48(2) of The Rent (Scotland) Act 1984 requires the tribunal to

assume that the number of persons seeking to become tenants of similar dwelling-houses in the locality on the terms (other than those relating to rent) of the regulated tenancy is not substantially greater than the number of such dwelling-houses which are available to let on such terms.

15. The Tribunal recognised that the three methods of assessing the rent in Scotland are (1) determining the fair rent by reference to comparable registered rents in the area. (2) determining the fair rent by reference to market rents of comparable properties allowing for appropriate deductions for scarcity and (3) determining the fair rent by reference to the anticipated annual return based on the capital value of the property. They acknowledged that none of these methods is the primary method. The task of determining a fair rent is a composite task which takes account of these three methods. The appropriate method depends on the facts and circumstances of each case. The Tribunal also gave consideration to the observations of the Lord President in Western Heritable Investment Co Ltd v Hunter (2004) and also the more recent case of Wright v Elderpark Housing Association (2017) which requires the Tribunal to proceed on the best available evidence and use the other evidence as a cross check, where possible.

Registered Rents

16. The Tribunal considered the evidence of registered rents in the Fair Rent Register.

17. All seven of the properties identified from the Fair Rent Register have been built since the 1960s, and so are not directly comparable. It was not possible to find a recent entry for a stone built flatted dwellinghouse in EH12 in the Register. Four of the properties identified have two bedrooms. Two of the properties identified have four bedrooms.

18. The only recent entry for a three bedroomed property in EH12 in the Fair Rent Register is 70/3 Craigmount Brae, Edinburgh. The registered fair rent for that property equates to £77.38 per square metre.

19. There is one direct and reliable comparison. In Wright v Elderpark Housing Association [2017] CSIH 54 Lord Drummond Young said:

..., it will frequently be appropriate for the rent officer or committee to begin with the rents that have been registered for comparable properties falling under Part VI of the Act (housing association properties), and to use the private rented market as a cross-check, making allowance for any scarcity in accordance with subsection (2) of section 48.

20. Taking a holistic view of each of the 7 potentially comparable properties for which entries were found in the Fair Rent Register, the tribunal concludes that a fair rental

for a flatted dwellinghouse in the EH12 postcode area can be calculated at £80 per square metre.

21. The internal floor area of this property is approximately 116 square metres. Applying a rental figure of £80 per square metre, we find that a fair rental for this property, when compared with registered rents, is £9,280.

22. The Tribunal considered that an adjustment was required to reflect the fact that the Landlords did not provide furnishings, appliances, or decoration, and the kitchen and bathroom were fitted at the tenant's expense. Taking an estimate of the cost of upgrading the subject property to the standard of the comparable properties marketed for rental in the summer months prior to the date of hearing, and taking a straight line depreciation over 5 to 10 years for the different elements of the cost of decoration and providing the furnishings and appliances, the Tribunal considered that a deduction of £700 per annum was reasonable to reflect these differences.

23. The Tribunal determined that a comparable rent for the Property using the evidence of registered fair rents, reasonably adjusted to reflect the size of the property, is £9280 per annum. Deducting the cost of fitting out, decoration, furnishing, and white goods estimated at £700, a comparable fair rental is £8,580.00 per annum.

Market Rents

24. The Tribunal also considered the evidence of market rents.

25. The evidence of annual rents for the properties advertised for rental in the EH12 area prior to the date of hearing are in the region of £15,000 per annum. These comparable properties are all built in the last 50 years and have floor coverings, furnishings and appliances provided by the Landlords.

26. For the reasons given in paragraph 22, the tribunal estimates the cost of upgrading the subject property to the standard of the comparable properties marketed for rental in the summer months prior to the date of hearing. The Tribunal considered that a deduction of £700 per annum was reasonable to reflect these differences.

27. The Tribunal considered the open market rent to be £15,000; deducting the cost of fitting out, decoration, furnishing, and white goods estimated at £700, a comparable open market rental would be £14,300.

Scarcity

28. When the Tribunal fix a fair rent they must do so on an assumption that the number of persons seeking to become tenants of similar properties in the locality of the Property is not substantially higher than the number of similar dwelling houses which

are available for lease. Case law has determined that when considering the question of scarcity, a large area must be considered to avoid an increase in demand being caused by specific local amenities. The Tribunal considered it reasonable to consider the City of Edinburgh when assessing the question of scarcity. The parties did not make representations to the Tribunal on the question of scarcity.

29. The time taken to let properties and rent increases are factors that contribute to determining if scarcity exists. The Citylets report for Q3 2022 says

Q3 2022 witnessed average rents in Scotland rise 8.3% Year on Year (YOY)...with properties taking just 19 days to let. Property to rent in Edinburgh remained very difficult to secure with average Time to Let (TTL) remaining at just 15 days... the Average property to let in Edinburgh now costs £1327 per month, up a significant 14.7% YOY. Many agents note they have never operated in a more competitive market.

30. The City of Edinburgh Council report that there are now more than 20,000 people on their housing waiting list.

31. Private housing and social housing are two strands of the same market for rental properties. There is a huge imbalance in the Edinburgh rental market where supply is overwhelmed by demand. There is therefore a significant demand for housing throughout Edinburgh, which can best be interpreted as a scarcity of housing.

32. The Tribunal determined that there is still a strong demand for private rented accommodation in Edinburgh. The number of people seeking to become tenants of such properties in Edinburgh is higher than the number of houses available and that the demand is substantially higher than the supply.

33. Taking a holistic view of all the available evidence, the tribunal finds that there is scarcity amounting to 40%.

34. The Tribunal determined that a comparable market rent for the Property using the evidence of market rents, after deduction of the adjustment of £700 and the 40% scarcity deduction of £5,720, results in a net comparable market rent of £8580 per annum.

Return on the capital valuation of the Property

35. The parties have not provided any evidence of capital valuations of the Property. The Tribunal were mindful that the capital valuation method has been described as notoriously unreliable '*normally to be used only as a last resort*' (Western Heritable Investment Co Ltd v Husband 1983 SC (HL) 60, 73). Given the strong evidence of comparable fair rents and market rents and the absence of evidence of capital

valuations the Tribunal determined that it was appropriate to proceed to assess the fair rent of the Property without using the capital valuation method.

36. The comparable fair rent is £8,580.00 and the comparable adjusted market rent is also £8,580.00.

37. The Tribunal are mindful that fixing the rent is a composite task and consequently after consideration of all these factors the Tribunal determine that the fair rent for the property is £8,580.00 per annum.

38. In reaching this decision the tribunal have had regard to all the considerations required to be taken into account in terms of Section 48 of the Rent (Scotland) Act 1984.

39. This decision takes effect from the 22 March 2022.

P Doyle

Legal Member

19th October 2022