

# 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 29(1) of The Private Housing (Tenancies) (Scotland) Act 2016.**

**Chamber Ref: FTS/HPC/RN/21/2826**

**Property: Flat Ground/02, 15 Trefoil Avenue, Glasgow G41 3PD ('the Property')**

**The Parties:**

**Mr Malcolm Howes, 20 Strathalmond Road, Edinburgh EH4 8AF ('the Landlord')**

**Mr Benjamin Christodoulos Kritikos and Ms Aimee Laura Bea Ballinger, Flat Ground/02, 15 Trefoil Avenue, Glasgow G41 3PD ('the Tenants')**

**Tribunal members:**

**George Clark (Legal Member/Chairperson) and Mike Links (Ordinary/surveyor Member).**

#### **1. BACKGROUND**

The tenancy is a Private Residential Tenancy in terms of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act"). The rent was £700 per calendar month. On 28 August 2021, the Landlord served a Rent-Increase Notice under Section 22(1) of the 2016 Act, advising the Tenants that he wished to increase the rent to £850 per calendar month from 1 December 2021. The Tenants referred the matter to a Rent Officer for determination. On 10 November 2021, the Rent Officer set the rent at £730 per calendar month with effect from 1 December 2021. On 15 November 2021, the Landlord appealed the Rent Officer's determination to the First-tier Tribunal in terms of Section 28 of the 2016 Act. The Tribunal was not given a copy of the Rent Officer's provisional Order in this case, but the Landlord indicated in his representations that it stated a proposed rent of £790 per month and that, when requested to reconsider the proposed amount under Section 26 of the 2016 Act, the Rent Officer had reduced it to £730 per month. The Landlord considered that there was a disparity between the rent set by the Rent Officer and current market data. He provided the Tribunal with a

Citylets Comparables Report of 15 November 2021 and a Comparables Report by 1Let dated 10 November 2021, which, together, provided details of 6 properties in Trefoil Avenue that had been let out in 2021. The Landlord also provided details of two further properties in the street. The rental figures ranged from £795 to £895 per month. An inspection and Hearing, scheduled for 26 January 2022 were postponed at the request of both Parties. It was anticipated that the Tenants would vacate the Property by the end of April and the Parties asked the Tribunal to delay the inspection and Hearing until the end of April, as, if the Tenants moved out, it might not be necessary for the matter to proceed further. The Tribunal acceded to that request.

The Tenants confirmed to the Tribunal that they would be vacating the Property on 28 April 2022, but accepted that, given the date of the Notice to Leave that they had served on the Landlord, their tenancy would not terminate until 2 May 2022.

## **2. THE INSPECTION**

The Tribunal inspected the Property on the morning of 29 April 2022 and a Hearing took place later that day, by means of a telephone conference call. The Landlord was present at the inspection and participated in the Hearing. The Tenants had vacated the Property on the previous day and were neither present nor represented at the inspection or Hearing.

The Property comprises a ground floor flat in a four storey traditional red sandstone tenement building in the Shawlands area of Glasgow. The building is circa 120 years old. The roof is pitched and tiled and the flat has double-glazed windows in each room, apart from the kitchen and utility area, the windows of which are single-glazed. The accommodation comprises an entrance hall, small galley kitchen with utility area off in the adapted former scullery, living room, double bedroom, small single bedroom, and bathroom. Hot water and space heating are provided by a combi boiler and radiators. The internal floor area is approximately 59 square metres.

The Property is unfurnished. The Landlord provided the white goods. The timber floors in the living room and single bedroom are sanded and varnished. There is laminate flooring in the double (rear) bedroom, and tiled flooring in the bathroom and kitchen and utility area. On-street parking. No services are provided by the Landlords.

The Property is situated close to good local shops and other amenities and public transport links to the centre of Glasgow.

### **3. THE HEARING**

The Landlord referred the Tribunal to the comparable rent figures that he had provided with the application and the Tribunal discussed with him those properties, together with a number of other properties in the area which the Tribunal had itself identified as being comparable. A number of these had been intimated to the Parties in advance of the Hearing.

### **4. THE DECISION**

The Tribunal considered all the rental evidence before it. The Landlord had provided details of 6 comparable properties, all in Trefoil Avenue. All of them had two double bedrooms, compared with the one double and small single bedroom in the present Property. The most expensive one (£895 per month) was furnished. Two properties at £850 were unfurnished, as was a further one at £825 per month and two at £795.

The comparable figures obtained by the Tribunal for properties in the area were a two-bedroom top flat in Tantallon Road at £825, a two-bedroom ground flat in Mount Stuart Street at £875, a two-bedroom first floor upper flat in Grantley Gardens at £825 and a flat in Waverley Street at £850, which had a double and a single bedroom, but which had an en-suite as well as a bathroom.

The Tribunal noted that, the Property being a ground floor flat, its second bedroom and kitchen were smaller than equivalent rooms in upper flats, to accommodate the common entrance passage of the tenement, the flats above extending over the passage. The second bedroom was barely large enough to accommodate a bed and this had to be reflected in the rent that the Property could achieve.

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 £800 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 1 December 2021, so the effective date from which the rent determined by the Tribunal becomes the rent payable is the first payment date following the day on which the Tribunal made its Order. The Order was made on 29 April 2022. The Private Residential Tenancy Agreement between the Parties states that the rent is payable on the first day of the month. Accordingly, the rent determined by the Tribunal becomes payable on 1 May 2022.

The Tribunal’s Decision was unanimous.

G Clark

29 April 2022

Chairperson

