

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision and Statement of Reasons in respect of a referral to the First-tier Tribunal for Scotland Housing and Property Chamber for a Determination of Rent under Sections 24(3)(a) and 25(1) of The Housing (Scotland) Act 1988

Chamber Ref: FTS/HPC/RS/23/0447

Property: Park Cottage, Dochgarroch, Inverness IV3 8JG (“the Property”)

Parties:

Mr Mark Aitkenhead, Park Cottage, Dochgarroch, Inverness IV3 8JG (“the Tenant”) and

Mr Alexander James Baillie, Dochfour Estate, Inverness IV3 8GY (“the Landlords”)

Tribunal members: George Clark (Legal Member/Chair) and Robert Buchan (Ordinary Member/Surveyor)

Background

1. The current rent for the Property is £465 per calendar month (£5,580 per annum) and the lease is an Assured Tenancy or a Short Assured Tenancy. By way of a Form AT2 Notice, dated 18 August 2022, the Landlord proposed a new rent of £600 per calendar month (£7,200 per annum). The proposed rent was to take effect from 28 February 2023. The Tenant referred the Notice to the First Tier Tribunal for Scotland Housing and Property Chamber (“the Tribunal”) for a determination of rent under Section 24 of the Housing (Scotland) Act 1988 (“the 1988 Act”). The Tenant’s Notice of Referral (AT4) was received on 10 February 2023, before the beginning of the period to

which the proposed new rent related, so complied with the requirements of Section 24(3) of the 1988 Act.

2. In his application, the Tenant contended that he had no existing tenancy agreement and that there had been a failed attempt by the Landlord to evict him in order to turn the Property into an Airbnb. In later submissions, he pointed out that he and his wife had moved into the Property on 1 May 1991. They had later separated and he had moved out, but after a time his wife no longer wanted to live there and he was granted occupancy on 1 June 2001. As regards parity with other estate houses, they are served by a Council maintained tarred road with access to fibre broadband whereas he lives down a 110-yard track. He provided copies of correspondence regarding the status of his tenancy and the fact that it might be an Assured rather than a Short Assured Tenancy, as the Form AT5 Notice was dated 14 June 2001, but, although the tenancy agreement was dated 18 June and 3 July 2001, the tenancy was stated to have commenced on 1 June 2001, so the Form AT6 Notice was not served before the creation of the tenancy.
3. On 13 April 2023, the Tribunal advised the Parties of the date and times of an Inspection and Hearing.
4. The Landlord's representative, Mr Jonathan Townsend-Rose, submitted written representations to the Tribunal on 3 May 2023. He supplied a copy of a Building Survey Report by D M Hall LLP, Aberdeen, dated May 2022. The primary purpose of the Report had been to assess the current condition and energy efficiency of the Property and it set out a number of matters that would require to be addressed to improve the EPC rating. The Landlord's representative stated that the Property has been let to the Tenant for many years. During that time, the Property has been professionally maintained in wind and watertight condition and every effort made to comply with the prevailing regulatory framework. The Landlord is aware of the need to upgrade to meet proposed energy efficient standards. The rent was increased by £10 per month in August 2017. As with many of the properties on the estate, the rent has been set at a level lower than might be obtained

on the open market, partly due to a desire to provide housing for local people. The Tenant has benefited from a below market rent over many years, and the proposed increase is reasonable to reflect increases in residential rents since 2017 and where there is a requirement to lay out considerable expenditure to improve the energy efficiency of the Property. The Landlord had served a Notice to Quit, as these works are invasive and could not be carried out while the Property is occupied, and the Tenant had been unwilling to accept offers of alternative accommodation during the works period.

5. The Landlord provided a number of comparables for the Tribunal to consider, including another cottage on the estate where the rent was set at £625 in 2021.
6. Prior to the Inspection and Hearing, the Tribunal provided the Parties with details of a large number of possible comparable rental properties. These were identified before the Tribunal had seen the Property itself.

The Inspection

7. The Tribunal inspected the Property on the morning of 15 June 2023. The Tenant was present at the inspection. The Landlord was represented by Mr Jonathan Townsend-Rose.
8. A Schedule of Photographs, taken at the Inspection, is attached to and forms part of this Decision.
9. The Property is a traditional style farm/estate cottage in a rural location and is over 100 years old. There is a more recent extension, built c.1970s, providing additional accommodation. The internal floor area is 71 square metres or thereby. Accessed by a private driveway with room for car parking, the Property is of stone construction with a pitched slated roof. The windows are single-glazed. The accommodation comprises living room, two double bedrooms, a kitchen and bathroom. Space and water heating are provided by oil-fired central heating, with a radiator in each room. There is also a

wood-burning stove, with a back boiler, in the living room. The kitchen and bathroom facilities are dated and there is no shower or shower attachment to the bath. The Tenant has introduced calor gas to the Property to fuel a gas hob. The EPC banding is "F". The decorative condition of the Property is fair. All the floor coverings were provided by the Tenant. The Landlord has provided the required heat and smoke detectors. There is mains water, and drainage is to a septic tank, which is emptied and maintained by the Landlord. The Property has an area of garden ground and a number of wooden sheds. The Property is situated 3 miles from Inverness,

The Hearing

10. Following the inspection, the Tribunal held a Hearing at Inverness Justice Centre. The Tenant was present and was assisted by his niece, Ms Virginia Nelson. The Landlord was represented by Mr Townsend-Rose.

Reasons for Decision

11. Section 25 of the 1988 Act requires the Tribunal to determine the rent at which the Tribunal considers that the house might reasonably be expected to let in the open market by a willing landlord under an Assured Tenancy, disregarding any improvement carried out by the tenant.

12. The Tribunal considered whether it was necessary to determine whether the tenancy of the Property is an Assured or Short Assured Tenancy. The distinction between the two, in relation to rent determination, is that a tenant under a Short Assured Tenancy can apply to the Tribunal at any time for a rent determination, but under an Assured Tenancy can only do so when the landlord serves a Form AT2 Notice of intention to increase the rent. Further, by Section 34(3) Of the 1988 Act, the Tribunal shall not make a determination of rent under a Short Assured Tenancy unless it considers that the rent payable under the tenancy is significantly higher than the rent which the landlord might reasonably be expected to obtain, having regard to the level of

rents payable under tenancies of similar houses in the locality let on Assured Tenancies (whether Short Assured Tenancies or not).

13. The Tenant contended that his was not a Short Assured Tenancy, as the Form AT5 Notice had not been served before its creation, as required by Section 32(1) of the 1988 Act. The Tribunal decided that, for the purposes of the present application, it was not necessary to determine whether it was an Assured or Short Assured Tenancy, as the Tribunal had decided that the rent being paid was not significantly higher than that of similar houses in the locality. The present application was, in any event, an appeal against the rent proposed in a Form AT2 Notice served by the Landlord and was not a reference by the Tenant for a rent determination under Section 34 of the 1988 Act.
14. The Tribunal considered carefully all the evidence before it and in particular the details of all the properties recently let or presently on the market for rent that had been identified in the area of the present Property. The Tribunal was conscious that, as is typical of rural cottages, there were no exactly comparable properties against which the present Property can be compared, but noted amongst the properties, details of which it had circulated to the Parties prior to the Inspection and Hearing, a two-bedroom end-terraced cottage at Low Street Clachnaharry, currently available for let at £850 per month and a two-bedroom semi-detached house in the Cradlehall area of Inverness, available at £795 per month. The Tribunal considered that the rent that could reasonably be achieved for a rural cottage in the Inverness area, with a fully modernised kitchen and bathroom, double glazing, with floorcoverings and white goods provided by the landlord, was £800 per month (£9,600 per annum). The Tribunal also noted the example provided by the Landlord of another cottage on the estate, the rent of which had been set at £625 in 2021.
15. The present Property does not have a modernised kitchen or bathroom and does not have a shower. The windows are not double-glazed. The Tribunal's assessment was that the impact on rent of the condition of the present

Property would result in a rent, disregarding the improvements carried out by the Tenant, of £650 per month. The Tribunal also disregarded the fact that the Landlord intends to spend significant sums to improve the energy efficiency of the Property, as it would have no impact on the current rent.

16. The Tribunal noted that the figure it had set was higher than the rent proposed by the Landlord in the Form AT2 Notice. The Landlord's representative had stated that the rent for the Property, as for many of the houses on the estate, had been set at a level lower than might be obtained on the open market, partly due to a desire to provide housing for local people. The Tribunal, however, is required to determine an open market rent and it will be for the Landlord to decide whether to limit the rent charged to £600, as proposed in the Form AT2 Notice.

Decision

17. Having taken all factors into account the Tribunal determined that, in terms of Section 25(1) of the Housing (Scotland) Act 1988, the rent at which the Property, in its present condition, might reasonably be expected to be let in the open market by a willing landlord under an Assured Tenancy was £650 per month (£7,800 per annum).

18. The Tribunal recognised that the increase in rent might cause undue hardship to the Tenant if it were to take effect from the beginning of the period to which the rent proposed in the Form AT2 Notice relates (28 February 2023) and decided, in terms of Section 25(6) of the 1988 Act that its Determination should take effect from 1 June 2023.

.....G.Clark..... Date: 19 June 2023
(Legal Member/Chair)