

Housing and Property Chamber
First-tier Tribunal for Scotland



Housing (Scotland) Act 1988

Register Of Rents Determined Under Statutory Assured Tenancies

REFERENCE NO.

FTS/HPC/RA/18/1225

APPLICATION RECEIVED

23 May 2018

ADDRESS OF PREMISES

Flat 2F2, 39 Jordan Lane, Edinburgh, EH10 4QY

TENANT

Mr David Howells

**NAME AND ADDRESS OF
LANDLORD**

Mr and Mrs Grant Lorimer
38 Plewlands Gardens, Edinburgh,
EH10 5JR

AGENT

RENTAL PERIOD

6 months

DATE TENANCY COMMENCED

4 June 2007

DESCRIPTION OF PREMISES: Second floor furnished flat in traditional 4-storey tenement built c1900. Accommodation comprises living room, double bedroom, kitchen and bathroom. Small utility area off bedroom. Original, single-glazed windows. Gas central heating. Decorative order poor. Floor coverings at end of serviceable life. Shared drying green/garden to rear.

SERVICES PROVIDED

None

TRIBUNAL MEMBERS

CHAIRPERSON

George Clark

ORDINARY MEMBER (SURVEYOR)

Sara Hesp

ORDINARY MEMBER

PRESENT RENT

£6,900.00

PROPOSED RENT

£10,200.00

DETERMINED RENT

£8.400

DATE OF DECISION

EFFECTIVE DATE

23 August 2018

1 September 2018

G Clark

Chairperson of tribunal

23 August 2018

Date

Housing and Property Chamber

First-tier Tribunal for Scotland



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/RA/18/1225

Property: Flat 2F2, 39 Jordan Lane, Edinburgh EH10 4QY (“the Property”)

Parties:

Mr David Howells, Flat 2F2, 39 Jordan Lane, Edinburgh EH10 4QY (“the Tenant”) and

Mr and Mrs Grant Lorimer, 38 Plewlands Gardens, Edinburgh EH10 4QY (“the Landlord”)

Tribunal members: George Clark (Legal Member/Chair) and Mrs Sara Hesp (Ordinary Member/Surveyor)

Background

1. The current rent for the Property is £575 per calendar month (£6,900 per annum). The lease is an Assured Tenancy. By way of a Form AT2 Notice, received by the Tenant on 7 December 2017, the Landlord proposed a new rent of £850 per calendar month (£10,200 per annum). The proposed rent was to take effect from 7 June 2018. 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 23 May 2018, before the beginning of the period to which the proposed new rent related, as required by Section 24(3) of the 1988 Act.

The Inspection

2. The Tribunal inspected the Property on the morning of 23 August 2018. The Tenant, Mr Howells, was present at the inspection, but not at the subsequent hearing. The Landlord, Mr Lorimer, was present at the inspection and the subsequent hearing.

3. The Property is a second floor flat in a 4-storey traditional tenement built circa 1900. The accommodation within the Property comprises a bay-windowed living room, double bedroom, kitchen and bathroom. There is a small utility area, situated off the bedroom. The kitchen units and appliances are relatively modern. The bathroom has a bath with a shower over, but it is dated in appearance. There is a modern electrical consumer unit. Apart from the hallway, the Property is in poor decorative order. The windows are original and single-glazed. There is a small shared drying green/garden to the rear of the tenement and a door-entry system. The gross internal floor area is 58 square metres or thereby. The Property is let furnished. No services are provided by the Landlord. The Property is in the Morningside area of Edinburgh, has a good outlook to the south and is situated close to excellent local amenities and schools, with good public transport links to Edinburgh city centre. On-street parking is available on payment of the relevant fee for a residents' parking permit.

Written Submissions

4. The Tenant made written submissions to the Tribunal, received on 12 July 2018. He stated that the bathroom and kitchen of the Property had been renovated in 2008, but the floor space for the bathroom was narrow and the kitchen floor space was cramped, as it was a converted box room. The

waste pipe from the bathroom was in a state of disrepair and the drying green had declined as a communal amenity area over the past year. Taking into account an annual inflation rate of 2% from the last rent determination in 2012, he estimated that an increase of 12% would be reflected by an increase of £70 per month on the present rent, resulting in a rent of £645 per month, but submitted that the deterioration in amenities like the drying green might reduce that figure. He enclosed sample rents for the private market rents for one-bedroom flats in the area, ranging from £600 to £695 per month. He considered that the proposed rent increase of 50% was unjustified.

5. The Landlord made written representations to the Tribunal received on 6 July 2018. The Landlord stated that research indicated that £850 was a fair rent for a flat of this type in this locality. He provided details of a number of comparable properties, including a one-bedroom flat in Jordan Lane at a rental of £850 per month and a two-bedroom flat in the street at £1,000 per month. The property was a spacious bay-windowed second floor through flat with a southerly open aspect to the hills and was situated in a quiet residential cul-de-sac which has a mixture of flatted properties and villas. The flat was fully furnished and the common stair had recently been decorated and a new door entry system had been installed. It was in a prime location, local amenities including excellent schools, both state and private, excellent shops, a cinema, restaurants, coffee shops and bars. There was easy access to the city centre, universities and leisure facilities. Many of the one-bedroom flats in the area were four on a landing and were not comparable to the Property in size or amenity. Rentals for Morningside properties were at the upper end of the rental market. The rent had remained at £575 per month for more than six years and was well below the market rent. Rents had increased by around 40% since 2012. The Tenant was resistant to disruption, which made proposed improvements to the Property, including redecoration and recarpeting, very difficult.

The Hearing

6. Following the inspection, the Tribunal held a hearing at George House, 126 George Street, Edinburgh. The Landlord, Mr Lorimer, attended the hearing. The Tenant was not present or represented at the hearing. The Landlord told the Tribunal that the properties provided by the Tenant were not true comparables. One of them was nowhere near Morningside and a number of others were four flats to a landing. It was the Tenant who was making it impossible to redecorate the flat. The Landlord would like to redecorate and install double glazing. The Landlord had served a Notice to Quit in 2008, but he had not progressed that to seek an order for possession.
7. The Landlord then left the hearing and the Tribunal considered all the evidence before it, including comparative rental evidence it had obtained from its Members' own research.
8. Prior to determining the rent, the Tribunal had to consider a legal objection to the process which had been made by Shelter Scotland, on behalf of the Tenant, in a letter dated 6 July 2018. In that letter, they stated that, in terms of Section 24 of the Housing (Scotland) Act 1988 ("the 1988 Act"), the Landlord could only serve a Form AT2 Notice proposing a new rent if the tenancy was a statutory assured tenancy and, in the absence of a Notice to Quit bringing the contractual tenancy to an end, the use of a Form AT2 Notice was not competent. Accordingly, the Tribunal should issue a certificate of non-jurisdiction.
9. The Tribunal accepted that the use of a Form AT2 Notice depended on the tenancy being a statutory assured tenancy, but it was of the view that the Property had been let for a fixed period from 4 June 2007 to 4 December 2007. The lease did not contain any provision for it continuing on, for example, a month-to-month basis thereafter and the contractual tenancy had, therefore, terminated on 4 December 2007. The Tribunal held, therefore, that Section 16(1) of the 1988 Act applied. That Section provides (paraphrasing) that, after the termination of a contractual tenancy, which was an assured tenancy, the tenant, so long as he retains possession without

being entitled to do so under a contractual tenancy, shall continue to have the assured tenancy. The Section goes on to state that such an assured tenancy falls within the definition of “statutory assured tenancy”. Accordingly, the Tribunal held that the tenancy was no longer a contractual tenancy, but was a statutory assured tenancy and that, in terms of Section 24(1) of the 1988 Act, the Landlord was entitled to use the Form AT2 Notice to propose an increase in the rent.

10. The Tribunal further held that, as a matter of fact, the Landlord had served a Notice to Quit on the Tenant on 30 September 2008, so Section 24(1) of the 1988 Act would have applied anyway. A copy of that Notice had been with the Landlord’s written representations, which had been copied to the Tenant and the Tenant had not, in his written representations, challenged the fact that it had been served on him.
11. In his written representations, the Tenant had stated that the issue date on the Form AT2 Notice served on him had been written as 23 November 2018, with the proposed rent to take effect on 7 June 2018. He wished to know whether the error in the issue date rendered the Form AT2 Notice invalid. The Tribunal accepted that the correct issue date should have been 23 November 2017, but it noted that the Tenant had stated in terms in his written representation that he had received it on 7 December 2017 and he had also, of course, referred it to the Tribunal. Accordingly, the view of the Tribunal was that this was simply a clerical error on the part of the Landlord and the Tenant had not been in any way prejudiced by that error.

Decision

12. The Tribunal had identified a number of one-bedroom flats in the area of the Property, including a number in Jordan Lane and the Parties had also provided a number of comparables. Accordingly, the Tribunal determined that there was a sufficient number of similar houses available to let in the locality to enable it to make a determination.

13. The Tribunal considered the properties offered by both parties. The Tenant had included flats in Craighouse Gardens, Balcarres Street and Fowler Terrace. The Landlord had referred to flats in Springvalley Terrace, Millar Place and Jordan Lane. At the hearing, the Landlord had expressed the view that the Tenant's examples were not truly comparable to the Property. The Tribunal's own researches included several of the flats referred to by the parties, and also flats in Maxwell Street and Merchiston Street. The Tribunal was, however, of the view that the best comparable properties were those in Jordan Lane itself and that the available evidence for that street was consistent and was sufficient to enable it to base its decision on those properties. There was recent evidence of a second floor two-bedroom flat having been let for £1,000 per month and a third floor two-bedroom flat having achieved £895 per month. A one-bedroom flat had been rented out at £850 per month, but it was located on the ground floor and was stated to have been recently refurbished throughout and was fully furnished with all new furniture. There is also another second floor one-bedroom flat in Jordan Lane currently on the market at £850 per month. It is unfurnished, but has a power shower and is double glazed.

14. Using its own knowledge and experience and having regard to the information available, the Tribunal considered that the market rent for a typical one-bedroom property in the locality of the current property, fully modernised, with gas central heating and double glazing would be in the region of £850 per month. The Tribunal had, however, to consider the decorative condition of the Property, the fact that the bathroom would benefit from modernisation, the unsatisfactory location of the utility area and the absence of double-glazing.

15. 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 might reasonably be expected to be let in the open market by a

willing landlord under an Assured Tenancy was £700 per month (£8,400 per annum).

16. The Tribunal decided that its Determination should take effect from 1 September 2018.

G Clark

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(Legal Member/Chair)

Date 23 August 2018.