

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 34 of the Housing (Scotland) Act 1988.

Chamber Ref: FTS/HPC/RS/19/1870

7/8 New Mart Gardens, Edinburgh EH14 1TZ ("the Property")

The Parties:

Lowther Homes Limited, registered in Scotland under the Companies Act 2006 and having their registered office at Wheatley House, 25 Cochrane Street, Glasgow G1 1HL, a subsidiary of Wheatley Group ("the Landlord")

Mr Alan Knight, 7/8 New Mart Gardens, Edinburgh EH14 1TZ ("the Tenant")

Tribunal members:

George Clark (Legal Member/Chairperson) and Robert Buchan (Ordinary Member).

1. BACKGROUND

The Tenant has been a tenant of this property since 15 November 2012. The tenancy is a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988. The current rent is £6,660 per annum (£555 per month). On 28 January 2019, the Landlords intimated that the rent would be increased to £6,900 per annum (£575 per month) from 1 May 2019. By application, received by the Tribunal on 19 June 2019, the Tenant applied for a determination of rent under Sections 24(3) and 34(4) of the Housing (Scotland) Act 1988 ("the 1988 Act")

The Tenant stated in his application that he was unhappy with two large rent increases in two years. The reasons given for the increases had been that extra services were being provided, but the view of the Tenant was that those services had already been provided by his original Landlords Dunedin Canmore Enterprise Limited prior to the Property being taken over by Lowther Homes. He had seen no appreciable difference in quality to the services since the rent rises. In further written representations, received by the Tribunal on 22 July 2019, he referred to what he

regarded as a change of attitude which indicated to him that, since taking over Dunedin Canmore, the Landlords were not continuing in the spirit of a mid-market rental policy.

3. THE INSPECTION

On the morning of 29 August 2019 the Tribunal inspected the Property. The Tenant was present at the inspection. The Landlords were not present and were not represented.

The property is a second floor flat in a 3 storey block of purpose-built flats, built around 2008. There is no lift. There is a security entry system to the block.

The accommodation comprises living room with open plan kitchen, one bedroom and a shower room. The internal floor area is approximately 48 square metres.

There is a gas central heating system in the Property. The windows throughout the Property are UPVC double glazed windows. The Landlord provided the white goods and the carpets and floor coverings throughout the Property.

On-street parking is available outside the Property.

The common areas of the Development of which the Property forms part are factored at the expense of the Landlord.

The Property is situated close to local amenities, including a 24-hour superstore and has good transport links, including a nearby railway station, to Edinburgh City centre.

4. THE HEARING

The Tenant attended the Hearing, but the Landlord was not present or represented.

The Tenant did not provide the Tribunal with any evidence of passing rents for comparable properties in the area and, as the Landlord had not made any written representations to the Tribunal, the Tribunal had to rely on its own knowledge and experience in determining the rent.

The Tenant asked the Tribunal to note that the Property did not have a separate kitchen. Otherwise, he had nothing to add to his written representations.

The Tenant then left the Hearing and the Tribunal considered all the evidence before it.

5. THE DECISION

The Tribunal had the following documents before it:-

5.1 A copy of the Short Assured Tenancy Agreement between the Tenant and Dunedin Canmore Enterprise Limited, commencing on 15 November 2012 and, if not terminated on 22 May 2013, continuing on a monthly basis thereafter.

5.2 The application and the documentation which accompanied it, including the letters from the Landlords intimating rent increases effective from 1 May 2018 and 1 May 2019.

5.3 The written representations from the Tenant, received on 22 July 2019.

5.4 Citylets Report and Market Overview for Q2 2019.

5.5 Details taken from websites of one-bedroom flats recently let in the EH14 postcode area.

The Tribunal noted the representations made by the Tenant.

No services are provided by the Landlord, so there were no additional factors to be taken into account and the comparable evidence demonstrated that there was no scarcity of one-bedroom flats available for let in the area. The Tribunal is satisfied that there is a sufficient number of similar flats in the locality let on assured tenancies (whether short assured tenancies or not) and that the test set out in Section 34(3)(a) of the Housing (Scotland) Act 1988 has been met.

The Tribunal then considered the terms of Section 34(3)(b) of the Act, which provides that where an application under Section 34(1) of the Act is made with respect to the rent under a short assured tenancy, the Tribunal shall not make a determination of the rent unless it considers "that the rent payable under the short assured tenancy in question is significantly higher than the rent which the landlord might reasonably be expected to be able to obtain under the tenancy", having regard to the tenancies of similar house in the locality.

The Tribunal was unable to comment on the rent increase which had been effective from 1 May 2018, its consideration being restricted to the increase from 1 May 2019, which had been referred to it.

The Tribunal considered all the evidence relating to current market rents that it had at its disposal. The Citylets Report indicated that the average rent for one-bedroom flats in the EH14 postcode area in Q2 of 2019 was £699 per month. The Report stated that the average rent of a one-bedroom flat in Edinburgh had risen by 3.6% in

the last year. The Tribunal had evidence that the full open market rent for a flat in the New Mart area, based on a number of comparables, was in the range £695-£780 per month. There was one comparable property which was let on a mid-market rent basis at £545 per month, but in that case, white goods were not provided by the landlord. The Tribunal noted that the rent for the Property intimated by the Landlords and effective from 1 May 2019, at £575 per month, was 3.6% higher than the existing rent, which was exactly in line with the findings of the Citylets Report.

Using their own knowledge and experience and having regard to the information available, the Tribunal concluded that the rent sought by the Landlords could not be said to be significantly higher than the rent which the Landlords might reasonably be expected to obtain under the short assured tenancy of the Property. The test set out in Section 34(3)(b) of the Act had, not, therefore, been met and the Tribunal was unable to make a determination of the rent in this case.

The view of the Tribunal was unanimous.

G Clark

Legal Member/Chairperson

29 August 2019