

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/RN/22/2842

5 (GF2) Mount Lodge Place, Edinburgh, EH15 2AD ('the Property')

The Parties:

Paul Baruffati, residing at Vidablikk 31, 7506 Stjordal, Norway ("The Landord")

and

Nicola Cave and Grace Taylor-Joyce, residing at 5 (GF2) Mount Lodge Place, Edinburgh, EH15 2AD ('the Tenants')

Tribunal members:

Paul Doyle (Legal Member) and Mike Links (Ordinary Member).

BACKGROUND

1. The Tenants have rented this property from the Landlord since 20/09/2021. The tenancy is a Private Residential Tenancy in terms of The Private Housing (Tenancies)(Scotland) Act 2016. The rental from September 2021 was £14,400.00 per annum (£1,200.00 per month). The Landlords applied for the rent to be increased. The Rent Officer registered a rent of £15,540.00 per annum (£1,295.00 per month) with effect from 01 September 2022. The Landlord referred the Rent Officer's determination to the First tier Tribunal.

2. Section 32 of the Private Housing (Tenancies)(Scotland) Act 2016 gives direction on the determination of the open market rent for the Property, as follows

32. Determination of open market rent

(1) Where an order maker is to determine the rent under section 25(1) or (as the case may be) 29(1), the determination is to be made on the basis that the property in question would be let by a willing landlord to a hypothetical willing tenant under a new tenancy which would—

(a) be a private residential tenancy,

(b) begin on the date on which the rent would have been increased in accordance with section 22(4) had a referral to a rent officer not been made,

(c) have the same terms as the tenancy to which the referral or (as the case may be) appeal relates.

(2) In determining the open market rent of the property under subsection (1), the order maker is to disregard—

(a) any positive effect on the rental value of the property that is attributable to work paid for or carried out by the tenant or a previous tenant under the same tenancy, unless the work was paid for or carried out pursuant to a requirement under the terms of the tenancy,

(b) any negative effect on the rental value that is attributable to a failure by the tenant or a previous tenant under the same tenancy to comply with the terms of the tenancy.

(3) In a case where two or more persons jointly are the tenant under a tenancy, a reference to the tenant in subsection (2) includes any one of them.

3. The parties were asked to provide the Tribunal with representations and any further information with regards to rental information of comparable properties. The Tenants made written representations on 15/12/2022. The Landlord made written representations on 11/08/2022.

4. The Rent Officer arrived at her decision after considering rentals of 2 comparable properties in the EH15 postcode area.

THE INSPECTION

5. At 10am on 23 January 2023 the Tribunal inspected the Property. The Tenants were present at the inspection. The Landlord was neither present nor represented. During the inspection, the surveyor member took photographs of the property. A schedule of those photographs is annexed hereto.

6. The property is a ground floor flat in a rendered, brick and block built, block of four flatted dwellinghouses. A common stair door provides access to the front door of the property. The front door of the property opens onto a small vestibule, which gives access to a central hallway. The property has three bedrooms, a living room, a bathroom, and a kitchen. In the kitchen there is a side door which opens onto a decked patio area. There is a communal drying green to the rear of the property. The property has gas central heating and UPVC double glazed windows throughout. There is unrestricted on street parking. The gross internal floor area is 81 square metres or thereby.

7. The Landlord provided the floor coverings throughout the Property. The white goods and furniture have been provided by the Landlord.

8. No services are provided by the Landlord.

THE HEARING

9. Both tenants attended the hearing. The landlord was present. Because the landlord joined the conference call from Norway, he did not provide evidence but restricted himself to making submissions only.

THE DECISION

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

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

2. Detailed written submissions from both parties.

3. A copy of the lease.

4. Open market comparable rental figures.

11. The Property is a ground floor three-bedroom property in a block of four flatted dwellinghouses attached to a neighbouring tenement. The property is in the Portobello area of Edinburgh with good transport links to the centre of Edinburgh. The property might benefit from redecoration.

12. Annexed to the Rent Officer's decision, there is an abbreviated list of the comparisons that the Rent Officer relied on. The details provided of those properties (and their monthly rental) are

Marlborough Street	Edinburgh	EH15	3 Rooms	£925.00
Portobello High Street	Edinburgh	EH15	3 Rooms	£1100.00

No other details such as the size or condition of these comparable rentals was made available.

13. By letter dated 11 August 2022 the landlord's representative provided details of comparable open market rents of two bedroom properties in Edinburgh

Address	Postcode	Rooms	Monthly Rent
5/5 Portobello Road	EH8	4	£1,425.00
7(GFR) Inveresk Road	EH21	5	£1995.00

14. The Tribunal obtained details of comparable market rents of three bedroom properties. A search of the EH15 postcode area only revealed one directly comparable property, which was advertised on the rental market in October 2022.

Address	Postcode	Bedrooms	Monthly Rent
High Street, Portobello	EH15	3	£1,350.00

15. In his submissions, the landlord candidly said that it is difficult to find a directly comparable rental property in the Portobello (EH15) area. He also told the tribunal that the property has three bedrooms.

16. The rentals relied on by the landlord are of limited assistance. The property is in postcode area EH15. EH8 is 1km east of the city of Edinburgh, and contains South Side, Northfield, Meadowbank, Dumbiedykes, and Piershill. EH21 is further to the East of Edinburgh and incorporates Musselburgh and Inveresk. One of the comparable figures relied on by the landlord is for a larger property.

17. The two relevant methods of assessing the open market rent in Scotland are (a) determining the open market rent by reference to market rents of comparable properties or (b) determining the open market rent by reference to the anticipated annual return based on the capital value of the property. Neither of these methods is the primary method. The task of determining an open market rent is a composite task which takes account of both of these methods. The appropriate method depends on the facts and circumstances of each case. The observations of the Lord President in Western Heritable Investment Co Ltd v Hunter (2004) and also in the case of Wright v Elderpark Housing Association (2017) reminds the Tribunal to proceed on the best available evidence and use the other evidence as a cross check, where possible.

Comparable Market Rents

18. The comparable market rents relied on by the Rent Officer range from £925.00 per month to £1100.00 per month. Each property has 3 rooms. No meaningful details are given about those properties. No meaningful analysis is provided by the Rent Officer. The addresses are incomplete. The date of comparison and the date of rental is not included in the details provided. None of the parties make submissions or raise direct challenges to the comparable figures relied on by the Rent Officer.

19. The entire range of all of the rental figures for three bedroomed flats within the same postcode area, which can properly be described as comparable, placed before the tribunal runs from £925.00 per month to £1350 per month.

20. One of the comparable figures relied on by the Rent Officer is for a property in Portobello High Street, with a rental of £1,100 per month. The comparable rental figure identified by the tribunal is also in Portobello High Street and attracted a rental of £1350 in October 2022. The range of realistically comparable rentals in September 2022 was from £1,100 to £1,350 per month.

21. The Rent Officers figure falls comfortably within the range of comparable rental figures found on the open market in the Portobello area of Edinburgh in September/October 2022.

22. The nearest comparable rental figure available to the tribunal is for a 3 bedroomed flat in a three storey, stone built, tenement in the High Street, Portobello. It is close to attractive local amenities and provides easier access to transport links to central Edinburgh.

23. The weight of reliable evidence tells us that, after allowing for differences in accommodation, size, condition, and location, if the property were offered to a willing tenant in September 2022 the Landlord could realistically expect a rental in the region of £1295.00 per month. The Tribunal considered the open market rent to be £1295.00 per month.

24. There is no evidence of either positive or negative effects of the Tenants' actions on the value of the property.

25. Section 29(3) of the Private Housing (Tenancies)(Scotland) Act 2016 says

In an order made under subsection (1), the First-tier Tribunal must record the amount of the rent that is fairly attributable to the provision of services, unless the amount is negligible or no amount is so attributable.

26. There is no proportion of rental attributable to the provision of services. We do not attribute a portion of the rent to services.

27. Accordingly the tribunal determined that the open market rent as at September 2022 is reasonably stated at £1295.00 per month.

Return on the capital valuation of the Property

28. 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 open market rents and the absence of evidence of capital valuations the Tribunal determined that it was appropriate to proceed to assess the open market rent of the Property without using the capital valuation method.

29. The Tribunal are mindful that fixing the open market rent is a composite task and consequently after consideration of all these factors the Tribunal determine that the open market rent for the property is £15,540.00 per annum (£1,295.00 per month).

30. In reaching this decision the tribunal have had regard to all the considerations required to be taken into account in terms of the Private Housing (Tenancies)(Scotland) Act 2016

31. This decision takes effect from the 01 September 2022.

32. Section 30 of the Private Housing (Tenancies)(Scotland) Act 2016 says

30. Finality of First-tier Tribunal's decision

(1) An order under section 29(1) may be reviewed in accordance with this section only.

(2) Accordingly (and without prejudice to the generality of subsection (1)), a decision of the First-tier Tribunal to make an order under section 29(1) may be neither—

(a) reviewed under section 43 of the Tribunals (Scotland) Act 2014, nor

(b) appealed against under section 46 of that Act.

(3) The First-tier Tribunal may review an order under section 29(1)—

(a) at its own instance, or

(b) at the request of the landlord or the tenant under the tenancy to which the order relates.

(4) In a review under subsection (3), the First-tier Tribunal may—

(a) take no action, or

(b) correct a minor error contained in the order.

Paul Doyle

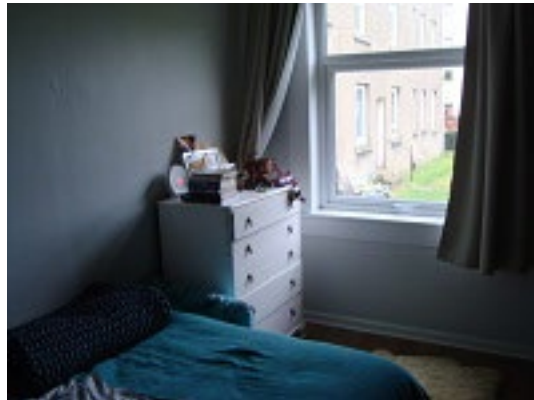
Legal Member

23 January 2023

5 (GF2) MOUNT LODGE PLACE, EDINBURGH EH15 2AD
SCHEDULE OF PHOTOGRAPHS



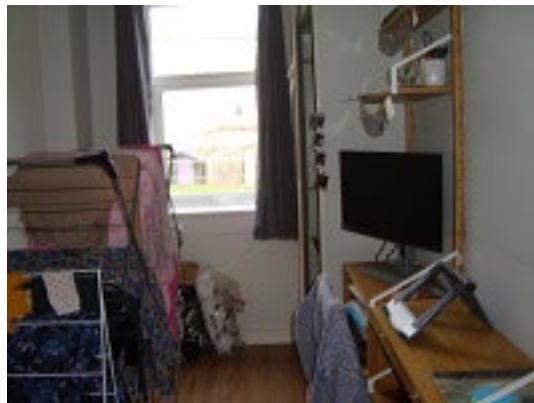
Front elevation



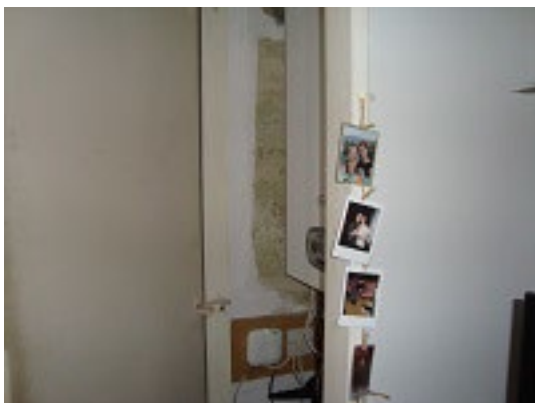
Bedroom (1/L)



Bathroom (2/L)



Bedroom (3/L)



Boiler in Bedroom cupboard



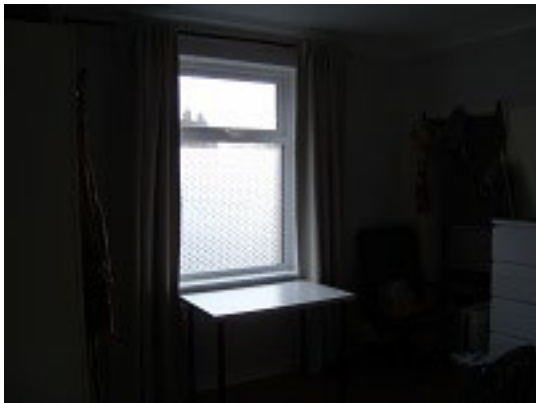
Kitchen (4/L)



Kitchen (4/L)



Living Room (5/L – to front)



Bedroom (6/L- to front)