

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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**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/21/3209**

5 Northfield Avenue, Glasgow, G14 9BN ('the Property')

### **The Parties:**

Edward Green and Lamyaa Nadim, residing at 5 Northfield Avenue, Glasgow, G14 9BN ('the Tenant')

Helena Chi-May Lee, residing at 39 Birchfield Drive, Glasgow, G14 9FG ('the Landlord')

### **Tribunal members:**

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

### **BACKGROUND**

1. The Tenant has rented this property from the Landlord since 07/01/2021. When the tenant took entry, the agreed rental was £1050.00 per month. On 12 October 2021, the Landlord served a rent increase notice on the tenant proposing to increase the monthly rental to £1150.00. The tenant referred the proposal to increase the rental to the Rent Officer, who indicated a proposal to set the rental of the property at £1075.00 per month. The Landlord disagreed and sought review of the Rent Officer's proposal.

2. In a letter dated 14/12/2021 the Rent Officer set the rental of the property at £1,150.00 per calendar month with effect from 07/02/2022. The Tenant referred the Rent Officer's determination to the First tier Tribunal.

3. To determine the fair rent for the Property the Tribunal are required to consider the rentals of comparable properties and whether there is a scarcity of supply of rental properties in the locality.

4. The property is a modern, brick built, mid terraced house (in a terrace of 4 houses). It is situated in a densely populated area with mixed styles of housing. Close by, there are two six storey blocks of flats, opposite which there are Victorian

stone built villas. Immediately opposite the property, there are brick built flatted dwellinghouses of similar age to the property. In the opposite direction, there are semi-detached dwellinghouses built in the 1940s and 1950s. None of those neighbouring dwellinghouses are similar to the property.

5. The parties were asked to provide the Tribunal with representations and any further information about rent levels of comparable properties and whether there is scarcity of supply of rental property in the locality. Neither the Landlord nor the tenant provided the Tribunal with any representations.

### **THE INSPECTION**

6. At 10am on 22 April 2022 the Tribunal inspected the Property. The tenant and the landlord were present at the inspection.

7. The property is a modern, brick built, mid terraced house, on two stories with gardens to the front and rear. The front door opens onto a hallway, and provides access to an open planned living area and dining area, leading to a modern fitted kitchen. Patio doors from the dining area provide access to the rear garden. The hallway provides access to stairs to the upper floor, where there are 3 bedrooms and a bathroom.

8. The property was completely refurbished and renovated at the end of 2020, immediately before the tenants moved into the property. The internal gross area of the property is 71sq m or thereby.

9. The windows throughout the Property are UPVC double glazed windows. The Landlord provided the carpets, floor coverings and white goods. The property was let to the tenants unfurnished. Residents only parking is available outside the Property. No services are provided by the Landlords.

### **THE HEARING**

10. Both the tenant and the landlord attended the hearing. The tenant and the landlord agreed the background set out at paragraphs 1 & 2, above. Mr. Green, for the tenant, told us they were content with the rent officer's proposal to set rent at £1075 per calendar month. Both the landlord and the tenant told us that they have carried out their own research, but cannot find any comparable figures because the only similar properties in the area are the three (neighbouring) houses in the terrace of four houses, of which this property forms part.

### **THE DECISION**

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

1. A copy of the notice of proposed rental increase sent on behalf of the landlord on 12 October 2021.
  2. The rent officer's proposed increase in rental, dated 24 November 2021
  3. The rent officers notification of increased rental, dated 14 December 2021
  4. The tenant's application to the First-tier Tribunal, dated 19 December 2021.
12. The Tribunal tried to obtain details of comparable fair rents of three bedroomed, modern, mid-terraced properties from the Fair Rent eRegister and from the EPC register, but found no relevant entries
13. The tribunal noticed from an estate agents sign (displayed near the property) that terms of let had recently being agreed for a property close by. On inquiry, tribunal members were told that that property is a two bedroom flatted dwellinghouse for which rental of £675 per calendar month was recently agreed. Tribunal members' enquiries are not helpful because there is a significant difference between a two bedroomed flatted dwelling house and a three bedroomed, mid terrace dwelling house on two floors.
14. Annexed to each of the Rent Officer's letters (dated 24 November and 14 December both 2021) there is an abbreviated list of the comparisons that the Rent Officer relied on. No meaningful details are given about those properties. No meaningful analysis is provided. The addresses are incomplete. The date of comparison and the date of rental is not included in the details provided.
15. The Tribunal considered the rental evidence. S. 32 of the Private Housing (Tenancies)(Scotland) Act 2016 says:

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.

16. The Tribunal recognised that the three methods of assessing the rent in Scotland are (1) determining the fair rent by reference to comparable registered rents in the area. (2) determining the fair rent by reference to market rents of comparable properties allowing for appropriate deductions for scarcity and (3) determining the fair rent by reference to the anticipated annual return based on the capital value of the property. They acknowledged that none of these methods is the primary method. The task of determining a fair rent is a composite task which takes account of these three methods. The appropriate method depends on the facts and circumstances of each case. The Tribunal also gave consideration to the observations of the Lord President in *Western Heritable Investment Co Ltd v Hunter* (2004) and also the more recent case of *Wright v Elderpark Housing Association* (2017) which requires the Tribunal to proceed on the best available evidence and use the other evidence as a cross check, where possible.

### Registered Rents

17. There is no reliable evidence available to the tribunal of comparable registered rents in the Fair Rent Register.

18. Because of the dearth of evidence, The Tribunal could not determine a comparable rent for the Property using the evidence of registered fair rents,

### Market Rents

19. The Tribunal also considered the evidence of market rents.

20. The rent officer applied a rate of £194 per square metre. In January 2021 the tenant agreed to pay, and the landlord was prepared to accept, rental at the rate of 177.46 per sq metre. The Rent Officer therefore applied an increase of

approximately 9.1% to come into effect 13 months after the tenants moved into the property.

21. The landlords unchallenged evidence is that, before the tenants moved into the property, she asked for a rental of £1150 per calendar month, but agreed to rent the property to the tenants at the lower figure of £1050 per calendar month.

22. The Rent Officer's comparisons might be incomplete, but they do tell us that the range of rentals in the G13 and G14 post code area ranges from £895 per calendar month to £1400 per calendar month.

23. Relying on an average taken from the Rent Officer's figures in November 2021, a comparable market rental would be £1,019 per month.

24. Relying on an average taken from the Rent Officer's figures in December 2021, a comparable market rental would be £1,315 per month.

### Scarcity

25. When the Tribunal fix a fair rent, they must do so on an assumption that the number of persons seeking to become tenants of similar properties in the locality of the Property is not substantially higher than the number of similar dwelling houses which are available for lease. Case law has determined that when considering the question of scarcity, a large area must be considered to avoid an increase in demand being caused by specific local amenities. The Tribunal considered it reasonable to consider the Glasgow City when assessing the question of scarcity. The parties did not make representations to the Tribunal on the question of scarcity.

26. The time taken to let properties and rent increases are factors that contribute to determining if scarcity exists. No reliable material is placed before the tribunal. Tribunal members' knowledge is that in the last 18 months the letting market in the City of Glasgow has been brisk. Considering the Citylets report for Q1 2022 did not challenge the opinion of the tribunal members

27. The Tribunal determined that there is still a healthy demand for private rented accommodation in Glasgow, but there is no reliable evidence of scarcity.

28. The Tribunal determined that a comparable market rent for the Property using the limited evidence of market rents, is in the region of £1,100.00 per calendar month

### The capital valuation of the Property

29. 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). In the absence of evidence of capital valuations the Tribunal determined that it was appropriate to proceed to assess the fair rent of the Property without using the capital valuation method.

30. The comparable fair rent cannot be determined because tribunal members could not find comparable registered fair rents. Both the landlord and tenant agreed that they could not find a directly comparable rental figure, and relied only on declarations that there has been an increase in the cost of living since January 2021.

**31. The Tribunal are mindful that fixing the rent is a composite task and consequently after consideration of all these factors the Tribunal determine that the fair rent for the property is £1,100.00 per calendar month.**

32. In reaching this decision the tribunal have had regard to all the considerations required to be taken into account in terms of Section 32 of the Private Housing (Tenancies)(Scotland) Act 2016.

33. This decision takes effect from the 7 February 2022.

26 April 2022

Legal Member