

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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**Decision in respect of a referral to the First-tier Tribunal for Scotland Housing and Property Chamber for a Determination of Rent under Section 34(1) of The Housing (Scotland) Act 1988**

**Chamber Ref: FTS/HPC/RS/22/4108**

**Property: Grooms Quarters, Glen Estate, Innerleithen, Scottish Borders EH44 6PX (“the Property”)**

**Parties:**

**Mr Andrew Brown, Grooms Quarters, Glen Estate, Innerleithen, Scottish Borders EH44 6PX (“the Tenant”)**

**and**

**Glen Settlement Trust, Glen House, Innerleithen House, Scottish Borders EH44 6PX (“the Landlords”)**

**Tribunal members: George Clark (Legal Member/Chair) and Mike Links (Ordinary Member/Surveyor)**

### **Background**

1. The lease in the present case is a Short Assured Tenancy, commencing on 14 August 2015, the original rent having been £420 per month. It contains a rent review provision entitling the landlords to increase the rent without notice by an amount equal to the percentage increase in the Retail Price Index over the calendar year ending 1<sup>st</sup> January prior to the rent

review date or, on giving the tenant at least 6 months' prior written notice, to increase the rent to the market rent of the Property. The Landlords gave notice to the tenant of their intention to increase the rent by 4% from £477 per month to £496.08 per month from 14 August 2022. The Tenant made an application to the First Tier Tribunal for Scotland Housing and Property Chamber ("the Tribunal") for a determination of rent under Section 34(1) of the Housing (Scotland) Act 1988 ("the 1988 Act"). The Tenant's Notice of Referral (AT4) was dated 10 November 2022.

2. On 31 January 2023, the Tenant made written representations to the Tribunal. He stated that the property is situated in a noisy agricultural courtyard and estate car park between two derelict stables causing the bare stone flagged and stone staired property to be freezing cold with diminished amenities and difficult access. The management of the estate had prohibited him from using the tarmac main drive and insisted that he uses the unmade up farm track which can be impassible in winter and extremely muddy and dirty to walk on all year after rain. He has no garden, although he is allowed occasional seating next to his back door in the working courtyard which is also used as a car park. He emphasised that the Property gets minimal light. He cited a number of other properties on the estate, similar ones having been listed for renting at £320 per month in 2020. Much larger cottages of 4 rooms and a separate kitchen with gardens had a fair rent of £400 per month fixed in 2017. He also provided comparable examples in Innerleithen and Peebles, but said that there is usually no scarcity of properties for rent on the estate.
3. The Landlords' agents, at the request of the Tribunal, provided basic details of 26 rented properties on the Estate, together with the present rents for each. The Landlords asked that this information be treated as confidential, not to be shared with the Tenant or any third party, because of its confidential nature and the landlords' agents GDPR responsibilities. 20 of the properties are let on a Short Assured Tenancy basis or are Private Residential Tenancies. Four are Protected Tenancies under the Rent (Scotland) Act 1984 and the remaining two are in a special programme with

the Scottish Government's Rural Housing Fund. There was a wide range of rental figures and the Landlord's agents stated that their ongoing programme of improvements and renovations meant that properties were at different stages of improvement, which would be reflected in rents. They regarded Coachman's House as the best comparison, as it is a flat and has the same accommodation as the present Property and is located in the same courtyard.

## **The Inspection**

4. The Tribunal inspected the Property on the morning of 27 February 2023. The Tenant was present at the inspection. The Landlords were represented by Ms Ashleigh Wilson, Portfolio Manager, of Rettie & Co, Edinburgh.
5. The Property is located in a corner of a stables courtyard adjacent to the main entrance courtyard of Glen House. An entrance door leads off the stables courtyard, but the Property can also be accessed by a doorway, which the Tenant describes as the front door, leading off the main courtyard. The tenant has, until recently, been permitted to use that door, but has been advised that he should no longer do so. He has also been told that he is not permitted to use the main access road to Glen House, but instead must use a different farm access track which leads directly to the stables courtyard.
6. The Property is stone-built. The roof is partially tiled and partially covered by corrugated metal sheeting.
7. The accommodation comprises a hallway and a kitchen/sittingroom on the ground floor and a bedroom and bathroom on the upper level, which is accessed by a stone staircase. It appears that the staircase was originally external and that at some point it has been enclosed to produce the present accommodation. The downstairs room is fitted with wall and floor kitchen units, and also acts as the living room of the Property. A dining table and chairs are also located in this room. There is a fireplace with a wood-burning stove, and a radiator. The ground floor accommodation has flagstone

flooring. The bedroom has a camp-ceiling and a radiator, and the bathroom contains a bath with shower fitting over, a w.c. a wash hand basin and a heated towel rail. There is a small boxroom on the upper level, but it does not have a window and cannot be considered to be a habitable room. The gross internal area is 50 square metres or thereby.

8. The courtyard location of the property and the size of the windows are such that it admits only limited daylight. There is a single allocated parking space and a designated storage area in the adjoining stables. The Property has no garden ground.

### **The Hearing**

9. A Hearing was held by means of a telephone conference call on the afternoon of 23 February 2023. The Tenant participated in the conference call. The Landlords were represented by Ms Wilson.

10. The Tenant told the Tribunal that there is no reference in his lease to access. He used the main driveway, as did his neighbours in the Coach House, but, a couple of years ago, he had been told that he could no longer use it and could no longer park in front of the main house. This meant that people visiting him had nowhere to park. The access road that he now has to use is very bad in winter weather. He had also been told that he could no longer sit on the grassed area of the courtyard of the main house, as he used to do. He had initially been told that he could use the boxroom to accommodate visitors staying overnight, but had now been told that it must be used solely for storage. He stressed that the Property is very dark and, consequently, very cold.

### **Reasons for Decision**

11. Section 34(1) of the 1988 Act provides that the tenant under a Short Assured Tenancy may make an application to the Tribunal for a determination of the rent which in the Tribunal's opinion, the landlord might reasonably be expected to obtain under the Short Assured Tenancy.

12. Section 34(3) of the 1988 Act states that where an application is made to the Tribunal under Section 34(1), the Tribunal shall not make such a determination unless it considers (a) that there is a sufficient number of similar houses in the locality let on assured tenancies (whether Short Assured Tenancies or not) and (b) 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 level of rents payable under the tenancies referred to in paragraph (a).
  
13. The Tribunal considered carefully all the evidence before it. The Landlord's agents had requested that rent details provided by them be kept confidential, and the Tribunal was content to anonymise the information, but the Tribunal had identified a number of registered rents of properties in the Glen Estate, these being a matter of public record, although they were Protected Tenancies under legislation which preceded the 1988 Act. The Tenant had compared the present Property with the nearby Coachman's House, which was, he said, a much bigger and custom-built two-storey property, with windows on both sides and with lovely light. It is better insulated and its heating costs are, therefore, much lower. The tenants are also allowed to use the main drive. The Tribunal noted, however, that the rent for the Coachman's House is significantly higher than the proposed rent for the present Property, although it also has only one reception room and one bedroom.
  
14. The rental figures provided by the Landlord's agents include detached, semi-detached and terraced houses and also flats. Consequently, there is a wide range of rents being charged. The Tribunal considered in particular the properties with one bedroom. As already noted, the rent for the Coachman's House is significantly higher. The Tribunal accepted the evidence of the Tenant that it is custom-built, better-appointed and has access to the main driveway, but did not consider that these benefits were such as to explain the significant difference in rent when compared to the present Property. The rent for a detached one-bedroom house is even higher than Coachman's House.

The rents for two other one-bedroom flats are lower than the present Property, but they are Rural Fund Housing tenancies and their rents are controlled by the Scottish Government, so are not subject to market forces.

## Decision

15. Having taken all factors into account the Tribunal determined that, in terms of Section 24(3) and 34(1) of the Housing (Scotland) Act 1988, there is a sufficient number of similar, or at least comparable, houses in the locality let on assured tenancies and that the rent sought was not significantly higher than the rent which the landlord might reasonably be expected to be able to obtain under the tenancy, having regard to the level of rents payable under those tenancies in the locality. Accordingly, the Tribunal was unable to make a determination of rent in the present case.

G Clark

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(Legal Member/Chair)

Date: 16 March 2023