



First-tier Tribunal for Scotland (Housing and Property Chamber)

Determination by First-tier Tribunal for Scotland (Housing and Property Chamber)

Statement of Reasons for Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber (hereinafter referred to as “the tribunal”) under Section 24 of the Housing (Scotland) Act 1988

Case Reference Number: FTS/HPC/RR/22/4062

Parties

Mr. Dave Hiddleston residing at 88 The Grove, Heathhall, Dumfries, DG1 1TW (“the applicant”)

Dalloch Limited, care of Direct Lettings Scotland Limited, 5-6 Melville Place, Edinburgh EH3 7PR (“the respondents”)

The Tribunal consisted of:-

Mr James Bauld - Chairperson

Mr Mike Links - Ordinary Member (Surveyor)

Introduction:-

1. This is a reference to tribunal in respect of the property at 88 The Grove, Heathhall, Dumfries DG1 1TW (“the property”). The landlords are Dalloch Limited. The tenant is Mr. Dave Hiddleston. The Tenancy is a regulated tenancy in terms of the Rent (Scotland) Act 1984.
2. The current rent being paid by the Tenant in respect of the Property is £380 per month or £4,680 per year. The Landlord via their agent Direct Lettings Scotland Limited, 5-6 Melville Place Edinburgh EH3 7PR lodged a form RR1 seeking to have a fair rent registered for the Property. The Landlord sought a fair rent of £7,200 per year. The Application by the Landlord was dated 5 September 2022.



3. The rent officer determined that the fair rent for the Property should be £5,472 per year (£456.00) per month. The date of the rent officer's decision is 17 October 2022. The tenant objected to the registered rent by an objection dated 7 November 2022. The Application was accordingly referred to the Tribunal for determination.

Inspection & Hearing

4. An inspection and hearing was set to take place on 12 April 2022. On that day the Tribunal members attended at the Property to carry out the inspection. The Landlord was represented by Jacqueline McAinsh, Property manager from Direct Lettings Scotland Limited who are the agents for the landlord. The Tenant was present and allowed access to the Tribunal members to carry out the inspection.
5. The property comprises a two storey semi-detached house, constructed circa 1940. The outer walls are cavity brickwork, rendered externally and the roof is pitched and tiled. The accommodation comprises, on the ground floor, Entrance Hall, Living Room, Dining Room and Kitchen. The upper floor has a Landing, three Bedrooms and a Shower Room/WC. Full gas fired central heating is installed with radiators throughout. Hot water is provided from the central heating boiler, located in a wall cupboard in the Living Room. The gross internal floor area amounts to 88 sq. m. or thereby.
6. After the inspection the Tribunal convened for the hearing held by teleconference call. The Tenant did not attend the hearing but had provided written submissions and comments during the inspection. The Landlords were represented by Ms McAinsh.
7. Accordingly the Tribunal required to make its determination based on the evidence obtained at the inspection and from the documents provided by the parties. The Tribunal's Decision was based on the inspection of the Property, the available documentation and the Tribunal's own knowledge, expertise and experience.

The Decision

8. The Tribunal had the following documentation before them:



- a. Copy form RR1 in respect of the Property being the Landlord's Application for registration of rent dated 5 September 2022 July 2018;
 - b. Determination by the rent officer dated 17 October 2022
 - c. Written submissions from the tenant
 - d. Written submissions from the Landlord's agents setting out information with regard to comparable rents of other properties within the area.
 - e. List of comparable rented properties produced by the ordinary member of the tribunal and circulated to parties in advance of the inspection
9. The Tribunal considered all the documents provided. The Tribunal were mindful of the terms of Section 48 (1) of the Rent (Scotland) Act 1984 which requires the Tribunal to have regard to all of the circumstances (other than personal circumstances) and in particular to apply their knowledge and experience of current rents of comparable properties in the area as well as having regard to the age, character and locality of the dwelling house in question and to the state of repair and if any furniture is provided for use under the Tenancy, the quantity, quality and condition of the furniture.
10. The Tribunal are also required to consider in terms of Section 48 (2) of the same Act that the "number of persons seeking to become the Tenant of similar dwelling houses in the locality under terms (other than those related to rent) of the regulated Tenancy is not substantially greater than the number of dwelling houses in the locality which are available for letting on such terms). This is often referred to as "scarcity").
11. The Tribunal noted that there are three accepted methods in Scotland for determining rent. These methods are:-
- a. Determining a rent by having regard to registered rents of comparable houses in the area;
 - b. Determining a rent by comparing market rents within the area and then discounting for any scarcity element and making any appropriate disregards are required by Section 48 (3) of the 1984 Act "Tenant's Improvements" and;
 - c. Calculating the appropriate return based on the capital value of the Property taking into account any element of scarcity.



12. None of these methods is regarded as being the primary method and the method to be chosen by the Tribunal in any particular case will depend upon in each case upon the evidence available.
13. The calculation of an appropriate return based on the capital value of the Property did not appear appropriate given firstly the imprecision of such a calculation which requires the use of contentious variables compared to the relevant ease of use in comparable rents and secondly the readily available evidence of comparable rents in the area of the Property.
14. The Tribunal considered whether they should use the method of comparing existing registered rents or using the method of taking a market rent and this discounting what scarcity and disregards they consider would be appropriate.
15. With regard to existing registered rents, the list of comparable properties produced by the tribunal member contained information with regard to nine properties in the same street as the property itself. All were owned by the same landlord. In each case, these properties were included in the Rent register and all had registered rents set at £4,572 per annum effective from 17 October 2022. None of these determinations had been challenged by either the respective tenants nor by the landlord. All properties were a mix of semi-detached and terraced houses and directly comparable to the subject property.
16. The Tribunal also, noted that the Landlord's agents had provided information relating to three recent tenancies they had granted in respect of houses in the area. All of these tenancies had been created as private residential tenancies under the now current legislation. In these tenancies the agreed rents charged range from £600 per month to £650 per month. None of these tenancies benefit from the "fair rent" regime under the 1984 Act.
17. Mr Hiddleston was not present at the hearing. In his application and in his written submissions he indicated that he believed the proposed new rent was not fair and was excessive. He referred to the "rent cap" provisions in the Cost of Living (Tenant Protection) (Scotland) Act 2022 which currently restricts rent increases in other tenancy regimes. This Act has no impact on tenancies which are covered by the fair rent regime under the 1984 Act. He indicated he understood why the Landlord was seeking to increase the rent and understood that a rent increase was likely but that he thought the proposed increase to £456 per month from £380 per month would cause him hardship.



18. Having considered matters, the Tribunal accepted the evidence of the various registered rents of other houses in the same street as being the best method to determine the fair rent in this case.
19. In the case of Wright v Elderpark Housing association ([2017] CSIH 54) the Court of Session stated that ***“...if rent in the rent register has been set by a rent officer and has not been referred to a committee, that means that it has been accepted by both landlord and tenant. That acceptance indicates that the level of rent can be seen as consensual, which is in itself an indication that the rent is truly a fair rent”***
20. In this case, the tribunal have the evidence of nine recently registered rents, all relating to nigh identical properties in the same street, all owned by the same landlord, all being fixed at the level of £4,572 per annum. The landlord has not challenged any of these decisions of the Rent Officer and has accepted the rent set at £4572 per annum.
21. The Tribunal accordingly concludes that the appropriate rent which should be fixed is £456 per month or £5,472 per year.
22. Having determined the market rent, the Tribunal then considered whether there should be any scarcity deduction in terms of Section 48 (2) of the 1984 Act. Applying its own skill, knowledge and experience, and considering the evidence providing by the Letting Agent for the Landlord, the Tribunal could find no evidence of any excess demand for properties such as the one under inspection. In the circumstances the Tribunal decided there was no significant scarcity of properties and there should be no amendment to the rent determined.
23. In reaching this Decision the Tribunal have had regard to all the considerations required to be taken into account in terms of Section 48 of the Rent (Scotland) Act 1984. This Decision takes effect from 12 April 2023 being the date of Decision of the Tribunal although it is noted that the landlord’s agent indicated that the increased rent will only be charged from 28 April 2023.

Right of Appeal

In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That



party must seek permission to appeal within 30 days of the date the decision was sent to them.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Legal Member

12th April 2023
Date