

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/RS/23/4178

7B, Scotland Close, Bo'ness, EH51 0AH (the Property')

The Parties:

Avon Properties ('the Landlords')

Northwood (Central Lowlands) Limited ('the Landlords' Representative')

Christopher Watkins ('the Tenant')

Tribunal member:

Jacqui Taylor (Legal Member)

1. Background.

Christopher Watkins is the tenant of the Property in terms of a short assured tenancy granted by the Landlords dated 4th October 2017.

The Landlords' representative provided the Tribunal with a copy of the form AT5 dated 2nd August 2017.

The commencement date of the short assured tenancy was 4th August 2017. The Landlords Representative sent the Tenant a letter dated 8th September 2022 by email seeking to increase the rent of the Property to £525 per month from 4th January 2023. The Tenant completed form AT4 dated 14th November 2023, which he sent to the Rent Officer. The Rent Officer sent the Tenant a letter dated 23rd November 2023 which referred to the AT4 application and explained that the Rent Officer could not determine if the tenancy was exempt from the rent cap under the Housing Scotland Act 1988 as amended by the Cost of Living (Tenant Protection)(Scotland)Act 2022 and this is a

matter for the courts and Tribunals to determine. The Tenant thereafter sent the AT4 application to the Tribunal.

3. By Notice of Acceptance by the Chamber President dated 24th November 2023, she intimated that he had decided to refer the application (which application paperwork comprises documents received on 21st November 2023) to a Tribunal. The Notice of Acceptance was in the following terms:

'The application raises a question on the legal competency of the application before the First-tier Tribunal and the jurisdiction of the First-tier Tribunal to make at first instance a determination on the rent issue in dispute. It involves consideration of the provisions of the Cost of Living (Tenant Protection) (Scotland) Act 2022 and the amendments made to the Housing (Scotland) Act 1988. It is appropriate in these circumstances that the parties have an opportunity to submit written legal representations on the competency of the application before the First-tier Tribunal before a decision is made. The issue of legal competency of the application may be suitable for determination without a hearing based on the parties' written representations, all in terms of Rule 18 of the Rules, and the written representations of the parties to this procedural approach are sought. The detail of the application is set out in the attached paperwork and the attached letter specifies the date by which any written representations must be made by the Respondent. A party can request that the date specified for making written representations be changed to a later date and such request will be considered by the First-tier Tribunal and any change to the specified date must be notified to each party. Any written representations received will be sent to the other party.'

4. The Chamber President issued a Direction to the parties dated 7th December 2023. The Direction stated that the application raises a question of legal competency. It involved consideration of the provisions of the Cost of Living (Tenant Protection)(Scotland) Act 2022 and the amendments made to the Housing (Scotland) Act 1988. It stated that it may be that the Upper Tribunal judgement in *Andrew Brown v Glen Settlement Trust* 2023 UT 39 may be relevant to the circumstances of the case and invited the parties to make written representations on this point.

5. The parties did not make any written representations on the competency of the application.

6. The Chamber President issued a further Notice of Direction dated 3rd January 2024 and advised the parties that a hearing had been set down when the issue of competency would be considered and oral submissions could be made.

7. The Hearing on the competency of the application.

This case called for an in person Hearing at 10.00 on 20th March 2024 at STEP Stirling, Stirling Enterprise Park, John Player Building, Stirling, FK7 7RP.

The Tenant did not attend the hearing and was not represented.

Mrs Ann Johnston and Jim McHugh of Northwood (Central Lowlands) Limited attended the hearing and represented the Landlords.

The Tenant had been advised of the Hearing by email dated 25th January 2024. The Tribunal were content to proceed with the CMD as the requirements of Tribunal Rule 29 had been satisfied.

Mrs Johnston advised the Tribunal that she considered the rent increase to be competent as clause seven of the lease was a rent increase clause.

In connection with the competency of the application she advised the Tribunal that as section 34 of the Housing (Scotland) Act 1988 was repealed by Schedule 1, paragraph 2(7) to the Cost of Living (Tenant Protection)(Scotland) Act 2022 which came into effect on 28th October 2022 the application was not competent.

8. The Decision.

8.1 Findings in Fact

The Tribunal made the following findings in fact:

The lease between the parties is a short assured tenancy.

The Tenant's application to the Tribunal for a rent determination was made on 21st November 2023.

8.2 Section 34 of the Housing (Scotland) Act 1988 gives the Tenant the right to apply to the Tribunal for a determination of the rent the Landlord might reasonably be expected to obtain under the short assured tenancy. The Cost of Living (Tenant Protection)(Scotland) Act 2022 came into effect on 28th October 2022. Schedule 1, paragraph 2(7) to the Cost of Living (Tenant Protection)(Scotland) Act 2022 repealed section 34 of the Housing (Scotland) Act 1988 with effect from 28th October 2022. The repeal is due to come to an end on 31st March 2024.

8.3 Following the decision of the Upper Tribunal judgement in *Andrew Brown v Glen Settlement Trust* 2023 UT 39, the Tribunal determined that as the Tenant's application to the Tribunal for a rent determination was made after the Cost of Living (Tenant

Protection)(Scotland) Act 2022 came into effect the Tribunal has no jurisdiction to consider the application.

Accordingly, the Tribunal dismissed the application.

9. Appeal

A landlord, tenant or third party applicant 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.

...J.Taylor.....

20th March 2024

Legal Member