

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber)

(Hereinafter referred to as “the Tribunal”)

Under Section 34 of the Housing (Scotland) Act 1988 (“the 1988 Act”)

Case Reference Number: FTS/HPC/RS/26/0299

Re: Perrystone Lodge, Dunure Road, Ayr KA7 4LD (“the property”)

Ms Elizabeth Eaglesham and Mr Gary McKee, Perrystone Lodge, Dunure Road, Ayr KA7 4LD (“Applicants and Tenants”)

Mr Kenneth McPherson, address unknown (Respondent and Landlord)

Tribunal Members – Sarah O'Neill (Legal Member) and Peter McEachran (Ordinary (Surveyor) Member)

Decision

The tribunal is unable to make a determination. The application is therefore dismissed.

Background

1. This is a reference to the tribunal in respect of the property at Perrystone Lodge, Dunure Road, Ayr KA7 4LD.
2. The landlord is Mr Kenneth McPherson. The tenants are Ms Elizabeth Eaglesham and Mr Gary McKee.
3. The tenancy is a short assured tenancy under the Housing (Scotland) Act 1988 (“the Act”). It commenced on 3 April 2017.
4. On 5 November 2025, Limegreen Estate Agents (“Limegreen”) wrote to the Applicants on behalf of the Respondent, indicating that the Respondent intended to increase the rent on the property from £721 per calendar month to £1250 per calendar month with effect from 3 February 2026.

5. The tenants timeously objected to the proposed increase by referring the proposed increase to the tribunal by lodging a Form AT4 dated 20 January 2026.
6. The matter was referred to a tribunal and both parties were invited to make written representations. Both parties were also notified that an inspection and hearing would take place and were invited to attend the inspection and hearing.
7. Written representations were received from the Applicants on 10 August 2026.
8. Written representations were received from Limegreen on behalf of the Respondent on 17 August and 7 September 2026.
9. The tribunal issued a direction to the parties on 17 August 2026. In the direction, the tribunal noted that it would explore as a preliminary issue at the hearing whether the notice of a rent increase dated 5 November 2025 was validly served on the Applicants by the Respondent.
10. The tribunal also noted that its powers in setting or determining rents under assured or short assured tenancies are limited by the terms of the Housing (Scotland) Act 1988. It noted that in respect of a short assured tenancy, the tribunal can only make a determination if there are a sufficient number of houses in the locality let on assured tenancies and the rent payable under the tenancy is significantly higher than the rent which a landlord might reasonably be expected to be able to obtain under the tenancy, having regard to the level of rents payable under those comparable tenancies.
11. The tribunal also noted that the parties should be aware that if the tribunal is able to make a determination, it will require to do so based on the open market rent which could be achieved for the property. The tribunal is required to determine the rent at a level which the tribunal considers the house might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy.
12. In light of the above, the tribunal invited both parties to provide by 1 September 2026 1) any further written submissions they wished to make regarding the validity of the rent increase notice of 5 November 2025 and 2) any available evidence of any other rents in respect of other assured tenancies in the area.
13. No written representations were received from either party in response to the tribunal's direction.

The inspection and hearing

14. The inspection took place at the property on 8 September 2026 at 10am. The Applicants were present and provided access for the inspection.

15. Following the inspection, a hearing took place on the same day at 11.45am at Ayr Town Hall, New Bridge Street, Ayr. Both Applicants were present and represented themselves. The Respondent was represented by Ms Zoe Hughes of Limegreen.

Findings in fact

16. The parties entered into a short assured tenancy agreement in relation to the property which commenced on 3 April 2017. The initial term of the tenancy ended on 4 October 2017, with the tenancy continuing from month to month thereafter until terminated by either party.
17. The tenancy agreement states at paragraph 3 that the rent is £675 per month payable in advance. Paragraph 3 also states: "The Landlord's agents may increase the rent after the initial term by giving the Tenant a minimum of two months' notice in writing".
18. At the time of the hearing, an eviction application by the Respondent against the Applicants was under consideration by another tribunal.
19. The property is located just off the A719 (Dunure Road), and lies approximately 4 miles to the south of Ayr.
20. Local shopping and other amenities are available within Ayr.
21. The property comprises the lodge house for Perryston House. access is via a private road from the main road.
22. The house comprises a detached lodge house of traditional brick construction with a Stucco style external render. The roof is pitched design clad in original tiles and flooring is suspended timber. Windows are replacement upvc framed double glazed units.
23. The property is estimated to be in the region of 80 years old and has a gross internal floor area of approximately 118 square metres.
24. The accommodation may be summarised as follows:-
- Ground floor :- hall, living room, kitchen, bedroom 1, bathroom, rear vestibule.
- First floor :- landing, bedroom 2, bedroom 3.
25. The property is thought to be connected to mains supplies of electricity and water with drainage to a septic tank. Heating is from an oil fired central heating system. The boiler is located in the rear vestibule and the oil storage tank is within the garden.

26. It is assumed all necessary servitudes are available to allow satisfactory occupation.
27. The road is likely to be privately maintained and the lodge may have some liability for the upkeep.
28. At the time of the tribunal's routine limited inspection of the property, it appeared generally in fair order with a number of repair and maintenance items requiring attention. There was, however, a significant dampness issue evident within the property. This is particularly evident in the ground floor bedroom where it is causing mildew and damp staining on surfaces, together with deterioration to carpets. This issue will require to be addressed and it would be appropriate to consult with a recognised timber and damp specialist to reach a solution.

The law

29. The relevant law contained in Section 34(3) of the 1988 Act only allows the tribunal to make a determination in respect of the rent in a short assured tenancy in the following circumstances, namely where 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)”

Preliminary issue

30. The Applicants submitted that the rent increase letter dated 5 November 2025 which they received from Limegreen on behalf of the Respondent was invalid as it had not been properly intimated to them. They argued that they should have been sent a form AT2 and given six months' notice of the proposed increase. They had been given a notice to quit on 16 September 2021. The Respondent had changed his mind and allowed them to remain in the property, but they had not received a new tenancy agreement after the ish date. They therefore had a statutory assured tenancy, and a form AT2 was required.
31. The Applicants had produced a notice to leave dated 16 September 2021 which they had received from the Respondent's solicitor, stating that an application would not be submitted to the tribunal for an eviction order before 17 March 2022. They had also produced a notice to quit from the Respondent's solicitor dated 23 August 2024, requiring them to leave by 31

October 2024. This was accompanied by a notice under section 33 of the Housing (Scotland) Act 1988 (“a section 33 notice”) which stated that the tenancy would end on 31 October 2024, and a form AT6 dated 31 October 2024.

32. At the hearing, the Applicants produced a copy of a further notice to quit from the Respondent’s solicitor dated 10 May 2024, together with a copy section 33 notice stating that the tenancy would end on 15 July 2024 and a further form AT6, both dated 10 May 2024.
33. The Applicants confirmed that they had found information on Shelter Scotland’s website which stated that if they had been served a notice to quit, their landlord was required to send them a form AT2. They had understood from the letters received from the Respondent’s solicitor that further to the notice to leave dated 16 September, they now had a statutory assured tenancy.
34. Ms Hughes stated that it was the Respondent’s position that there was still a contractual short assured tenancy in place between the parties. That was why the appropriate notices had been served by the Respondent prior to making an eviction application to the tribunal. The rent increase, which had been implemented in accordance with paragraph 3 of the tenancy agreement, was therefore valid and took effect from 3 February 2026. The Applicants currently owed the Respondent £4232 in rent arrears as a result of the rent increase.

Submissions by the Applicants

35. The Applicants said that they believed the property had been on the market since at least 2015. It had been marketed for rental in 2017, when they had moved in. The Respondent had then put it back on the market around 3 weeks after they had moved in. They had been given a notice to quit in 2021 as the property was to be sold, but the Respondent had later changed his mind and asked if they want to stay.
36. They believed that the rent increase was related to the ongoing eviction proceedings and that the Respondent wanted to get them out of the property by increasing the rent. The rent increase notice had been sent to them less than a week after the initial case management discussion for the eviction application.
37. They were unsure of the grounds on which the eviction application had been brought. Initially the Respondent had been planning to sell the property. Then he had said that his son wanted to move into the property, but they thought that the application had been brought on the grounds that the tenancy had reached its ish date. The eviction proceedings had been ongoing for some time, having been continued several times for various reasons.

38. An evidential hearing had been held regarding the eviction application on 28 August 2026. It had been postponed because the Respondent had asked for time to negotiate with the Applicants regarding their potential purchase of the property. They had made a verbal offer, but so far the Respondent had not suggested a price. The tribunal had given the parties three weeks to reach agreement, failing which a further hearing would be fixed.
39. The Applicants were unable to provide evidence of comparable properties in the area which were let on assured or short assured tenancies. While they were aware that their rent had been low, they had been good tenants and had looked after the property well. The size of the proposed rent increase, which represented a 73% increase on the previous rent, had come as a shock to them.
40. They were unable to use the downstairs bedroom due to the dampness issues which the landlord had not addressed. They confirmed that they had not made a repairing standard application to the tribunal. They had sought advice regarding the eviction and the rent increase, but were unaware of the possibility of making a repairing standard application to the tribunal.

Submissions on behalf of the Respondent

41. Ms Hughes told the tribunal that the Respondent had intended to sell the property together with the main house. He had thought that he had sold both properties in 2021, but the sale did not go through. The main house had now been sold separately, as he had been unable to obtain vacant possession to the property. It was her understanding that the Respondent now wished to move into the property himself. The Applicants disputed this, saying that they believed the Respondent had bought a house in Ayr and was now living there. Ms Hughes said that she was unaware of this.
42. Limegreen had taken over management of the property from the Respondent in late 2025. The landlord had asked them to increase the rent in line with market value.
43. Limegreen had no other properties which were similar to this property, regardless of the type of tenancy. She believed that, on the basis of local comparable three bedroom rental properties the rental market value for the property was in the region of £1200 -£1300 per month. She conceded that it was difficult to find comparables and that these other properties were likely to be let under private residential tenancies. She had not produced any comparable rents to the tribunal.
44. She conceded that the proposed rent increase was significant. She confirmed that the rent increase notice had been sent in accordance with clause 3 of the tenancy agreement.

Reasons for decision

45. With regard to the validity of the rent increase notice, the tribunal finds that there remains a contractual tenancy in place between the parties. The notice to leave dated 16 September 2021 was invalid as it refers to the Private Housing (Tenancies) (Scotland) Act 2016 and is applicable only to a private residential tenancy. This notice did not therefore end the contractual tenancy between the parties.
46. The tribunal also determines on the basis of the information before it that the notice to quit dated 28 August 2024 was invalid. The notice required the tenants to move out by 31 October 2024, which was not an ish date. The original tenancy period ran until 4 October 2017, and was then continued from month to month thereafter. The correct ish date would therefore have been the 4th of the month. The tribunal also considers that the notice to quit dated 10 May 2024 which was produced by the Applicants at the hearing, and which did not include a termination date, was also invalid.
47. The tribunal therefore finds that, as none of the three notices produced by the Applicants were valid, a contractual tenancy remains in place between the parties. In terms of paragraph 3 of the tenancy agreement, the landlord can increase the rent by giving at least two months' notice to the tenants. No limit on the level of any increase is specified. As the Respondent gave the Applicants more than two months' notice of the proposed notice, the tribunal therefore determines that the rent increase notice was valid.
48. Neither party had provided any information to the tribunal which demonstrated the current rent for any existing assured or short assured tenancy within the general area of the property. The oral evidence submitted by Ms Hughes regarding the rents for other similar properties in the area, which was not supported by any documentary evidence most likely related to properties let on private residential tenancies under and in terms of the Private Housing (Tenancies) (Scotland) Act 2016.
49. The tribunal could find no information relating to any existing assured or short assured tenancies within the general area. There is no central register of such existing rents provided by any organisation which is available either to the tribunal or to the general public. There is no public record of private rentals.
50. In the absence of any information relating to rent for comparable properties on short assured tenancies or assured tenancies in the area, the tribunal is unable as a matter of law to make any determination given the specific provisions of section 34 of the 1988 Act.

Decision

The application is therefore dismissed and no determination is made. The effect of this is that the rent increase took effect from 3 February 2026.

Right of Appeal

In terms of Section 46 of the Tribunal (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.

Signed.....Date:....25 September 2026
Sarah O'Neill, Chairperson