

Housing and Property Chamber
First-tier Tribunal for Scotland



HOUSING (SCOTLAND) ACT 1988, SECTION 25(1)

**REGISTER OF RENTS DETERMINED UNDER STATUTORY ASSURED
TENANCIES**

REFERENCE NO:

FTS/HPC/RA/18/2637

APPLICATION RECEIVED

10 October 2018

ADDRESS OF PREMISES

6 Fairnington Farm Cottages, Maxton, near Kelso, Roxburghshire, TD5 8NT

TENANT

Mr and Mrs Hugh Tawse, residing at 6 Fairnington Farm Cottages, Maxton, near Kelso, Roxburghshire, TD5 8NT

LANDLORD

Mr Nigel Salvesen, Fairnington House, Maxton, near Kelso, Roxburghshire

AGENT FOR THE LANDLORD

CKD Galbraith, 7 Bank Street, Galashiels, TD1 1EN

RENTAL PERIOD

Monthly

DATE TENANCY COMMENCES

April 1989

DESCRIPTION OF PREMISES

End terraced farm cottage dating from around 1890 with double-glazing, solid fuel central heating, large garden ground to front and medium sized garden ground to rear comprising living room with bedroom off, dining area, kitchen, two further bedrooms and bathroom.

SERVICES PROVIDED

None

TRIBUNAL MEMBERS

Chairman (Legal)

Ordinary Member (Surveyor)

Mr E K Miller

Mr M Links

PRESENT RENT

£4,740 per annum

RENT DETERMINED

£5,160 per annum

DATE CONSIDERED

17 December 2018

EFFECTIVE DATE

7 February 2019

E Miller

Ewan K Miller

Chairman of the Housing and Property Chamber of the First-Tier Tribunal for
Scotland

Date: 8/1/19

Housing and Property Chamber First-tier Tribunal for Scotland



STATEMENT OF REASONS FOR DECISION OF THE HOUSING AND PROPERTY CHAMBER OF THE FIRST-TIER TRIBUNAL FOR SCOTLAND

(hereinafter referred to as "the Tribunal")

Under Section 25(1) of the Housing (Scotland) Act 1988

Case Reference Number: FTS/HPC/RA/18/2637

**Property at 6 Fairnington Farm Cottages, Maxton, near Kelso, Roxburghshire,
TD5 8NT ("the Property")**

The Parties:

Mr and Mrs Hugh Tawse, residing at 6 Fairnington Farm Cottage, Maxton, near Kelso, Roxburghshire, TD5 8NT ("the Tenant")

Nigel Salvesen, Fairnington House, near Kelso, Roxburghshire ("the Landlord")
represented by CKD Galbraith, 7 Bank Street, Galashiels, TD1 1EN

The Tribunal comprised:

Mr E K Miller (Chairman and Legal Member)
Mike Links (Ordinary Member, Surveyor)

Background

1. This is a reference by the Tenant of the Landlord's notice seeking an increase of rent for the Property. The Tenant seeks a determination from the First-Tier Tribunal of the open market rent for the Property as defined in Section 25(1) of the Housing (Scotland) Act 1988 as at December 2018.
2. The tenancy is an assured tenancy. On 12 July 2018 the Landlord's agent served on the Tenant an AT2 notice under Section 24(1) of the Housing (Scotland) Act 1988 seeking an increase in rental from £395 to £430 per calendar month with effect from 7 February 2019. By way of Form AT4 dated 7 October 2018, the Tenant referred the Landlord's notice to the Tribunal for the determination of the said open market rent.

Inspection

3. A Tribunal comprising Mr E K Miller (Chairman and Legal Member) and Mr Mike Links (Ordinary/Surveyor Member) carried out an inspection of the Property on 17 December 2018. The Tenant was present throughout the inspection. Neither the Landlord nor his representatives were present. The Tribunal took the Schedule of Photographs, which is attached to this Statement and incorporated herein.

Hearing

4. The Tribunal held a Hearing at the Langlee Community Centre, Marigold Drive, Galashiels, TD1 2LP at 11:30am on 17 December 2018. Mrs Tawse, the tenant was present and represented herself. The Landlord was not present but was represented by Ms Susan Watson and Ms Yvonne Keddie from CKD Galbraith, the Landlord's agents.

Description

5. The Property comprises an end terrace farm cottage dating from around 1890. The Property has relatively modern double-glazing. There is a large garden to the front, primarily laid to grass, and a more modest garden to the rear with various outbuildings. Internally, the Property is on two levels. On the ground floor there is a living room with a bedroom off this. The bedroom is a good size. There is a small dining area leading through to a kitchen located within a rear extension. On the first floor there are two bedrooms together with a bathroom. The Property is located in an attractive but remote rural location.
6. The heating system within the Property was solid fuel central heating with an open fire in the living room and an immersion heater. The Tenant had a number of electric and oil filled radiators in the Property that they had provided themselves to provide additional heating.
7. It was accepted by the parties that the floor coverings throughout the Property had been provided by the Tenant. It was also noted and agreed that the Tenant had installed a shower over the bath and provided the wet wall in the bathroom.
8. It was noted that there were areas of mould spotting in the dining room and the smaller of the upstairs bedrooms. The Tribunal was satisfied that these were not as a result of water ingress to the Property but were rather condensation issues arising from everyday living. The Tribunal noted that there was some staining on the walls of the main bedroom which appeared to have arisen as a result of insulation that had previously been installed by the Landlord. The Landlord had obtained a quote and had instructed further works to address this issue. The works had not taken place at the time of the Tribunal due to dates not suiting the Tenant. It was accepted and agreed by both parties that the works would be carried out shortly however. On that basis the Tribunal took the view that, overall, the Property was in an

acceptable condition and did not have any material bearing on the rental position.

Documentation

9. The Tribunal had the following documentation before it:-

- (1) Form AT2 as completed by the Landlord.
- (2) Form AT4 completed by the Tenant.
- (3) Decision of the Tribunal relating to the Property dated 28 May 2012.
- (4) Various particulars for rent for properties obtained by the Tribunal for properties in the area.
- (5) Evidence from both the Landlord and the Tenant in relation to properties in the area available for rent or recently let.

Discussion

10. The task for the Tribunal under Section 25 of the 1988 Act was to determine the rent at which the Property might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy as at the date of the Hearing.
11. The Tribunal was required to carry out the determination applying the test for valuation set out in Section 25(1) of the 1988 Act while in terms of Section 25(2) disregarding any effect on the rent attributable to (a) the sitting tenant, (b) to any improvement carried out by the Tenant or a predecessor in title except where carried out in pursuance of the terms of the lease, and (c) to any failure by the Tenant to comply with the terms of the tenancy.
12. The tenancy was unfurnished. As noted above, it was accepted that the Property had been improved by the Tenant with the addition of floor coverings throughout and the installation of the shower over the bath. In the view of the Tribunal these were the only material elements that required to be disregarded in terms of Section 25(2)(b) when assessing the rental levels.
13. Turning to the question of rental levels, the Landlord led evidence in relation to a number of the neighbouring row of properties of which the Property formed part. The Landlord owned the row of farm cottages and the Tribunal had no reason to doubt the evidence produced in relation to their rental levels. Other properties were referred to as well but the Tribunal found the evidence relating to the neighbouring properties to be the most compelling on the basis they were identical in location and similar in style and size of property.

Of particular relevance was No 5, Fairnington Cottages. This comprised a lounge, kitchen, two bedrooms, a dining room/third bedroom and bathroom.

This was let at £471 per calendar month. This differed from the Property in that it had oil fired central heating but was otherwise very similar.

No. 7 Fairnington Farm Cottages was comprised of a lounge/diner, kitchen, 3 bedrooms and bathroom and was let at £467 per calendar month. Again this was very similar to the Property but again had oil fired central heating.

No 9, Fairnington Farm Cottages was let at a higher level of £575 per calendar month. The agents highlighted that there had been a lot of interest in this property with it receiving eight viewings and four applications within a short period of time of being put on the market. The agents acknowledged, however, that this property had a bigger garden and also additional accommodation in the form of a side extension. Overall the property was bigger than No 6 and was described by the agents as in pristine condition. Again it had oil fired central heating.

14. The Tenant put forward letting particulars for 4 Muirhouselaw, Maxton, St Boswells. This was a two bedroom terraced cottage with partial electric heating and an open fire. It had a shared garden. She submitted that this was a better comparison at £350 pcm when made against her property.
15. As stated above, several other property schedules were looked at but overall the properties listed above were found to be most comparable with the Property and gave the best evidence. In particular the Tribunal placed a greater weight on those properties lying adjacent to the Property which was identical in location and similar in size and style.

The Tribunal did not attach a great deal of weight to the property comparable produced by the Tenant. This was a smaller property and had a shared garden. This was reflected in the lower rental of £350 per calendar month being sought for that compared to the £430 being sought for her property by the Landlord.

The Tribunal placed greater weight on Cottages 5 and 7 which were let at £471 and £467 per calendar month each. The Tribunal noted that these properties had oil fired central heating which made them more attractive rental propositions. The Landlord's agent indicated that they did not view the type of heating system installed in any property as having an impact on rental, nor did having the benefit of floor coverings.

The Tribunal, however, from its own experience and knowledge of the market was satisfied that most prospective tenants are conscious of the type of heating system installed. Oil fired central heating is a more effective form of heating both in terms of cost and efficiency than the heating system within the Property. The Tenant produced evidence of her heating costs to the Tribunal, which were significant. The lack of a modern central heating system in a remote rural location would have a negative impact on the rental achievable. To a lesser extent, the lack of floorcovering would act as a disincentive to let the Property for some prospective tenants. Some tenants would not have the financial wherewithal to carpet a property throughout.

Accordingly the Tribunal was of the view that whilst there was good evidence of comparable rents of Nos 5 & 7 at circa £470 per calendar month level, an element of discount would require to be given to reflect the fact that the Property did not have oil fired central heating nor carpets nor a shower over the bath (the carpets and shower requiring to be disregarded in terms of s25(2)(b)).

The Tribunal felt that a fair deduction would be approximately £40 per calendar month compared to the rental being achieved for the neighbouring properties. This would suggest that the Landlord's figure of £430 per calendar month that was being sought was fair. The Tribunal also noted that the previous rental of £395 per calendar month had been set in 2012. There had been a gradual increase in rents in the area in line with inflation and on that basis alone it seemed to the Tribunal that £430 per calendar month was the correct level of rent.

Decision

16. Taking into account all of the relevant circumstances, the Tribunal determined the rent at which (subject to Section 25(2) and (3)) the Property might reasonably be expected to let on the open market by a willing landlord under an assured tenancy beginning on 17 December 2018 would be a rent of £430 per calendar month. The Tribunal was satisfied that it would be appropriate for the new rental to take effect from the date sought by the Landlord originally of 19 February 2019.

Right of Appeal

17. A landlord or tenant aggrieved by this decision may seek permission from the Tribunal to appeal on a point of law against this decision to the Upper Tribunal and that within 30 days beginning with the date when this decision was sent to the party seeking permission.
18. Unless the lease or tenancy between the parties has been brought to an end, the appropriate respondent in such appeal proceedings is the other party to the proceedings and not the Tribunal which made the decision.

E Miller

Signed:

.....
Ewan K Miller

Date:

..... 8/1/19

This is the Schedule of Photographs referred to in the Focusing Letter dated 8/1/2017

Housing and Property Chamber

First-tier Tribunal for Scotland



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

SCHEDULE OF PHOTOGRAPHS

ADDRESS: 6 FAIRNINGTON FARM COTTAGES, MAXTON, KELSO TD58NT

DATE: 17TH DECEMBER 2018

REFERENCE: FTS/HPC/RA/18/2637



FRONT ELEVATION



GROUND FLOOR BEDROOM



CO MONITOR IN LIVING ROOM



LIVING ROOM



HOT WATER CYLINDER IN LR



SMOKE DETECTOR IN HALL



ELCTRIC CONSUMER UNIT



CONDENSATION MOULD IN DINING AREA



KITCHEN



BATHROOM



CONDENSATION MOULD IN BED CPD



MASTER BEDROOM