

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/RR/21/3121

Property: Ground floor flat, 10 Lothian Gardens, Glasgow G20 6BN ('the Property')

The Parties:

S&D Properties (Edinburgh) Limited, incorporated under The Companies Acts (SCO51876) and having their registered office at Suite 1/1, 79 West Regent Street, Glasgow G2 7AW ('the Landlords')

Miss Terry (otherwise Teri) Hodgins, Ground floor flat, 10 Lothian Gardens, Glasgow G20 6BN ('the Tenant')

Tribunal members:

George Clark (Legal Member/Chairperson) and Mike Links (Ordinary/surveyor Member).

Decision

The Tribunal dismissed the Landlords' appeal against a Regulated Tenancy Rent in respect of the Property.

Background

On 2 November 2021, the Landlords applied, in terms of the Rent (Scotland) Act 1984 for a fair rent to be registered in respect of the Property at £12,000 per annum. The Rent Officer registered a fair rent of £8,350 per annum with effect from 7 December 2021. The present rent is £7,867 per annum. The Landlords appealed the Rent Officer's determination to the First-tier Tribunal.

The Landlords provided the Tribunal with a document described as a Licence, commencing on 18 April 1994, which formed the agreement between the Parties.

On 29 March 2022, the Tribunal issued a Direction to the Parties to provide the Tribunal with written representations as to why they considered the agreement to be a registered regulated tenancy, given that Regulated Tenancies could only be created on or after 2 January 1989 and that the agreement was termed a "Licence".

The Landlords submitted written representations to the Tribunal. The Tenant did not make any written representations.

The Landlords submitted, and the Tribunal accepted, that there was a typographical error in the Tribunal's Direction, in that Regulated Tenancies must have commenced on or before 1 January 1989. They contended that the agreement was an Assured Tenancy, as the requirements of Section 12(1) of the Housing (Scotland) Act ("the 1988 Act") were satisfied. The Tenant is an individual and took occupation of the Property after 2 January 1989. The Property is let as a separate dwelling and is occupied as the Tenant's only or principal home. The agreement does not fall within any of the exemptions contained within Schedule 4 to the 1988 Act. Accordingly, the rent had been registered incorrectly under and in terms of Part 4 of the Rent (Scotland) Act 1984.

The Landlords provided the Tribunal with copies of various documents, from which it appeared that in 1998 the Landlords had served a Form AT2 Notice under the 1988 Act, to increase the rent. The Tenant had been represented by Shelter Scotland, who had argued that the Notice was inappropriate. The Landlords had served a further Form AT2 Notice in 2000. The Tenant had argued that the agreement was a Regulated Tenancy. In May 2001, the Landlords received written correspondence from the Rent Registration Service advising that a fair rent could not be registered as the agreement was an Assured Tenancy. Notwithstanding that, however, the Tenant had lodged an application for registration of a fair rent in July 2001 and the Rent Registration Service had issued notification of rent registration dated 22 October 2001. Thereafter, at various times, the Landlords, presuming that the first registration had been processed properly, had applied for an increased rent to be registered. The present rent had been registered in 2017 and the increased rent had been registered with effect from 7 December 2021, the determination having again described the agreement as a Regulated Tenancy.

Case Management Discussion

A Case Management Discussion was held on the morning of 11 July 2022. The Tenant did not attend and was not represented. Mrs Caroline Swan, the Landlords' Managing Director, was present and the Landlords were also represented by Ms Kirstie Donnelly of TC Young, solicitors, Glasgow, who referred the Tribunal to the written representations. Mrs Swan advised the Tribunal that the Tenant moved into the Property in October 1991. At that time, it was shared with another person. The Tenant obtained sole occupancy in April 1994.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the appeal without a Hearing.

Section 12 of the 1988 Act provides that a tenancy under which a house is let as a separate dwelling is an Assured Tenancy if and so long as the tenant is an individual and occupies the house as their only or principal home, unless the tenancy falls within any paragraph of Schedule 4 to the 1988 Act. Schedule 4 lists categories of tenancies which cannot be Assured Tenancies. They are tenancies entered into before 2 January 1989, tenancies at a low rent, tenancies of shops, licensed premises, agricultural land or agricultural holdings, lettings by educational institutions to students, holiday lettings, lettings by resident landlords, Crown tenancies, local authority or housing association tenancies, and shared ownership agreements.

The Tribunal noted that the tenancy commenced after 2 January 1989 and was satisfied that the Tenant is an individual occupying the Property as her only or principal home. At the time the tenancy was granted, she had exclusive occupation of at least part of the Property and, since 1994, has had exclusive occupation of the entire Property. The Tribunal was also satisfied that none of the Schedule 4 exceptions to the definition of Assured Tenancy applies to the present tenancy. Accordingly, the requirements of Section 12 of the 1988 Act have been met and the agreement is an Assured Tenancy and not a Regulated Tenancy.

E Munroe

The Tribunal's Decision was unanimous.

G Clark

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Chairperson

11 July 2022