



PRIVATE RENTED HOUSING PANEL

HOUSING (SCOTLAND) ACT 1988 SECTION 25(1)

Register Of Rents Determined Under Statutory Assured Tenancies

REFERENCE NO.

RAC/AB21/A63

APPLICATION RECEIVED

3 November 2009

ADDRESS OF PREMISES

9 Walton Road, Bucksburn, Aberdeen, AB21 9TX

TENANT

Mr G & Mrs K Marsh

NAME AND ADDRESS OF LANDLORD

Rowett Research Institute
Aberdeen University
Estates Section
University Office
King's College
Aberdeen AB24 3FX

AGENT

RENTAL PERIOD

3-monthly

DATE TENANCY COMMENCED

4 June 2005

DESCRIPTION OF PREMISES

Detached cottage C.1900 with oil central heating and double glazing, comprising 5 rooms, kitchen and bathroom. Gross internal floor area is approximately 100 sq m.

SERVICES PROVIDED

None

COMMITTEE MEMBERS

CHAIRMAN
PROFESSIONAL MEMBER
LAYMEMBER

E Miller LLB (Hons) Dip LP NP
A Anderson
M Scott

PRESENT RENT

£ 3,819.00

RENT DETERMINED

£ 8,400.00

DATE CONSIDERED

8 February 2010

DATE DETERMINATION TAKES EFFECT

8 February 2010

E Miller

Chairman of Private Rented Housing Committee

2 / 3 / 2010

Date

Private Rented Housing Panel

Statement of Reasons

Inspection – 8 February 2010

**Property – 9 Walton Road, Bucksburn, Aberdeen,
AB21 9TX ("the Property")**

INTRODUCTION

The Committee comprised Mr E K Miller (Chairman), Mr A Anderson (Surveyor) and Mr M Scott (Housing Member).

The Property belongs to The Rowett Research Institute which is part of the University of Aberdeen, Kings College, Aberdeen, AB24 3FX ("the Landlord"). The Tenants are Mr and Mrs Geoff Marsh, residing at 9 Walton Road, Bucksburn, Aberdeen, AB21 9TX ("the Tenants").

This was an application to the Private Rented Housing Panel for the determination of applications by the Landlord under (a) Section 17 of the Housing (Scotland) Act 1988 ("the Act") in respect of a proposed variation of the terms of a statutory assured tenancy; and (b) under Sections 24 and 25 of the Act for a determination of the market rental payable under the said tenancy.

The Tenants have been in occupation of the Property since 4 June 2005. The rent currently being paid by the Tenants is £318.25 per month (£3,819 per annum). The Landlord has applied for a rent increase to £900 per month (£10,800 per annum). The Panel appointed the Committee to inspect the Property and to make a decision on both the proposed variation and market rent for the Property.

INSPECTION

The Committee inspected the Property on the morning of 8 December 2010, together with the Clerk to the Committee Mr Iain MacLean. The Property is located within lands owned by The Rowett Research Institute, now part of the University of Aberdeen. The Property is located in a pleasant situation and has open views over farmland towards the A96. The Property has good access into Bucksburn, Dyce and on into the City of Aberdeen itself.

The Property is a detached cottage built circa 1900, with oil central heating and double glazing and comprises five rooms, kitchen and bathroom. The gross internal floor area is approximately 100 square metres. The Property has a good sized garden laid mainly to grass and a detached garage, currently used as a store/kennel.

Upon arrival at the Property the Committee were met by the Tenants (Mr Marsh only) and three members of the University staff (Mr Gordon Mathieson, Ms Wendy Cruickshank and Ms Tracy Robb). It transpired that the Tenant had not understood or been notified that representatives from the Landlord would be in attendance and initially refused any representatives from the Landlord access to the Property. He was prepared to allow the Committee to inspect the Property. The Tenant explained that he had things that he wished to say to the Committee that he did not wish the Landlord's representatives to hear. He had had no notification from the Landlord requesting access, as they were obliged to do in terms of his lease. The Chairman explained to the Tenant that the Committee could not take evidence from any party alone. Any information that he wished to impart would also have to be made available to the Landlord so that they had a chance to respond to and comment upon it. The Chairman highlighted that the nature of the visit was for the primary purpose of allowing the Committee to see for themselves the condition of the Property and to ascertain what works, if any, the Tenant had carried out. The opportunity to discuss in more detail the merits of the case was appropriate for the Hearing rather than the inspection. After discussion, the Tenant agreed that one representative of the Landlord could accompany the Committee. The Chairman then explained the Tenant's position to the Landlord and again reiterated the position in relation to an inspection. The Landlords were agreeable to only one member accompanying the Committee during the inspection and, at the Tenant's request, Mr Mathieson was the party to accompany the Committee.

The Committee along with the Tenant and Mr Mathieson then proceeded to inspect the Property.

Internally, the Property comprised a lounge with a small television room off this, a second lounge, two bedrooms, kitchen and bathroom.

The kitchen was small but serviceable with a small rear entrance off. The Tenant highlighted the rear door which was in poor condition and had to be maintained by him. The boiler was located in this area although the Tenant's view was that this was a second-hand boiler that had been installed. The Landlord had recently installed an extractor fan in the kitchen, the Tenant's view of which was that it was not fit for purpose. Some new kitchen door fronts had been added as well. Generally however the units were tired and only a cosmetic repair had been made by the Landlord.

The lounge was a good size and had been reasonably decorated by the Tenants. The Tenants had laid the carpet and replaced skirting boards. The Tenant had also installed a wood burning stove. Damp meter readings returned some measurement indicating the possibility of some element of rising damp. Situated off the main lounge was a small sitting area that was used as a TV room by the Tenants.

The second lounge was also in reasonable decorative order and was a good sized room overlooking the front of the Property.

On the upper floor was a hall with a skylight window. The skylight window was in poor condition.

The second bedroom on the upper floor had again been furnished by the Tenants and was in reasonable decorative order. Damp meter readings showed some minor damp on the gable wall.

The main bedroom was also in reasonable condition although the wallpaper was poor in places. The Tenants complained of damp and water ingress, although at the time of the inspection no evidence of this could be located. Situated off the upper hall was a storage cupboard which, upon inspection, it was apparent that there was some water ingress as there was a wet joist.

The bathroom to the Property was also located on the upper floor. This was dated but otherwise serviceable.

Overall the Property had been maintained in reasonable decorative order and had been maintained by the Tenants. The Property would benefit from some upgrading however, particularly in relation to the kitchen and bathroom.

DOCUMENTATION

Form AT1(L) from the Landlord dated 30 July 2009.
 Form AT2 from the Landlord dated 20 July 2009.
 Form AT3 from Tenants.
 Form AT4 from Tenants.
 Second AT2 Notice from the Landlord dated 17 December 2009.

The Committee also had before it a copy of the original Tenancy Agreement and subsequent alternative tenancy offers from the Landlord, representations from the Tenants and the Landlord and evidence of comparable properties from the Landlord.

HEARING

Prior to hearing from the parties on the substantive issues of the Landlords applications, the Committee first looked at jurisdictional issues that had arisen in relation to the lodging of the AT1, AT2, AT3 and AT4.

The Committee noted that the Tenants had originally been granted a contractual tenancy for three months from 5 June 2005 to 3 September 2005. This had been continuing by way of *tacit relocation* until the present time. The Committee noted that on 20 April 2009 the University had served a Notice to Quit on the Tenants thus converting the contractual assured tenancy to a statutory assured tenancy.

In terms of Section 16(1) of the Act in the event of a contractual assured tenancy changing to a statutory assured tenancy the tenant shall continue to have the rights and obligations under the original tenancy agreement but excluding, inter alia, those which make provision for an increase in rent otherwise than by an a specified amount or percentage. In terms of Section 17(2) of the Housing (Scotland) Act 1988, a landlord may, prior to the first anniversary of the termination of the former tenancy, propose a variation of the terms of the lease. However, proposed variations as to rent are not competent unless the original tenancy agreement specifies increases of a set amount or

percentage (ie within the definition specified in Section 16(1)). The variation proposed by the Landlord in the AT1(L) was to change the rent review date from April to December. The Committee were of the view that the rent review clause proposed by the Landlord in the AT1(L) did not comply with the terms of the Act as it sought to change a provision regarding rent otherwise than by way of a specified amount or a specified percentage increase. The Committee were of the view that since the proposed variation did not comply with Section 16(1)(b) and Section 17(2) then it followed that even although the AT1(L) Notice may have been correctly served it was irrelevant for the purposes of the Hearing as the variation proposed was not competent for a statutory tenancy and therefore had no effect.

In relation to the first AT2 served by the Landlord, the Committee were satisfied that this had been properly served on the Tenant and sufficient notice given. Section 24(1)(b) of the Act provides that such a rent review notice can be served at any time during the tenancy if it is not a contractual tenancy (which was the case here).

On the basis that the Committee accepted that the first AT2 had been validly served and a decision would be issued following upon the Hearing it followed that the application by the Landlord under the second AT2 was a little premature. The Committee were to make a decision under the original AT2 and therefore a further increase could not be imposed on the Tenants for a year after the Committee's decision took effect.

The Chairman explained to both parties that the proposal of the Committee was therefore to simply proceed with a Hearing based on the Landlord's original AT2 application to uplift the rent to £900. The AT1 and the second AT2 would be treated as having been withdrawn by the Landlord. Both parties confirmed that this was acceptable to them.

The jurisdictional issues having been dealt with the Committee then proceeded to hear evidence from both the Tenants and the Landlord. The Landlord submitted that the rent being charged in respect of the Property was too low. The Rowett Research Institute had been merged with the Landlord a couple of years ago and the management of the properties on the Rowett Estate had been taken over by the Landlord's Estates Office. With the exception of some farm and tied tenancies, the Landlords were seeking to increase rents charged on the Estate to a more commercial level than that previously charged by The Rowett Estate. Where properties were becoming vacant, the Landlords were seeking to upgrade these and to let them out at market rents. Whilst the Tenant's daughter had previously been an employee of the Estate, neither of the Tenants were themselves were employees or former employees of the Estate. By way of comparable evidence the University cited the examples of 134 and 138 Greenburn Road on the Estate. These were both 3-bedroom properties that had been re-let recently for £750 per calendar month. They also cited the example of 6 Walton Road which was a 3-bedroom semi-detached property and recently re-let for £620. The Landlord wished to present to the Committee a full list of all the rentals charged on the Estate but did not wish the Tenants to see this as it contained what the Landlords perceived to be sensitive information. The Committee advised they would not be able to take account of this if they were not able to show it to the Tenant as it was unfair on them not to have the

opportunity to comment on this. After discussion all parties agreed that the Landlord would withdraw the full list of rents from the Committee and instead would simply seek to rely on the three that they were happy to disclose (i.e. the two at Greenburn and the one at Walton Road). The Landlord accepted that there were some repairs and upgrading required within the Property but advised the Committee that access was very difficult to arrange through the Tenants and had been requested on numerous occasions with a view to identifying what works were required. The Landlord provided a list to the Committee of works they would like to carry out. The Landlord was concerned that the oil central heating in the Property was not being used and that the tank was empty. This would inevitably lead to the Property declining in condition.

The Tenants advised that they had lived in the Property for over 5 years and there had been no material change in the rent in that time. An uplift in the rent to £900 per month seemed to be grossly disproportionate and they had been of the understanding that the maximum uplift that could be done in any one year was 10%. The Chairman advised that whilst an assessment of a fair rent under the Housing (Scotland) Act 1984 did contain restrictions as to the extent of any uplift this was not the case in relation to an assessment of a market rent under the Act.

In any event the Tenants felt that £900 was still excessive and there were no other rents being charged at this level on the Estate as far as they were aware. The Tenant made reference to other rents on the Estate being, to his knowledge and understanding, charged a very nominal level. The Tenant also advised that he felt that similar properties in similar locations to the Property could be let at the level of rent that he was currently paying although he did not produce any comparable evidence to validate this.

In relation to the question of repairs, they had asked for numerous repairs to be done but these had never been forthcoming. Some minor repairs and improvements had been made by the Landlord over the last little while but in the Tenants view this was because the Landlord was conscious that the Hearing was coming up. The Tenant was adamant that access was not a problem. Whilst there had been some illness within the family over the Christmas period and they had requested the Landlord not to take access during this period, he did not perceive it as a difficulty generally.

In relation to the question of the oil heating, the Tenant advised that they did not use the oil central heating in the summer as this was disproportionately expensive. They did use it in the winter however. The tank had been intended to be refilled on Saturday but the suppliers had not arrived. The Tenant drew the Committee's attention to the fact that during the inspection there had been electric radiators on the Property to provide warmth. Accordingly it was not the case that the Property would deteriorate from a lack of heating.

DECISION

In terms of Section 25 of the Act the Committee are required to determine a rent which the Committee consider that the Property might reasonably be expected to be let on the open market by a willing landlord under an assured tenancy. The Committee were of the view that the Property would be reasonably

attractive in the letting market. It enjoyed a quiet rural location yet had good access to neighbouring facilities and a good route into the city of Aberdeen itself. The Property itself had reasonable size rooms and a reasonable garden area. The Property was in need of some upgrading, particularly in relation to the kitchen and bathroom and some general redecoration. The Committee also took into account that the Tenant had installed various carpets, carried out some redecoration and had also put in a wood burning stove. If these Tenants improvements were disregarded this would reduce the level of rental achievable. The Committee were of the view that a rental of £900 per calendar month was at the top end of the market rent and noted that even for those comparable properties the University had provided the rental values did not equate to this.

Looking at the Tenants submission the Committee were unconvinced that a similar property in a similar location could be obtained for the rental level the Tenant was currently paying. The Committee had carried out its own investigations into rental levels in the area. Given the attractive location and range of facilities the rental levels were generally significantly higher for similar properties than was being currently paid by the Tenant. The fact that the Landlord was perhaps charging lower rents to employees was unfortunate for the Tenant but at the end of the day the Committee were obliged to assess a market rent for the Property.

In the circumstances the Committee were satisfied that a rental of £900 per calendar month could not be achieved for the Property taking into account (a) its current condition (b) upgrading works that would generally be required to re-let and (c) disregarding the improvements carried out by the Tenant. The Committee were of the view that these factors meant that a market rent for the Property in its current condition would be £700 per calendar month.

The Committee considered the date on which the new rent would take effect from. In the normal course of events, under Section 25(6) of the Act this would be the date specified in the Notice (in this case 9 December 2009). However the Committee have the right to vary the date of the start of the new rent up to the date when the Committee determined the rent if it appears that setting the rent from the date of the notice would cause undue hardship to the Tenant. In light of the significant increase in rent the Committee were satisfied that to effectively backdate the rent to December 2009 would cause undue hardship to the Tenant and accordingly the Committee determined that the rent would take effect from 8 February 2010.

In reaching their decision the Committee had full regard to the requirements of the Act.

E Miller

Signed: (Chairman)

Date: 2/3/2010