

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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**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/19/0210**

**Flat 1F2, 29 Lower Granton Road, Edinburgh, EH5 3RS ('the Property')**

**The Parties:**

**Dunedin Canmore Housing Association, 8 New Mart Road, Edinburgh, EH14 1RL ('the Landlord')**

**Mrs Brenda McColm residing at Flat 1F2, 29 Lower Granton Road, Edinburgh, EH5 3RS ('the Tenant')**

**Tribunal members:**

**Jacqui Taylor (Chairperson) and David Godfrey (Ordinary Member).**

### **1. BACKGROUND**

The Tenant has been a tenant of this property since 1986. The tenancy is a statutory protected tenancy in terms of the Rent (Scotland) Act 1984. The current rent is £3722.64 per annum (£310.22 per month). The Landlords applied for the rent to be increased to £4393.20 per annum (£366.10 per month). The Rent Officer registered a rent of £4151.00 per annum (£345.92 per month) with effect from 11<sup>th</sup> January 2019. The Tenant referred the determination to the First tier Tribunal.

### **2. DIRECTION**

The Tribunal sent the parties a Direction dated 27<sup>th</sup> March 2019. The Direction explained that in determining the fair rent for the Property the Tribunal are required to consider the rentals of comparable properties and whether there is a scarcity of supply of rental properties in the locality. The Tribunal advised that they have sourced the following rental information:

1. Details of seven comparable properties being advertised for lease within EH5

2. Details of Fair rent properties within EH5 from the Fair Rent eRegister.
3. An extract from the Citylets report for Q4 2018
4. Details of ten comparable properties from My House Price Professional.

Copies of the extracts were provided.

The parties were directed to provide the Tribunal with representations and any further information with regards to the said rental information of comparable properties and whether there is scarcity of supply of rental property in the locality by 3<sup>rd</sup> April 2019.

The parties did not provide the Tribunal with any representations in response to the Direction.

### **3. THE INSPECTION**

On the morning of 8<sup>th</sup> April 2019 the Tribunal inspected the Property. The Tenant was present at the inspection. The Landlords were not present and were not represented.

The property is a first floor flat in a 3 storey tenement which dates from the 19<sup>th</sup> century. There is a security entry system to the tenement that was working correctly.

The accommodation comprises open plan living room/ kitchen, two double bedrooms (one of which was smaller than the other), small dark internal shower room containing shower and wash hand basin and separate toilet compartment with WC only. The internal floor area is approximately 53 square metres.

There is a gas central heating system in the Property. The windows throughout the Property are UPVC double glazed windows. The Tenant provided the carpets and floor coverings throughout the Property. No white goods or furniture has been provided by the Landlords.

There is a small garden area at the rear of the Property where the drying area was located. The area was overgrown with weeds at the inspection.

On-street parking is available outside the Property.

No services are provided by the Landlords.

### **4. THE HEARING**

The parties did not attend the hearing and were not represented.

### **5. THE DECISION**

The Tribunal had the following documents before them:-

5.1 A copy of form RR1, the Landlords' application for registration of the rent.

5.2 Rental evidence sent to the parties with the Direction dated 27<sup>th</sup> March 2019:

The Tribunal considered the particular details of the Property. They reflected that the Property was a small two bedroom property. They considered that the particular features of the Property namely overall small size of the Property, the small living kitchen and fact that the WC was separate from the small dark internal shower room result in the Property being more comparable with one bedroom properties.

The Tribunal obtained details of comparable fair rents of one and two bedroom properties from the Fair Rent eRegister and also obtained details of the size of the properties from the EPC register, where an EPC had been registered for the properties.

The details are:

Address	Postcode	Bed Rooms	Date registered	Rent	Size	Services
20 Lower Granton Road, Edinburgh.	EH5 3RS	1	11/1/19	£3638	38 m sq	
105 Granton Road, Edinburgh.	EH5 3NJ	1	11/1/19	£3575		
22 Lower Granton Road, Edinburgh.	EH5 3RT	1	30/11/16	£3512.54		
24 Wardie Square, Edinburgh	EH5 1EU	2	11/1/19	£4260		
28 Wardie Square, Edinburgh	EH5 1EU	2	11/1/19	£4260	51 m sq	

They also obtained details of one bedroom properties available for rent in the post code area EH5 on the letting web.com website.

The details are:

Address	Postcode	Bed Rooms	Rent	Size	Comments
West Granton Road	EH5	1	£725 pm (£8700 pa)		Modern property
3F2, 7 Starbank Road, Edinburgh	EH5	1	£700 pm (£8400 pa)	57 m sq	Sea view

Flat 3, 27 Lower Granton Road, Edinburgh	EH5	1	£620 pm (£7440 pa)	32 m sq	Furnished, white goods
13 South Trinity Road, Edinburgh	EH5	1	£700 pm (£8400 pa)	46 m sq	Main door flat, white goods, furnished.

The Tribunal considered the said documents and rental evidence.

The Tribunal were mindful of the terms of section 48(1) of The Rent (Scotland) Act 1984, which requires the Tribunal 'to have regard to all of the circumstances (other than personal circumstances) and in particular to apply their knowledge and experience of current rents of comparable property in the area, as well as having regard to the age, character and locality of the dwelling house in question and to its state of repair and, if any furniture is provided for use under the tenancy, and to the quantity, quality and condition of the furniture'. Also section 48(2) which requires them to 'assume that the number of persons seeking to become tenants of similar dwelling-houses in the locality on the terms (other than those relating to rent) of the regulated tenancy is not substantially greater than the number of such dwelling-houses which are available to let on such terms.'

The Tribunal recognised that the three methods of assessing the rent in Scotland are (1) determining the fair rent by reference to comparable registered rents in the area. (2) determining the fair rent by reference to market rents of comparable properties allowing for appropriate deductions for scarcity and (3) determining the fair rent by reference to the anticipated annual return based on the capital value of the property. They acknowledged that none of these methods is the primary method. The task of determining a fair rent is a composite task which takes account of these three methods. The appropriate method depends on the facts and circumstances of each case. The Tribunal also gave consideration to the observations of the Lord President in *Western Heritable Investment Co Ltd v Hunter* (2004) and also the recent case of *Wright v Elderpark Housing Association* (2017) which requires the Tribunal to proceed on the best available evidence and use the other evidence as a cross check, where possible.

*The Tribunal considered the evidence of registered rents in the Fair Rent Register.*

20 & 22 Lower Granton Road and 105 Granton Road, Edinburgh.

These properties are directly comparable with 1F2, 29 Lower Granton Road, Edinburgh as they are very similar properties, located in the same street/ area and are assumed to have the same level of

amenity. However the Tribunal were mindful that these properties are slightly smaller than 1F2, 29 Lower Granton Road, Edinburgh.

24 and 28 Wardie Square, Edinburgh.

The Tribunal noted that these are terraced properties in a more desirable location and therefore found this rental evidence to be of limited assistance.

Consequently the Tribunal determined that a comparable rent for the Property using the evidence of registered fair rents, reasonably adjusted to reflect the size of Flat 1F2, 29 Lower Granton Road, Edinburgh is £3800 per annum.

*The Tribunal also considered the evidence of market rents.*

The annual rents for the properties advertised on letting web.com web site range from £7440 to £8400 per annum. These comparable properties are one bedroom properties with living room, kitchen, bathroom, floor coverings, furnishings and appliances provided by the Landlords. The Tribunal considered that an adjustment was required to reflect the fact that the Landlords of Flat 1F2, 29 Lower Granton Road, Edinburgh did not provide any furnishings, appliances, decoration or floor coverings. Taking an estimate of the cost of upgrading the subject property to a standard evident in the comparables, and taking a straight line depreciation over 5 to 10 years for the different elements of the cost of decoration and providing the furnishings and appliances, the Tribunal considered that a deduction of £400 per annum was reasonable to reflect these differences. The Tribunal considered that the open market rent to be £7800 and deducting this cost of £400, a comparable open market rental would be £7400.

*Scarcity*

As already noted, when the Tribunal fix a fair rent they must do so on an assumption that the number of persons seeking to become tenants of similar properties in the locality of the Property is not substantially higher than the number of similar dwelling houses which are available for lease. Case law has determined that when considering the question of scarcity a large area must be considered to avoid an increase in demand being caused by specific local amenities. The Tribunal considered it reasonable to consider the City of Edinburgh when assessing the question of scarcity. The Tribunal in their Direction dated 27<sup>th</sup> March 2019 had asked the parties to make representations to the Tribunal on the question of scarcity. However the parties did not make any such representations.

In considering the matter of scarcity the Tribunal considered that time taken to let properties and rent increases are factors that contribute to determining if scarcity exists.

The City lets report for Q4 2018 includes the following market trends for the lease of one and two bedroom properties

One Bedroom	Average Rent	Rent Change 1 year	Rent change 5 years	Rent change 10 years	Av TTL (days)	Let within 1 week	Let within 1 month
Edinburgh	£779	8.5%	34.8%	45.9%	19	22%	79%
Scotland	£553	4.1%	15.7%	22.2%	28	20%	65%
Two Bedroom	Average Rent	Rent Change 1 year	Rent change 5 years	Rent change 10 years	Av TTL (days)	Let within 1 week	Let within 1 month
Edinburgh	£1017	7.5%	31.7%	43.2%	23	18%	72%
Scotland	£728	4.6%	12.9%	18.6%	33	16%	58%

These figures show that both one and two bedroom properties in Edinburgh have seen a significantly higher rent increase over five years and shorter time to let periods than the rest of Scotland.

The Scottish Government report on private sector rent levels in Scotland over the years 2010 to 2018 includes statistics on the average monthly rents for one and two bedroom properties. No specific figures are provided for Edinburgh so Lothian has been used for the purposes of this consideration. The figures provided are as follows:

	2010	2017	2018	2010 to 2018 Change	2017 to 2018 change
Lothian	520	704	728	39.8%	3.3%
Scotland	436	501	510	16.9%	1.7%

The figures for 2 bedroom properties are:

	2010	2017	2018	2010 to 2018 Change	2017 to 2018 change
Lothian	665	888	946	42.3%	6.5%
Scotland	536	643	652	21.6%	1.5%

These statistics show that Lothian has the highest monthly rents for one and two bedroom properties across Scotland and a significantly larger increase in rents during the period 2010 to 2018 than the rest of Scotland and it appears reasonable to infer that Lothian statistics are heavily weighted by Edinburgh. The Tribunal determined that there is a strong demand for private rented accommodation in Edinburgh. They infer that the number of people seeking to become tenants of such properties in Edinburgh is higher than the number of houses available and that the demand is substantially higher than the supply and having regard to all of the circumstances, consider that there is scarcity amounting to 25%.

Consequently the Tribunal determined that a comparable market rent for the Property using the evidence of market rents, after deduction of the adjustment of £400 and the 25% scarcity deduction of £1850, results in a net comparable market rent of £5550 per annum.

*The Tribunal considered if it was appropriate to use a return on the capital valuation of the Property.*

The parties had not provided any evidence of capital valuations of the Property. The Tribunal were mindful that the capital valuation method has been described as notoriously unreliable 'normally to be used only as a last resort' (*Western Heritable Investment Co Ltd v Husband* 1983 SC (HL) 60, 73). Given the strong evidence of comparable fair rents and market rents and the absence of evidence of capital valuations the Tribunal determined that it was appropriate to proceed to assess the fair rent of the Property without using the capital valuation method.

As explained the comparable fair rent is £3800 and the comparable adjusted market rent is £5550.

**The Tribunal are mindful that fixing the rent is a composite task and consequently after consideration of all these factors the Tribunal determine that the fair rent for the property is £4400 per annum.**

In reaching this decision the committee have had regard to all the considerations required to be taken into account in terms of Section 48 of the Rent (Scotland) Act 1984.

This decision takes effect from the 8<sup>th</sup> April 2019.  
Jacqui Taylor

Chairperson 

15<sup>th</sup> April 2019

