

Housing and Property Chamber
First-tier Tribunal for Scotland



Rent (Scotland) Act 1984

Notification Of Decision

REFERENCE NO.	OBJECTION RECEIVED	OBJECTION
FTS/HPC/RR/18/2145	20 August 2018	Landlord

ADDRESS OF PREMISES

21 Primrose Street, Dumfries, DG2 7AU

TENANT

Mr James Behan

**NAME AND ADDRESS OF
LANDLORD**

Devorgilla Property Company Limited
c/o G M Thomson and Company, 35
Buccleuch Street, Dumfries, DG1 2AB

AGENT

G M Thomson & Company
35 Buccleuch Street, Dumfries, DG1
2AB

DESCRIPTION OF PREMISES .. A two bedroom ground floor flat with own door access in a traditionally built two storey block of 4 flats built in or around 1905 and consists of two bedrooms, living room, bathroom, kitchen and hall. The property has modern double glazing and gas fired central heating

SERVICES PROVIDED

None

TRIBUNAL MEMBERS

CHAIRPERSON Jim Bauld
ORDINARY MEMBER (SURVEYOR) Robert Buchan

FAIR RENT	DATE OF DECISION	EFFECTIVE DATE
£ 3920.00 p.a.	16 November 2018	25 October 2018

Mr James Bauld

.....
Chairperson of tribunal

16 November 2018

.....
Date

Housing and Property Chamber First-tier Tribunal for Scotland



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

STATEMENT OF DECISION of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 48 of the Rent (Scotland) Act 1984

Ref: FTS/HPC/RR/18/2145

The Parties:-

Devorgilla Property Company Limited per their agents GM Thomson & Co, 35 Buccleuch Street, Dumfries, DG1 2AB ("the Landlord")

and

Mr James Behan residing at 21 Primrose Street, Dumfries, DG2 7AU ("the Tenant")

Tribunal Members

James Bauld (legal member)
Robert Buchan (ordinary member)

Background

1. This is a reference to the First-tier Tribunal in respect of the Property at 21 Primrose Street, Dumfries, DG2 7AU. The Landlord at the Property is Devorgilla Property Company Limited and the Tenant is Mr James Behan who resides at the Property. The Tenancy is a regulated Tenancy in terms of the Rent (Scotland) Act 1984.
2. The current rent being paid by the Tenant in respect of the Property is £300 per month or £3,600 per year. The Landlord via his agent GM Thomson Limited of 35 Buccleuch Street, Dumfries, DG1 2AB lodged a form RR1 seeking to have a fair rent registered for the Property. The Landlord sought a fair rent of £4,680 per year. The Application by the Landlord was dated 2 July 2018.
3. The rent officer determined that the fair rent for the Property should be £4,100.04 per year (£341.67) per month. The date of the rent officer's decision is 10 August 2018. The Landlord objected to the registered rent by an objection dated 15 August 2018. The Application was accordingly referred to the Tribunal for determination.

Inspection & Hearing

1. An inspection and hearing was set to take place on 25 October 2018. On that day the Tribunal members attended at the Property to carry out the inspection. The Landlords were neither present nor represented. The Tenant was present and allowed access to the Tribunal members to carry out the inspection.

2. The Property is a two bedroom ground floor flat with own door access in a traditionally built two storey block of 4 flats. The Property was built in or around 1905. The Property consists of two bedrooms, living room, bathroom, kitchen and hall. The property has modern double glazing and gas fired central heating. During the inspection the Tenant advised that he had provided all of the kitchen's units currently in place and that he had installed the shower cubicle within the bathroom. The Tenant also indicated that all decoration within the Property had been carried out by him and all carpets and floor coverings had been provided by him. The double glazed windows and central heating system had been installed with a benefit of the Scottish Government warm deal scheme. There is a communal back garden area which contained a drying green and bin storage. The back garden area is shared with other properties in Primrose Street. The Property is situated in a quiet residential street close to Dumfries town centre and has reasonable access to public transport links and relevant local shops and services.
3. After the inspection the Tribunal convened for the hearing at Lochvale House, Georgetown Road, Dumfries. The Tenant attended the hearing. The Landlords were neither present nor represented and had emailed the Tribunal office prior to the hearing to indicate they would not be in attendance. Accordingly the Tribunal required to make its determination based on the evidence obtained at the inspection and from the documents provided by the parties. The Tribunal's Decision was based on the inspection of the Property, the available documentation and the Tribunal's own knowledge, expertise and experience.

The Decision

1. The Tribunal had the following documentation before them:
 - a. Copy form RR1 in respect of the Property being the Landlord's Application for registration of rent dated 2 July 2018;
 - b. Determination by the rent officer dated 10 August 2018;
 - c. Email from the Landlord's agents dated 15 August 2018 setting out information with regard to comparable rents of other properties within the area.
2. The Tribunal considered all the documents provided. 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 properties in the area as well as having regard to the age, character and locality of the dwelling house in question and to the state of repair and if any furniture is provided for use under the Tenancy, the quantity, quality and condition of the furniture.

3. The Tribunal are also required to consider in terms of Section 48 (2) of the same Act that the “number of persons seeking to become the Tenant of similar dwelling houses in the locality under terms (other than those related to rent) of the regulated Tenancy is not substantially greater than the number of dwelling houses in the locality which are available for letting on such terms). This is often referred to as “scarcity”).
4. The Tribunal noted that there are three accepted methods in Scotland for determining rent. These methods are:-
 - a. Determining a rent by having regard to registered rents of comparable houses in the area;
 - b. Determining a rent by comparing market rents within the area and then discounting for any scarcity element and making any appropriate disregards as required by Section 48 (3) of the 1984 Act (“Tenant’s Improvements”) and;
 - c. Calculating the appropriate return based on the capital value of the Property taking into account any element of scarcity.
5. None of these methods is regarded as being the primary method and the method to be chosen by the Tribunal in any particular case will depend in each case upon the evidence available.
6. The calculation of an appropriate return based on the capital value of the Property did not appear appropriate in this case given firstly the imprecision of such a calculation which requires the use of contentious variables compared to the relevant ease of use in comparable rents and secondly the readily available evidence of comparable rents in the area of the Property.
7. The Tribunal considered whether they should use the method of comparing existing registered rents or using the method of taking a market rent and discounting what scarcity and disregards they consider would be appropriate.
8. In considering the use of comparable registered rents, the Tribunal found that only two rents had been registered in the DG2 post code area in the last year, the subject property and a neighbouring property, both of which rents were being appealed
9. With regard to market rents, the Landlord’s agent in their email of 15 August had provided information with regard to thirteen properties where they acted for the same landlord all within the same street. All thirteen properties were directly comparable to the subject Property. The Tribunal also, in carrying out their own investigations, noted that the Landlord’s agents had on their website two properties advertised as available for rent in Primrose Street on the day of the hearing. These properties were number 20A Primrose Street and 14A Primrose Street. The property at 20A is directly above the subject Property. Both of these

properties were advertised at a rent of £450 per calendar month. In their email, the Landlord's agents had set out that the range of rents for the properties which they currently leased in the Primrose Street ranged from £415 per month to £450 per month. Mr Behan was present at the hearing. The Tribunal asked him whether he had any knowledge of the levels of rent currently being charged. He indicated he was aware of the flat above him being currently empty and it had been empty for about three weeks. He had no specific knowledge with regard to current rents in the area but was aware that there was another case being dealt with by the Tribunal involving near neighbours Mr and Mrs Robson. He indicated he understood why the Landlord was seeking to increase the rent and understood that a rent increase was likely but that he thought the proposed increase to £390 per month from £300 per month was in his words "a bit of a jump".

10. Having considered matters, the Tribunal were happy to accept the evidence provided by the Landlord's agents of a directly comparable rent for almost identical properties within the same street and in this case within the same block. Accordingly, the Tribunal concluded that the appropriate rent which should be fixed before taking into account various deductions in terms of the Section 48 (3) disregards should be £450 per month or £5,400 per year.
11. The Tribunal then considered what deductions should be made from that initial figure. The Tribunal noted that the advertised properties in Primrose Street were advertised as having central heating and double glazing. The subject Property also had the same items which had been provided without cost to the Tenant. The Tribunal noted that the advertised properties were advertised as having a fitted kitchen, fitted bathroom, had been redecorated and had floorcoverings provided. In respect of the subject Property the kitchen units had been provided by the Tenant, the bathroom had been refurbished by the Tenant, all decoration had been done by the Tenant and all floor coverings had been carried out by the Tenant. The Tribunal also noted that no electrical rewiring had been carried to this Property since the Tenant had moved in. Mr Behan had been in this Property since 1976. Accordingly the Tribunal required to determine the discounts to be applied to the market rent in respect of the provision of kitchen units, bathroom, redecoration, floor coverings and rewiring. The Tribunal took the view that the likely cost of the fitted kitchen for this Property would be £4000. Applying the estimated life of ten years the Tribunal took the view that a discount of £400 per year was appropriate. Similarly with regard to the bathroom, the Tribunal took the view that the likely cost of fitting the bathroom would be £3000. Again applying a ten year estimated life the deduction there would be £300. With regard to redecoration, the Tribunal took the view that redecoration costs for this Property would be in the region of £2000 and would require to be done approximately every five years. Accordingly the appropriate annual deduction would be £400. With regard to flooring, the Tribunal conservatively estimated that providing floor coverings for the entirety of this Property would be in the region of £1600 again with replacements required approximately every five years. The deduction to be applied

would be £320. Further the Tribunal took the view that the wiring in the Property would require some works to be carried out at some point and an approximate cost for rewiring works might be £1000. Applying an approximate 15 year life of such works the Tribunal estimated an annual reduction of about £60. The total discounts to be applied amount to £1,480 per year. Applying those discounts to the market rent of £5,400 led the Tribunal to taking the view that the appropriate registered rent for this Property would be £3,920 per annum or £326.67 per month. Accordingly the Tribunal determined that the appropriate fair rent for this property should be £3,920 per annum or £326.67 per month.

12. Having determined the market rent, the Tribunal then considered whether there should be any scarcity deduction in terms of Section 48 (2) of the 1984 Act. Applying its own skill, knowledge and experience, and considering the evidence providing by the Letting Agent for the Landlord, the Tribunal could find no evidence of any excess demand for properties such as the one under inspection and noted that there appeared to be a number of properties available for rent in the locality of the subjects including at least two near identical properties within the same street. In the circumstances the Tribunal decided there was no significant scarcity of properties and there should be no amendment to the rent determined.
13. In reaching this Decision the Tribunal 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 25 October 2018 being the date of Decision of the Tribunal.

Right of Appeal

1. In terms of section 46 of the Tribunals (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.
2. Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Mr James Bauld

Signed ..
James B

Date.....

16 November 2015

Photographs taken during the inspection of
21 Primrose Street, Dumfries, DG2 7AU



Ground floor front



Street

Photographs taken during the inspection of
21 Primrose Street, Dumfries, DG2 7AU



Rear



Double glazing

Photographs taken during the inspection of
21 Primrose Street, Dumfries, DG2 7AU



Kitchen showing the central heating boiler



Shower-room