



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 on an application under Schedule 5, paragraph 8 of the Rent (Scotland) Act 1984

Chamber Ref: FTS/HPC/RR/22/0965

Property: Flat 1/1, 14 Burnbank Gardens, Glasgow G20 6HB ("the Property")

The Parties:

Glasgow West Housing Association, 5 Royal Crescent, Glasgow G3 7SL ('the Landlords')

Ms Mary Giel, Flat 1/1, 14 Burnbank Gardens, Glasgow G20 6HB ('the Tenant')

Tribunal members:

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

1. BACKGROUND

The tenancy is a regulated tenancy in terms of the Rent (Scotland) Act 1984. The current rent is £5,029.23 per annum. The Landlords applied for the rent to be increased to £5,780.95 per annum. The Rent Officer registered a rent of £5,560.95 per annum with effect from 19 March 2022. The Landlords appealed the determination to the First-tier Tribunal but provided no representations in support of their appeal.

2. THE INSPECTION

The Tribunal inspected the Property on the morning of 13 July 2022. The Tenant was present at the inspection. The Landlords were neither present nor represented. The Property comprises a first floor flat in a three storey over basement mid-terraced dwellinghouse converted into a basement flat and one flat on each floor above. It is a traditionally built grey ashlar stone building circa 140 years old. The roof could not be inspected from ground level but is assumed to be pitched and tiled, and the Property

has timber double-glazed windows. The accommodation comprises an entrance hall, living room, two double bedrooms, fitted kitchen and shower-room with toilet and wash hand basin. There is full central heating with a combi boiler also providing hot water. The internal floor area is approximately 75 square metres. There is a communal garden to the rear and access to a large communal garden across the road from the Property. There is metered on-street parking.

The Tenant provided the carpets and floor coverings throughout the Property, the gas oven and hob and the white goods. The services provided by the Landlords are stair cleaning and grass cutting.

The Property is situated very close to Great Western Road, with good local amenities and transport links to the city centre.

The Tribunal noted at the inspection that the only smoke detector in the Property is located in the hallway. There is no smoke detector in the living room and no heat detector in the kitchen. The Tenant has been supplied with a carbon monoxide monitor to replace one on the kitchen ceiling, but it is not suitably located, being beneath the level of the central heating boiler. The Landlords are clearly not complying with Scottish Government regulations and guidance on the fire safety of the Property and the Tribunal expects them to take immediate action to rectify the situation.

3. THE HEARING

The Tenant did not attend the hearing and was not represented. The Landlords were not present or represented.

4. THE DECISION

The Tribunal had the following documents before it:-

- (i) a copy of form RR1, the Landlords' application for registration of the rent.
- (ii) a copy of the Rent Officer's determination.

The Tribunal considered these documents and rental evidence.

The Tribunal Members 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) 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 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 recent registered rents in the Fair Rent Register.

The Tribunal identified six potentially comparable properties in the G20 postcode area with registered fair rents.

Basement flat, 14 Burnbank Gardens comprises 3 rooms, kitchen and bathroom and has central heating. A rent of £5,445.95 per annum was registered on 19 March 2022, with services assessed at £245.52

Flat 2/2, 43 Burnbank Terrace comprises 2 rooms, kitchen and bathroom and has central heating. A rent of £4,340.28 per annum was registered on 19 March 2022, with services assessed at £207.48.

Flat G/1, 6 Burnbank Terrace comprises 3 rooms, kitchenette and bathroom and has central heating. A rent of £5,360.03 per annum was registered on 19 March 2022,

with services assessed at £331.44. This decision is currently under appeal to the Tribunal.

Maindoor flat, 39 Burnbank Terrace comprises 3 rooms, kitchen/diner and shower room and has central heating. A rent of £5,078.04 per annum was registered, but is currently under appeal to the Tribunal.

Flat 2/2 Napiershall Street comprises 2 rooms, kitchen and bathroom and has central heating. A rent of £3,930.75 per annum was registered with effect from 23 January 2022, with services assessed at £184.56.

24 Prince of Wales gardens is a semi-detached 2-storey house, comprises 3 rooms, kitchenette and bathroom and has central heating. A rent of £5,796 was registered effective from 19 November 2021.

The Tribunal also considered the evidence of open market rents.

The Tribunal found no directly comparable properties currently or recently available on the open market.

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. The Tribunal had no evidence before it that indicated there was not a reasonable balance between supply and demand in the area and decided that scarcity was not, therefore, an element which affected the rental levels.

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.

The Tribunal are mindful that fixing the rent is a composite task and consequently after consideration of all these factors the Tribunal decided there was no evidence to support the appeal and decided that a fair rent for the Property is that set by the Rent Officer, namely £5,560.95 per annum. The Tribunal found the registered rent for the basement flat within the same building to be the best comparison and made allowance for the fact that the basement flat would be darker than the first floor flat, which had a better outlook over the communal gardens across the road. The Tenant had advised the Tribunal at the inspection that the two flats were identical in layout.

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 1 August 2022

Clark

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Chairperson

13 July 2022