



PRIVATE RENTED HOUSING PANEL

RENT (SCOTLAND) ACT 1984

Notification Of Decision By The Private Rented Housing Committee

REFERENCE NO:	OBJECTION RECEIVED	OBJECTION
RAC/G22/682	19 February 2009	Tenant

ADDRESS OF PREMISES
2/2, 165 Killearn Street, Glasgow, G22 5HY

TENANT
Mr Robert Lawrence

NAME AND ADDRESS OF LANDLORD	AGENT
North Glasgow Housing Association Ned Donaldson House 50 Reidhouse Street Glasgow G21 4LS	

DESCRIPTION OF PREMISES
Second floor tenement flat circa 1900 with gas central heating and double glazing comprising two rooms, galley kitchen and dark bathroom.

SERVICES PROVIDED
Backcourt maintenance, landlord's supply, communal aerials, close lighting and backcourt services.

COMMITTEE MEMBERS

CHAIRMAN	Mrs I Montgomery BA(Hons) NP
SURVEYOR	Mr M Links FRICS
LAYMEMBER	Mr C Harvey MA

FAIR RENT	DATE OF DECISION	EFFECTIVE DATE
£3,482.88 p.a. (Inclusive of services of £182.88 p.a.non-variable)	1 June 2009	18 February 2009

I Montgomery

Chairman of Private Rented Housing Committee

1st June 2009

Date



PRIVATE RENTED HOUSING COMMITTEE

STATEMENT OF REASONS

INSPECTION: -1st June 2009

PROPERTY: -2/2, 165 KILLEARN STREET, POSSILPARK, GLASGOW, G22
5HY.

INTRODUCTION

1. The Committee comprised Mrs. I.R. Montgomery (Chairman), Mr. M. Links (Surveyor) and Mr. C. Harvey (Housing member). The landlord is North Glasgow Housing Association Ltd, Ned Donaldson House, 50 Reidhouse Street, Glasgow G21 4LS. The tenant is Mr Robert Lawrence. This reference to the Private Rented Housing Committee for the determination of a Fair Rent under the Rent (Scotland) Act 1984 in respect of the second floor traditional tenement flat at 2/2, 165 Killearn Street, Glasgow arises from dissatisfaction on the part of the tenant.
2. The previous rent was £2,145.00 per annum. The landlord applied for a rent of £2,941.12 per annum. The rent determined by the Rent Officer was £2,941.12 per annum.

DESCRIPTION OF THE PROPERTY

3. On the morning of the 1st June 2009, the Committee, accompanied by the clerk, inspected the property, which is the second floor right hand flat within a traditional four storey red sandstone tenement building. The tenement

building was built around 1900, and is located in a residential area with good access to shopping and transport. The exterior of the building appeared to be in a reasonable state of repair and the roof is tiled. Some of the adjacent buildings had required at some point in time to be supported by ties, but no ties were evident at the front of this building. Inspection of the rear of the property, however, revealed that some ties had been inserted at the rear. On the day of the Committee's inspection, some maintenance or repair work was being carried out to the front of the building which meant that access was not available through the normal close, but through an adjacent close. However, the Committee was able to inspect the close internally and found it to be in good condition. The original tiles had been replaced with appropriate modern equivalent tiles. There is a door entry system at the front of the building which was not operational at the time of the inspection due to the work being carried out on that date. The tenant confirmed, however, that the system is normally in good working order.

4. The accommodation extends to two rooms, a galley kitchen and a bathroom. The property has central heating which was installed by the landlord in about 2004. The combi boiler also heats the water. The property is now double glazed throughout, the landlord having replaced the windows in late 2007/early 2008. The living room is of good size and has a triple bay window with a pleasant open outlook. The kitchen is small and in the galley style. New kitchen units were installed by the landlord at the same time as the central heating was installed. The tenant pointed out that if appliances were fitted in all the spaces intended for this purpose, it would become impossible to close the door. The bedroom is a good sized double bedroom with one window. There is a superficial crack in the plaster in one corner of the room. The bathroom fixtures were supplied by the landlord, and the tenant complained that the extractor fan did not work well. The property has a large walk-in cupboard off the hallway. There are some cracks in the corner of the plasterboard in the hallway, but again these are superficial in nature and gave

no cause for concern. The property has been fitted with modern electricity meters and a hard wired smoke detector. The back court was tidy and well maintained at the time of inspection. The bin area was tidy and free of litter. There was a small quantity of broken glass and litter adjacent to the path leading from the bin area to the rear entrance to the building, but this was a minor issue. The overall impression of the back court was that it was clean, tidy and well maintained.

5. The landlord's representative introduced himself to the Committee members prior to the inspection but chose not to attend the inspection.

DOCUMENTATION

6. In addition to the Inspection Report, case summary sheet and extract from the Rent Register, the Committee also considered: -

- a) The decision notice and statement of reasons issued by the Committee who previously determined the Fair Rent in May 2006;

- b) Notification from the Rent Registration Service of a Fair Rent appeal, dated 18th February 2009;

- c) Copy letter from the tenant dated 17th February 2009;

- d) Form RR1 dated 26th November 2008;

- e) Written representations from the tenant received 9th March 2009;

- f) Written representations from the landlord received 10th March 2009;

- g) Copy standard North Glasgow Housing Association Scottish Secure Tenancy Agreement;

- h) Documentary evidence produced by landlord relative to the cost of the provision of services provided to the property at 2/2 165 Killearn Street, Glasgow.

HEARING

7. The hearing took place in the Panel offices on the same day as the inspection.

8. The tenant attended the hearing and spoke on his own behalf. The landlord was represented by Mr Bob Innes, Assistant Area Manager (East) assisted by Mr Fred Davidson who has responsibility within the Housing Association for Service Charges.

9. Mr Lawrence argued that the proposed rent increase was excessive. He stated that in the Spring 2009 edition of their newspaper for tenants and owners, the landlord had issued an assurance that rent increases would be limited to a maximum of 1.9% from April 2009. He produced and lodged the newspaper referred to as evidence in support of his appeal. He stated that he was not aware of any other rents being paid in relation to properties in the area, although he was aware of two properties that had taken quite some time to let. He complained about the level of maintenance carried out to the back court area, and stated that it is not normally as tidy as it was that day. He stated that the grass was not cut every two weeks as it was supposed to be, and submitted that there seemed to be no pattern to when it was done. He stated that rubbish had lain for months awaiting bulk uplift before it was finally removed. He stated that he did not mind paying for a service if he received it, but he did not feel that the current level of service merited the costs being charged. He expressed the opinion that the amount the landlord is paying for some of the services received is excessive, and that the landlord should consider re-tendering for more competitive quotes. He submitted that 63% of tenants do not pay their rent as they receive Housing Benefit and argued that this inflates rents to unrealistic levels. He urged the Committee to find that the proposed rent is excessive and reduce it accordingly.

10. Mr Innes confirmed that the landlord is unable to locate a signed Tenancy Agreement relative to the tenant's tenancy. He acknowledged that in the absence of a tenancy agreement the services would require to be recorded as non-contractual and non-variable. He stated that the tenant had appealed

against the rents fixed on a number of previous occasions and this had resulted in his rent falling significantly below the level paid by other tenants in both assured and regulated tenancies. He stated that the Association aims to maintain the properties to a high standard and therefore requires to set rents at a realistic but still affordable level in order to fund appropriate future investment in the properties. He stated that the income from property rentals had to be sufficient to allow the association to continue with its 30 year plan. He stated that another tenant in the same block was paying £242.36 per month for the same size of property with the same services. He stated that the grass should be cut twice a month and advised that the Clerk of Works goes round regularly to inspect that this is done. He stated that the Association had not received many complaints from tenants. In relation to scarcity he stated that the association does have a waiting list for its properties, but that demand is not as high as it used to be. He advised that many people now prefer a new-build property instead of a traditional tenement property, and tenements therefore can be slightly more difficult to let. He stated that the average time taken to re-let properties in the Possilpark area is 12 working days, which can be compared to an average of ten working days in other areas. He was unable to break that figure down to show the difference between new build and tenement properties. In conclusion, he stated that the Association requires to charge a realistic rent in order to cover its costs. He submitted that this tenant's rent had fallen behind and urged the Committee to find that the rent sought is reasonable. In response to Mr Lawrence's question, he confirmed that 63% of the Association's tenants receive some form of Housing Benefit, although not all receive full Housing Benefit. He stated that the back court area had been substantially upgraded recently as part of a larger project to deal with a rat infestation problem which had previously been a source of concern in the area. He stated that the Housing Association had worked with Glasgow City Council to resolve this problem.

11. Mr Davidson stated that the Association does not seek to make any element of profit on its delivery of services and merely wishes to pass on the actual costs to the tenants. He stated that the cost of services could not be broken down to each individual property but is simply divided by the total number of tenants. He acknowledged that there would be "winners and losers" as a result.

THE DECISION

12. In terms of section 48(1) of the 1984 Act, the duty of the Committee when determining what rent would be a fair rent under a regulated tenancy, is to *"have regard to all the circumstances, (other than personal circumstances), and, in particular, to apply their knowledge and experience of current rents of other 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, to the quantity, quality and condition of the furniture"*. Disrepair or defects attributable to the tenant should be disregarded, as should any improvements made by the tenant, otherwise than in pursuance of the terms of the tenancy (section 48(3)). There were no such defects in this particular case, nor was any furniture provided. Improvements by the landlord are taken into account. In reaching its determination, the Committee complied with its duty as set out above.

13. The Committee considered carefully all the evidence presented, together with the observations made by the Committee members at the inspection. In particular, the Committee considered carefully which of the three alternative methods of ascertaining a fair rent was most appropriate in this case. The three accepted methods used in Scotland are a) determining a fair rent by having regard to registered rents of comparable houses in the area, b) taking market rents and then discounting for any scarcity element and making any appropriate disregards as required by section 48(3), or c) calculating the

appropriate return based on the capital value of the property, taking into account the element of scarcity. None of these methods is regarded as being the primary method, and the method chosen by the Committee will depend in each case upon the evidence available.

14. Mindful of the observations by the Lord President in Western Heritable Investment Co. Ltd v Hunter (2004), the Committee was aware of the need to proceed on the basis of the best available evidence, using other available evidence as a check where possible. In this case, the address of two possible comparable properties had been provided by the clerk, namely the properties situated at 1/1, 24 Nairn Street, Glasgow and at 3/3, 1 Haldane Street, Glasgow. Both these properties had been assessed by a **prhp** Committee on 7th May 2008. Of these properties, the property at 3/3, 1 Haldane Street was closer in size and condition to the property now under consideration. The property at 1/1, 24 Nairn Street was considerably smaller and in much poorer condition than the property now under consideration. Although the property at 3/3, 1 Haldane Street is described as having two rooms, the Committee noted that it also has the benefit of a large living kitchen, which this property does not. However, it only has partial double-glazing and no central heating, whereas this property has double-glazing and central heating. The property at 3/3, 1 Haldane Street had had a fair rent fixed by a Private Rented Housing Committee (**prhc**) at an annual rent of £3,600 effective from 7th May 2008. That Committee's Statement of Reasons was available to this Committee, and the Committee therefore had detailed and reliable information about this property.

15. The Committee, using its own knowledge and experience, was aware of a number of similar sized properties in the Possil Park area where rents of at least £300 per month were being achieved on a market rent basis, or where flats were being offered for rent at around these prices or even higher. Some were available for let at the time of the inspection for £375 per month.

However, these were upgraded and often fully furnished properties, which the property now under consideration is not. Those achieving the highest prices are generally the most desirable properties, either in terms of facilities or location. The Committee also bore in mind that rents being demanded at any point in time are not necessarily the rents which will ultimately be achieved.

16. Looking at all the evidence, the Committee concluded that the best method to adopt in this case was the method of taking market rents and then discounting for any scarcity element and making any appropriate disregards as required by section 48(3). We reached this conclusion because the Committee has considerable knowledge of market rental values in the area upon which to draw, whereas only two comparable regulated tenancies were available. However, as the Committee had the benefit of these comparable properties, which had been considered by a **prhc**, we used the comparable registered rent method as a cross check.
17. The property in question is in good condition and has good access to shops, restaurants and transport. Drawing on its own knowledge and experience of the local rental market, the Committee determined that the market rent for a two room property in this area would be in the region of £300 per month, or £3,600 per annum. Many properties will achieve rents higher than this because of their particular location or desirability.
18. It is important to recognize that the Committee must determine the Fair Rent for the property in accordance with the provisions set out in the Rent (Scotland) Act 1984. For this reason, the Committee were unable to find that the rent should increase by no more than 1.9% per annum on the basis that the Housing Association had stated this in the newspaper. That is a matter the tenant would have to take up with the landlord direct. Similarly, as the Act makes no provision for the Committee to adjust the figures to discount any impact on rental values which results from the existence of the system of

Housing Benefit (now Housing Allowance) this is not a factor the Committee can take into account.

19. The property which is being valued is a two room property with double glazing and central heating. However, this property is supplied unfurnished, and with no white goods or floor coverings. The Committee considered that these factors must be taken into account when considering a reasonable market rent figure for the property now under consideration. The Committee considered that there would be considerable market resistance to such a property in the private rented sector, particularly at the present time when there are plenty of properties available for prospective tenants to choose from. Prospective tenants are likely to be reluctant to incur the high costs of laying floor coverings and installing white goods. The Committee estimated the cost of purchasing and installing white goods and of laying suitable floor coverings to be in the region of £2,100. We considered that domestic white goods have a life expectancy of about seven years and that this also applies to floor coverings in a rented property. We accordingly considered that these costs should be defrayed over a period of seven years. Deducting £300 per annum from the market rent of £3,600 per annum to take account of these costs resulted in a net figure of £3,300 per annum. We accordingly assessed the market rent for the property *in the condition at which it must be valued* as £275 per calendar month. The Committee then proceeded to consider whether any deduction required to be made in terms of section 48(2) (the factor commonly referred to as "scarcity").

20. The concept of scarcity is an essential feature of the fair rent scheme under the Rent (Scotland) Act 1984. It is contained within section 48(2) of that Act. The principle behind the inclusion of this section was that tenants *in a situation of scarcity of supply* (in other words, where there are more prospective tenants than available houses) should be protected from market forces. It is this factor that distinguishes a fair rent under the 1984 Act from an

open market rent. Section 48(2) requires that a neutral market with no scarcity of houses be assumed. In that situation, prospective tenants can be assumed to be willing to pay only what the property is worth, with no additional premium being paid in order to secure a property that is difficult to come by. If that situation does not exist, and there *is* a shortage of houses, (thus artificially pushing up rents) then section 48(2) requires that the tenant be protected from the financial implications of that.

21. The Committee considered whether any discount should be made for scarcity in this case, but was satisfied that in the area of Glasgow as a whole, there could not be said to be scarcity of similar properties to let at the present time. There was evidence at the time of the inspection of a considerable number of properties available for sale or let in the vicinity of the property now being considered. The Committee was satisfied that no deduction required to be made in relation to scarcity for this type of property in this area at this point in time.

22. Using the market rent method therefore would result in the Fair Rent for this property being assessed at £3,300 per annum. The Committee proceeded to use the comparable registered rent method as a cross check. The Committee noted that the property at 3/3, 1 Haldane Street had neither double glazing nor central heating but was larger than the property now under consideration. The Committee considered that the property at 1/1, 24 Nairn Street was in a significantly poorer condition than the property now under consideration. We considered that a substantially higher level of rent was appropriate for this current property. We noted that the Committee dealing with these two properties had made reference to a fair rent of £3,300 for a two room and kitchen flat in Daisy Street, Govanhill which was not inconsistent with our own findings. We considered that this property sits mid way between the two properties considered by the Committee in May 2008. We did not consider that there was evidence of a significant increase in rental values over that one

year period. The Committee had also accepted that there was equilibrium of supply and demand in the housing market in the relevant area at that point in time and no scarcity deduction had therefore been made. The Committee therefore concluded that, when appropriate adjustments were made for the differences between the condition of the two properties, the cross check with the comparable registered rent confirmed the result obtained by using the market rent method.

23. The Committee then proceeded to consider the issue of services. The monthly service charges sought by the landlord are as set out in the schedule of Service Charges and are as follows:-

1. Backcourt maintenance -	£11.28
2. Landlord's supply (e.g. electricity) -	£1.41
3. Communal aerals -	£2.43
4. Close lighting -	£2.88
5. Backcourt Services -	£3.52

24. At the hearing, the tenant confirmed that he was satisfied that the charges relative to items 2, 3 and 4 were reasonable. His only objections were to items 1 and 5. In relation to item 1, the Committee considered that an annual charge of £135.36 per house relative to the maintenance of the relatively small back court area was excessive. While it may be inconvenient for the Housing Association to allocate costs of such services on an individual basis, this Committee has to look at this individual property and assess what is fair and reasonable for this tenant to pay. The Committee was in no doubt that this appellant was one of the "losers" Mr Davidson has referred to, and we adjusted the figure accordingly. We considered that a figure of £5.00 per month was appropriate and we accordingly reduced the amount payable in respect of back court maintenance to that sum. We accepted that the proposed charges for items 2, 3 and 4 were reasonable. We considered item 5. The landlord has produced documentary evidence to show that they have

to purchase this service from Glasgow City Council. The Service Level Agreement was produced along with a breakdown in prices. Taking all this evidence into account, the Committee considered that the proposed monthly charge of £3.52 for backcourt services was reasonable. We accordingly fixed the services at an annual figure of £182.88 which breaks down into monthly charges as follows:-

1. Backcourt maintenance -	£5.00
2. Landlord's supply (e.g. electricity) -	£1.41
3. Communal aerials -	£2.43
4. Close lighting -	£2.88
5. Backcourt Services -	<u>£3.52</u>
	<u>£15.24</u>

25. In the absence of a copy of the Tenancy Agreement signed by the tenant, the Committee was unable to consider whether there was a proper contractual basis for the charging of services. In these circumstances, in the absence of any evidence to the contrary, the services are recorded as being non-contractual and non-variable.

26. In section 49 of the Rent (Scotland) Act 1984, it is declared that the amount to be registered shall include any sums payable by the tenant for services. Having taken all relevant factors into account, the Committee determined that a Fair Rent for the property was £3,482.88 per annum, inclusive of services of £182.88. In reaching this decision, the Committee had regard to all documentary and other evidence, and all the circumstances that required to be taken into account in terms of section 48 of the Rent (Scotland) Act 1984.

27. The Committee was acutely aware that this figure represented a substantial increase in the rent which the tenant had been paying, and also was more than the rent the landlord had asked for. However, the duty of the Committee is to fix a Fair Rent in accordance with the terms of section 48 of the Rent

(Scotland) Act 1984. Although the landlord is a Housing Association, and therefore does not normally seek to achieve the market rent, that is also not a factor which the Committee can take account of. It should be noted, however, that any increase now imposed as a result of the Committee's decision must be in accordance with the provisions of section 33 of the 1984 Act and The Limits on Rent Increases (Scotland) Order 1989 S.I. 1989 No 2469 (s.168).

28. The effective date is 18th February 2009.

Signed .. **I Montgomery**Chairman)
Date .. 26th June 2009