



PRIVATE RENTED HOUSING PANEL

Rent (Scotland) Act 1984

Notification Of Decision By The Private Rented Housing Committee

REFERENCE NO.	OBJECTION RECEIVED	OBJECTION
PRHP/RR/16/0247	15 July 2016	Landlord

ADDRESS OF PREMISES

Flat 3F/1, 2 Boroughloch Square, Edinburgh, EH8 9NJ

TENANT

Mr Terence Martin

NAME AND ADDRESS OF LANDLORD

Ardnastang Estates Ltd
C/O Derek Gibb and Partners Ltd, 30 Milville
Street, Edinburgh, EH9 1LP

AGENT

Derek Gibb & Partners Ltd
30 Melville Street, Edinburgh, EH9 1LP

DESCRIPTION OF PREMISES

Remarks: The property is a third floor flatted dwelling-house entering from a common passage and stair. There is car parking to the front of the property. The property has a living room, one-bedroom a kitchen and a bathroom. The property does not have central heating and is single glazed.

SERVICES PROVIDED

None

COMMITTEE MEMBERS

CHAIRPERSON

Paul Doyle

SURVEYOR MEMBER

Robert Buchan

FAIR RENT

£ 5,380 p.a.

DATE OF DECISION

20 September 2016

EFFECTIVE DATE

1 July 2016

Chairperson of Private Rented Housing Committee

20 September 2016

Date



**Statement of Reasons for Decision of the Private Rented Housing Committee
Under paragraph 10(1) of Schedule 5 to the Rent (Scotland) Act 1984**

Case reference PRHP/RR/16/0247

PROPERTY – Flat 3F/1, 2 Boroughloch Square, Edinburgh, EH8 9NJ

The Committee

Paul Doyle - Chairperson

Robert Buchan – Surveyor Member

Introduction

1. This is a reference to a committee of the private rented housing panel for determination of a fair rent under the Rent (Scotland) Act 1984 by the landlord, Ardnastrang Estates Ltd, c/o Derek Gibb and Partners Ltd, 30 Melville Street, Edinburgh EH9 1LP (“The Landlord”) in respect of the property at flat 3F1 Boroughloch Square, Edinburgh, EH8 9NJ. The tenant is Mr Terence Martin (“the Tenant”).

2. The registered rent paid by the tenant in respect of the property was £4675 per annum. The landlords applied for a rental of £8400 per annum. The rent officer determined a rental of £5380 per annum. The Landlord referred the rent officer’s determination to the Private Rented Housing Panel.

3. Both the Tenant and the Landlord’s agent were present at the inspection which took place at 11:30am on 20 September 2016. A hearing took place at 3pm within George house George Street Edinburgh. Only the Tenant attended that hearing, the Landlords agent rested upon his written submission dated 3 August 2016.

4. The committee of the private rented housing panel comprised Paul Doyle chairman and Robert Buchan surveyor member.

DOCUMENTATION

5. The committee considered all of the documents referred to it by the parties which included the application and the written representations from the Landlord. The Tenant did not make any written representations to the Committee.

THE INSPECTION

6. The inspection took place at 11:30 AM on 20 September 2016. The tenant welcomed committee members and the Landlord's agent into the property. The chairman of the Committee introduced Committee members to both the Tenant and the Landlord's agent. The Committee then inspected the property.

The PROPERTY

7. The property is a third floor flatted dwelling-house entering from a common passage and stair. There is car parking to the front of the property. The front door of the property opens onto a central hallway, which provides access to each of the rooms. The property has a living room, one-bedroom a kitchen and a bathroom (with a three-piece sanitary suite). The larger building of which this property forms part is listed. The property does not have central heating and is single glazed.

8. The property is let unfurnished. The landlord is responsible for repairs to the fabric of the building the tenant is responsible for internal decoration.

9. The property is centrally located in Edinburgh's old town, within easy walking distance of the city Centre with extensive local shopping and good public transport links. The gross internal floor area of the property is 50 sq m or thereby.

The HEARING

10. The hearing took place at 3pm within George House, George Street, Edinburgh. The Landlord's position is set out in the written submission dated 3rd August 2016. The Landlord owns a number of other flatted properties within the same building. The Landlord relies on comparative figures for similar rented properties, and argues that the current market and the property's location merit a higher rental

11. The tenant explained that he has lived in the property since 1 January 1955. He is one of only two protected tenants in the property. He believes that the increased rental sought by the landlord is excessive.

DECISION AND REASONS

12. In terms of section 48 (1) of the rent Scotland act 1984 as amended, 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."

13. Disrepair or defects attributable to the tenants should be disregarded, as should any improvements made by the tenant, otherwise than in pursuance of the terms of the tenancy (section 48(3) of the Act). Improvements by the landlord should be taken into account. In reaching its determination the Committee applied those duties.

14. The Committee considered carefully all the evidence presented and considered which of the three alternative methods of ascertaining a fair event would be most appropriate in this case.

15. The three accepted methods used in Scotland are

- (a) Determining a fair event 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) of the Act
- (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 on the evidence available.

16. The Committee was aware of the need to proceed on the basis of the best evidence available, using other available evidence as a check where possible. There was no reliable evidence of registered rents of comparable properties in the area. The Committee is not persuaded (and neither party suggests) that return based on capital value of the property is the appropriate method to use in this case. The Committee decided that the best method to use in this case is an assessment of local market rents and then applying the appropriate disregards.

17. The Committee is aware that there are similar one bedroomed properties available for rental, and which have been recently rented, close to this property. A one bedroomed furnished property was recently rented at 630pcm. That property is in good condition and has an Energy Performance rating in category C1

18. A one bedroomed furnished property with a newly refurbished kitchen was recently let in Buccleuch Terrace at a rental of £750pcm. That property had an Energy performance rating in the C category and was in much better decorative condition than this property.

19. The Landlord relies on comparative figures for one property in Buccleuch Street and 6 properties in the same building. At first sight, it appears that a fair comparative figure for rental is £700 pcm, but the properties considered so far are not directly comparable. The energy performance for this property is categorised as G11, so that it falls into the poorest banding of energy performance.

20. The landlord, very fairly, provides the rental for a property on the same landing and immediately opposite this property. That property is the closest comparison to this property. The rental for that property is £650pcm. Placing reliance on the comparative rentals produced by the Landlord, the Committee finds that a fair market rental for this property is 650pcm, which is £7,800 per annum.

21. To make this property available for rental to a new tenant today, the landlord would have to renovate, refurbish and modernise the property. In order to assess a fair market rent, it is necessary to make an allowance for the cost of necessary work to prepare the property for a willing tenant. Realistically the Landlord would have to

replace the bathroom, replace the kitchen, install central heating, install double-glazing, replace the floor coverings and redecorate before successfully re-letting this property.

21. Using their own skill and experience the Committee assess the cost of carrying out those works as follows

Refitting Kitchen - £4,000

Replacing bathroom - £3,000

Installing central heating - £3,000

Installing double glazing -£3,000

Replacing floor coverings- £1,600

Redecoration - £1,000

22. Using their own skill and experience, the Committee amortise the cost of refitting a kitchen over 10 years, giving an annual cost of £400. The Committee amortise the cost of replacing the bathroom over 10 years, giving an annual cost of £300. The Committee amortise the cost of installing central heating over 15 years, giving an annual cost of £200. The Committee amortise the cost of installing double glazing over 15 years, giving an annual cost of £200. The Committee amortise the cost of replacing floor coverings over 5 years, giving an annual cost of £320. The committee amortise the cost of redecoration over 5 years, giving an annual cost of £200.

23. From a market rental of £7,800 per annum, deductions totalling £1,620, reducing the annual rental for this property to £6180 per annum.

24. The concept of scarcity is an essential feature of a 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) of the Act requires that the tenant be protected from the financial implications of that.

25. Case law has determined that for the purposes of the assumption a committee must assess the rental market over a "large area" to exclude excessive demand caused by specific local amenities such as proximity to city centre shops, offices and transport links or a hospital or university. "Locality" must be decided in that context. In considering the assumption, the committee considered that the City of Edinburgh as a whole is the "locality" for the purposes of the assumption.

25. The Committee find that there is a scarcity of similar properties in Edinburgh. Edinburgh as a whole as a letting market where demand outstrips supply. There is a high demand for properties of this nature, and each of the comparable properties considered by the Committee were let within days of their first advertisement. The value of rentals in Edinburgh have risen at a much higher percentage than anywhere else in Scotland in the last 12 months.

26. The Committee considered market evidence and in particular considered statistics compiled by the Scottish Government covering Lothian and a particularly helpful, up to date and informative bulletin prepared by Citylets, a privately owned Scottish portal for advertising property to let which advises that 80,000 properties to let were advertised during the year. The Committee also had access to the Rightmove website providing details of property let and their time to let.

27. The Scottish Government report indicated that in Lothian (of which Edinburgh is only a part), on average, rents for one bedroomed properties increased by 26.2% between 2010 and 2015. During this time, the cumulative increase of the Consumer Prices Index measure of inflation was 11.6%. The Citylets Q2 2016 report, specifically measuring rents in Edinburgh, indicated rent increases of 27.7% over the previous 5 years, of 21.2% over the previous 3 years and 8.7% year on year to the second quarter of 2016. These increases are significantly higher than in Scotland as a whole as shown in the Citylets report and come at a time of record low interest rates. The Committee consider that this shows clear evidence of scarcity in the private rental market in Edinburgh for one bedroom flats.

26. Having carefully considered the evidence, the Committee therefore find that the market rental should be reduced by 15% to reflect the scarcity of properties of this nature available for rental in Edinburgh. £6180 x 15% is £927. Once that is deducted from the rental assessed by the Committee, the fair annual rental for this property would be £5253.

27. The rent officer's assessment, against which the Landlord appeals, is that a fair rent for this property is £5,380 per annum. There is a 2.36% difference between the Committee's assessment of fair rent and that of the Rent Officer. The margin between the two assessments is so slight that the Committee come to the conclusion that the rent registered by the Rent Officer is a fair rent in terms of s.48 of the 1984 Act.

28. In reaching this decision the Committee had regard to all of the requirements of section 48 of the 1984 Act which it required to apply.

Paul Doyle

Signed

Date

6/10/2016

Chairman



Photographs taken during the inspection of
Flat 3F/1, 2 Boroughloch Square, Edinburgh, EH8 9NJ



Front – the flat is above the Oriel window



Rear of the building

Photographs taken during the inspection of
Flat 3F/1, 2 Boroughloch Square, Edinburgh, EH8 9NJ



Kitchen



Bathroom