

Housing and Property Chamber

First-tier Tribunal for Scotland



RENT (SCOTLAND) ACT 1984, SCHEDULE 5 PARAGRAPH 10(1)

NOTIFICATION OF DECISION OF FIRST-TIER TRIBUNAL FOR SCOTLAND

REFERENCE NO:	OBJECTION RECEIVED	OBJECTION
FTS/HPC/RR/19/3169	3 October 2019	Tenant

ADDRESS OF PREMISES

9 Edzell Court, Whiteinch, Glasgow G14 0TG

TENANT

Mrs Catherine Plommer

AGENT

NAME AND ADDRESS OF LANDLORD

Whiteinch & Scotstoun Housing Association
1 Northinch Court,
Glasgow G14 0UG

AGENT

Not applicable

DESCRIPTION OF PREMISES

2 storey end-terraced house erected approximately 1988 in the Whiteinch area of Glasgow. Accommodation comprises kitchen with dining area, living room, three bedrooms, bathroom with toilet and wash-hand basin, downstairs toilet, garden. Gas central heating. Double glazing throughout.

The gross internal floor area is 102 square metres.

SERVICES PROVIDED

Maintenance of common landscaped area and communal lighting in Edzell Court, Bulk uplift service

TRIBUNAL MEMBERS

CHAIRMAN	D Bartos
SURVEYOR	R Buchan

FAIR RENT**DATE OF DECISION****EFFECTIVE DATE**

£ 6690 p.a.

20 January 2020

14 September 2019

*services:

D Bartos

Chairman of First-tier Tribunal, Housing and Property Chamber

Date 20 January 2020

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Reasons for Decision of the Private Rented Housing Tribunal

(Hereinafter referred to as "the Tribunal")

Under paragraph 10(1) of schedule 5 to the Rent (Scotland) Act 1984

Case Reference Number: FTS/HPC/RR/19/3169

Re : Property at 9 Edzell Court, Whiteinch, Glasgow G14 0TG ("the Property")

The Parties:-

Whiteinch and Scotstoun Housing Association Limited, The Whiteinch Centre, 1 Northinch Court, Glasgow G14 0UG ("the Landlords")

Mrs Catherine Plommer, 9 Edzell Court, Whiteinch, Glasgow G14 0TG ("the Tenant")

The Tribunal comprised:-

Mr David Bartos	- Chairperson
Mr Robert Buchan	- Surveyor member

Background

1. Mrs Plommer is a tenant of the Property by virtue of a Scottish Secure Tenancy Agreement with the Landlords dated 13 June 2003. This tenancy agreement replaced the previous tenancy agreement which began on 28 February 1988. The Property was and is owned by a housing association. This means that the previous tenancy of the

Property was covered by sections 55 to 59 of the Rent (Scotland) Act 1984 and its rent was registrable under section 56 of the 1984 Act. Those sections of the 1984 Act were preserved for Mrs Plommer's existing tenancy by virtue of article 5 of the Housing (Scotland) Act 2001 (Scottish Secure Tenancy etc) Order 2002.

2. The previous registered rent for the Property was £504.84 per calendar month or £6,058.08 per year inclusive of service charge of £261.84 per year as a variable amount. The Landlords applied to the Rent Officer for registration of a rent of £7,357.56 per year inclusive of services to be registered as a fair rent. In their application the Landlords requested that yearly figure to include £353.88 as a charge for services which could be varied by them.
3. On 13 September 2019 the Rent Officer registered a rent of £6,989.04 per year including a non-variable amount for services of £353.88. This was intimated to the Landlords and the Tenant. The Tenant objected to this by letter of appeal to the Rent Officer. The Rent Officer referred the objections to the Tribunal by her letter dated 3 October 2019.
4. The Tribunal attended at the Property on 6 January 2020 at 10.00 a.m.. The Tenant was present. The Landlords were not represented at the inspection. The weather was wet and windy. The Property is an end-terrace house in a terrace of houses which faces onto a central square forming Edzell Court. There are further terraces of houses on either side of the square which appears well maintained. There are a total of 13 houses in three terraces. The terrace on the north side has houses numbered 1 to 4; that on the west side houses numbered 5 to 9 and that on the south side houses numbered 10 to 13. The houses were built in 1987 or 1988. Externally the structural condition of the Property appeared to be good and the Property was wind and watertight on the day of inspection. There are some unallocated parking spaces in the square. The Property and Edzell Court are situated just to south of Dumbarton Road in the Whiteinch area of Glasgow. It is near to community amenities, and has good transport links to the shopping areas in the west end of Glasgow. There are also extensive industrial and commercial areas nearby.
5. The accommodation consists of two double bedrooms, a single bedroom, living room, a dining kitchen, bathroom and a downstairs toilet. On the ground floor, the downstairs toilet, the living room and the dining kitchen are accessed directly from a central hallway. The kitchen extends from the front of the house to the rear and has windows to the side and rear. There is access from the kitchen to a large garden at the rear and side of the house which belongs to the Property. The living room faces the garden at the rear. On the first floor there is a bathroom

at the side of the house and the three bedrooms all face the rear of the house and the garden with an open outlook.

6. The Property has gas central heating powered by a boiler in the kitchen. It has double glazing throughout. There is also access to the garden through a passageway between the front of the house and the gable end of the adjacent terrace.
7. All decoration throughout the Property has been carried out by or on behalf of the Tenant. It is dated and in need of renovation. All carpets and floor coverings have been provided by the Tenant. They too are in a worn state and in need of replacement. The Tenant has provided the gas cooker, the refrigerator and washing machine. The tenancy is unfurnished. The units in the kitchen and bathroom and fittings in the bathroom are worn and in need of replacement.
8. The Tribunal took account of their inspection and in addition the following documentary evidence : -
 - Copy form RR1 being the Landlords' application for registration of rent for the Property dated 13 August 2019
 - Copy extract from the Rent Register for the Property showing among other matters the rent registered by the Rent Officer on 13 September 2019
 - Copy reference to the Tribunal from the Rent Officer dated 3 October 2019
 - Copy letter of appeal from the Tenant
 - Copy tenancy agreement dated 11 February 1988
 - Copy Scottish Secure Tenancy Agreement dated 13 June 2003
 - Written representations from the Tenant received by the Tribunal on 24 December 2019
 - Written representations from the Landlords dated 5 December 2019 and 23 December 2019
 - Copy letters to the Landlords from the Rent Officer dated 2, and 4 August 2016 and 14 September 2016
 - Copy rent statement dated 19 December 2019
 - Archived notes of letting relating to properties at Dumbarton Road (Partick), Ferryden Court, and Millbrix Avenue (Old Knightswood), and notes of marketing to let of properties at Ferryden Court, Dumbarton Road, Harefield Drive Scotstounhill, and in Scotstoun, Glasgow.
 - Citylets Report for Q3 2019
 - Scottish Government Private Rented Sector statistics 2010 to 2018 (extracts – pages 1 to 6, and 13, 14, 32, 48 and 50)

- Rightmove's bar chart showing average asking prices for rents in G14
- Selected list of registered rents in G14 area, including Primrose Street, Edzell Street, Edzell Court, 984 Dumbarton Road, Earl Street
- Extract rent register pages for 5 Edzell Court and 4 Edzell Court

The Citylets Report, archived notes of lettings and marketing, the Scottish Government statistics, the bar chart document and the registered rent material had been obtained by the Tribunal and copies had been intimated to the parties, by notice dated 11 December 2019.

The Hearing

9. At the conclusion of the inspection the Tribunal held a hearing within the Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The Landlords were represented by their Housing Manager Jim Calderwood. There was no appearance by or for the Tenant. She indicated at the inspection that she did not intend to attend.
10. Mr Calderwood explained that the Landlords set the rents based on the Landlords' operating model. They would always charge more for a main-door house such as the Property with its own garden than for a flat in a tenement. The rents were not set separately for properties which were covered by registered rents under the 1984 Act. They were set regardless of the nature of particular type of rental agreement. From nearly 1300 rented units the Landlords had under 50 units such as the Property that were covered by registered rents under the 1984 Act.
11. Looking at the notes of lettings in the open market provided by the Tribunal, Mr Calderwood noted that those in Ferryden Court and Millbrix Avenue were relevant. The others were either in Partick, which was materially closer to the centre or in Scotstoun which was materially further out. In so far as the location was analogous, he noted that flats in the Whiteinch area were always less desirable for tenants than houses. He also observed that there were no services provided in these private rents.
12. Looking at the registered rents for four roomed (3 bedroom) properties, he identified those in Edzell Street, Edzell Court, Earl Street, Primrose Street, and 984 Dumbarton Road to be relevant. However the Primrose Street and Dumbarton Road properties were tenement flats which would attract a lower rent than the Property in question. There were a lot of tenemental properties in the area. The housing development of which

the Property formed part was built in about 1988. The Landlords owned the houses in the Edzell development that had not been bought privately.

13. With regard to the registered rent for the house at 5 Edzell Court in the same terrace as the Property which was fixed at £543 per month as at 23 January 2019, Mr Calderwood was unable to explain why the Landlords were now seeking £613 per month less than 12 months later. He speculated that it was possible that the kitchen of 5 Edzell Court was smaller but he could not be sure. He told the Tribunal that none of the rents registered for the Landlords' properties had been appealed and taken on to a tribunal.
14. Mr Calderwood explained that the Landlords' increases in rent averaged 3 to 4 per cent per year over the past 5 years. The increases for three bedroom properties shown in the Scottish Government statistics for the lowest quartile for Greater Glasgow (2016 to 2018) of about 12% were higher than those sought by the Landlords.
15. The rise in rent sought by the Landlords was based on their operating model across the whole 1300 properties which they let out to tenants. He was however unable to point to anything in the Landlords' operating costs that had necessitated the requested increase of 21% over 3 years from £504.84 per month to £613.13 per month.
16. Mr Calderwood accepted that all floor coverings, white goods and furniture had been provided by the Tenant and only the kitchen fittings and units and bathroom and toilet fittings had been provided by the Landlords.
17. Turning to the services element of the rent, he confirmed that although the application to the Rent Officer had sought an increase for the provision of stair lighting, door entry system, communal t.v. system, and a communal ventilation unit, none of these services were supplied to the Tenant. Nor was there any back court to maintain and charge for.
18. This meant that the only services in the 2003 tenancy agreement that were actually provided were maintenance of the common landscaped areas in Edzell Court and the provision of common 'bulkhead' lighting on the gable ends of the side terraces for security reasons. He understood that the sole lamp post in Edzell Court had been taken over by Glasgow City Council and that the Council paid for the lighting of it.
19. The cost of common landscaped area maintenance of £53,043 per year was calculated over 1785 of properties both let by the Landlords or factored by the Landlords. The cost of the common lighting was

calculated at £133,056 per year over all of those let or factored properties.

20. Mr Calderwood told the Tribunal that since about 2003 the Landlords had also provided a 'Bulk Uplift Service' to the Tenant. Under this the Landlords' contractors would come to the houses in Edzell Court every Tuesday and pick up heavy items such as old washing machines and take them to pick up points agreed with the Council from which the Council would then take them to its disposal site. This service had been provided after the Council had stopped providing its door-to-door service. The tenants had been aware of this additional service.
21. The bulk uplift service had a cost of £64,752 per year covering over 1785 of properties both let by the Landlords or factored by the Landlords.
22. Mr Calderwood also submitted that the Landlords were entitled to payment from the Tenant for community alarms, lift and concierge which were supplied to the multi-storey block which they owned at 64 Curle Street. He explained that the Landlords sought to allocate these costs across the whole of their tenants whether or not the tenants were living in the multi-storey block. This was to achieve an element of fairness between those living in and out of such accommodation which would otherwise be more costly and less attractive to tenants because of alarms, lift and concierge outgoings.
23. The Tribunal explored with Mr Calderwood the legal basis of any such charge when it was not mentioned in the tenancy agreement. He submitted that there had been consultation with all of the Landlords' tenants and there had been no objection to this allocation of the costs. This was sufficient in his view for the charge to be allocated to all tenants including Mrs Plommer.

The Law Being Applied

24. In considering an objection to the rent registered by the Rent Officer the Tribunal requires to determine for itself what rent is or would be a fair rent under a regulated tenancy of the property in question. If the Tribunal determines that the rent registered by the Rent Officer is a fair rent then it must confirm the rent but if it takes the view that the rent so registered is not a fair rent, then it must determine the fair rent for the property in question without being bound by the Rent Officer's figure.
25. In determining the fair rent the Tribunal must strike an equitable balance between the interests of a tenant and landlord respectively. In striking that balance the Tribunal is obliged under section 48(1) of the Rent (Scotland) Act 1984 to have regard to all 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 under the tenancy to the quality, quantity and condition of the furniture.

26. The disregard of personal circumstances means that the Tribunal must disregard a tenant's ability to pay the rent. The assets or financial position or organisation of a landlord are also "personal circumstances" which have to be disregarded.
27. Furthermore in determining the fair rent the Tribunal is obliged under section 48(2) of that Act to assume that the number of persons seeking to become tenants of similar properties in the locality on the terms (other than those relating to rent) of the tenancy is not substantially greater than the number of dwellings in the locality which are available for letting on such terms.
28. The Tribunal must disregard any improvement or the replacement of any fixture or fitting carried out, otherwise than in pursuance of the tenancy, by the tenant or any predecessor of his under the tenancy.
29. The task of determining the fair rent under section 48(1) is a composite task which takes account of a number of accepted methods of determining a rent, none of which is regarded as the primary method. (*Western Heritable v. Hunter* 2004 S.C. 635 at para. [41]). The three accepted methods are:
 - (a) having regard to registered rents of comparable dwellinghouses in the area;
 - (b) taking market rents of such dwellinghouses and deducting an amount in respect of improvement and the like by the tenant which requires to be disregarded under section 48(3) and an amount if the market rents do not reflect the assumption as to demand not being substantially greater than supply (the assumption as to absence of market imbalance) and
 - (c) calculating the appropriate return based on the capital value of the property, taking into account the assumed absence of market imbalance.

The third method has been described as notoriously unreliable, "normally to be used only as a last resort" (*Western Heritable Investment Co. Ltd v. Husband* 1983 S.C. (H.L.) 60, 73).
30. Market rents may be used as a cross-check against registered rents to ensure that where there is no scarcity (market imbalance), registered rents do not come to be markedly out of line with current market conditions and to provide an adjustment for general inflation (*Wright v.*

Elderpark Housing Association [2017] CSIH 54, at para. [13]). Equally registered rents may be used as a cross-check against market rents Western Heritable Investment Co. Ltd v. Hunter 2004 S.C. 635, para. [41]).

Rental Evidence

31. The Tribunal considered carefully all the above evidence and written representations together with the observations of the Tribunal members at the inspection.
32. The Tribunal had the following comparable annual registered rents:

Rent of £ 6516.60 (£543.00 per month) for 5 Edzell Court
 Rent of £ 6989.04 (£582.42 per month) for 4 Edzell Court
 Rent of £ 6917.56 (£576.46 per month) for 22 and 30 Edzell Street.

The Tribunal also took note of the registered annual rents for flats in the area being :
 Rent of £ 5442.24 (£453.52 per month) for 984 Dumbarton Road
 Rent of £ 5514.36 (£459.53 per month) for 2 Primrose Street.
33. The rents for 5 Edzell Court and 984 Dumbarton Road were registered on 23 January 2019 and that for Primrose Street on 18 January 2019. The rent for 4 Edzell Court was registered on 13 September 2019 on the same day as the rent for the Tenant's Property. The rents for 22 and 30 Edzell Street were registered on 23 August 2019. All included the provision of services.
34. Registered rents were set by the Rent Officer with no explanation or reasoning as to how the rent was set or what factors had been taken into account in that process.
35. The Tribunal were able to use their knowledge of market rents from the Whiteinch area of Glasgow. The Tribunal had the following comparable market rents:
 - Rents of £650 per month for two unfurnished and fully modernised 3 bedroomed flats at Ferryden Court, Whiteinch one being a let agreed and marketed from 4 February to 12 April 2019 and the other marketed for 6 days in August 2019 respectively
 - Rent of £600 per month for a modernised 3 bedroomed duplex dwelling on Millbrix Avenue, Knightswood, let agreed and marketed from 14 May to 26 July 2019

36. In her written representations the Tenant observed that the increase found by the Rent Officer was about 15% over three years when inflation over that period was 2% per year. Her position was that the increase was unfairly high.

Reasons for Decision

Market Rents

37. Using its knowledge of market rents and taking account of the market rents in the above comparables, and the Landlords' submissions the Tribunal considered that a three bedroomed unfurnished house of the size and location of the Property in a satisfactory state of repair with modern fixtures and fittings including double glazing, central heating and "white goods" (cooker, refrigerator, washing machine) in the Whiteinch area of Glasgow would let in the open market for about £675 per month.
38. The Tribunal took the view that in order to achieve that market rent an allowance would have to be made for the costs to the Landlords of upgrading including the installation of new kitchen units, full re-decoration and installation of new flooring. Over the years the Tenant had installed all of the floor coverings which fall to be disregarded under section 48 of the 1984 Act but would also have to be replaced to achieve the market rent of £675 per month. The cost of the white goods would also have to be taken into account as part of the upgrade.
39. Taking the limited lifetimes of the upgrades into account the Tribunal estimated their cost at £10,000 depreciated at £1,500 per annum or £125 per month. Making such a monthly deduction from £675 the Tribunal considered that leaving aside the assumption as to no market imbalance (no scarcity) a fair rent on a market rent basis with no services would be £550 per month.

Balanced market assumption

40. The next question is whether the section 48(2) assumption mentioned above applies. This is that number of persons seeking to become tenants of similar dwellings in the "locality" of the Property on the terms (other than relating to rent) of the tenancy is not substantially higher than the number of such dwellings which are available for letting on such terms.
41. Case law has determined that in deciding whether the assumption exists a Tribunal 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.

42. The Tribunal recognised that an easily definable "large area" in this case would be Glasgow as a whole. There was no issue over this.
43. Was the number of persons seeking to become tenants of similar properties in Glasgow on the terms (other than those relating to rent) of the tenancy substantially greater than the number of dwellinghouses in Glasgow available for letting on such terms ? The Tribunal was clear that the answer was "no". There was nothing in either the City lets report for Q3 2019 or the Scottish Government Report that suggested that the demand was substantially greater than supply in question. The assumption in section 48(2) for fixing fair rent applied.

Return on Capital

44. The calculation of an appropriate return based on the capital value of the Property did not appear appropriate given (1) the imprecision of such a calculation which invariably requires the use of contentious variables (in particular the decapitalisation rate) compared to the relative ease of using comparable rents and (2) the readily available evidence of open market let property and registered fair rents in the area of the Property.

Registered Rents

45. The fixing of a fair rent is a composite exercise where one method can be used as a cross-check of the figure using another method. Typically market rents fall to be cross-checked against registered rents and vice-versa.
46. Applying that approach the Tribunal considered the registered rents. Those for the houses at 4 Edzell Court and, 22, and 30 Edzell Street were for valuations in August and September 2019 which were on or close to the valuation date in the present case of 14 September 2019. All were decisions of the Rent Officer the reasoning of which was unknown to the Tribunal. The rent for 4 Edzell Court was at the same level as the Rent Officer's finding in the present case. The rents of 22 and 30 Edzell Street were lower presumably reflecting their facing a busier road and with a differing layout inside. Given their contemporaneous nature with the decision under appeal and the lack of information about the reasoning behind them the Tribunal did not rely on them.
47. The rents of flats at Dumbarton Road and Primrose Street, underlined the lower value of registered rents of flatted properties in the area as

compared with those for houses such as the Property. Otherwise, being flats registered rents for flats were of little assistance.

48. The house at 5 Edzell Court appeared to be most similar to the Property. It had a downstairs shower room rather than the toilet area of the present Property. However the Tribunal could see that the toilet area in the Property was convertible by a tenant to a shower area. The rent of 5 Edzell Court pointed to a figure of £543 per month inclusive of services in January 2019. It was not clear why the Rent Officer should have found an increase of about 7% in the 8 months leading to the September 2019 valuation date for the current Property when the Citylets figure for average rents for 3 bedroom properties in the Glasgow area show a decrease during 2019.

Cross-check

49. The adjusted market figure found by the Tribunal suggests that the registered rents are not materially out of line with what landlords in general and tenants negotiate for themselves as rent for properties similar to that of the Tenant.
50. Both the market rents and the registered rents show increases materially in excess of the retail prices index (the general measure of inflation). In these circumstances it did not appear fair to the Landlords (whose housing association status – a personal circumstance - must be disregarded in this exercise), that the rent increase should be restricted to the rate of inflation as argued for by the Tenant.
51. Taking the composite approach to the market and registered rent figures the Tribunal found that a fair rent to both the Tenant and Landlords was £547 per month leaving aside any services provided by the Landlords.

Services

52. The fair rent to be determined by the Tribunal also includes any amount payable by a tenant to a landlord for services, whether or not the tenancy includes that amount in a global rent figure or separates it out from rent for occupation only or the amount for services is payable under an agreement separate from the tenancy.
53. The amount for services in the fair rent must not be too high or excessive for the service provided. The existing registered rent included a figure of £261.84 per year for services, being £21.82 per month.

54. It was accepted by Mr Calderwood and the Tribunal that the services mentioned in the 2003 Scottish Secure Tenancy Agreement and actually provided by the Landlords were only:

- The maintenance of the common landscaped areas in Edzell Court
- The provision of common 'bulkhead' lighting on the gable ends of the two side terraced buildings in Edzell Court.

The Tribunal accepted that the Tenant was liable to pay for these services.

55. The first question was whether the fair rent should include the weekly "bulk uplift" service mentioned by Mr Calderwood. It was not mentioned in the 2003 Tenancy Agreement and there was no written documentation provided to the Tribunal showing the Tenant's agreement to it. The Tribunal accepted Mr Calderwood's evidence that there had been consultation by the Landlords with the tenants in Edzell Court, including Mrs Plommer as the Tenant and that the service had then been provided and for paid for without objection. In these circumstances the Tribunal concluded that there was a separate informal agreement between the Landlords and the Tenant for the bulk uplift service for which the Tenant required to pay.
56. The second question was whether the fair rent should include an element for community alarms, lifts and concierge which were supplied to properties away from the Edzell development and in particular the multi-storey block at Curle Street.
57. The Tribunal was unable to accept that the fair rent should include such an element. Firstly as a matter of law payment of rent including that for services is based on consent. The Landlords were unable to point to any evidence of consent by the Tenant to pay for services which were supplied to properties with which she had no common concern and where the only common element was that they had tenants who shared the same landlord. Failing an agreement by the Tenant to pay for services, no amount is payable and no amount should be included in the fair rent.
58. Secondly, even if Mrs Plommer had agreed knowingly to pay for services supplied to other properties and not supplied in any way to her or the Property tenanted by her, that would be not a service supplied in connection with the Property falling to be valued by the Tribunal as part of a fair rent for the Property but rather an unrelated gift by her for the benefit of other persons in other properties. The Tribunal is not concerned with such gifts, however well-intentioned they may be.

59. Turning to the three services provided to the Tenant, the Tribunal fixed amounts payable in respect of each. In respect of the maintenance of landscaped areas, the Tribunal took this to include the pavements and parking spaces in the inner part of Edzell Court.
60. On the basis of the Landlords' written representations it found that the yearly share of the Tenant for maintenance of Edzell Court was 1/1785 of £53,043 being £29.71.
61. In respect of the bulk uplift it found the yearly share of Tenant was 1/1785 of £64,752 being £36.28.
62. In respect of the lighting, the Tribunal considered the Landlords' claim for a 1/1785 share of £133,056. That gave a figure of £74.54 per year payable by the Tenant for the four 'bulkhead' lights attached to buildings in Edzell Court. That seemed to the Tribunal to be excessive. It found that £5 per month was acceptable giving £60 per year.
63. A fairly attributable value of services payable by the Tenant as part of the rent was therefore £126 per year (£10.50 per month).
64. The Tribunal was conscious that this was less than the £261.84 per year in the previous registered rent from 2016. The break-down of that figure was not known. However the Tribunal was not bound by the Rent Officer's valuation in 2016 any more than it was for the 2019 one.
65. The next question was whether the Landlords were entitled to vary the services payments in the fair rent. Under section 49(6) of the Rent (Scotland) Act 1984 the Tribunal can allow variation if the terms of the agreements for the services provide reasonable provisions for variation.
66. Clause 1.8 of the 2003 Scottish Secure Tenancy Agreement excludes variation where a tenant has a registered fair rent such as in the present case. The Tribunal therefore disallowed variation of the services element of the fair rent in the present case.

Conclusion

67. Taking a broad and equitable view of the matter, the Tribunal took the view that the rent registered by the Rent Officer was excessive. Instead the Tribunal substituted a figure of £6,690 per year including non-variable services of £126 per year as the fair rent. Given that they were under 5% of the overall figure the services did not require to be noted separately in the rent register. The overall fair rent amounts to £557.50 per month.

68. Both parties and in particular the Tenant should be aware that there are legal provisions requiring any increase in rent to be introduced in a staged process.
69. In reaching this decision the Tribunal had regard to all of the requirements of section 48 of the 1984 Act which it required to apply by virtue of section 56 of that Act.
70. As the Landlords are a housing association, section 60(2) of that Act applies and the date of registration shall be deemed to be the date on which the rent determined by the Rent Officer was registered, namely 14 September 2019

D Bartos

Signed

..Date: 20January 2020.....

David Bartos, Chairperson