

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of Reasons by the First-tier Tribunal for Scotland Housing and Property Chamber in respect of an application for a determination of rent under the Rent (Scotland) Act 1984

Chamber ref: FTS/HPC/RR/19/3318

Property: Flat 1/2, 21 West End Park Street, Glasgow G3 6LH ("the Property")

Parties: Mr William Fox, Flat 1/2, 21 West End Park Street, Glasgow G3 6LH ("the Tenant")

Charing Cross Housing Association, 31 Ashley Street, Glasgow G3 6DR ("the Landlords")

Tribunal Members: George Clark (Legal Member) and Mike Links (Ordinary Member)

Introduction

1. This is a reference to the First-tier Tribunal for Scotland Housing and Property Chamber ("the Tribunal") for the determination of a fair rent under the Rent (Scotland) Act 1984 ("the 1984 Act") by the Landlord in respect of Flat 1/2, 21 West End Park Street, Glasgow G3 6LH ("the Property").
2. The previously registered rent for the Property was £3,840.12 per annum. The Landlord applied for an increase to £4,143.93 per annum. On 15 August 2019, the Rent Officer registered a rent of £4,143.93 per annum effective from 6 October 2019. The Landlord referred the Rent Officer's determination to the Tribunal.

The Inspection

3. The Tribunal inspected the property on the morning of 17 February 2020. The Tribunal comprised George Clark (Legal Member) and Mike Links (Ordinary Member). A file of photographs, taken at the inspection, is attached to and forms part of this Statement of Reasons.
4. The property is a first-floor flat in a brick-faced 4-storey block erected circa 1988. It has gas central heating with a combi boiler. The windows are single-glazed.
5. The accommodation within the property comprises living room, two bedrooms, kitchen/diner and bath/shower room. The bathroom has recently been wet-walled and a shower has been fitted.
6. The gross internal area of the Property is 92 square metres or thereby.
7. There is a communal back court and on-street parking.
8. The property is let unfurnished and the cooker was also provided by the Tenant.
9. The Landlord provides back court maintenance, at an estimated cost of £1.88 per week, but does not provide any other services.

Written Representations

10. The Landlord contended in documents submitted with the referral that the Rent Officer had assessed the Property using information provided by the Landlord but that that rental information had related to 2-apartment flats, not, as in the present case, 3-apartment properties.

The Hearing

11. Following the inspection, a Hearing was held at Glasgow Tribunals Centre, 20 York Street, Glasgow. Neither Party attended or was represented. The Tribunal considered all the evidence before it.
12. Prior to the Hearing, the Tribunal had issued a Direction requiring the Landlord to provide confirmation of the rent being sought and, in particular, evidence of passing rents for 3-apartment flats in the area. The Landlord did provide rental

figures for a number of properties, but the Tribunal did not find them directly comparable. They also, however, provided the Tribunal with a document showing the method by which they calculated base rent for a 3-apartment flat. Their methodology, which resulted from the fact that the registered rent would be in place for three years, produced an annual figure of £4,463.29, by applying an increase of 3.7% in 2020/21, 3.6% in 2021/22 and 3.5% in 2022/23 and taking the average of these three figures.

Reasons for Decision

13. Section 48 of the 1984 Act, as amended provides that:

48.— Determination of fair rent.

(1) In determining for the purposes of this Part of this Act what rent is or would be a fair rent under a regulated tenancy of a dwelling-house, it shall be the duty of the rent officer or, as the case may be, of the Tribunal, subject to the provisions of this section, to have regard to all 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, to the quantity, quality and condition of the furniture.

(2) For the purposes of the determination it shall be assumed 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 in the locality which are available for letting on such terms.

(3) There shall be disregarded—

(a) any disrepair or other defect attributable to a failure by the tenant under the regulated tenancy or any predecessor in title of his to comply with any terms thereof, and

(b) any improvement (including any improvement to the furniture provided for use under the tenancy), or the replacement of any fixture or fitting carried out, otherwise than in pursuance of the terms of the tenancy, by the tenant under the regulated tenancy or any predecessor in title of his, and

(c) if any furniture is provided for use under the regulated tenancy, any deterioration in the condition of the furniture due to any ill-treatment by the tenant, any person residing or lodging with him, or any sub-tenant of his.

(4) In the application of this section to a converted tenancy, the references in subsection (3) above to the tenant under the regulated tenancy shall include references to the tenant under the tenancy before the conversion.

14. The Tribunal considered carefully all the evidence presented, together with its observations at the inspection. In particular, the Tribunal considered carefully which of the three alternative methods of ascertaining a fair rent was most appropriate in this case.

15. 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.

16. The Tribunal was aware of the need to proceed on the basis of the best available evidence, using other available evidence as a check where possible. The Tribunal had the benefit of its own knowledge and experience of the rents passing and being asked in the local market. In these circumstances, the Tribunal decided that the best method to use in this case was the market rent less any discount for scarcity method at (b) *supra*.

17. 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.

18. The Tribunal considered whether any discount should be made for scarcity in this case but was satisfied that in the area as a whole, there could not be said to be scarcity of similar properties to let at the present time. The Tribunal was satisfied that no deduction required to be made in relation to scarcity for this type of property at this point in time.
19. The Tribunal regarded the approach taken by the Landlord in calculating base rents across its portfolio of 515 properties was fair and it produced a rent for the Property of £4,463.29 per annum, inclusive of services. The Tribunal did not consider there was any reason to apply a discount to that figure to reflect the condition or amenities of the Property.
20. Having taken all relevant factors into account, the Tribunal determined that a Fair Rent for the property was ~~£4,463.29~~ per annum, inclusive of the services provided by the Landlord, namely back court maintenance and stair lighting. In reaching this decision, the Tribunal had regard to all the evidence, and to all the circumstances that must be taken into account in terms of section 48 of the Rent (Scotland) Act 1984.

Signed George Clark Legal Member/Chair

17 February 2020 Date

*This is the Schedule of Photographs
referred to in the Statement of Reasons
George Clark 17/2/20*

Housing and Property Chamber First-tier Tribunal for Scotland



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

SCHEDULE OF PHOTOGRAPHS

ADDRESS: FLAT 1/2, 21 WEST END PARK STREET, GLAGOW G3 6LH

DATE: 17TH FEBRUARY 2020

REFERENCE: FTS/HPC/RR/19/3318



FRONT ELEVATION



KITCHEN



BATHROOM



LIVING ROOM

Mr M LINKS

ORDINARY MEMBER (SURVEYOR)

HOUSING AND PROPERTY CHAMBER

DATE 17 February 2020