

Housing and Property Chamber  
First-tier Tribunal for Scotland



**Rent (Scotland) Act 1984**

**Notification Of Decision**

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<b>REFERENCE NO.</b>	<b>OBJECTION RECEIVED</b>	<b>OBJECTION</b>
FTS/HPC/RR/18/2272	7 September 2018	Landlord

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**ADDRESS OF PREMISES**

Basement Flat, 10A Coates Gardens, Edinburgh, EH12 5LB

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**TENANT**

Mrs Valerie Miller

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**NAME AND ADDRESS OF  
LANDLORD**

Mr Daniel Mark Aitken  
1 Brighthouse Park Cross, Edinburgh,  
EH4 6GZ

**AGENT**

Ace Property  
189 Bruntsfield Place, Edinburgh, EH10  
4DQ

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**DESCRIPTION OF PREMISES:** Basement Flat comprising living room, double bedroom, kitchen and bathroom. Gas central heating. Single glazed windows. Kitchen and bathroom in need of modernisation. Exclusive garden ground to rear. Close to transport and other local amenities. In street with lodging house and a number of private hotels.

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**SERVICES PROVIDED**

None

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**TRIBUNAL MEMBERS**

**CHAIRPERSON**

George Clark

**ORDINARY MEMBER (SURVEYOR)**

Andrew Murray

**ORDINARY MEMBER**

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**FAIR RENT**

£ 5,520.00 p.a.

**DATE OF DECISION**

26 November 2018

**EFFECTIVE DATE**

1 February 2019

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Chairperson of Tribunal:  
26 November 2018

**G. Clark**

# Housing and Property Chamber First-tier Tribunal for Scotland



**Statement of Decision with Reasons in an Application for Registration of a Rent under Section 46(1) of the Rent (Scotland) Act 1984**

**Property: 10A Coates Crescent, Edinburgh EH12 5LB**

**Chamber Reference: FTS/HPC/RR/18/2272**

## **INTRODUCTION**

1. This is a reference to the Housing and Property Chamber of the First-tier Tribunal for Scotland for the determination of a fair rent under the Rent (Scotland) Act 1984 by the tenant, Miss Valerie Miller (“the tenant”) in relation to 10A Coates Crescent, Edinburgh EH12 5LB. The landlord is Daniel Mark Aitken, 1 Brighthouse Cross, Edinburgh EH4 6GZ (“the landlord”).
2. The rent paid by the tenant in respect of the property was £3,450 per year. The landlord proposed a rent of £6,600 per year for the property. The Rent Officer determined a rent of £5,520 per year. The landlord referred the Rent Officer’s determination to the Housing and Property Chamber of the First-tier Tribunal for Scotland.
3. The tenant was present at the inspection, but not at the subsequent hearing. The landlord was represented at the inspection and the hearing by Wendy Mackay, Property Manager, Ace Properties, 189 Bruntsfield Place, Edinburgh.
4. The Tribunal comprised George Clark (Legal Member) and Andrew Murray (Ordinary/surveyor Member).

## THE DOCUMENTATION

5. The Tribunal considered all the documents referred to it by the parties, namely the landlord's Application for Registration of a Rent dated 18 June 2018, the Rent Officer's determination dated 13 August 2018, the landlord's written representations of 29 October 2018 and the tenant's written representations, dated 22 October 2018.
6. In her written representations, the tenant stated that the increase sought by the landlord was of the order of 90% and the rent registered by the Rent Officer represented a 60% increase. The landlord wished such a large increase because of similar rents and properties in the district. She presumed these other properties were furnished, that carpets were replaced and that painting and decorating were kept up to date by the landlords. Her bathroom had been flooded on six occasions and the bath had filled with waste water from the flats above on three occasions. She had been told that she would have to move out again to allow the boxroom and sittingroom to be replastered following damp-proofing treatment. The tenants of other flats in the district did not have all that to contend with. She had lived in the property for 38 years and had painted every inch of it, inside and out, back and front, including railings and downpipes. If the property looked to be in order, it was down to her efforts. The tenant thought the 90% rent increase the landlord was seeking was totally unfair.
7. In his written representations, the landlord justified the proposed increase on the basis of return on capital and on the level of rents of similar properties. He referenced a basement flat in Coates Gardens with the same overall floor area, the internal layout of which had been remodelled, possibly in better internal condition and with the same garden area and a front outdoor store. It was on the market at offers over £385,000. He also referred to a ground floor flat at Coates Gardens, with two bedrooms, in better internal condition, but without a garden, on the market at offers over £355,000. Based on a 3% gross return before expenses, the annual rent

should be in the range of £10,650 to £11,550 per annum (£887 to £962 per month) and the landlord believed a 3% return was conservative.

8. The landlord also referred to two flats for rent in Coates Gardens, both two-bedroom, first floor flats, in good order. One was £1,325 per month and the other was £1,290. There were, he said, many other references around these figures.
9. The landlord added that he had not requested an increase for at least 15 years and that there was no lease agreement. There were bills to pay and repairs to carry out and this cost money. He thought it fair that the rent should keep pace with rising costs. In his original application to the Rent Officer, he had requested £550 per month, which he had thought was reasonable. He was now seeking a higher figure based on return on capital and rents for similar properties.

## **THE INSPECTION**

10. The inspection took place on 26 November 2018. The Legal Chair of the Tribunal introduced the Tribunal to the tenant and the landlord's representative. The Tribunal then proceeded to inspect the property.

## **DESCRIPTION OF THE PROPERTY**

11. The property forms the basement flat of a 4-storey terraced building in a street comprising townhouses, many converted into private hotels, in the west end of Edinburgh city centre, close to Haymarket Station. It is well situated for all local amenities and transport links. On-street parking is available by Residents' Permit and metered spaces.
12. The accommodation comprises living room, bedroom, boxroom, kitchen and bathroom. The property has its own entrance, accessed by an external stair from street level. There is an area of garden ground to the rear and a cellar located beneath the pavement. The kitchen units are

approximately 20 years old and are basic. The bathroom fittings are dated, the wash hand basin has hairline cracks and the enamel coating of the cast iron bath is defective. There is an electric shower over the bath. There is gas central heating with a combi boiler, installed in 2013. The age of the electrical wiring is unknown but there is a modern consumer unit. The Tribunal had sight of an Electrical Installation Condition Report from 2017. The flooring is, in the main, painted chipboard. The windows are single-glazed timber.

13. The property is let unfurnished.
14. The gross internal floor area of the property is 120 square metres or thereby.

### **THE HEARING**

15. The hearing took place at George House, 126 George Street, Edinburgh.

### **DECISION AND REASONS**

16. In terms of section 48(1) of the Rent (Scotland) Act 1984, as amended, the duty of the Tribunal 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”.*
17. 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)). Improvements by the landlord should be taken into account. In reaching its determination, the Tribunal complied with its duty as set out above.

18. The Tribunal considered carefully all the evidence presented. In particular, the Tribunal considered carefully which of the three alternative methods of ascertaining a fair rent was most appropriate in this case.
19. 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 Tribunal will depend in each case upon the evidence available.
20. 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. There was no evidence available to the Tribunal of registered rents of comparable properties in the area and the Tribunal determined that the best method to choose was to look at market rents and make appropriate disregards. The Tribunal was not persuaded that return based on the capital value of the property was the appropriate method to use in relation to a regulated tenancy.
21. 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.

22. The Tribunal considered whether any discount should be made for scarcity in this case, but was satisfied that in the central Edinburgh area as a whole, there could not be said to be scarcity of similar properties to let at the present time and neither party had presented evidence to the Tribunal that demand for properties in the area substantially exceeded supply. 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.
23. The Tribunal noted the comments made by the tenant in her written representations and noted also that the flat was adjacent to a building used as a lodging house, with 12 individual residents. The tribunal accepted that this would result in an element of noise and disruption when compared to a townhouse occupied by a family. The tenant had commented at the inspection that she felt unable to use the front room as the living room, as residents of the lodging house stood outside smoking, at the gate leading from the street to the steps down to her flat. Accordingly, she used the back room as a living room and the front room as a bedroom. Her view was that the property had not been upgraded to the standard of other flats in the area. The Tribunal also noted that the tenant's primary concern was the level of increase being proposed but was of the view that it had to assess the matter by paying due regard to the rents passing in similar flats in the area, discounting appropriately to take account of the condition of the property.
24. The Tribunal had available to it the rental figures being sought for a number of flats in the area. Two-bedroom flats appeared to be achieving rents of around £1,300 per month, but, whilst they did not have exclusive garden ground, their proportions were very different, as they formed the principal rooms of former townhouses. They were also in a fully

modernised condition, with modern fitted kitchens and with white goods and floorcoverings supplied by the landlords. The comparable figures offered by the landlord were also properties which would be on a grander scale. There was evidence of a one-bedroom flat in Eton Terrace achieving £1,000 per month, but it was part of a Georgian building in a significantly better area. The Tribunal was of the view that the market rental for a fully modernised, one-bedroom basement flat in the area of the property was £700 per month.

25. The Tribunal then considered what discount should be applied in the present case, taking account of the condition of the property. The kitchen is basic, the bathroom fittings probably need to be replaced, there is no double glazing and painted chipboard is not an acceptable form of floorcovering. In addition, the tenant has carried out all the redecoration. The cellar is unlined and open to the elements and is, therefore, unusable. The tenant had pointed out dampness in the property, but, as this appeared to be being dealt with, the Tribunal did not feel it had any impact on rental value.
26. The location of the property is good in terms of proximity to the city centre and all amenities, but there is a lodging house next door and there are a number of private hotels nearby, which could have an impact on peaceable enjoyment of the property and, therefore, on the rent it can achieve.
27. Allowing for discounts for its condition and location, the Tribunal concluded that a fair rent for the property was in the region of £450-£480 per month. The rent registered by the Rent Officer had been £460 per month and the Tribunal saw no reason to disturb that decision. The Tribunal noted in passing that an increase of 3% per annum, compounded, over a period of 18 years would have resulted in a rental figure of £489.50. but did not regard that as the proper approach to take in assessing a fair rent in this case.
28. Accordingly, having taken all relevant factors into account, the Tribunal determined that a Fair Rent for the property was **£5,520.00** per year (£460



per month). In reaching this decision, the Tribunal had regard to all the evidence presented to it, and to all the circumstances that must be taken into account in terms of section 48 of the Rent (Scotland) Act 1984.

Signed .. **G. Clark** ..

**George Clark, Solicitor**  
**Legal Chair**

**26 November 2018**