

Housing and Property Chamber First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') issued under section 26 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017.

Chamber Ref: FTS/HPC/RR/19/2129

Property: 9 Fendoch Street, Glasgow G32 9XA ('the Property')

The Parties:

Shettleston Housing Association, Helen McGregor House, 65 Pettigrew Street, Glasgow G32 7XR ('the Landlords')

Ms Margaret Baxter, residing at 9 Fendoch Street, Glasgow G32 9XA ('the Tenant')

Tribunal members:

George Clark (Legal Member/Chairperson) and David Godfrey (Ordinary Member).

1. BACKGROUND

The Tenant has been a tenant of this property since 19 May 1995 but has been a tenant of the Landlord for approximately 40 years, so the tenancy is a statutory protected tenancy in terms of the Rent (Scotland) Act 1984. The current rent is £2,949.24 per annum (£245.77 per month). The Landlords applied for the rent to be increased to £4,146.12 per annum (£345.51 per month). The Rent Officer registered a rent of £3,253.14 per annum (£271.10 per month) with effect from 13 June 2019. The Landlords referred the determination to the First-tier Tribunal. They argued that the average rent they charged for a 3-apartment flat was £71.16 per week (£3,700.32 per annum) and the Scottish Social Landlord average was £74.94 per week (£3,896.88 per annum), considerably higher than the Rent Officer's determination of £3,253.14 per annum. The Property had benefited from substantial investment over the past two years, including applying external insulation/render, installing double glazing and fitting a new front door. They aimed to set rents that were affordable to those on low incomes and, using the Scottish Federation of

Housing Associations' guidance, they had found that the vast majority of their current properties fell into the affordable category. They needed to ensure that rents were sufficient to cover all of their costs.

2. THE INSPECTION

The Tribunal inspected the Property on the morning of 10 September 2019. The Tenant was present at the inspection. The Landlords were represented by Debbie Marinelli, their Senior Housing Officer.

The property is an upper flat in a block of four which dates from the 1930s in the Shettleston area of Glasgow. The accommodation comprises living room, two double bedrooms, kitchen, and bathroom. The internal floor area is approximately 53 square metres.

There is a gas central heating system in the Property with a combination boiler. The windows throughout the Property are UPVC double glazed windows. The Tenant provided the carpets and floor coverings throughout the Property and the white goods. There is a substantial area of garden ground at the rear of the Property. On-street parking is available outside the Property. Services provided by the Landlords include 14 grass cuts and three hedge cuts per annum.

3. THE HEARING

The Tenant did not attend the hearing and was not represented. The Landlords were represented by Ms Marinelli.

Ms Marinelli advised the tribunal of two comparable properties let by Shettleston Housing Association in the vicinity of the subject property.

Comparison 1 - 41 Fendoch Street which is also a two bedroom upper flat which is let at a rent of £340.54 per month.

Comparison 2 - 17 Fendoch Street which is also a two bedroom upper flat which is let at a rent of £324.18 per month.

4. THE DECISION

The Tribunal had the following documents before it:-

- (i) a copy of form RR1, the Landlords' application for registration of the rent.
- (ii) a copy of the Rent Officer's determination.

(iii) a copy of the Landlords' letter of 25 June 2019 objecting to the rent registered by the Rent Officer.

The Tribunal noted the recent improvements to the Property, namely external insulation/render, double glazing and a new front door.

The Tribunal obtained details of comparable fair rents of two bedroom properties from the Fair Rent eRegister.

The details are:

Address	Postcode	Apartments	Date registered	Rent
23 Loch Achray Street	G32 9DY	3	05/07/2019	£4,126.20
41 Glen Ogle Street	G32 9EA	3	04/07/2019	£4,203.48
28 Glen Ogle Street	G32 9EA	3	04/07/2019	£4,404.72
9 Fendoch Street	G32 9XA	3	13/06/2019	£3,253.14
46 Loch Laidon Street	G32 9HW	3	30/03/2017	£4,030.32
24 Glen Ogle Street	G32 9EA	3	27/05/2016	£3,953.40
21 Loch Achray Street	G32 9DY	3	27/05/2016	£3,953.40

The Tribunal noted that the range of rents was approximately £3,950 - £4,400 per annum and that the Rent Officer's determination of rent for the present Property (£3,253.14) was noticeably out of line with the comparable evidence.

The Tribunal also considered evidence of 3 apartment flats available for rent in the G32 postcode area, including a lower flat in a similar block in Cardowan Road, which was on the market at £495 per month (£5,940 per annum) and another 3 apartment

flat in Shettleston Road, also being marketed at £495 per month. Searches of websites such as Citylets provided evidence of a significant number of 3 apartment flats available on the open market with rents ranging from £550 to £600 per month. The Tribunal also noted that the Local Housing Allowance for 2 bedroomed properties in Glasgow is £120 per week.

The Tribunal considered the said documents and rental evidence provided by the Landlords.

The Tribunal were mindful of the terms of section 48(1) of The Rent (Scotland) Act 1984, which requires the Tribunal 'to have regard to all of 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, and to the quantity, quality and condition of the furniture'. Also section 48(2) which requires them to 'assume 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 which are available to let on such terms.'

The Tribunal recognised that the three methods of assessing the rent in Scotland are (1) determining the fair rent by reference to comparable registered rents in the area. (2) determining the fair rent by reference to market rents of comparable properties allowing for appropriate deductions for scarcity and (3) determining the fair rent by reference to the anticipated annual return based on the capital value of the property. They acknowledged that none of these methods is the primary method. The task of determining a fair rent is a composite task which takes account of these three methods. The appropriate method depends on the facts and circumstances of each case. The Tribunal also gave consideration to the observations of the Lord President in *Western Heritable Investment Co Ltd v Hunter* (2004) and also the recent case of *Wright v Elderpark Housing Association* (2017) which requires the Tribunal to proceed on the best available evidence and use the other evidence as a cross check, where possible.

The Tribunal considered the evidence of registered rents in the Fair Rent Register.

The other registered rents were all in the £3,950-£4,400 range, with the other three registered in 2019 all exceeding £4,100

The Tribunal also considered the evidence of market rents.

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The flats at 41 Fendoch Street and 17 Fendoch Street have annual rents of £4,086.48 and £3,890.16 respectively..

Scarcity

As already noted, when the Tribunal fixes a fair rent it must do so on an assumption that the number of persons seeking to become tenants of similar properties in the locality of the Property is not substantially higher than the number of similar dwelling houses which are available for lease. The Landlords informed the Tribunal that there were over 2,000 people on their waiting list and following consideration of the levels of market rents and fair rents, the Tribunal was satisfied from the evidence before it that there was an imbalance between supply and demand in the area and that scarcity was an element which affected the rental levels. The Tribunal is of the opinion that an adjustment in the region of 30% should be made to reflect scarcity in this case.

The Tribunal considered if it was appropriate to use a return on the capital valuation of the Property.

The parties had not provided any evidence of capital valuations of the Property. The Tribunal was mindful that the capital valuation method has been described as notoriously unreliable 'normally to be used only as a last resort' (*Western Heritable Investment Co Ltd v Husband* 1983 SC (HL) 60, 73). Given the strong evidence of comparable fair rents and market rents and the absence of evidence of capital valuations the Tribunal determined that it was appropriate to proceed to assess the fair rent of the Property without using the capital valuation method.

The Tribunal is mindful that fixing the rent is a composite task and consequently after consideration of all these factors the Tribunal determines that there is sufficient evidence to support the rent level sought by the Landlords and that the fair rent for the property is £4,146.12 per annum, to include the services being provided by the Landlords.

In reaching this decision the Tribunal has had regard to all the considerations required to be taken into account in terms of Section 48 of the Rent (Scotland) Act 1984.

This decision takes effect from the 13 June 2019.

G Clark

Chairperson

10 September 2019