

RENT ASSESSMENT PANEL FOR SCOTLAND

RENT (SCOTLAND) ACT 1984

NOTIFICATION OF DECISION BY THE RENT ASSESSMENT COMMITTEE

REFERENCE NO.	OBJECTION RECEIVED	OBJECTION
RAC/PA32/396	28 November 2005	Landlord

ADDRESS OF PREMISES

Ladyfield House, Inverary, Argyll, PA32 8XJ

TENANT

Mr & Mrs CA Robb

NAME AND ADDRESS OF LANDLORD

Argyll Estates
Cherry Park
Inverary
Argyll
PA32 8XE

DESCRIPTION OF PREMISES

Detached house pre 1919 with extensive outhouses and grounds, oil fired central heating and double glazing comprising on the ground floor one room, dining kitchen, wc with shower and utility room. On upper floor, two rooms and bathroom. The maintenance and repair of the buildings, both internally and externally and the access road and bridge are all the tenants responsibility.

SERVICES PROVIDED

None

COMMITTEE MEMBERS

CHAIRMAN	Mrs J Taylor LLB Dip LP NP
PROFESSIONAL MEMBER	Mr G Campbell FRICS
LAY MEMBER	Mr J Riach

FAIR RENT	DATE OF DECISION	EFFECTIVE DATE
£ 2530.00 per annum	7 February 2006	7 February 2006

J Taylor

Chairman of the Rent Assessment Committee

.....22nd February 2006.....
Date

STATEMENT OF REASONS

in connection with

the property

Ladyfield House, Inveraray, Argyll

THE PARTIES

The landlord is The Trustees of the tenth Duke of Argyll, and their factors are Argyll Estates, Argyll Estates Office, Cherry Park, Inveraray. The tenants are Mr and Mrs C A Robb.

BACK GROUND

The tenant's lease of the property commenced on 1st April 1983 and was for the period of twenty years, the lease is continuing by tacit relocation. At the commencement of the lease the property was in a dilapidated condition. The tenants carried out substantial repair works to the property over the first three to four years to render the property wind and water tight. Since then they have carried out further repairs and upgrading works to the property, as the lease and post lease agreement between the parties states that the tenants are responsible for internal and external repairs and the repair of the access road to the property, including the bridge. The Rent Officer registered a rent of £30 per week, with effect from 11th November 2005. The previous rent was £960 per annum. The Landlord referred the determination to The Rent Assessment Committee.

THE INSPECTION

The committee inspected the property on 7th February 2006. The property is a detached farmhouse which was constructed circa 1919. It is located approximately five miles north of Inveraray in a rural, isolated location, about 500 metres from the main road at the end of a private access road. The accommodation on the ground floor comprises living room, kitchen/diner, utility room and downstairs wc and shower room. On the upper floor the accommodation comprises two double bedrooms, landing and bathroom. Included in the lease are approximately eight acres of grazing land, the access road to the property, the garden ground adjacent to the property and

extensive outbuildings. Double glazing had been installed throughout. The radiators in the property were heated from the Raeburn, located in the kitchen. The property is served by a septic tank and a private water supply. The nearest shops and bus stop are located in Inveraray. No services are provided by the landlord.

THE HEARING

The hearing was held in the property immediately after the inspection. The tenants attended the hearing but neither the landlord nor their factor attended.

At the hearing Mr and Mrs Robb advised the committee as follows:-

- The lease between the parties was dated 9th, 16th and 24th June 1983. Following the grant of the lease the parties signed a post lease agreement dated 26th June and 12th July 1983. The tenants showed the post lease agreement to the committee. The relevant sections of the lease and post lease agreement provide as follows:-
 - LEASE
 - Clause 7- Access shall be by private estate road.....The tenants shall contribute to the maintenance thereof including the bridge according to user.
 - POST LEASE AGREEMENT
 - Clause 2- The tenants undertake to effect, within three years of the date of entry.....repairs etc to bring the property up to a tolerable standard.
 - Clause 3- the tenants shall be responsible for keeping and maintaining Ladyfield House in the condition which it is in after having been brought up to a tolerable standard as aforesaid. The tenants will be responsible for internal and external decoration and also keeping the house wind and water tight.
 - Clause 7- The tenants shall carry out repairs to the timber parts of the bridge on the access road and that their own expense. The landlords undertake to provide suitable timber free of charge to enable the repairs to be carried out.
 - Clause 10- If the lease is continued by tacit relocation the landlords shall be entitled to review the rent to bring it into line with the then current market rent for similar subjects. Failing agreement such rent shall be determined by arbitration. In such circumstances the improvements executed by the tenants at their own expense shall be regarded as having been executed under an obligation imposed on the tenant in respect of which an

equivalent allowance or benefit has been made or given by the trustees in consideration of their execution.

- The rent they have paid for the property is:-
 - Years 1-5 £600 per annum
 - Years 5-10 £720 per annum
 - Years 10 to present £960 per annum.
- The landlord has not carried out any repairs to the property but did provide the materials to repair the bridge, which was repaired by the tenant.
- The value of the property at the commencement of the lease was £5000. It was dilapidated and there were sheep living in the upper floor.
- They advised the committee that there had been very few sales of similar properties in the area. They thought 'Tullich' had been sold 12 years ago for approximately £75,000, but it was a substantially larger property. White Cottage had been sold 15 years ago for £40,000. They were unable to confirm an estimated capital valuation of the property.
- They explained that they did not object to the rent going up in principle. They were objecting to the letter they received from the landlord explaining that they considered that their lease had finished. This had been very upsetting for them.
- They confirmed that they had never received a notice to quit from the landlord. They had not signed the Renunciation of their existing lease or the Short Assured Tenancy agreement received from the landlord.
- Since the dispute with the landlord regarding the lease they had spent little money on renovating the property, before that time they had installed expensive Everest double glazed units and doors and were spending roughly £1000 per annum on improving the property.
- They confirmed that they still leased the grazing land from the landlord. They thought that if they had to rent similar ground elsewhere they would probably have to pay £8 per week rental charge for the grazing.
- The tenants confirmed that they maintained the access road. They fill in the pot holes etc and spent, on average, two days per month maintaining the road.
- They confirmed that the landlord insures the property and they insure their contents.

- The chairperson read the tenants the terms of the recent letter received from the Estate Factor dated 27th January 2006 and Professor Robson's opinion, which was enclosed with the letter. The tenants advised the committee that they did not wish an opportunity to obtain separate advice on these documents.

THE DECISION

The committee had the following documents before them:-

- A copy of the Rent Officer's determination.
- A copy of the landlord's application for registration of the rent. In the application the landlord's agent stated *inter alia* that the Landlord had no responsibility for repairs and the tenant was responsible for both external and internal repairs.
- A copy of the letter from The landlord's factor to The Senior Rent officer, dated 22nd November 2005, which stated *inter alia*:-

'.....the rent registered of £30 per week is unacceptable in light of the fact that Mr and Mrs Robb were paying £11 per week in 1983.....This is no where near a reasonable sum for a property of this type and location. Mr and Mrs Robb took on the property under the terms of the lease and the Post Lease agreements and knew full well that at the expiry of the term ie 19 years from 1983 there would be a significant increase as stated in the lease.

I fail to see, when they have been paying a peppercorn rent of £20 per week latterly you can increase this by a mere £10 which is certainly not in line with similar rents or properties elsewhere, eventhough it represents a 30% increase. 30% of a small amount is still a small amount.

The amount paid by Mr and Mrs Robb since their occupation was as follows:-

Years 1-5	£600
Years 5-10	£720
1998- present	£960....'

- A copy of the landlord's application confirming that they did not wish to attend the hearing, where they stated *inter alia* 'the house as it stands would realise £100 per week on the open market. Mr and Mrs Robb were given the house in 1983 on the understanding that they were to renovate to a tolerable standard, which they did. Clause (Tenth) of the lease agreement states that the 'landlords shall be entitled to review the rent to bring into line with the then current market rate for similar properties'. All improvements executed by the tenants at their own expense shall be regarded as having been executed under an obligation imposed on the tenant in respect of which an equivalent allowance or benefit has been made or given by the trustees in consideration of their execution. In short Mr and Mrs Robb have enjoyed a peppercorn rent on a property they were willing to accept in 1983. They were fully aware of the terms at expiry of the agreement. £30 per week is in my opinion not considered to be an acceptable rent to the landlord and I would ask that we come to a compromise.'

- A copy of the tenant's application confirming that they wished to attend the hearing, where they state *inter alia* 'Whilst my wife and I realise that an increase in rent is due, we object strongly to Mr Montgomery's initial approach and despite his statements to the contrary feel that there is a move afoot to evict us from Ladyfield'
- A copy of the tenant's letter dated 1st December 2005, where they state *inter alia* :- 'When my wife and I took on the property in 1983 it was in a derelict state. The house was being used as a shelter for sheep. There was some roof on the building but it was in a very poor state of repair and water was pouring through all over. There were no windows or doors on the house. There was no electricity supply, an outside toilet with a bucket that required emptying and a very inadequate water supply to a single tap in the kitchen.....we went ahead with the rebuild work over three years and spend some £20,000.....'
- A letter from the landlord's agent to the tenants dated 9th March 1983 setting out the terms of the proposed lease.
- A copy of the lease between the parties dated 9th and 24th June 1983.
- A copy of the post lease agreement between the parties dated 26th June and 12th July 1983.
- Letter from the landlord's factor to the tenants dated 18th July 2003 stating *inter alia*:-
'Further to our meeting on 17th July I now suggest that the following apply.
The rent for the buildings and garden ground will be £4800 per annum, should you be unable to pay this sum the following phasing in will apply:-
 - *First Year £1760*
 - *Second Year £2560*
 - *Third Year £3360*
 - *Fourth Year £4160*
 - *Fifth Year £4960**There will be no further rent review on these figures within five years however following the fifth year rent reviews as provided in your tenancy agreement will apply.....The grazing land will be subject to a separate agreement....."*
- Letter from the landlord's factor to the tenants dated 9th February 2004 stating *inter alia*:-
'Further to our meeting on 9th February 2004 I now suggest that the following apply.
The rent for the property will be let on a Short Assured Tenancy will be phased over five years as follows:-
 - *First Year £1300*
 - *Second Year £1820*
 - *Third Year £2340*
 - *Fourth Year £2860*
 - *Fifth Year £3120**There will be no further rent review on these figures within five years however following the fifth year rent reviews as provided in your tenancy agreement will apply.....'*
- Letter from the landlord's factor to the tenants dated 12th March 2004, enclosing a renunciation of lease for signature and AT5 form advising them that the proposed lease will be a short assured tenancy.

- Letter from Messrs Stewart Balfour and Sutherland (The tenant's Solicitors) to the tenants dated 5th August 2003 stating *inter alia* that they considered that a statutory secured tenancy had been created when the lease came to an end on 31st March 2003.
- Letter from Messrs Stewart Balfour and Sutherland to the Landlord's agent dated 26th April 2004 stating :-
' that they considered that Mr and Mrs Robb had a secure tenancy, but agreeing to a revised rent as follows:-
 - First Year £1300
 - Second Year £1820
 - Third Year £2340
 - Fourth Year £2860
 - Fifth, Sixth, Seventh, Eighth, Ninth and Tenth Years £3120
 And requesting confirmation that the landlord would accept this proposal.'
- Response from the Landlord's factor dated 28th April 2004, explaining that they could not accept the tenant's proposed rents (per Stewart Balfour and Sutherland's letter of 26th April 2004) if it would be under the terms of the existing lease.
- Letter from the Rent Officer to Messrs Stewart Balfour and Sutherland dated 25th October 2005.
- Letter from the landlord's factor to the Rent Assessment Committee dated 27th January 2006 with Opinion from Professor Robson referred to above. In essence Professor Robson advised that in his opinion that the lease was a residential tenancy and not an agricultural tenancy and it was protected under the Rent (Scotland) Act 1984.

The committee considered these documents together with the submissions made by the tenants. The committee agreed with Professor Robson's opinion that the lease was a residential tenancy and enjoyed the protection afforded by The Rent (Scotland) Act 1984, notwithstanding the terms of clause tenth of the post lease agreement.

In particular the committee were mindful of the following sections of the Act:-

- Section 48 which states, *inter alia* :-

"The committee shall 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".

- Section 48(3)(b) which states *inter alia* 'there shall be disregarded.....any improvement.....carried out, otherwise than in pursuance of the terms of the tenancy, by the tenant....'

The committee acknowledged that the tenants had brought the property up to the tolerable standard but considered that the expense incurred by them should be disregarded as they had received the benefit of the discounted rent in terms of the original lease.

The committee carefully considered the most appropriate method of determining the fair rent of the property. They recognised that neither the landlord nor the tenant had been able to provide recent evidence of comparable regulated rents, capital valuations or scarcity. They acknowledged that the Landlord had stated that he considered that the property would realise £100 per week on the open market. They accepted that this was realistic, albeit that the rent of £100 per week would be on the basis that the landlord would be responsible for the repairs to the property. They were aware of the unusual agreement between the parties whereby the tenants are responsible for internal and external repairs and the repair of the access road and bridge now that the property had been brought up to the tolerable standard.

The committee were also mindful of the observations of the Lord President in **Western Heritable Investment Co Ltd v Hunter (2004)** which requires the committee to proceed on the best available evidence and use the other evidence as a cross check where possible.

The committee considered that the evidence of the market rent of a £100 per week (£5200 per annum) was the best available evidence, albeit that this would be on the basis that the landlord would be responsible for the repairs, as stated. They considered that there was certainly scarcity of availability of rented properties in the area and a deduction of thirty five percent for scarcity was reasonable. They acknowledged that adjustments were necessary to reflect the fact that the landlord bore the expense of insuring the property and also that the tenants are responsible for internal and external repairs and the repair of the access road and bridge.

The committee had been unable to find evidence of recent sales in the area of similar properties and considered that the tenant's evidence of capital sales to be too dated to be of assistance. In the circumstances they determined the fair rent for the property using the landlord's opinion on the likely market rent and made the necessary adjustments, as stated.

The Committee, after considering these matters decided that the fair rent for the property was £ 2530 per annum.