

RENT ASSESSMENT PANEL FOR SCOTLAND

RENT (SCOTLAND) ACT 1984

NOTIFICATION OF DECISION BY THE RENT ASSESSMENT COMMITTEE

REFERENCE NO.	OBJECTION RECEIVED	OBJECTION
RAC/PA61/408	13 December 2005	Landlord

ADDRESS OF PREMISES

1 Kiloran Cottage, Isle of Colonsay, Argyll, PA61 7YT

TENANT

Mrs E Galbraith

NAME AND ADDRESS OF LANDLORD

The Honorable DA Howard
Colonsay Estate
Isle of Colonsay
Argyll
PA61 7YU

AGENT

CKD Galbraith
3 Main Street
Milngavie
Glasgow
G62 6BJ

DESCRIPTION OF PREMISES

Semi detached house circa 1900 with central heating and double glazing comprising three rooms, kitchen and bathroom.

SERVICES PROVIDED

None

COMMITTEE MEMBERS

CHAIRMAN

Mrs I Montgomery BA (Hons) NP

PROFESSIONAL MEMBER

Mr R Buchan BSc FRICS

LAY MEMBER

Mr S Campbell

FAIR RENT

£2,080.00per annum

DATE OF DECISION

22 February 2006

EFFECTIVE DATE

22 February 2006

I Montgomery

Chairman of the Rent Assessment Committee

22nd February 2006

Date

RENT ASSESSMENT COMMITTEE
STATEMENT OF REASONS
INSPECTION: 22nd FEBRUARY 2006

PROPERTY: - 1 KILORAN COTTAGE, ISLE OF COLONSAY

INTRODUCTION

1. The Committee comprised Mrs I.R. Montgomery (Chairman), Mr R. Buchan (Surveyor) and Mr S. Campbell. The landlord is The Hon. D A Howard, Colonsay Estate, Isle of Colonsay, Argyll PA61 7YU represented by Messrs CKD Galbraith, 3 Main Street, Milngavie, Glasgow G62 6BJ. The tenant is Mrs E. Galbraith. This reference to the Rent Assessment Committee for the determination of a Fair Rent under the Rent (Scotland) Act 1984 in respect of the semi detached cottage known as 1 Kiloran Cottage arises from dissatisfaction on the part of the landlord.
2. The previous rent was £1,200.00 per annum. The landlord applied for a rent of £2,400.00 per annum. The rent determined by the Rent Officer was £2,000.00 per annum.

DESCRIPTION OF THE PROPERTY

3. On the morning of the 22nd February 2006, the Committee, accompanied by the Clerk, Mr Robert Shea, inspected the semi-detached cottage known as 1 Kiloran Cottage on the Isle of Colonsay. The Isle of Colonsay lies off the coast of Argyll and is one of the more remote of the inhabited Hebridean islands. It has its own primary school, a hotel, a post office and a café/restaurant. The island is served by a ferry service from Oban three times a week in the winter with an additional service to Islay in the summer months. The property under consideration is inland, located near to the entrance of Colonsay House. It is situated adjacent to a working farm, and there was regular passage of tractors and other farm vehicles during the Committee's inspection. As it was winter, some cattle were sheltered in the stalls and there was therefore the inevitable odour of large animals in a confined space.

4. The property was built around 1900 and is of grey roughcast construction with a slate roof. It has garden ground consisting of grass on three sides. Externally the property seemed to be in reasonable condition, although there was some evidence of the damp course having failed. The property enjoys attractive views of open countryside. There was a slabbed path leading to the front door. The tenant had had the slabs laid.
5. The property is double-glazed throughout and had been rewired between twenty to thirty years ago but is otherwise unimproved by the landlord. Oil-fired central heating has been installed under the Scottish Executive "Warm Deal" scheme.
6. The accommodation extends to a living room, two double bedrooms of generous proportion, a kitchen, and a bathroom. There is an attic which had been partially floored by the landlord and is used for storage. The living room is large with two single windows. The party wall and adjoining outer wall were extremely damp at the time of the Committee's inspection. There appeared to be water penetration or leakage occurring in addition to rising dampness. The main bedroom is a very large double room with a single window. There was evidence of rising damp in this room also, and the distinctive unpleasant odour of damp. The second bedroom, although smaller, is still of good size. It has one single window. It too bore evidence of rising damp. The kitchen is small but functional. There is a window in the kitchen. The landlord supplied wall units in the kitchen but the other units and work surfaces had been installed by the tenant. The bathroom is ventilated by a double glazed window. The landlord provided a bath, WC and wash hand basin in the bathroom. These fittings were of some age but were functional. Hot water is obtained by means of a combi boiler installed with the central heating system and located outside the property. The property was in reasonable decorative order throughout.
7. The landlord was not represented at the inspection.

DOCUMENTATION

8. In addition to the Inspection Report, case summary sheet and extract from the Rent Register, the Committee considered:

- a) Form RRI application;
- b) Letter from landlord's agent dated 30th November 2005;
- c) Letter from Rent Officer dated 6th December 2005;
- d) Written representations from the landlord;

The same Committee was also considering the properties situated at 2 Kiloran Cottage and 6 Glassard at the same time.

HEARING

9. Neither party requested a hearing.

THE DECISION

10. The duty of the Committee 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. The Committee are required 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 in the locality which are available for letting on such terms (section 48(2)). 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. There were no such defects in this particular case, nor was any furniture provided. In reaching its determination, the Committee complied with its duty as set out above.
11. As mentioned above, in terms of section 48(3)(b) of the Rent (Scotland) Act 1984 any improvements made by the tenant (other than in pursuance of the terms of the tenancy) must be disregarded for the purposes of determining a fair rent. The purpose of this is obviously to prevent the landlord being able to increase the rent to reflect improvements to the property which the tenant himself or herself has made. The landlord is, however, entitled to benefit from improvements he or she has made. In this case the landlord has rewired the property and installed double

glazing. These improvements must be taken account of when determining a fair rent.

12. Central heating has been installed under the Scottish Executive "Warm Deal" scheme. Under this scheme, a grant is payable subject to the claimant meeting certain criteria. The scheme is funded by the Scottish Executive but managed by the Eaga Partnership. The full system is serviced and maintained free for the first year. The boiler is serviced and maintained free for two years. Although it is the occupier, in this case the tenant, who is eligible for the grant, the landlord must agree to the work being carried out. As part of that consent, the landlord must agree to maintain the system after the expiry of the guarantee period. The Committee proceeded on the basis that the obligation to maintain the system lies with the landlord. As the tenant has not paid for the scheme, and has no ongoing liability to maintain it, the installation cannot be regarded as a tenant's improvement in terms of section 48(3)(b) of the Rent (Scotland) Act 1984. That being so, the Committee cannot disregard it and must take account of the fact that the property has the benefit of central heating when determining a fair rent.
13. The Committee are therefore required to determine a fair rent for a property which has the benefit of double-glazing and central heating (including hot water) and has been rewired, albeit some considerable time ago. The Committee considered that the presence of rising damp and possible water penetration in the living room of the property considerably detracted from the tenant's enjoyment of the property, and had the potential to adversely affect her health. The Committee also considered that the close proximity of the cottage to the working farm detracted from the amenity of the property. The Committee took these factors into account when reaching their determination.
14. The Committee considered carefully all the evidence presented, together with the observations made by the Committee members at the inspection. In particular, the Committee considered carefully which of the alternative methods of ascertaining a fair rent was most appropriate in this case. There are three main guidelines normally used in the calculation of a fair rent under the 1984 Act. The first method is to first take a market rent and then discount for any scarcity element

and make any appropriate disregards. The second method is to compare registered rents for other similar protected tenancy properties. The third is to ascertain what would be a fair return to the landlord on the capital value of his house. No method is, as a matter of law, “primary”. Which method should be adopted is a matter for the Committee to determine in each case, using the best evidence available.

15. Mindful of the observations by the Lord President in **Western Heritable Investment Co. Ltd v Hunter (2004)**, the Committee was aware of the need to proceed on the basis of the best available evidence, using other available evidence as a check where possible. In this case, the Committee had no evidence relative to registered rents for other similar protected tenancy properties. That method was not therefore a viable option in this case. The capital value method is the method least favoured as it can produce inflated and unreliable results in times of high capital values. In the particular circumstances of this case, the Committee was satisfied that the best method to use was that of calculating a market rent and then discounting for any scarcity element and making any appropriate disregards or adjustments to take account of the strengths and weaknesses of the particular property under consideration. The Committee accordingly proceeded on this basis.

16. The Committee had been provided with evidence from the landlord of four open market rents passing on the island. Of the four, two related to larger detached properties and two related to two bedroom semi-detached properties. The Committee considered that the semi-detached properties were closer comparables to the property now under consideration in terms of size and desirability. Of the two semi-detached properties, the Committee considered that the property at 2 Hall Cottage Kiloran was the closest comparable property to 1 Kiloran as Craigoran Cottage, Scalasaig appeared to be a more desirable property located on the coast in close proximity to the ferry terminal and adjacent to the Post Office. The rent agreed for 2 Hall Cottage was £3,000 with effect from June 2006. The Committee accepted this figure as being the open market rent for a property similar to the property under consideration.

17. As the property under consideration is let under a protected tenancy, the Committee proceeded to consider whether there should be any deduction for

scarcity in terms of section 48(2). The Committee was aware of the Colonsay Housing Initiative which had been set up in 1999 to address the housing problems on Colonsay, including a shortage of available housing and limited social rented housing. The Committee was satisfied that in 2000 there had been very substantial scarcity and that scarcity did still exist in Colonsay and other Hebridean islands. The landlord himself had acknowledged the existence of scarcity in his written representations and in his capital value calculation had suggested a figure of 50%. That is a very high figure to be set for scarcity, and in the absence of any argument or evidence to justify that figure the Committee did not consider that it could simply accept such a high figure as being accurate. To do so would have had the effect of keeping the rents paid under a protected tenancy at a level of only half the market rents paid for other properties (leaving aside any adjustments for condition or disregards). The Committee concluded that scarcity did exist in the Hebridean islands in general and in Colonsay in particular and decided that the level of scarcity could be assessed at 30%. The Committee accordingly made this adjustment for scarcity. The Committee adjusted the resulting figure to take account of the fact that the property under consideration has the benefit of central heating whereas there was no evidence to indicate that 2 Hall Cottage also had central heating. However, the Committee considered that the high level of damp present must be reflected in the valuation of the property and deducted the sum of £200 per annum to take account of this factor. Having made these adjustments, the Committee concluded that £2,080 was a fair rent for the property at 1 Kiloran.

18. The Committee was also considering the property at 2 Kiloran. Both of these properties would have been fixed at the same fair rent had it not been for the fact that one had the benefit of central heating and the other did not. This factor is reflected in the lower rental fixed for 2 Kiloran. Both were otherwise in a very similar situation in that both had significant problems with damp and suffered from their proximity to the working farm with its disadvantages of traffic, activity and unpleasant smells. The two properties were very similar in relation to the valuation exercise this Committee was required to carry out. The Committee were also considering the property at 6 Glassard. The Committee considered this to be a more desirable property in a number of ways. It had the advantage of being located on the coast and had clear and very attractive views of the sea from

various windows. Not only did it have the benefit of sea views, it was located closer to the ferry terminal and the shop/post office and was not affected by traffic. It had a working damp proof course and did not have the problems of rising damp suffered by the properties at 1 and 2 Kiloran. It had been built at a later point in time and was in better condition due to being of better construction. The properties at 1 and 2 Kiloran had two good sized bedrooms whereas the property at 6 Glassard had one double room and a small annex to that which may originally have been intended as a dressing room. The Committee did not consider that this room could be classed as a second bedroom as the occupant of the smaller room did not have the benefit of privacy as anyone accessing the other room had to pass through that small room. Taking all these factors into account the Committee considered this to be a more attractive property for which a fair rent of £2,400 was appropriate. The Committee considered these fair rents to be appropriate in comparison with each other and the use of the capital value method as a cross check produced figures compatible with these results.

19. In section 49 of the Rent (Scotland) Act 1984, it is declared that the amount to be registered shall include any sums payable by the tenant for services. In this case no services are provided. Having taken all relevant factors into account, the Committee determined that a Fair Rent for the property at 1 Kiloran was £2,080.00 per annum.
20. In reaching its decision, the Committee had regard to all the circumstances required to be taken into account in terms of sections 48 and 49 of the Rent (Scotland) Act 1984.
21. The registration takes effect from the date when the Committee reached their decision, namely 22nd February 2006.

Signed.

I Montgomery

(Chairman)

Date.....

8th March 2006