



PRIVATE RENTED HOUSING PANEL

RENT (SCOTLAND) ACT 1984

Notification Of Decision By The Private Rented Housing Committee

REFERENCE NO:	OBJECTION RECEIVED	OBJECTION
RAC/EH44/658	3 October 2008	Landlord

ADDRESS OF PREMISES

The Old School House, Glen Estate, Innerleithen, EH44 6PX

TENANT

Mr Mrs Airey

NAME AND ADDRESS OF LANDLORD

The Hon. Mrs T Tennant
Glen House
Innerleithen
EH44 6PX

AGENT

CKD Galbraith
59 George Street
Edinburgh
EH2 2JG

DESCRIPTION OF PREMISES

Detached two storey stone and slate house circa 1880 in rural setting comprising four bedrooms, livingroom, diningroom, kitchen, two bathrooms and sun lounge.

SERVICES PROVIDED

None

COMMITTEE MEMBERS

CHAIRMAN
SURVEYOR

Mr E Miller LLB (Hon) Dip LP NP
Mr R Buchan BSc FRICS

FAIR RENT	DATE OF DECISION	EFFECTIVE DATE
£ 4200.00 p.a.	20 March 2009	20 March 2009

E. Miller

Chairman of Private Rented Housing Committee

23 / 4 / 2009

Date

PRIVATE RENTED HOUSING COMMITTEE

STATEMENT OF REASONS

INSPECTION - 20 March 2009

PROPERTY - The Old Schoolhouse, Glen Estate, Innerleithen, EH44 6BX

INTRODUCTION

1. The Committee comprised Mr E K Miller (Chairman) and Mr R Buchan (Surveyor).
2. The landlord is The Hon. Mrs Tessa Tennant represented by Michael Thompson of Messrs CKD Galbraith, 59 George Street, Edinburgh, EH2 2JG.
3. The tenants are Mr and Mrs Christopher Airey represented by Tonia Mcfarlan of Messrs Balfour & Manson, Solicitors, 54-56 Frederick Street, Edinburgh, EH2 1LS. This reference to the Private Rented Housing Committee for the determination of a Fair Rent under the Rent (Scotland) Act 1984 in respect of the Property arises from dissatisfaction on the part of the landlord.
4. The previous rent was £3,540 per annum. The landlord applied for a rent of £9,600 per annum. The rent determined by the Rent Officer was £4,200 per annum.

DESCRIPTION OF THE PROPERTY

5. On the morning of 20 March 2009, the Committee, accompanied by the Clerk to the Committee Mr Robert Shea, carried out an inspection of the property. The property is situated in a rural setting on a private road leading through the Glen Estate. The property has pleasant open views and a good sized garden mainly laid to grass surrounding it on all sides.

The nearest shops and facilities are in the village of Innerleithen approximately 5 miles away.

6. The property is a detached one and a half storey stone house with a slate roof built around 1880. A sun lounge extension has been added to the side of the property at some later date. Externally, there was a concrete/brick garage, several sheds and coal bunkers. Other than the garage the other outbuildings belonged to the tenants. The roof of the property was in reasonable condition for a property of that age. The gutters were in fair condition at best. The windows of the property were all single glazed. Generally, these were in poor order and needed attention. Some repairs had been carried out to these in the past by the landlord but these had been poorly done and were unsightly.
7. The ground floor accommodation comprised a living room, dining room, kitchen (with pantry off), bathroom, sun lounge and a further public room (both the sun lounge and further public room being utilised as additional bedrooms at the time of inspection). The upper floor accommodation comprised three good sized bedrooms and a further bathroom.

The living room had a window overlooking the front of the property and was of a good size. The tenants had added a wood burning stove connected to the central heating system, various electrical sockets as well as all carpets, curtains and other furnishings and a radiator.

A small utility area had been created by the tenants in the area leading from the living room through to the sun lounge. The electric fuse boxes, and meters were included in this area.

The sun lounge was being utilised as a bedroom by the tenants. Whilst still in basic condition, the ceiling and walls had been plasterboarded and it did form useable accommodation.

The kitchen, according to the tenants, had originally only had a sink with a small draining board and some shelving beside it. The tenants had since

installed a proper fitted kitchen and Raeburn cooker within the kitchen area and had also converted an area behind the kitchen into a useful pantry area.

The bathrooms were small but adequate. In both the sink and bath were original but the tenants had replaced the WCs

The bedrooms were all a reasonable size.

Overall it was clear that the property had more or less been a shell when taken over by the tenants at the start of the tenancy. The property was well decorated overall. In addition to the works mentioned above the tenants had installed the central heating systems, all radiators and the bulk of the electrical points within the property.

DOCUMENTATION

8. The Committee considered all documents provided by the landlord and the tenants and also details of recently registered rent decisions in the area provided by the Clerk. All documentation provided was taken account of at the Hearing.

HEARING

9. Both parties had requested a hearing and this took place at the property with the consent of both parties. Mr Thompson, for the landlord, submitted that the Rent Officer's view of the Fair Rent was too low. He drew attention to other market rents achieved within the Glen Estate for similar properties (inc Laundry House, Glen Farmhouse and the Kennels). He did accept that the tenants had carried out various works of improvement to the property and whilst this meant there would need to some deduction against a market rent to assess the Fair Rent his view was that too much of a discount had been applied by the Rent Officer. He also drew attention to the other Registered Rents within the area. In his view these were not much lower than the one applied to the property yet these other properties were significantly smaller and were unimproved to some extent also. He also highlighted what the landlord perceived as a

low level of return on capital if the Fair Rent were kept at the Rent Officer's level (a return of 1.4% assuming a capital value of £300,000).

Mr Airey made a submission, in terms similar to the written submissions already made, regarding the tenants' views. He highlighted the fact that the property had been an unimproved shell when taken over by the tenants in 1984 with the only form of heating being a single coal fire in the lounge. He highlighted the various alterations that had been carried out by the tenants over the years and the cost of these at in excess of £30,000 (and the fact that no costing for labour had been included in his figures) and also the continuing poor quality of the exterior of the property. Mr Airey highlighted that the Registered Rent reflected the increase in the Retail Prices Index ("RPI") over the term of the lease and suggested that other Registered Rents in the area were in line with RPI also. In relation to the market rent properties and the Registered Rent properties mentioned by the landlord, Mr Airey highlighted various repairs issues that had arisen in these properties and also where higher rents could be achieved on these because of benefits they had which their property did not. Mr Airey produced a letter from Buccleuch John Sale Surveyors stating an open market rent would be c£650-£675 for the property (Mr Thompson took issue with this as they had been instructed jointly with his firm in the marketing of properties on the Estate. He felt the letter was factually incorrect and outwith the knowledge of that firm). On the question of the capital return to the landlord, Mr Airey disputed the capital value of the property. A summary sheet was produced from Allied Surveyors putting the value at £260,000. Mr Airey took the view that there were other issues highlighted in the survey report the tenants had obtained that could suggest the value should be lower. Whilst he was prepared to show the committee the full survey the tenants did not wish the landlord to see it unless she met half the cost (the Chairman indicated that this would not be possible. If the tenants wanted the Committee to consider the terms of the report in coming to their decision then it was only right and proper that the landlord have sight of the report and the opportunity to comment upon it. The tenants declined and the full survey report was not produced to the Committee). The tenants complained about fly infestation in the property arising from the adjacent farm's

manure pile which was situated some 120 yards from the property. There was also a complaint regarding the water supply to the property which occasionally caused difficulty. Ms McFarlan, for the tenants, then made a submission highlighting the length of time the tenants have been in occupation, the care and improvement they had given the property and the relevant statutory provisions which the Committee would require to be guided by including the comment that there is a difference between a fair rent and an open market rent, and then summarised the tenants' position.

THE DECISION

10. In terms of Section 48(1) of the 1984 Act, 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 dwellinghouse 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"*. Disrepair or defects attributable to the tenants should be disregarded, as should any improvements made by the tenants, otherwise than in pursuance of the terms of the tenancy (Section (48(3))). Improvements by the landlord are taken into account. In reaching its determination, the Committee complied with its duty as set out above.
11. 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 three alternative methods of ascertaining a fair rent was most appropriate in this case. 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.

12. The Committee first considered whether to use registered rents as comparables. The Committee had two comparables (No.1 Glen Row, a 4 room terraced house at £2700 and No. 1 Avenuehead Cottage a 3 room semi-detached modernised cottage at £3725 together with information regarding two other properties from the landlord). However the Committee could not inspect any of these properties, were unable to determine the extent of the modernisation or otherwise and they were not of a similar size. Given this and the lack of information showing how these registered rents had been determined the Committee did not consider it appropriate to place significant weight on these as comparables. The Committee then considered whether to calculate an appropriate return based on the capital value of the property. Taking into account the difference between the parties as to the capital value of the property, the recent fluctuations (both upwards and currently downwards) in the capital value of property in Scotland and the lack of detailed information on the sales highlighted by the landlord the Committee did not consider it appropriate to assess the Fair Rent on the basis of a capital return to the landlord. The Committee therefore proceeded to consider the case using the market rent less tenants' improvements less any discount for scarcity approach.
13. Using its knowledge and experience, and having regard to other properties available for let in the area both highlighted by the parties and also from the Committees own investigations, the Committee considered that a market rent for a single glazed, well decorated, centrally heated, unfurnished, carpeted four bedroom property of a type and in the locality of the present property, would be around £850 per month. Both landlord and tenants had accepted that £850 was around the maximum level an acceptably modernised property would achieve in the area. The Committee were not swayed by the letter from Buccleuch John Sale which seemed out of line with the market position. The Committee did not think

the tenants comments on the manure pile and the occasional disruption of the private water supply would have any material impact on the rental value, these being simply an occupational hazard of residency in the countryside. However, the Committee were of the view that the maintenance of the exterior (in particular the windows of the property, which were in a very poor state of repair) would have a detrimental effect on the rental value achievable and the Committee considered that for this particular property a maximum of £750 per month would be achieved. The Committee did not wish to take account of the tenants' submissions regarding previous decisions of the Rent Officer being in line with RPI, this being merely coincidental in the view of the Committee. The property must be valued more or less as a shell and as if it had no form of heating other than a single fire in one room, no usable kitchen, no utility area, no carpets, no pantry area, an unimproved and largely unusable sun lounge and very dated electrics that would not comply with any modern standard. The two bathrooms would also have to be valued as functioning but requiring upgrading. The Committee considered that taking into account the monies and labour expended by the tenants and the considerable sums the landlord would have had to expend to bring the property up to even its current standard, a discount of £400 per month should be deducted from the open market figure to take account of these factors leaving a net figure of £350 per month.

14. The Committee then proceeded to consider whether any further deductions required to be made in terms of Section 48(2) (the factor commonly referred to as "scarcity") of the 1984 Act. The concept of scarcity is an essential feature of the fair rent scheme under the Rent (Scotland) Act 1984. 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 tenants be protected from the financial implications of that.

15. The Committee considered whether any discount should be made for scarcity in this case but was satisfied that in the area of the Borders as a whole, and as accepted by both the landlord and the tenants at the Hearing, there could not be said to be scarcity of similar properties to let at the present time. The Committee was satisfied that no deduction required to be made in relation to scarcity for this type of property at this point in time.
16. 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 tenants for services. In this case, however, no services are provided.
17. Having taken all relevant factors into account, the Committee determined that a Fair Rent for the property was £4,200 per annum. In reaching this decision, the Committee had regard to all documentary and other evidence and all the circumstances that required to be taken into account in terms of Section 48 of the Rent (Scotland) Act 1984.
18. It should be noted that any increase in rent imposed in consequence of this decision must be applied in accordance with the provisions of Section 33 of the Rent (Scotland) Act 1984 and The Limits on Rent Increases (Scotland) Order 1989 No. 2469 (s168). These provisions specify the limits for the phasing in of significant increases.
19. The effective date is 20 March 2009.

Signed: **E. Miller** (Chairman)

Date: 23/4/2009