

Housing and Property Chamber
First-tier Tribunal for Scotland



Rent (Scotland) Act 1984

Notification Of Decision

REFERENCE NO.	OBJECTION RECEIVED	OBJECTION
PRHP/RR/16/0329	20 October 2016	Not Applicable

ADDRESS OF PREMISES

3/R, 108 Dundrennan Road, Glasgow, G42 9SH

TENANT

Mr David Clelland

**NAME AND ADDRESS OF
LANDLORD**

York & District Investment Co. Ltd
c/o Edzell Property Management,
1008 Pollokshaws Road, Glasgow,
G41 2HG

AGENT

Allied Surveyors Scotland
24 Herbert Street, Glasgow, G20 6NB

DESCRIPTION OF PREMISES

Top floor flat in 4 storey traditional red sandstone tenement erected circa 1900.
Roof pitched and concrete tiled. Accommodation comprises sitting room,
bedroom, dining kitchen, scullery and bathroom

SERVICES PROVIDED

None

TRIBUNAL MEMBERS

CHAIRPERSON George Clark
ORDINARY MEMBER (SURVEYOR) Mike Links

FAIR RENT	DATE OF DECISION	EFFECTIVE DATE
£ 4,250.00 p.a.	15 December 2016	15 December 2016

George Barrie Clark
Chairperson of tribunal

G Clark

15 December 2016



STATEMENT OF REASONS

CHAMBER REF: PRHP/RR/16/0329

PROPERTY:

Flat 3/R, 108 Dundrennan Road, Glasgow G42 9SH

INSPECTION: 15 December 2016

STATEMENT OF REASONS

INTRODUCTION

1. This is a reference to the Private Rented Housing Committee for the determination of a fair rent under the Rent (Scotland) Act 1984 by the tenant, Mr David Clelland ('the tenant'), in relation to the property known as Flat 3/R, 108 Dundrennan Road, Glasgow G42 9SH. The landlords are York & District Investment Company Limited, care of Edzell Property Management, 1008 Pollokshaws Road, Glasgow G41 2HG ('the landlords').
2. The reference was received on 20 October 2016. The Private Rented Housing Panel became the Housing and Property Chamber of the First-tier Tribunal for Scotland with effect from 1 December 2016 and this Statement of Decision is, therefore, a decision of the Tribunal.
3. The rent being paid by the tenant in respect of the property was £3,814 per year. The landlord applied for rent of £5,400 per year for the property. The Rent Officer determined a rent of £4,450.02 per year. The tenant referred the Rent Officer's determination to the Private Rented Housing Committee, now the Tribunal.
4. The tenant was present at the inspection and the subsequent hearing. The landlords were represented at the inspection and subsequent hearing by Mr Richard Taylor, solicitor and property manager of Edzell Property Management and, at the hearing, by Mr Robin Lovat, a partner in Edzell Property Management..
5. The Committee comprised

Chairman	George Clark
Ordinary Member	Mike Links

THE DOCUMENTATION

6. The Tribunal considered all the documents referred to it by the parties. In particular, the application and the written representations from the tenant and the landlords.

THE INSPECTION

7. The inspection took place on 15 December 2016.
8. The Chair introduced the Tribunal to the tenant and the landlords' representative. The Tribunal proceeded to inspect the property.

DESCRIPTION OF THE PROPERTY

9. The property is a top floor flat in a 4 storey traditional red sandstone tenement building containing 8 flats in total, erected around 1900. The roof is pitched, with concrete tiles. The accommodation would originally have comprised two rooms, dining kitchen, scullery and bathroom. The bedroom has been partitioned off on ingoing, to create a storage area and the dining kitchen has also been partitioned, with the former scullery being converted into a utility room, so that the accommodation now comprises sitting room, bedroom, dining kitchen, utility room and bathroom. The bathroom has been altered by the introduction of a raised floor to create a sunken bath area. The windows are double-glazed. There is no central heating, the only fitted heating being a gas fire in the sitting room. The electrical wiring system has been upgraded with the installation of a modern consumer unit. There is a back green and court behind the tenement, with a bin shelter. The gross internal floor area is 80 square metres or thereby.
10. The property is situated in the south side of Glasgow and is close to local amenities.

THE HEARING

11. Following the inspection, the Tribunal held a hearing at Wellington House, 134 -136 Wellington Street, Glasgow G2 2XL and heard from the tenant and the landlords' representatives.

12. The tenant told the Tribunal that the tenancy had begun on 28 February 1980 and that the tenant lived at the property with his wife and his son. Part of the arrangement with the original landlord was common in relation to unimproved flats at the time the tenancy began, namely that tenants dealt with improvements. The house had been let completely unfurnished and had a sink in the scullery and a cast iron bath. The present landlords had put in new windows in 2015 and the electrical consumer unit had been installed very recently. The landlords had also recently installed smoke detectors, a heat detector in the kitchen and a carbon monoxide detector. The tenant had put up the partitioned areas in the property, had provided all the floorcoverings and was responsible for redecoration. All the landlords had ever done was to paint the external windows every 5 years. The tenant was of the view that the increase proposed was massive at 18%. The rent was reviewed every 3 years and this was the first time he had appealed it, because it was excessive.

13. The landlords' representatives told the Tribunal that they had commissioned an Electrical Installation Condition Report and had carried out all the works mentioned in the report. The report had been recommended, but as an observation only, in a Repairing Standard Enforcement order in respect of the property and the landlords had thought it prudent to do additional upgrading at the same time. The landlords' representatives told the Tribunal that there was no issue of scarcity and that unrefurbished flats in the area were achieving rentals of £350-£380 per calendar month ("pcm"). With a basic clean-up the property would achieve £450 pcm in the current market. The landlords' representatives had asked a contractor who was doing general work to provide an estimate for a high-specification refurbishment of the property and his estimate of the cost involved was £18,420 plus VAT. It was not the

landlord's intention to carry out such a refurbishment and it was accepted that some of the electrical work had now been done (at a cost of approximately £1,200), although the estimate did not include installing central heating, which would cost approximately £1,800. If done to that high specification, the property would let for £625-£650 pcm and, if done to a lower specification, it would achieve £550 pcm. The landlords' representatives accepted that the property was not prospectively vacant at present.

DECISIONS AND REASONS

14. Section 48 of the Rent (Scotland) Act 1984 as amended provides that:

a. 48.— Determination of fair rent.

- (1) In determining for the purposes of this Part of this Act what rent is or would be a fair rent under a regulated tenancy of a dwelling-house, it shall be the duty of the rent officer or, as the case may be, of the private rented housing committee, subject to the provisions of this section, to have regard to all 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, to the quantity, quality and condition of the furniture.*
- (2) For the purposes of the determination it shall be assumed 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.*
- (3) There shall be disregarded—*
 - (a) any disrepair or other defect attributable to a failure by the tenant under the regulated tenancy or any predecessor in title of his to comply with any terms thereof, and*
 - (b) any improvement (including any improvement to the furniture provided for use under the tenancy), or the replacement of any fixture or fitting carried out, otherwise than in pursuance of the terms of the tenancy, by the tenant under the regulated tenancy or any predecessor in title of his, and*

(c) if any furniture is provided for use under the regulated tenancy, any deterioration in the condition of the furniture due to any ill-treatment by the tenant, any person residing or lodging with him, or any sub-tenant of his.

(4) In the application of this section to a converted tenancy, the references in subsection (3) above to the tenant under the regulated tenancy shall include references to the tenant under the tenancy before the conversion.

15. In terms of section 48(1) of the 1984 Act, the duty of the Tribunal when determining what rent would be a fair rent under a regulated tenancy, is to;-

(1) "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".

16. 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 *supra*.

17. The Tribunal considered carefully all the evidence presented in writing and at the hearing, together with the observations made by the tenant and the landlords' representatives at the inspection. In particular, the Tribunal considered carefully which of the three alternative methods of ascertaining a fair rent was most appropriate in this case.

18. 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.

19. 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. The Tribunal had the benefit of its own knowledge and experience of the rents passing and being asked in the local market.

20. 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 is 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.

21. The Tribunal considered whether any discount should be made for scarcity in this case, but was satisfied that in the south side of Glasgow there could not be said to be a scarcity of similar properties to let. 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.

22. Having considered the matter carefully, the Tribunal decided that the best method to use in this case was to have regard to market rents and then make any appropriate disregards as required by Section 48(3), the method at (b) *supra*.
23. The landlords' representatives provided the Tribunal with a number of comparables. Two of these were properties in Shawlands, which the Tribunal considered to be a significantly different area. Other comparables in closer geographical proximity to the property were offered, but they all related to fully refurbished flats with modern kitchens and bathrooms and central heating. The Tribunal had carried out its own research and had identified 6 properties with rental figures of £495-£550 pcm. The Tribunal's view was that if the present property was fully modernised, with floorcoverings and central heating added (and including the double glazing that had been installed in 2015), the rental potential would be approximately £6,240 per annum (£520 pcm). The Tribunal then applied the appropriate disregards as required by Section 48(3).
24. Accordingly, having taken all relevant factors into account, the Tribunal determined that a Fair Rent for the property was **£4,250.00** per year. In reaching this decision, the Tribunal had regard to all the evidence, and to all the circumstances that must be taken into account in terms of section 48 of the Rent (Scotland) Act 1984.
25. The Tribunal determined that the effective date for the Fair rent in terms of Section 50(4) of the Act should be the date of the Tribunal's decision.

G Clark

Signed

George Clark, Solicitor, Chairman.