

# Housing and Property Chamber First-tier Tribunal for Scotland



## Housing (Scotland) Act 1988

### Register Of Rents Determined Under Short Assured Tenancies

**REFERENCE NO.**

PRHP/RS/16/0338

**APPLICATION RECEIVED**

1 November 2016

**ADDRESS OF PREMISES**

B/1, 1 Vinicombe Street, Glasgow, G12 8BH

**TENANT**

Mr Joe Cameron, Mr Jack Connor, Mr Duncan Murray-Uren

**NAME AND ADDRESS OF  
LANDLORD**Macnewco Sixty Eight Limited  
11-13 Cleveden Crescent,  
Glasgow, G12 0PB**AGENT**

Edward Doull, solicitor, Brunton Miller Solicitors, Glasgow

**RENTAL PERIOD**23/09/2016 – 23/09/2017 and  
month to month thereafter**DATE TENANCY COMMENCED**

23 September 2017

**DESCRIPTION OF PREMISES:** westmost basement flat in 5 storey tenement erected c 1900. Traditional red sandstone. Pitched roof. Accommodation comprises living room (used as double bedroom), 2 further double bedrooms, kitchen and bathroom. 4 storage cupboards off hall. Gas fired central heating. No double glazing. Communal drying green behind tenement. Close to local amenities and transport links. Furnished let. HMO Licence.

**SERVICES PROVIDED**

None

**TRIBUNAL MEMBERS****CHAIRPERSON  
ORDINARY MEMBER**George Clark  
Mike Links (Surveyor)**PRESENT RENT**

£1,290.00

**THE TRIBUNAL DID NOT MAKE A DETERMINATION WHEN IT  
CONSIDERED THE MATTER ON 9 JANUARY 2017.**

G Clark

Chairperson, First-tier Tribunal 9 January 2017

# Housing and Property Chamber First-tier Tribunal for Scotland



## STATEMENT OF REASONS

in respect of a reference to the Tribunal for a  
**Determination of a market rent under The Housing (Scotland) Act 1988**  
**Property: Flat B/1, 1 Vinicombe Street, Glasgow G12 8BH**

**PRHP Ref: PRHP/RS/16/0338**

### Decision

**The Tribunal holds that the rent payable under the short assured tenancy of the Property is not significantly higher than the rent which the Landlords might reasonably be expected to obtain under the tenancy, having regard to the level of rents payable under the tenancies of similar houses in the locality. Section 34(3)(b) of the Housing (Scotland) Act 1988 therefore applies and the Committee is unable to make a determination on rent.**

### Introduction

1 This is a reference to the Private Rented Housing Committee (since 1 December 2016 the Housing and Property Chamber of the First-tier Tribunal for Scotland) ("the Tribunal") in respect of Flat B/1, 1 Vinicombe Street, Glasgow G12 8BH ("the Property").

The Landlords are Macnewco Sixty Eight Limited, having a place of business at 11-13 Cleveden Crescent, Glasgow G12 0PB ("the Landlords") and the Tenants are Jack Connor, Joe Cameron and Duncan Murray-Uren, all of whom reside at the property ("the Tenants").

2 The current rent for the Property is £1,290 per calendar month ("pcm") (£15,480 per annum). The tenancy is a Short Assured Tenancy which commenced on 23 September 2016. The reference by the Tenants to the Private Rented Housing Committee is by way of an application in Form AT4 for the Determination of Rent under Section 24(3) and Section 34(1) of The Housing (Scotland) Act 1988 ("The Act"). The date of the Tenants' application is 31 October 2016.

## **The Inspection**

- 3 The Tribunal members inspected the property on the morning of 9 January 2017. The Tribunal members were George Clark (Chairman) and Mike Links (surveyor member)

The property is the westmost basement flat in a 5 storey tenement in the West End of Glasgow, erected about 1880. The tenement is of traditional red sandstone construction with a pitched and, it is assumed, tiled roof. The property will originally have been part of a ground and basement flat and has been sub-divided at some stage to create self-contained ground and basement properties. The accommodation comprises a living room, converted into a double bedroom, 2 further double bedrooms, a kitchen and bathroom. There are 4 storage cupboards off the hall. The gas-fired central heating system also provides hot water, with a Vokera combination boiler. The property has its original sash and case windows. There is a communal drying green behind the tenement.

The property is let furnished. No services are provided by the Landlord.

The property has a gross internal floor area of approximately 101 square metres or thereby..

The property is located close to local amenities and transport links and is in an area which is popular for lettings to students.

The Tribunal has assumed that, as the Property has a HMO Licence, it complies with the requirements for such a Licence.

## **Written Submissions**

- 4 The Landlords had submitted written representations in advance of the hearing and both parties had requested to attend the hearing, which was held at Wellington House, 134-136 Wellington Street, Glasgow G2 2XL, following upon the inspection. All 3 Tenants attended the inspection and the Tenant, Mr Connor, attended the hearing. One of the Landlords' Directors, Anna Le Marquand, attended the inspection and the hearing and was accompanied by Ian Donald of Allied Surveyors. The Landlords were represented at the hearing by Edward Doull of Brunton Miller, solicitors, Glasgow

The Committee carefully considered the written documentation before it:-

- (a) Form AT4 prepared by the Tenant dated 31 October 2016.

- (b) Written submissions from the Landlord dated 24 November 2016 in which the Landlords gave information on comparable rents within the neighbouring area of the property. They also pointed out that the Tenants had negotiated on the rental figure and had tried, 3 days before the lease was due to commence, to negotiate a further reduction. This was not agreed to by the Landlords and the Tenants had accepted the position and signed the lease. On 26 September 2016, three days after moving in to the Property, the Tenants had notified the Landlords of the dampness and a dehumidifier had been provided. The Landlords had heard nothing further until it was raised during a visit to the Property on 10 November. The Landlords had instructed their maintenance team straight away and, at the time of their written submissions were currently investigating the problem, but they had noted on the visit that the heating had not been on, the flat had been very cold and there were damp towels over the radiators. The Tenants had said that due to the running costs, the heating was not on all the time. The Landlords had issued written guidelines to the Tenants on condensation
- (c) The Tenants had made submissions in writing on 6 January 2017, but there had been insufficient time for these representations to be copied to the Landlords and the Tribunal members. The Tribunal was satisfied, however, that they did not include any information that was not presented orally by the Tenant, Mr Connor, at the hearing.
- (d) A report provided to the landlords by Mr Donald of Allied Surveyors, dated 5 January 2017. This had not been copied to the Tenants or to the Tribunal members, but all were provided with copies at the inspection and the Tenants had sufficient time prior to the hearing to consider the comparable rental figures contained within the report.

## **The Hearing**

- 6 The Tenant, Mr Connor, submitted that the rent presently being charged was too high. There had been evidence of black mould in the rooms (the front bedroom and the kitchen) abutting the gable wall of the tenement on the day the Tenants had moved in. The building was currently listed by the local authority as being dangerous because of the condition of the gable wall. The Landlords had contended that the problem was condensation caused or contributed to by the Tenant drying washing over the radiators, but the problem had been evident on the day that the Tenant moved in. It had been reported to the Landlords, who had provided a dehumidifier and, after the Tenants had made the application to PRHP, the Landlords had painted over the mould and had put in a number of vents to the outside walls.

- 7 Mr Connor asked the Tribunal to consider only comparable rents for basement flats, as they could be distinguished from flats which were on upper floors by the lack of natural daylight and the greater likelihood of rising damp. The central heating system was not working properly, although the Tenants conceded that the Landlords were arranging for it to be flushed in the hope of remedying the problem. Mr Connor advised the Tribunal that the previous tenants of the Property had paid a rent of £1,200 pcm and had moved in to the other basement flat in the tenement, where they were also paying £1,200 pcm. This flat was, in the view of the Tenant, the closest comparable that could be found, being more or less a mirror-image of the Property, but without the problems of having a gable wall and, in particular, a gable wall that had been deemed dangerous. In Mr Connor's view, the dampness was caused or exacerbated by the fact that moisture was finding its way through the gable wall, because of the condition of the wall. He also reminded the Tribunal that the dampness problem had been there from the outset, so could not be said to have been caused by lack of heating or ventilation since the tenancy began or by the Tenants drying clothes on radiators. Initially, the Landlords had wanted to charge the Tenants £1,350 pcm, but the Tenants had negotiated a reduction of £60 pcm, prior to the commencement of the lease. This was, however, still £30 per tenant higher than the Landlords had been charging the previous tenants both for the Property and for the adjacent flat that they now occupied. Mr Connor could see no justification for the rent for the Property being higher than the figure for the other basement flat. He also provided the Tribunal with rental figures for 2 flats in the area which had 3 bedrooms and one of which also had a separate living room. Both had rents which were lower than that being charged for the Property. One of the properties, in Kersland Street, was also on the list of comparables provided in the report prepared by Mr Donald for the Landlords, but the Tenants disputed the rental figure given for that property in the report and Mr Connor produced what appeared to be a partial copy of the lease, showing the lower rental figure.
- 8 Mr Doull responded on behalf of the Landlords and, when appropriate, asked Ms Le Marquand and Mr Donald to address the Tribunal directly. He reiterated that, as stated in the Landlords' written submissions, the Tenants had seen the Property and then negotiated a reduced rent prior to entering into the lease and had attempted to negotiate a further reduction 3 days before the lease commenced. The Landlords' written submissions had included a Schedule with a number of comparable rental figures. The Landlords did not accept that there should be a differentiation in rental figures between basement flats and properties on upper floors of a tenement. When the Landlords had been notified of a problem with mould, they had provided a dehumidifier and had since provided the Tenants with written guidelines designed to avoid condensation in houses and had put in wall vents. These guidelines made it clear that clothes should not be dried on radiators.

9 Mr Doull told the Tribunal that the rental figure for the property in Kersland Street had been obtained by Mr Donald directly from the letting agents and this was confirmed by Mr Donald at the hearing. Mr Doull suggested that the figure obtained by Mr Donald be preferred. He contended that the present rent for the Property was entirely appropriate and ought not to be reduced. He referred the Tribunal to the provisions of Section 34(3) of the Housing (Scotland) Act 1988 and asked the Tribunal to find that the rent payable for the property was not (as the section required) "significantly higher" than the rent which the Landlords might be able to obtain, having regard to the rental levels for similar houses in the area. He told the Committee that it was reasonable to conclude that the Landlords had agreed not to increase the rent for the previous tenants of the Property when they moved into the adjacent basement flat, because they had a good track record as tenants. That flat should not, therefore, be regarded as a good comparison.

## 10 **Decision**

The Tribunal noted the representations made by the parties. The Chairman stated that the Tribunal took into account, when fixing rents, the present condition of the property concerned, but advised the parties that its role was limited to determining the rent and that any dispute relating to the condition of the Property would involve a separate application to the Tribunal under Section 22 of the Housing (Scotland) Act 2006.

No services are provided by the Landlord, so there were no additional factors to be taken into account and the comparable evidence provided by the parties demonstrated that there was no scarcity of 3 bedroom flats available for let in the area. The Tribunal is satisfied that there is a sufficient number of similar houses in the locality let on assured tenancies (whether short assured tenancies or not) and that the test set out in Section 34(3)(a) of the Housing (Scotland) Act 1988 has been met.

The Tribunal then considered the terms of Section 34(3)(b) of the Act, which provides that where an application under Section 34(1) of the Act is made with respect to the rent under a short assured tenancy, the Tribunal shall not make a determination of the rent unless it considers "that the rent payable under the short assured tenancy in question is significantly higher than the rent which the landlord might reasonably be expected to be able to obtain under the tenancy", having regard to the tenancies of similar house in the locality.

The Tribunal considered all the evidence relating to current market rents submitted by both the Landlord and the Tenant. The Tribunal accepted that the explanation for the rent being £1,200 pcm for the adjacent basement flat was a reasonable one and that it did not, therefore, offer a direct comparison. The Tribunal also concluded that it had seen no evidence to suggest that the rental achieved in the area for basement flats was lower than that for flats on

the upper floors of tenements and excluded from its determination the flat in Kersland Street where there was a factual dispute between the parties as to the actual rent being paid. Using their own knowledge and experience and having regard to the information available, the Tribunal concluded that the range of market rents for 3 bedroomed flats in the locality of the property, with HMO Licences, was £1,250-£1,350 pcm. The view of the Tribunal was that, as the present rent for the Property at £1,290 pcm lay within that range and was within 5% of both the lower and the higher figure, it could not be said to be significantly higher than the rent which the Landlord might reasonably be expected to obtain under the short assured tenancy of the Property. The test set out in Section 34(3)(b) of the Act had, therefore, been met and the Tribunal was unable to make a determination of the rent in this case. For the avoidance of doubt, the Tribunal also noted that, even if it had accepted the rent figures for the adjacent basement flat or the flat at Kersland Street, where the Parties disputed the rent actually being paid, as comparables, the rent for the present Property was less than 5% higher than either property and the Tribunal would not have held that difference to be significant in terms of the Section 34(3)(b) test.

The view of the Tribunal was unanimous.

George Clark (Chairperson)

9 January 2017