

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**

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**Statement of Reasons by the First-tier Tribunal for Scotland Housing and Property Chamber in respect of an application for a determination of rent under Sections 24(3) and 34(1) of the Housing (Scotland) Act 1988**

**Chamber ref: FTS/HPC/RA/19/2940**

**Property: 41 Brunstane Road South, Edinburgh EH15 2NQ**

**Parties: Miss Carol Paxton, 41 Brunstane Road South, Edinburgh, EH15 2NQ ("the Tenant")**

**South Castle Properties Limited, incorporated under the Companies Acts in Scotland (SC126595) and having their registered office at 61a North Castle Street, Edinburgh EH2 3LJ ("the Landlords")**

**Tribunal Members: George Clark (Legal Member) and Mike Links (Ordinary Member)**

### **Introduction**

1. This is an application by the Tenant for a determination of rent under Sections 24(3) and 34(1) of the Housing (Scotland) Act 1988 ("the 1988 Act") in respect of 41 Brunstane Road South, Edinburgh EH15 2NQ ("the property").
2. The current rent for the property is £600 per calendar month (£7,200 per annum). By way of Form AT2 dated 1 July 2019 the Landlords served notice on the Tenant of their proposal to increase the rent to £800 per calendar month (£9,600 per annum) with effect from 1 October 2019. On 18 September 2019, the Tenant applied by way of Form AT4 for a determination of rent under Sections 24(3) and 34(1) of the 1988 Act.

## **The Inspection**

3. The Tribunal inspected the property on the morning of 4 February 2020. The Tribunal comprised George Clark (Legal Member) and Mike Links (Ordinary Member). A file of photographs, taken at the inspection, is attached to and forms part of this Statement of Reasons. The Tenant was present at the inspection and subsequent hearing, where she was supported by Mrs Lynn Purves. The Landlords were represented by one of their Directors, Mr Michael Baynham, who attended the inspection and the hearing.
4. The property is a mid-terraced, two-storey house, built of stone with a pitched and slated roof, dating from the early part of the 19<sup>th</sup> Century. It forms part of a row of 5 houses, formerly farm workers' cottages, numbered 35-43 Brunstane Road South, Edinburgh, approximately 5 miles east of the city centre.
5. The property is close to local amenities, including a railway station and a large superstore. The immediate surrounding area has been extensively developed with modern housing, and the adjacent farm steading building is currently being developed for residential use. The property is understood to be a Category C Listed Building and has a gross internal floor area of approximately 72 square metres.
6. The accommodation within the property comprises, on the ground floor, a living room, a small kitchen off the living room, and a bathroom off the kitchen and, on the upper floor, two double bedrooms, one with a small storage cupboard off, and a small boxroom. There is a walk-in storage cupboard off the living room, with a window to the rear of the property.
7. The kitchen is small but has fitted units (installed by the Tenant), with a hob and oven and a free-standing fridge/freezer (all provided by the Tenant). The bathroom opens off the kitchen, is not modernised, has no wash hand basin and is extremely small.
8. The windows are in course of being replaced, but the replacements will have single glazing. There is no central heating and water is heated by means of a coal fire with a back boiler. There is a modern electricity consumer unit in the

storage cupboard off the living room. The roof, external stonework and external plumbing all appear to be in a reasonable state of repair. There is a small area of garden ground and paved courtyard to the front of the property. The property does not have a garage but has the use of a parking space located just beyond the front garden wall.

9. The property is let unfurnished.

### **Written Representations**

10. The Tenant, in her application, asked the Tribunal to note that she had lived in the Property all her life, having taken over the tenancy from her parents after they died and that all the furniture in the Property was owned by her, including all white goods. In further written representations, the Tenant argued that the Property remains highly substandard when compared to other rented accommodation of a similar size in the local area. It lacks central heating, the windows are in a poor state of repair and the kitchen and bathroom are extremely small by modern standards. She pointed out that the Tribunal (then a Committee of the Private Rented Housing Panel), when determining the rent in August 2016, had found that it was appropriate to take into account the fact that both the kitchen and bathroom were particularly small by comparison with other let properties being offered as comparables and that the market for older properties which lacked modern amenities was limited. The Committee had also considered that it was appropriate to take into account that the Property does not meet the tolerable standard and that a landlord could not let out the Property in its current condition on normal terms. The Tenant argued that this finding still stood today as nothing of significance had been done to improve the Property to a tolerable standard. She asked the Tribunal to adjudicate using the same benchmark as in 2016, namely that instead of trying to guess a hypothetical open market rent for the Property as it is, they calculate and then discount the capital cost of upgrading work, to the kitchen, bathroom, heating system and windows, required to modernise the Property and modify any rent increase to reflect this sum.

11. The Landlords, in their written representations, told the Tribunal that, since the Tribunal (then the Private Rented Housing Committee) had last determined the rent in 2016, the extremely attractive location of the Property had continued to improve. Two very attractive new-build properties had been constructed to complement the terrace of houses and the adjoining listed farm steading, to complete the attractive courtyard setting. The steading had been restored and its conversion to form five high-quality homes was nearing completion. These improvements had been evidenced by the substantial growth, well above the Edinburgh average, in the value of the terraced houses adjoining the Property. Number 43 had sold in September 2018 for £290,000 and Number 37 for £280,000 in July 2017 (having been sold by the Landlords, following refurbishment, in November 2014 for £225,000 and, in March 2016 for £217,500 respectively).

12. The Landlords provided as part of their written representations, comparable rental evidence. They had identified 12 two-bedroom terraced houses for rent in Edinburgh, but only one of them was a traditional period stone-built property, the others being mostly in modern estates, including one property in the nearby Gilberstoun estate. They suggested that the most relevant comparable property was a two-bedroom end-terraced house at 50 Gilberstoun Brig, which was within a short distance of the Property but in a less desirable location. The accommodation was remarkably similar, but significantly smaller than the Property. It had the benefit of gas central heating, a modern fitted kitchen complete with built-in gas hob and oven with a free-standing fridge-freezer and a modern three-piece bathroom suite. The only stone-built property amongst the comparable properties recently shown as being available to rent demonstrated a substantial premium in rental value (£1,400 per month) and the premium attaching to stone-built properties should be reflected in the Tribunal's rent determination in this case.

13. The Landlords contended that the capital value of the Property was higher than that of a smaller size standard modern estate terraced house such as 50 Gilberstoun Brig, which they thought could be fairly stated at £160,000. This was barely 55% of the value of 43 Brunstane Road South which had sold in

2018 for £290,000. They stressed again that the terraced stone houses were more desirable and larger. They calculated the rental yield of 50 Gilberstoun Brig as 6.9%. If they estimated the unimproved value of the Property at £230,000 by taking the price achieved for Number 43 and deducting the renovation costs similar to those for Numbers 37 and 43, a rental yield of 6.9% would produce a monthly rent of £1,332.50. On a comparable rate based on square footage, the rent would be £1,391 per month.

## **The Hearing**

14. The Hearing was held at Riverside House, Gorgie Road, Edinburgh and was attended by the Tenant, with her supporter and by Mr Baynham for the Landlords. The Tribunal told the Parties that they could assume that the Tribunal members had read and were familiar with the written representations.
15. Mr Baynham told the Tribunal that the amenity of the Property has improved since the last determination of rent. He reiterated that the closest comparison was 50 Gilberstoun Brig, which was smaller, but had better amenities, and that the Landlords had also looked at the capital value approach to rental valuation.
16. The Tenant said that in her view, there should be no increase in rent, as the bathroom has not been upgraded and, whilst the windows have been replaced, there is still finishing work to be carried out. The bathroom sash does not swing inwards. She expressed the view that the amenity has not improved since the last rent determination. The roadway immediately behind the Property is to become an access road to the new houses and the car park floods when it rains. There used to be open space at the front, but the Property is now overlooked by the new-build houses. It was not appropriate to compare the Property to 50 Gilberstoun Brig, which was to let at a rent of £925 per month. There is no wash hand basin in the bathroom of the Property. The Landlord said that the only way in which one could be put in would be to change it to a shower room, as the bathroom is so small, but the Tenant stressed that she wanted the use of a bath, not a shower.

## Reasons for Decision

17. The Tribunal considered all the paperwork before it and the evidence relating to current market rents submitted by both the Landlords and the Tenant in writing and at the hearing.
18. The Tenant is a second statutory successor to the original tenant, her late father, who held on a regulated tenancy basis. As, however, she became the second statutory successor to the tenancy after 2 January 1989, she is defined as a statutory assured tenant and the rent falls to be reviewed under the provisions of Sections 24 and 25 of the 1988 Act, rather than under the previous fair rent provisions contained in the Rent (Scotland) Act 1984. Accordingly, the Tribunal was required to set a market rent, rather than review a fair rent.
19. The Tribunal could not accept the Tenant's argument that the rent should stay at £600 per month. The passage of time meant that an increase was necessary. The Tribunal accepted that the road behind the Property would be used more frequently than at present, but the road had always been there. The Tribunal considered that the amenity of the area had improved since 2016, but not significantly. The Landlord advised the Tribunal at the Hearing that the listing of the building meant that replacement windows had to be single glazed, but, whilst understanding that position, the Tribunal, in determining the rent, had to have regard to the fact that the windows were not double glazed.
20. The Tribunal was of the view that it was not appropriate to consider return on capital as the basis of assessing the market rent for the property. There was such a variation in market values of properties, depending on the type of construction, amenities and location, that it could not be assumed that rents should be calculated in such a way that they would all achieve a similar return on capital.
21. The Landlords had thought that the best comparison was the property at 50 Gilberstoun Brig, which had recently been marketed at £925 per month and Mr Baynham had said that it had let quickly, but the Tribunal had no evidence as

to whether the figure of £925 had been achieved. The Tribunal, however, had identified another property at Gilberstoun Wynd, which was currently on the market at £795 per month. It was advertised as having a contemporary living arrangement, with modern kitchen and shower room and gas central heating. The floor area was significantly smaller than the present Property (47 sq.m), but the kitchen, with modern appliances, was double the size of the kitchen in the present Property and, generally, the property was much more suited in layout to modern living standards. The shower room was only slightly larger than the bathroom in the present Property, but it was not located directly off the kitchen and had a wash hand basin, so met the tolerable standard.

22. Although the Tribunal did not know whether the property at 50 Gilberstoun Brig had achieved a rental of £925, the view of the Tribunal was that it was high by comparison with the rental evidence for other two-bedroom houses in Edinburgh, apart from those in premium areas. Taking the average rent of the two Gilberstoun properties produced a figure of £860, but the Tribunal would make deductions for the present Property to reflect the fact that the windows are single glazed, the kitchen and bathroom are very small and both require complete modernisation, the floorcoverings and carpets and white goods were provided by the Tenant and the bathroom has no wash hand basin and is located directly off the kitchen. Taking these factors into account, the Tribunal calculated that the market rent would be approximately £150 per month less than the average of the two Gilberstoun properties at around £710.

23. The Tribunal considered statistical evidence on market rents published by Citylets. Their Report for Q3 in 2019 indicated that the annual increase in rental levels for two-bedroom properties in the previous year had been 2% and that the increase over the previous 5 years had been 30.3%. This suggested increases of approximately 6% per annum in the period from September 2016 to September 2018, to which should be added the 2% average increase in the year to September 2019. Applying this approach to the present Property would indicate a market rent in the region of £685.

24. Using their own knowledge and experience and having regard to the information available, the Tribunal considered that the market rent for a typical

two-bedroom property in the locality of the current property would be in the region of £700 per month (£8,400 per annum). In reaching this view, the Tribunal had regard to the fact that all the comparables available were modern houses with high amenities, including upstairs bathrooms, double glazing, modern insulation, driveway parking and private rear gardens.

25. The Tribunal also considered that it was appropriate to take account of the fact that both the kitchen and bathroom within the property were particularly small and that, whilst it might be argued that stone built cottage-style houses attracted a rental premium it was still the case that the market for older properties which lacked modern amenities was limited.

26. No services are provided by the Landlords.

27. In terms of Section 25(6) of the 1988 Act, unless the landlord and tenant otherwise agree, the rent determined by the Tribunal shall be the rent under the tenancy with effect from the beginning of the period to which the new rent specified in the Form AT2 Notice relates or, if it appears to the Tribunal that that would cause undue hardship to the tenant, with effect from such date as the Tribunal may direct (being a date after the beginning of that period but not after the date when the Tribunal determined the rent).

28. The Tribunal was conscious of the fact that the rent it had determined represented a significant increase from the existing rent and was of the view that to order it to have effect from the beginning of the period specified in the Form AT2 Notice (1 October 2019) might cause undue hardship to the Tenant. Accordingly, the Tribunal directed that the rent that it had determined should become payable from 1 February 2020.

George Clark

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.....Legal Member/Chair

4 Feb 2020 .....Date



*4 March 2020  
This is the Schedule of Photographs  
referred to in the Final Order  
of Referral*

# Housing and Property Chamber

## First-tier Tribunal for Scotland



**First-tier Tribunal for Scotland (Housing and Property Chamber)**

### **SCHEDULE OF PHOTOGRAPHS**

**ADDRESS: 41 BRUNSTANE ROAD SOUTH, EDINBURGH EH15 2NQ**

**DATE: 4 FEBRUARY 2020**

**REFERENCE: FTS/HPC/RA/19/2940**



**FRONT ELEVATION**



**REAR ELEVATION**



**COURTYARD DEVELOPMENT**



**LIVING ROOM**



**KITCHEN**



**BATHROOM**



**BATHROOM**

**BEDROOM WINDOW**



**FRONT BEDROOM**



**REAR BEDROM**

**Mr M LINKS**

**ORDINARY MEMBER (SURVEYOR)**

**HOUSING AND PROPERTY CHAMBER**

**DATE 4 FEBRUARY 2020**