

# Housing and Property Chamber First-tier Tribunal for Scotland



**Decision  
of the**

**First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') issued under section 26 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017.**

**Chamber Ref:FTS/HPC/RR/24/1629**

**Flat 1/3, 42 Stewartville Street, Glasgow, G11 5PL ('the Property')**

**The Parties:**

**Partick Housing Association, 10 Mansfield Street, Glasgow, G11 5QP ('the Landlords')**

**Miss Donnelly, TC Young, Solicitors, Glasgow ('the Landlords' representative')**

**Mr Brendan McGill residing at flat 1/3, 42 Stewartville Street, Glasgow, G11 5PL ('the Tenant')**

**Tribunal members:**

**Jacqui Taylor (Legal Member) and Robert Buchan (Ordinary Member).**

## **1. BACKGROUND**

The Tenant has resided in the Property since 1957. His mother was the original tenant in terms of her regulated tenancy with the Landlords. The Tenant succeeded to the tenancy on his mother's death in terms of the Housing (Scotland) Act 1984 when the tenancy became a statutory protected tenancy. The parties entered into a Scottish secure tenancy in 2005. The rent was registered on 27<sup>th</sup> April 2021 and continues to be assessed in terms of section 48 of the Housing (Scotland) Act 1984.

The current rent is £4262.04 per annum (£355.17 per month). The Landlords applied for the rent to be increased to £4912.80 per annum (£409.40 per month). The Rent Officer registered a rent of £4639.47 per annum (£386.62 per month) with effect from 27<sup>th</sup> April 2024. The Landlords referred the determination to the First tier Tribunal.

## **2. Written Representations.**

### **2.1 Written Representations by the Applicants**

*‘On 31st January 2024, the Applicant submitted an application for registration of rent in respect of the property in form RR1. The Applicant sought fair rent be registered at the rate of £4,912.60 per year. On 15th March 2024, the Rent Officer determined fair rent at the rate of £3,639.47 per year effective from 27th April 2024. On 8th April 2024, the Applicant submitted an objection to the registered rent to the Rent Officer in terms of paragraph 6, schedule 5 of the Rent (Scotland) Act 1984. On 10th April 2024, the Rent Officer referred the matter to the First-tier Tribunal in terms of paragraph 7, schedule 5 of the Rent (Scotland) Act 1984.*

*Accordingly, Partick Housing Association Limited, having submitted an objection to the rent officer’s determination are understood to be the Applicant for the purpose of current proceedings (RR/24/1629).*

*The notice of acceptance dated 18th April 2024 erroneously notes the Tenant, Mr B McGill, as the Applicant. The Applicant understands that Mr McGill has not engaged in proceedings to date.*

#### *Representations for the Applicant*

*The Tribunal require to determine fair rent for the Property in terms of Section 48 of the Rent (Scotland) Act 1984. Section 48(1) of the Act requires the Tribunal ‘to have regard to all of 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, and to the quantity, quality and condition of the furniture. Section 48(2) requires the Tribunal to ‘assume that the number of persons seeking to become tenants of similar dwellinghouses 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 which are available to let on such terms.’*

*It is submitted there are three methods of assessing the rent in Scotland, namely; (1) determining the fair rent by reference to comparable registered rents in the area (2) determining the fair rent by reference to market rents of comparable properties allowing for appropriate deductions for scarcity and (3) determining the fair rent by reference to the anticipated annual return based on the capital value of the property. It is submitted that none of these methods is a primary method.*

*The task of determining a fair rent is a composite task which takes account of these three methods, depending on the facts and circumstances of each case. Reference is made to Western Heritable Investment Co Ltd v Hunter 2004 S.C. 63 and Wright v Elderspark Housing Association [2017] CSIH 54.*

*It is submitted the Tribunal ought to proceed considering the best available evidence using other evidence as a cross check, where possible.*

*It is submitted that the capital valuation method should 'normally to be used only as a last resort' (Western Heritable Investment Co Ltd v Husband 1983 SC (HL) 60, 73). Given the available evidence of comparable fair rents and open market rents in this case, the capital valuation method need not be utilised.*

*The Tenant, Mr Brendan McGill, has occupied the property since 2001. The property was originally let to Mr McGill's late mother in terms of a tenancy agreement which commenced on 21st May 1976. On 1st September 2001 Mr McGill succeeded to the tenancy under and in terms of the Housing (Scotland) Act 1987. The tenancy retained fair rent protection. On 30th September 2002, all existing secure tenancies converted to Scottish Secure Tenancies. In terms of savings provisions introduced by Housing (Scotland) Act 2001 (Scottish Secure Tenancy etc.) Order 2002, the tenancy sustained fair rent protection. The current Scottish Secure Tenancy Agreement between the parties was signed on 18th November 2005.*

*Rent was registered at £4,308.24 with effect from 27th April 2021. The property is a first floor, one bedroom flat with a separate living room and dining kitchen. A floor plan is lodged and referred to. To the Applicant's knowledge, the Rent Officer did not inspect the Property prior to determining the rent. The Applicant has experienced difficulties gaining access to the Property to carry out upgrades and conduct annual safety inspections for several years.*

*In or around 2016 the Tenant has advised the Applicant he did not want gas within the Property. The Applicant understands the gas meter was removed in or around 2017.*

*The Applicant has offered Mr McGill a new bathroom, kitchen and heating system together with full rewire of the Property. The Applicant has encouraged the Tenant to engage with their programme of upgrades but the tenant has refused all such upgrades.*

*In or around December 2022 the Tenant agreed to the installation of an electric heating system. The Applicant obtained a quote for a suitable electric heating system with the*

*intention of immediate installation. The Tenant subsequently cancelled appointments, refused to permit the works to be carried out and advised the Applicant necessary upgrades could be completed at the end of his tenancy.*

*On 12th January 2024 the Applicant received reports from the local authority that the property may be uninhabited. The Applicant made investigations with the tenant. On 23rd January 2024, Mr McGill confirmed he continued to occupy the Property.*

#### *Registered Rents*

*The Applicant has collated details of fair rents registered in 2024 in respect of comparable one-bedroom flatted properties in the G11 postcode from the Fair Rent eRegister.*

*Reference is made to the Applicant's inventory of productions at production 1.*

*The monthly rents for these properties range between £372.19- £423.50 or between £4,466.28- £5,145.12 per annum. The median figure for comparable market rent based on the data presented by the Applicant is £4,912.80 per annum.*

*On 31st January 2024 the Applicant also applied to the Rent Officer for fair rent of £4,912.80 in respect of the properties at 21 Eldon Court and 454 Dumbarton Road. Rents were determined in that sum for both of those properties. To the best of the Applicant's knowledge, the rent officer did not inspect either property prior to rent determination.*

#### *Open Market Rents*

*The Applicant has collated details of comparable open market rents of one-bedroom flatted properties from internet sources.*

*Reference is made to the Applicant's inventory of productions at production 2.*

*As at 6th August 2024, RightMove.co.uk returned three results for comparable properties in the G11 postcode. City Lets and S1 Homes returned no results at the time of the Applicant's search.*

*The monthly rents for these properties range between £920- £1,050 or between £11,040 - £12,600 per annum. T*

*he median figure for comparable market rent based on the data presented by the Applicant is £11,400 per annum.*

#### *Conclusion*

*The Applicant is a housing association providing social housing in Glasgow. The Applicant has a rent harmonisation process in place which seeks to ensure tenants occupying properties of the same size and who have access to the same services pay*

*the same rental charge. The Applicant wishes to offer fair and equitable rents to all tenants across their housing stock. The Tribunal is invited to follow Wright v Elderpark Housing Association [2017] CSIH 54 in which Lord Drummond Young said" it will frequently be appropriate for the rent officer or committee to begin with the rents that have been registered for comparable properties falling under Part VI of the Act (housing association properties), and to use the private rented market as a cross-check, making allowance for any scarcity in accordance with subsection (2) of section 48". In the circumstances of the present case, the Tribunal are invited to disregard the current condition of the property as per section 48(3)(a). It is submitted the state of disrepair or other defects are attributable to the Tenant's refusal to allow the Applicant access to upgrade the Property in accordance with their proposed programme. Had the Tenant permitted access to the Applicant and their contractors, the Property would have benefitted from a full rewire, a new bathroom and kitchen and the installation of electric heating, the latter specifically to accommodate the Tenant's preferences. The Applicant has taken reasonable steps to encourage the Tenant to permit said upgrades but the Tenant has refused same. The Tribunal are invited to consider both the fair rent and open market comparators in this case. As such, it is submitted the fair rent is best determined as the mid-point between the open market rent of £11,400 and the fair registered rent of £4,912.80. Accordingly, a fair rent for the property is currently £8,156.40. In all the circumstances, the Applicant restricts their submission and invites the Tribunal to determine rent at £4,912.60 per annum.'*

Fair Rent Comparators ( One bedroom flats)

<b>Address</b>	<b>Effective From</b>	<b>Start Date</b>	<b>Rent requested</b>	<b>Notes</b>
Flat 3/1, 17 Fordyce Street G11 5PF	1.5.24	7.5.1987	£372.19	Central Heating
Flat 1/3, 6 Vine Street G11 6BD	1.5.24	25.6.1997	£372.19	Central Heating
Flat 3/2, 250 Dumbarton Road, G11 6TU	1.7.24	21.9.1983	£389.91	No Heating
Flat 3/2 9 Muirpark Street, G11 5NP	1.7.24	7.1.1987	£389.91	Central Heating

Block 2, 21 Eldon Court	1.5.24	28.6.1987	£404.14	Central Heating
Flat 1/1, 454 Dumbarton Road, G11 6SE	1.5.24	14.9.1999	£409.40	Central Heating
Flat ½, 1 Merkland Street, G11 6BU	1.5.24	1.1.1999	£409.40	Central Heating
Flat 3/2, 1 Merkland Street, G11 6BU	1.5.24	28.11.1986	£409.40	Central Heating
Flat 3/2, 28 Sandy Road, G11 6HE	1.5.24	21.8.2002	£423.50	Central Heating and shared car parking space

#### Market Rent Comparators ( One bedroom flats)

Address	Rent requested	Notes
Second floor flat 712 Dumbarton Road,	£920	Above commercial premises, Mod Kitchen, dining kitchen, double glazing, washing machine , fridge freezer, oven, hob hood and Electric Heating
½, 40 Mansfield Street, G11 5QW	£950	49 sq m, bay window living room., modern kit and bath rm, Gas Central heating.
3/1, 14 Lawrence Street, Glasgow, G11 5HQ	£1050	Large dining fitted kitchen, galley bathroom, gas central heating

## **2.2 Written Representations by the Respondent**

The Respondent sent the Tribunal an email dated 26<sup>th</sup> August 2024 which confirmed that the Rent Officer had inspected the Property. He explained matters that were inaccurate in the Applicants' written representations. His representations were in the following terms:

*'Your other letter contains Partick Housing Assoc's (PHA) written representation. Their statement infuriated me as it was full of falsehoods, exaggeration, misrepresentation and innuendo - it was the epitome of fake news!! In the past, PHA have been accused of bullying and harassing both my late mother (in her 80s) and myself, a sick old man, and now they're defaming me in print! Unbelievable! If I had actually done even a quarter of what they are stating, I would have been in very serious breach of my tenancy agreement and would have been evicted long ago or, at the very least, had my door forced to gain entry and then presented with a bill for the repairs. Neither of these has ever happened! PHA has made no contact with me whatsoever for 20 months (Dec '22 - 16th Aug '24) about anything electrical, rewiring, central heating or even kitchen related so there's obviously nothing urgent, despite what they asserted. I naturally assumed, in fact, they had taken my advice of December '22 and had asked SHQS and EESSH for an 'exemption' after which proposed work is paused until the tenant 'voids' the property (quoted from ScotGov Social Housing website) because I will almost certainly be leaving my flat, in which I have lived for 60 years, in 12-24 months time, because I won't be able to manage the many stairs as I have bad asthma which is getting progressively worse and is aggravated by stress (all this isn't helping) and assorted other ailments. I'll either be seeking a ground level flat or moving into an old folks home for which I have already made preliminary enquiries. The most infuriating aspect, however, of PHA's statement were the outrageous falsehoods about the young rent officer. They wrongly asserted that she had not even inspected the property prior to rent determination and that she had registered a rent of £3639, whereas the reality is that she DID inspect the property thoroughly and had informed Partick prior to her inspection and that the rent actually registered is £4639.47. PHA are clearly trying to give the impression that she is incompetent and negligent in her duty, and thus, her recommendation should be ignored completely. There is no other justification for those two obvious lies.'*

### **3. THE INSPECTION**

On the morning of 2<sup>nd</sup> September 2024 the Tribunal inspected the Property. The Tenant and Miss Donnelly, the Landlords' Representative, were present at the inspection.

The property is first floor tenement flat in a traditional 4 storey red sandstone built block, built in or around 1888. The accommodation comprises living room, one double bedroom, dining kitchen, and narrow bath room. The internal floor area is approximately 64 square metres.

A number of the walls and ceilings in the dining kitchen, bedroom and bathroom had been affected by water ingress and there was historic staining evident. One of the walls in the bathroom had been affected by water damage and there was a hole in the plaster. The electrical systems in the property were dated.

There is no installed heating in the Property. The Property is heated by plug in electrical heaters belonging to the tenant.

The windows throughout the Property are timber framed double glazed windows which were installed in 2017.

The Property is largely unimproved. The kitchen units are minimal and dated. The bathroom fittings are basic and the tenant fitted the timber surrounds to the bath. There is no shower. The Tenant had provided the carpets and floor coverings throughout the Property. No furniture or appliances were provided by the Landlords. The Property is conveniently situated for public transport and local services. There is metered on-street parking.

The services provided by the Landlords are administration on communal areas and VAT thereon and communal cleaning and VAT thereon.

#### **4. THE HEARING**

A Hearing took place at 11.30 am on 2<sup>nd</sup> September 2024 at the Glasgow Tribunal Centre, York Street, Glasgow. The Tenant and Miss Donnelly, the Landlords' Representative attended the hearing.

##### **4.1 Oral Representations by Miss Donnelly, The Landlords' Representative.**

Miss Donnelly referred the Tribunal to her written representations and acknowledged an error in stating that the registered rent was £3,639.47. She explained that the Landlords had offered the Tenant upgrades to the Property for several years but the Tenant has refused to agree to the upgrades. In connection with the outstanding repairs it is the Landlords' position that the repairs were not reported. However, she



confirmed that the Landlords have recently received an exemption from complying with the Scottish Housing Quality Standard in relation to this Property.

The Landlords do not believe there is scarcity in relation to rents in Glasgow but will accept the opinion of the Tribunal in relation to this point.

Miss Donnelly advised that she does not have details of the size of the comparable registered rent properties. The Tribunal provided details of the floor areas obtained from the EPC register as follows:

<b>Address</b>	<b>Floor Area from the EPC register (square metres)</b>
Flat 3/1, 17 Fordyce Street G11 5PF	45
Flat 1/3, 6 Vine Street G11 6BD	42
Flat 3/2, 250 Dumbarton Road, G11 6TU	56
Flat 3/2 9 Muirpark Street, G11 5NP	52
Block 2, 21 Eldon Court, G11 5DW	54
Flat 1/1, 454 Dumbarton Road, G11 6SE	69
Flat ½, 1 Merkland Street, G11 6BU	64
Flat 3/2, 1 Merkland Street, G11 6BU	64
Flat 3/2, 28 Sandy Road, G11 6HE	48

Miss Donnelly explained that she was unable to comment on these sizes.

#### **4.2 Oral Representations by the Tenant.**

Mr McGill advised that the Landlord's position is exaggerated and contains untruths. He reported the repairs required to the Bathroom to Drew Selkirk, maintenance manager of the Housing Association, in December 2022.

The gas meter was removed from the Property in 1973.

The Landlords had arranged for electric heating to be installed but the installation was cancelled due to covid and also due to the fact that he would not have been able to operate the control system which was run via an App.

It is untrue to state that he refused all upgrades to the Property. The windows were replaced in 2017 and the kitchen and bathroom lighting were upgraded in 2020.

The Landlords had suggested that they would install a new fitted kitchen but they would have relocated the kitchen units to the corner of the kitchen and removed the marble work top. He did not want these changes and did not agree to the replacement kitchen being installed.

In 2016 he was advised that the Landlords would rewire the Property and he would be relocated to a hotel for 7-10 days whilst the works were being carried out. He was also told that the cornicing in the lounge would be removed. He did not consider that the works would be for his benefit. If the works had been completed the Landlords would have increased the rent. He did not agree to these repairs.

In 2022 he was advised that a contractor would remove the linoleum flooring in the Property as they had identified asbestos on the back of the flooring. He suffers from asthma and did not want asbestos particles being disturbed. He believes that the best treatment for asbestos is for it to remain undisturbed.

He was offered a new bathroom suite in January 2024 he was asked if it was compulsory for him to take the suite and he was advised that it was not compulsory.

He has never refused to allow workmen to carry out work to the Property. He cannot be forced to accept upgrades to the Property.

He also advised that he was unable to comment on the sizes of the comparable properties provided by the Landlords' Representative and had no comments to make on whether there was scarcity of comparable rented property available to rent in the west end of Glasgow.

## **5. THE DECISION**

The Tribunal had the following documents before them:-

5.1 A copy of form RR1, the Landlords' application for registration of the rent.

5.2 The parties' written representations.

The Tribunal considered the condition of the Property, the parties' representations and the documents provided.

The Tribunal were mindful of the terms of section 48(1) of The Rent (Scotland) Act 1984, which requires the Tribunal 'to have regard to all of 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, and to the quantity, quality and condition of the furniture'. Also section 48(2) which requires them 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 which are available to let on such terms.'

The Tribunal recognised that the three methods of assessing the rent in Scotland are (1) determining the fair rent by reference to comparable registered rents in the area. (2) determining the fair rent by reference to market rents of comparable properties allowing for appropriate deductions for scarcity and (3) determining the fair rent by reference to the anticipated annual return based on the capital value of the property. They acknowledged that none of these methods is the primary method. The task of determining a fair rent is a composite task which takes account of these three methods. The appropriate method depends on the facts and circumstances of each case. The Tribunal also gave consideration to the observations of the Lord President in *Western Heritable Investment Co Ltd v Hunter* (2004) and also the recent case of *Wright v Elderpark Housing Association* (2017) which requires the Tribunal to proceed on the best available evidence and use the other evidence as a cross check, where possible.

*The Tribunal considered the evidence of registered rents in the Fair Rent Register.*

The Tribunal considered the comparable fair rents provided by the Landlords. The Tribunal determined that the properties at Dumbarton Road and Merkland Street were the most comparable due to these properties being a similar size to the subject Property and the annual fair rent of these properties is £4912.80. It was apparent that the Rent Officer was valuing one bedroom flats in the district at £4912.80 irrespective of the differences in floor area, with the exception of the subject property which was valued at £4639.47. The Rent Officer does not provide an explanation of how the registered rents are arrived at and it is left to an assumption that the lower rent for the

subject property is to reflect the difference in condition. It is clear from the Energy Performance certificates that the subject properties have central heating and it is reasonable to assume that they have been upgraded.

The Tribunal did not accept the Landlord's position that the Tribunal should disregard the current condition of the Property in terms of section 48(3)(a) of the Housing (Scotland) Act 1984.

That section is in the following terms:

*'Section 48(3)(a) 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.'*

The Landlords did not provide the Tribunal with a copy of the tenancy agreement and provided no evidence that it was a requirement of the tenancy agreement that the Tenant was required to agree to upgrading works. The Tribunal considered that it would be very unlikely for a lease to contain this condition.

In connection with the repairs required to the Property namely the historic damp staining and water damage to the wall plaster in the bathroom the Tribunal accepts the Tenants' evidence that he reported these matters to Drew Selkirk, the Respondents' maintenance manager. As the Tenant had reported these matters no deductions due to the repairs not being completed are appropriate.

Consequently, the Tribunal considered that an adjustment was required to reflect the fact that the Property 42 Stewartville Street was unimproved compared to the comparable registered rents, it did not have central heating and the décor, electrics, bathroom and kitchen had not been upgraded. Whilst decoration is normally the responsibility of the tenant, the interior has suffered from damp/water staining and decayed plasterwork which are not the fault of the tenant.

In addition, an adjustment was required due to the fact that there was a hole in the plaster wall in the bathroom that has not been repaired but had been intimated to the Landlords by the Tenant.

Taking an estimate of the cost of the repair to the plaster in the bathroom and the cost of upgrading the subject property to a standard evident in the comparables, and taking a straight line depreciation over 5 to 10 years for the different elements of the cost of necessary modernisation and repair, the Tribunal considered that a deduction of £1500 per annum was reasonable to reflect these differences.

Taking these matters into account the Tribunal determined that a comparable registered fair rent is £3412.80 per annum.

*The Tribunal also considered the evidence of market rents.*

The Tribunal considered the comparable market rents provided by the Landlords' representative which range from £920 per calendar month to £1050 per calendar month (£11,040 - £12,600 per annum) and which took the median figure of £11,400 as the open market rent. The Tribunal was prepared to accept this figure. However, the comparable properties mentioned are properties with modern kitchen, bathroom, floor coverings, central heating, decoration and appliances provided by the Landlords. The Tribunal considered that an adjustment in addition to that outlined above was required to reflect the fact that the subject property at Stewartville Street was not only unimproved, in that it did not have central heating or modernisation and had defective plaster in the bathroom but the Landlords did not provide any appliances, decoration or floor coverings as was the case in the advertised rentals.

Taking an estimate of the cost of upgrading the subject property to a standard evident in the comparables, and taking a straight line depreciation over 5 to 10 years for the different elements of the cost of necessary modernisation and repair, the Tribunal considered that a deduction of £4080 per annum was reasonable to reflect these differences. Therefore taking the comparable open market rent, £11,400 and deducting this cost, a comparable open market rental would be £7320 per annum.

### *Scarcity*

As already noted, when the Tribunal fix a fair rent they must do so on an assumption that the number of persons seeking to become tenants of similar properties in the locality of the Property is not substantially higher than the number of similar dwelling houses which are available for lease.

In considering the matter of scarcity the Tribunal considered that time taken to let properties and rent increases are factors that contribute to determining if scarcity exists.

Citylets, which describes itself as "the leading authority on the private rented sector and (which) has built up a strong reputation for well-informed insightful commentary, market analysis and is now a trusted media source on local and national rental issues"

prepares a quarterly market report. The Citylets report for Q1 2024 includes the following market trends for the lease of one bedroom properties

	Average Rent	Rent Change 1 year	Rent change 5 years	Av TTL (days)	Let within 1 week	Let within 1 month
Glasgow	£871	4.9%	45.9%	20	28%	74%
Glasgow G11	£887			16		
Scotland	£813	14.5%	40.4%	20	30%	76%

Eilidh Finlayson of Finlayson Grove reports in the Citylet Q1 report that Q1 of 2024 has continued to demonstrate a real shortage of available property in the private rented sector with viewings being capped for most properties advertised and tenants left frustrated in trying to secure tenancies.

Recent legislation aimed at private sector landlords including rent controls is highlighted in the report as leading to an exodus of private landlords from the sector and a reluctance of builders to commence building new homes for renting.

The Applicants provided an array of statistics on affordability of rents, generally indicating that their rents are 50% lower than average market rents and 65% lower than the local market rents for one bedroom flats.

The subject Property is situated in the highly desirable west end of Glasgow which is conveniently located for the university and transport into the city centre and therefore it can be expected that there would be a premium for properties in this area.

It is clear that there is a significant imbalance between the number of persons seeking to become tenants of similar properties in the locality of the Property and the number of similar dwelling houses which are available for lease.

For many years scarcity was determined as being 30% before deregulation and the buy to let boom which led to a better balance between demand and supply. However, it is clear that the level of imbalance has been increasing sharply over the last few years. The statistics provided by the Applicants on the gap between affordability and current open market rents tends to confirm the degree of scarcity that currently exists. Taking these matters into account the Tribunal consider that there is scarcity amounting to 35% and that this should be factored in to the calculation of fixing a Fair Rent.

Consequently, the Tribunal determined that a comparable market rent for the Property using the evidence of market rents, after deduction of the adjustment of £4080 and the 35% scarcity deduction results in a net comparable market rent of £4758 per annum.

*The Tribunal considered if it was appropriate to use a return on the capital valuation of the Property.*

The parties had not provided any evidence of capital valuations of the Property. The Tribunal were mindful that the capital valuation method has been described as notoriously unreliable 'normally to be used only as a last resort' (*Western Heritable Investment Co Ltd v Husband* 1983 SC (HL) 60, 73). Given the strong evidence of comparable registered rents and market rents and the absence of evidence of capital valuations the Tribunal determined that it was appropriate to proceed to assess the fair rent of the Property without using the capital valuation method.

As explained the comparable registered fair rent is £3412.80 and the comparable market rent is £4758

**The Tribunal are mindful that fixing the rent is a composite task and consequently after consideration of all these factors the Tribunal determine that the fair rent for the property is £4085 per annum, including services which are less than 5% of the rent.**

In reaching this decision the Tribunal have had regard to all the considerations required to be taken into account in terms of Section 48 of the Rent (Scotland) Act 1984.

This decision takes effect from the 2<sup>nd</sup> September 2024.

# J Taylor

Chairperson

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23<sup>rd</sup> September 2024