

**RENT ASSESSMENT PANEL FOR SCOTLAND**

**HOUSING (SCOTLAND) ACT 1988 SECTION 25 (1)  
REGISTER OF RENTS DETERMINED UNDER  
STATUTORY ASSURED TENANCIES**

**REFERENCE NO.**

RAC/EH6/A40

**APPLICATION RECEIVED**

9 March 2007

**ADDRESS OF PREMISES**

1F1, 8 Gladstone Place, Edinburgh, EH6 7LY

**TENANT**

Ms D & Ms S Murphy

**LANDLORD/AGENT**

Ms L McNee, 12 The Fairways, Monktonhall, Musselburgh, EH21 6SN

**RENTAL PERIOD**

2 months

**DATE TENANCY COMMENCED**

21 September 1998

**DESCRIPTION OF PREMISES**

First floor Edwardian tenement flat, comprising: four bedrooms, two living rooms, two box rooms, kitchen and bathroom. No central heating or double-glazing.

**SERVICES PROVIDED**

None

**COMMITTEE MEMBERS**

**CHAIRMAN**

Mr D O'Carroll LLB(Hons); Dip LP

**PROFESSIONAL MEMBER**

Mr R Buchan BSc FRICS

**LAYMEMBER**

Ms L Nicholson

**PRESENT RENT**

£ 1,050.00 pcm

**RENT DETERMINED BY RAC**

£ 1,100.00 pcm

**DATE CONSIDERED**

19 June 2007

**DATE DETERMINATION TAKES EFFECT**

19 June 2007

**D O'Carroll**

Chairman of Rent Assessment Committee

19 June 2007

Date

## **Rent Assessment Committee**

### **Statement of reasons for decision following a reference to the RAC under section 24 of the Housing (Scotland) Act 1988**

*8 Gladstone Place, Edinburgh EH6 7LY*

#### **Introduction**

1. This is a reference to the RAC ("the Committee") in respect of 8 Gladstone Place, Edinburgh EH6 7LY ("the subjects"). The landlady is Ms Linda McNee and the tenants are Donna and Sharon Murphy. The tenancy is a statutory assured tenancy under the Housing (Scotland) Act 1988 ("the Act"). On 10 October 2006, the landlady served a notice on the tenants under section 24(1) of the Act of an increase in rent from £1,050 to £1,300 per month, effective from 12 April 2007. The tenants timeously objected to that proposed increase by referring the proposed increase to the Committee. They stated that the rent should return to its original level of £900 per month. Both parties were invited to make written representations, to attend the inspection and to attend a hearing. They both took advantage of the invitation and supplied evidence of comparable market rents. The inspection and hearing took place on 19 June 2007.

#### **Findings in fact**

2. The Committee makes the following findings in fact following its inspection of the subjects, their surroundings, consideration of all written and oral evidence and the application of its own knowledge and expertise.
3. The subjects are a first floor tenement flat in a 4 storey building of 8 flats with secure entry. The building is of traditional stone and slate construction, understood to have been built in or around 1904. The subjects are in an attractive part of Leith, fronting Leith Links, an extensive area of parkland.
4. Accommodation is notably spacious and comprises a hall, 4 bedrooms, lounge, with bay window overlooking Leith Links, dining room, 2 box-rooms, kitchenette and bathroom.
5. There is a tidy common area of garden ground at the rear.
6. The property is served by mains water, electricity and drainage. There is no central heating system; heating is by coal fire and portable electric heaters.
7. Externally, the building is consistent with its age and type of construction. Although generally sound, some works of repair and maintenance are required to common parts and external decoration of the windows of the subject property is required.

8. Internally, the flat has many fine features, typical of its age but it is in very poor decorative order and generally in need of modernisation. Windows are single glazed and of traditional sash and case design, most needed at least some repair and/or maintenance and the bathroom window could not be opened. The kitchenette is small for the size of flat, as is the bathroom which is suffering from condensation. Both the kitchenette and bathroom are in need of substantial upgrading if not renewal.
9. The electrical wiring has been partially upgraded but it is still dated and limited by modern standards.
10. The subjects are let furnished and have been to the present tenants for about nine years. The flat was originally let fully furnished including all necessary furniture and furnishings. Over that time, inevitably, some items have been replaced by the tenants, some by the landlady, some have broken and have not been repaired and some have been put in storage by the tenants, not having a use for them. The tenants have added some of their own furnishings and a special arrangement was entered into as regards payment for a replacement washing machine. Some of the landlord's furnishings that remain are old and at the end of their useful life. It is proper to treat the flat presently as being let part furnished.
11. The local amenities are good including easy access to shops, schools and medical facilities. Public transport is good. Access to Edinburgh centre is relatively easy. The subjects form part of Gladstone Place, which comprises a fairly short part of the whole of the street on which it stands. All the buildings on Gladstone Place appear to be built to a similar specification.
12. In December 2005, Grant Management, a well-known property agency was advertising a fully furnished 5 bedrooled property in Gladstone Place for £1550 per month. Simultaneously, it was advertising a 5 bedrooled property, with lounge, fully fitted kitchen, brand new furnishings, modern décor and sanded floors for the same rent. In addition, a further 5 bedrooled flat, said to be spacious with modern décor and furnishings throughout, was being advertised by the same company in Wellington Place. That road also overlooks Leith Links. Grant Management is well-known for being involved in managing property in that market. In the view of the Committee, in the Edinburgh market, the asking rent is usually the same as or very close to rental actually achieved. In the view of the Committee, the Edinburgh rental market is buoyant and those flats would most likely have been let at the rent sought. In the view of the Committee, there has been equilibrium between supply and demand in the Edinburgh property market over the last two years. In the view of the Committee, the passing rents for such properties therefore would not have risen due to market forces during that time. However, the Committee expects that there would have been a modest increase to reflect

inflation over that time so that such properties might now fetch perhaps £1600 and £1550 per month. In the Committee's view, these flats are comparable as regards the extent and character of the subjects.

13. However, due to the size of the flats and the way they are laid out and the use made of each room, any of the Gladstone Place flats could be characterised as either a four bedroomed or five bedroomed flat depending on how the rooms were to be used and the degree of modernisation achieved. As the Committee notes above, the subjects, in their present condition are, in its view, 4 bedroomed. However, with renovation, they could easily be advertised as five bedroomed. In the view of the Committee, that is likely to be what Grant Management has done.
14. Any living accommodation occupied by 3 or more persons who are not all members of the same family or of one or other of two families is now deemed to be a House in Multiple Occupation (HMO) under the Housing (Scotland) Act 2006 and must be licensed unless it is exempted under certain limited cases. The application for a licence carries costs and a requirement to meet additional standards (normally related to fire safety). It is the view of the committee that the highest demand and the highest rent would be for such an HMO and that these advertised flats are assumed to be HMOs and as such are not considered to be exactly comparable.
15. In addition, these three flats are not exactly comparable with the subjects as regards their condition. The subjects are unmodernised and in need of extensive renovation to bring them up to a similar condition as the comparables. They would require a central heating system, new kitchen, new bathroom (and an additional shower room or bathroom for HMO use). They would require complete redecoration. Most of the floor coverings would need to be replaced and some of the furnishings. In addition, there are numerous repairs that would need to be done to the flat, such as repairs to the windows. Assessing the matter as best it can, using its knowledge and experience of these matters, the Committee estimates that such work would cost in the region of £45,000. Generally, the cost of such renovations is written down over 10 years producing, roughly, a write down element of about £5,000 per annum (taking account of interest charges as well).
16. Thus, to reach an estimate of the market value of the subjects using these three comparable as a guide, one would require to deduct the annual cost of the required renovations from the modernised comparables. Those comparables fetch annual rent of around £18,600 to £19,200 per annum. Applying the renovation deduction reduces that value to around £13,600 to £14,200 per annum: £1,130 to £1,180 per month in round terms.
17. Other comparables were suggested by the tenants. Referring to the ESPC property guide of 12 April 2007, reference was made to the following.

- a) A newly refurbished 5 bedroomed flat on 2 floors with fresh décor, spacious lounge, new furnishings, new kitchen and appliances with two bathrooms. Location: Albert Place, Leith. Rent was £1,200 per month.
- b) A four bedroomed flat in Easter Road also newly refurbished with new bathroom. The rent sought was £1,180.
- c) A recently upgraded 4 bedroomed flat, spacious bright lounge, newly fitted kitchen with appliances and new bedroom suite in Easter Road. Freshly decorated. Rent £1,150 per month.
- d) A 5 Bedroomed upper villa in Sighthill. Excellent decorative order, large lounge and fitted kitchen. Rent £1,000 per month.

None of these properties are close comparators. As comparators, they are not as close as those put forward by the landlady. The first three, although within 10 minutes walk of the subjects, do not have the advantages of the Links. Those areas are more down market and the property sizes tend to be much smaller. They do however indicate that fairly large rented and upgraded properties are available fairly close to the subjects at a rent somewhat lower than the comparables noted above and that if such properties were not refurbished, the rents for those properties would be somewhat lower than demanded and certainly less than the current passing rent of the subjects and therefore substantially less than the new rent level proposed by the landlord. The fourth comparable was of no assistance at all since Sighthill is a considerable distance from Leith and in a different type of area entirely. The nature of the subjects is different as well. That comparable was therefore completely disregarded

18. From the beginning of the tenancy in September 1998, the parties have freely negotiated the passing rent. Both parties have a reasonably good understanding and knowledge of the rental market for large flats in Edinburgh. The original rent was £900 per month. That was increased to £950 in January 2000, £1000 in January 2003 and £1050 in July 2005. That is the current agreed rent.

### **The law**

19. The Committee is bound to fix a market rent for the subjects by applying the terms of the Housing (Scotland) Act 1988, and in particular section 25. It is required to determine the rent at which, subject to certain assumptions in section 25(1) to (3), the Committee considers that the subjects might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy. There is no single or preferred method for the fixing of a market rent. While various methods are used to reach a final figure, it is for the Committee to determine, based on the evidence before it, the best method to fix the market rent. The assessed

market rent includes sums payable in respect of use of the furniture whether or not those sums are separately chargeable.

### **The decision**

20. The Committee determines that the market rent for the subjects, determined in accordance with section 25 of the Housing (Scotland) Act 1988, is £13,200 per annum, (£1,100 per month), with effect from 19 June 2007.

### **Reasons for the decision**

21. Neither party was able to supply any evidence relating to the market rent of any other property of the same type as the subjects, *in the same condition*. Thus, the Committee required to examine other possible comparables and then make appropriate adjustments to those possible comparables in order to provide material for the assessment of a market rent for the subjects in question.
22. The Committee, taking account of its findings in fact as to comparable market rents in the Leith area (particularly Leith Links), the market conditions, utilising its own knowledge and experience as to the likely level of rents for similar property in the wider area, was satisfied that the subjects would reasonably fetch, in their present state, a market rent of £1,100 per month. In reaching that figure, the Committee took account of the following matters.
23. First, the level of rents for closely similar properties very close to the subjects, subject to deductions to reflect the unimproved nature of the subjects. That produced a figure in the range £1,130 to £1,180 per month in round terms, as explained above. Secondly, it took account of the passing rents for other, less similar properties, in an improved state in the immediate environs of the subjects. Those figures produced a rather lower rent which even after further adjustment to take account of the dissimilar nature of the properties and the different type of area, did rather suggest that the market rent for the present subjects, in their unimproved state would be lower than the figure produced purely by application of financial calculations. Third, that range is likely to be an over estimate of the likely market rent in practice simply because flats, particularly without central heating, and without a modernised kitchen or bathroom, are much less likely to be of interest to potential tenants in today's market, particularly given the range of modernised alternatives available and modern expectations of comfort. In short, the lack of those facilities means that a rental figure in the range of £1,130 to £1,180 per month is unlikely to be achievable in practice and the landlord would in all probability have to settle for less to attract tenants to such a property. Fourth, the Committee considered that the history of rental terms actually agreed by the parties,

for the subjects, over the years, was a factor to be taken into account in determining the market rental of the subjects. Throughout the past nine years, the subjects were let as an assured tenancy. The parties freely negotiated terms in the light of the market conditions. That history demonstrates a fairly stable rental figure increasing irregularly by fairly modest amounts. Thus, the figure of £1,050 per month agreed in July 2005 is indicative of the market value at that time. If one then makes an allowance for inflation of around 5% from then to now, the figure produced is indicative of a current market value approximately £1,100 per month.

24. That figure is close to the range of figures produced above for the discounted close comparables and extremely close when one further adjusts that range for the reasons discussed above. Taking all relevant matters as set out above, the Committee concludes that that figure is the rent fixed for the purposes of this reference.
25. The Committee heard evidence from the tenants that the landlord of an identical property above them in the same building had recently offered them a tenancy of those subjects at just £1,000 per month. Moreover, it was said, that property had central heating. The Committee took no account of that evidence. Unlike the other comparables put forward by the parties, there was no documentary evidence at all. Furthermore, no notice was given of this comparable prior to the hearing and the landlord had no opportunity of checking it. The Committee see no reason why this comparable could have not been vouched for from the landlord concerned directly. The tenants were given plenty of notice of this hearing and were asked to provide written evidence if they wished. They did so, but without mention of this matter. In the circumstances, the Committee decided it could take no account of this evidence.
26. This rent takes effect from the date of this Committee's decision, 19 June 2007. This is because the Committee was satisfied that fixing the rent from the date specified in the landlord's notice would cause undue hardship to the tenants. They are on a modest income, in receipt of housing benefit and apparently without any substantial means. Applying an earlier date would put them immediately in rent arrears which they may have difficulty in paying.
27. Finally, it should be said that much of the material presented before the Committee concerned a litany of complaints and accusations by each of the parties against the other. Much of that concerned allegations of a history of failure to repair on the one hand and failure to properly use the subjects in a tenant-like fashion on the other. Thankfully, the Committee, as was explained at the hearing, did not need to make any findings as regards these matters. The majority were not of relevance to the role of the Committee in terms of its 1988 Act jurisdiction. It did of course take

account of the present state of the subjects as explained in the findings in fact. Thus, no account is taken of those matters and no findings in fact are made as regards those historical complaints and accusations.

28. Nonetheless, the Committee does hope that now the parties have had a full airing of their grievances against each other, that they might each try to once again co-operate, reach agreement on any outstanding matters and restore the good relationship that the Committee understands that they once had.

**D O'Carroll**

**Derek O'Carroll, Advocate, LLB (Hons); DipLP.**

**Chairman of the Rent Assessment Committee**

*19 June 2007.*