

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/19/2596

2/1, 150 Butterbiggin Road, Glasgow, G42 7AF ('the Property')

The Parties:

Govanhill Housing Association Limited, Samaritan House, 79 Coplaw Street, Glasgow, G42 7JG ('the Landlords')

Mr and Mrs G Lavelle, 2/1, 150 Butterbiggin Road, Glasgow, G42 7AF ('the Tenant')

Tribunal members:

Jacqui Taylor (Chairperson) and Carol Jones (Ordinary Member).

1. BACKGROUND

The Tenant has been a tenant of this property since 14th December 1985. The tenancy is a statutory protected tenancy in terms of the Rent (Scotland) Act 1984. The current rent is £4359.84 per annum (£363.32 per month) inclusive of services. The Landlords applied for the rent to be increased to £5181.06 per annum (£431.76 per month). The Rent Officer registered a rent of £5181.06 per annum (£431.76 per month) with effect from 20th September 2019. The Tenant referred the determination to the First tier Tribunal.

2. DIRECTION

The Tribunal sent the parties a Direction dated 2nd October 2019. The Direction explained that in determining the fair rent for the Property the Tribunal are required to consider the rentals of comparable properties and whether there is a scarcity of

supply of rental properties in the locality. The Tribunal advised that they have sourced the following rental information:

1. Details of properties currently being advertised for lease within Postcode area G42 from S1 Rent.
2. Details of properties currently being advertised for lease within Postcode area G42 from Rightmove.
3. Details of recent Fair rent properties within G42 from the Fair Rent eRegister.

Copies of the extracts were provided.

The parties were directed to provide the Tribunal with representations and any further information with regards to the said rental information of comparable properties and whether there is scarcity of supply of rental property in the locality by 17 October 2019.

The parties did not provide the Tribunal with any representations in response to the Direction.

3. THE INSPECTION

On the morning of 24th October 2019 the Tribunal inspected the Property. The Tenant was present at the inspection. The Landlords were not present and were not represented.

The property is a large second floor flat in a traditional red sandstone four storey tenement which is approximately 100 years old.

The accommodation comprises living room, two double bedrooms, dining-kitchen and bathroom. There is also a large walk in hall cupboard. The gross internal floor area is approximately 74 square metres.

There is a gas central heating system in the Property. The windows throughout the Property are double glazed. Some of the floorboards in the Property are squeaky and uneven.

At the rear of the Property is a communal amenity area for the tenement block. There is also a separate communal central grassed area.

The Tenant provided the carpets and floor coverings throughout the Property, also the appliances and was responsible for decoration of the Property. No furniture had been provided by the Landlords.

The Property is conveniently situated for public transport and local services. On-street parking is available in the locality.

The services provided by the Landlords are door entrance maintenance, back court maintenance and central area maintenance.

Photographs that were taken during the inspection are attached as a Schedule to this Decision.

4. THE HEARING

Avril Stewart, Housing Manager with Govanhill Housing Association, attended the hearing. The Tenants did not attend the hearing and were not represented.

Avril Stewart advised the Tribunal as follows:-

The Property was a larger property than most two bedroom properties they lease.

The Landlords had carried out upgrading works to the Property as follows:

- 2000: The bathroom had been upgraded. An electric shower had been installed more recently.
- 2009 or earlier: The common close had been upgraded.
- 2010: The windows, roof and gutters had been upgraded.
- 2017: The kitchen units had been replaced.
- 2018: The central heating boiler and radiators had been replaced.
- 1999 or earlier: The Property had been rewired.

She also explained that the Property had been affected by flooding from the property above in recent years and the ceilings had been replaced as a result.

The services provided by the Landlords are Door Entry Maintenance, Back Court Maintenance and Maintenance of the Central Area.

She considered the rent that had been fixed of £5181.06 inclusive of services was reasonable considering the size of the Property, the upgrading works that had been carried out and the comparable evidence.

In connection with the comparable properties she considered that the property in Annette Street was not particularly comparable as she thought that Butterbiggin Road was a more desirable address. She also advised that the differences in the rents detailed in the fair register are probably due to the size and facilities in the properties, but she could not confirm this definitively.

She did not consider there to be a scarcity of property available to rent in 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 Written representations from the Tenants which advised *inter alia*:

'The cost of the increase means that our annual rent will rise by £821.22 per year and £68.43 per month, which is just under 19%. This percentage is very much greater than either the consumer price index or the retail price index which are the starting points for most proposed increases.

We are being unfairly penalised as we have a secure tenancy which means that the GHA can only impose an increase every three years. We do not receive any different service than those tenants whose rent increases each year.

The consultation carried out by GHA this year for those tenants on an annual increase suggested a maximum increase of 3.4% which is a similar figure from the previous two years. If we were treated the same as other tenants of GHA our rent increase would only be approximately £38.

We hope these factors can be taken into account and a reassessment of our rent can be undertaken.'

They also sent the Tribunal a letter dated 15th October 2019 which advised:

'GHA have recently completed a new block of flats of various sizes. There is currently a major housing development going up in Butterbiggins Road and Inglefield Street offering affordable homes though, at the moment, we do not know what this equates to.

There are a large number of private lets within Govanhill other than GHA such as Rightmove and S1 Rentals and as expected those rents are significantly higher than GHA rents. A tenancy with such companies generally includes in your rent, all white goods in the kitchen, floor covering throughout and some internal decoration is carried out.

In the 35 years of our tenancy partial refurbishment has been carried out but the floors are not in good condition and have not in all that time been assessed for repair or replacement as per GHA policy for sitting tenants.

GHA have supplied a list of properties who have had a rent increase for the same amount that they have raised ours by. Our main issue with the rise relates to the % increase as laid out in our written representation.'

5.3 Written representations from the Landlords which advised *inter alia*:

'They referred to the rent increase letter sent to the Tenants in September 2016 following the previous rent and service charge review. They referred to the fact that the service charge, whilst variable, remains broadly the same it was £6.65 per month as at September 2016 and is now £6.86 per month.

Service Charge per flat = £29.16 per annum for the controlled entry door comprising of:

Electricity = £19.00 per annum

Maintenance Contract = £10.16 per annum

The controlled entry door services all 8 flats within the close.

Service Charge of £53.16 per annum to cover backcourt maintenance comprising:

- Weekly; Binstore - sweep/tidy and pull out of bulk refuse for uplift by the cleansing department
- Fortnightly: Grass cutting, Shrub maintenance, sweeping/delittering hard landscape areas.
- Monthly: Hedge trimming as required
- As required: Weed control /moss removal, tree pruning/maintenance.

We believe the rent and we proposed is a fair rent for the property size and amenity. In support of our proposed rent I would offer the following comparable rents also set by the rent registration service:

- 146 Butterbiggins Road, Flat 3/1 Rent and Service Charge of £5181.06 per annum set by the Rent Officer as at 01/07/19
- 162 Butterbiggins Road, Flat 1/1 , Rent and Service Charge of £5181.06 per annum set by the Rent Officer as at 01/07/19
- 104 Cumming Drive, Flat 2/R, Rent and Service Charge of £5,600 per annum set as at 13/04/18.

A further comparable is the local housing allowance, which, for properties of this size is £120.03 per week, or £520.13 per calendar month, the rent we propose of £431.75 per calendar month is significantly below the local housing allowance.'

5.4 Rental evidence sent to the parties with the Direction dated 2nd October 2019.

5.4.1 The properties being advertised on S1 Rent and Rightmove:

Address	Accommodation	Rent requested	Furnished	Other details
Allison Street	2 bedrooms	£550 pcm (£6600 pa)	No	Recently refurbished Tenement Flat
Calder Street	2 bedrooms	£595 pcm (£7140 pa)	Part furnished	Tenement flat
Inglefield Street	2 bedrooms	£575 pcm (£6900 pa)	furnished	Tenement flat
22 Dixon Avenue	2 bedrooms	£550 pcm (£6600)	furnished	Tenement flat
Langside Road	2 bedrooms	£650 pcm (£7800)	unfurnished	Tenement flat
Allison Street	2 bedrooms	£550 pcm (£6600)	Unfurnished	
Victoria Road	2 bedrooms	£575 pcm (£6900)	unfurnished	Quality kitchen fitted
Langside Road	2 bedrooms	£650 pcm (£7800)		Refurbished tenement flat

5.4.2 Details of Fair rent properties within G42 from the Fair Rent eRegister.

There are a total of 46 entries. A selection of the most recent entries for three room properties are:

Address	Rooms	Date registered	Rent	Furniture	Services	CH	Size (from EPC)
2/1 166 Butterbiggins Road	3 (Kit-diner, bathroom)	26/7/2019	£4908.06	N	Y	Y	55 m2
3/1,162 Butterbiggins Road	3 (Kit-diner, bath/shower room)	26/7/2019	£4981.55	N	Y	Y	58m2
1/1, 162 Butterbiggins Road	3 (Kit-diner, bathroom)	26/7/2019	£5181.06	N	Y	Y	
3/1, 146 Butterbiggins Road	3 (Kit-diner, Bathroom)	26/7/2019	£5181.06	N	Y	Y	63 m2
2/1, 146 Butterbiggins Road	3 (Kit-diner, bath/shower room)	26/7/2019	£5181.06	N	Y	Y	77m2
0/2 15 Boyd Street	3 (Kitchenette-bathroom)	26/7/2019	£4561.56	N	Y	Y	
1/2,180 Butterbiggins Road	3 (Kitchen-bathroom)	28/5/2019	£4988.95	N	Y	Y	63m2
0/2, 104 Cumming Drive	2 rooms (living kitchen/bathroom)	13/4/18	£5600	N	Y	Y	63m2

5.6 The Decision of the First-tier Tribunal (FTS/HPC/RR/18/1375 dated 6th September 2018 in relation to the three bedroom property 1/R, 456 Victoria Road, Glasgow, G42 8YU. That property had no central heating and an extensive floor area of 135 square metres. The Tenant had provided the kitchen units. The Tribunal determined that the fair rent for the property was £4260 per annum.

5.7 Rental evidence of a recent property advertised on S1 Homes:

Address	Accommodation	Rent requested	Furnished	Other details
Annette Street	2 bedrooms	£475 pcm (£5700 pa)	Yes	

5.8 The City lets report for Q2 2019 for post code area which confirmed that the average rent for a two bedroom flat in postcode area G42 is £614 per month / £7368 per annum.

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

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 reviewed the evidence of registered rents in the Fair Rent Register. The rents range from £4260 to £5181 per annum. The Tribunal acknowledged that the property 2/1, 150 Butterbiggins Road, Glasgow is most comparable with the properties 3/1, 146 Butterbiggins Road and 1/2, 180 Butterbiggins Road in terms of size and amenities. The Tribunal therefore determined that a comparable rent for 2/1, 150 Butterbiggins Road, Glasgow using the said evidence of the registered rents is £5050 per annum.

The Tribunal also considered the evidence of market rents.

The annual rents for the comparable types of properties advertised in the G42 postcode area at the relevant date range from £5700 to £7800 per annum. These properties are two bedroom flats with living room, kitchen, bathroom, floor coverings and appliances provided by the Landlords. A number of the properties were also furnished. The Tribunal took account of the particular features of 2/1, 150 Butterbiggins Road namely the large size of the accommodation, the fact that a relatively new (but basic) kitchen had recently been installed and that a new boiler and radiators had recently been installed. The Tribunal also had regard to the location of the Property in relation to the advertised properties to let and found the open market rent to be £6420. However the Tribunal recognised that an adjustment was required to reflect the fact that the Landlords of Flat 2/1, 150 Butterbiggins

Road, Glasgow did not provide any furnishings, appliances, decoration or floor coverings and it is nearly 20 years since the bathroom suite was upgraded. Taking an estimate of the cost of upgrading the subject property to a standard evident in the comparable properties on the market, and taking a straight line depreciation over 5 to 10 years for the different elements of the cost of decoration, floor coverings, some upgrading to the bathroom and providing the furnishings and appliances, the Tribunal considered that a deduction of £1000 per annum was reasonable to reflect these differences. After deducting the said cost of £1000, they determined that the comparable open market rental is £5420.

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.

The Tribunal in their Direction dated 2nd October 2019 had asked the parties to make representations to the Tribunal on the question of scarcity. However the Tenants did not make any such representations.

At the hearing Avril Stewart had advised the Tribunal that she did not consider there was a scarcity of supply of rented properties in Glasgow.

The Tribunal acknowledged that there is a reasonable supply of similar properties to rent in the Glasgow area and therefore there is no scarcity of supply of such properties at this time.

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 fair 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 Tribunal, using the comparable fair rent evidence found a rent of £5050 and using the comparable market evidence found a rent of £5420.

The Tribunal are mindful that fixing the rent is a composite task and consequently after consideration of all these factors the Tribunal consider the fair rent for the property to be £5200. As this figure is within 5% of the rent fixed by the Rent Officer they confirmed the Rent Officer's rent assessment and determined that the fair rent for the Property is £5181.06 per annum, inclusive of services (which are less than 5% of the rent).

In reaching this decision the committee 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 24th October 2019.

Appeals

In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

J Taylor

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Chairperson

2nd November 2019

Housing and Property Chamber

First-tier Tribunal for Scotland



Schedule of photographs taken during the inspection of 2/1,150 Butterbiggin Road,
Glasgow G42 7AF by the First-tier Tribunal for Scotland (Housing and Property Chamber)
on 24 October 2019

Reference Number :FTS/HPC/RR/19/2596

J Taylor



Front Elevation



Living Room



Living Room - showing recess



Front Bedroom



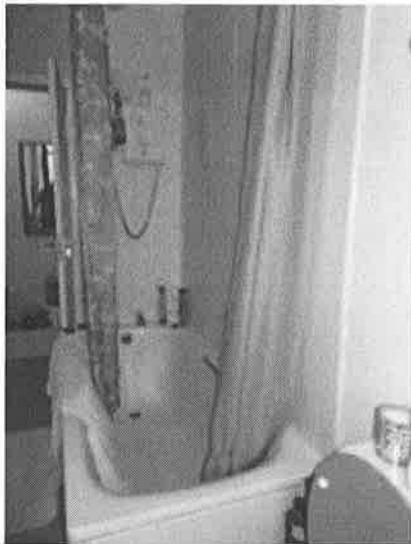
Back Bedroom



Kitchen



Kitchen - showing recess



Bathroom



Bathroom



Walk-in cupboard off hall



Hall

Housing and Property Chamber
First-tier Tribunal for Scotland



Rent (Scotland) Act 1984

Notification Of Decision

REFERENCE NO.	OBJECTION RECEIVED	OBJECTION
FTS/HPC/RR/19/2596	19 August 2019	Tenant

ADDRESS OF PREMISES

2/1 150 Butterbiggin Road, Glasgow, G42 7AF

TENANT

Mr G Lavelle, Mrs B Lavelle

**NAME AND ADDRESS OF
LANDLORD**

AGENT

Govanhill Housing Association Ltd
Samaritan House, 79 Coplaw Street,
Glasgow, G42 7JG

DESCRIPTION OF PREMISES

Second floor tenement flat. Accommodation comprises living room, two double bedrooms, dining- kitchen and bathroom. GCH. Double Glazing.

Gross internal floor area 74 square metres.

SERVICES PROVIDED

Door entrance maintenance, back court maintenance and central area maintenance. (Services are less than 5% of the rent)

TRIBUNAL MEMBERS

CHAIRPERSON

Jacqueline Taylor

ORDINARY MEMBER (SURVEYOR)

Carol Jones

ORDINARY MEMBER

FAIR RENT

£ 5181.06 p.a.
(incl services)

DATE OF DECISION

2nd November 2019

EFFECTIVE DATE

24th October 2019

J Taylor

Chairperson of the Tribunal
Date: 2nd November 2019