

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



**Rent (Scotland) Act 1984**

**Notification Of Decision**

REFERENCE NO.	OBJECTION RECEIVED	OBJECTION
FTS/HPC/RR/18/0224	31 January 2018	Tenant

**ADDRESS OF PREMISES**

130/1 Buccleuch Street (PF1), Edinburgh, EH8 9NQ

**TENANT**

Mr Brian Porterfield

**NAME AND ADDRESS OF  
LANDLORD**

Riccarton Properties LLP  
Stanswood Road, Fawley,  
Southampton, SO45 1AB

**AGENT**

Redpath Bruce LLP  
Crown House, 152 West Regent Street,  
Glasgow, G2 2RQ

**DESCRIPTION OF PREMISES:** ground floor flat in a 5 storey grade B listed tenement. The accomodation comprises living room, 2 double bedrooms, kitchen, bathroom and hall. The internal floor area is 91 sq m. Gas central heating. Single pane wooden frame sash and case windows. No furniture provided. The property does not meet the repairing standard and a reduction of 50% applied.

**SERVICES PROVIDED**

NONE

**TRIBUNAL MEMBERS**

**CHAIRPERSON**

Jacqueline Taylor

**ORDINARY MEMBER (SURVEYOR)**

Robert Buchan

**FAIR RENT**

£ 3550 p.a.

**DATE OF DECISION**

29 March 2018

**EFFECTIVE DATE**

14<sup>th</sup> December 2017

**J Taylor**

Chairperson of tribunal

18<sup>th</sup> April 2018

# 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/18/0224**

**130/1 Buccleuch Street (PF1), Edinburgh, EH8 9NQ ('the Property')**

**The Parties:**

**Riccarton Properties LLP, Stanswood Road, Fawley, Southampton, SO45 1AB ('the Landlords')**

**Redpath Bruce LLP, Crown House, 152 West Regent Street, Glasgow, G2 2RQ ('the Landlords' representatives')**

**Brian Porterfield residing at 130/1 Buccleuch Street (PF1), Edinburgh, EH8 9NQ ('the Tenant')**

**Tribunal members:**

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

### **1. BACKGROUND**

The Tenant has been a tenant of this property since 1974. The tenancy is a statutory protected tenancy in terms of the Rent (Scotland) Act 1984. The current rent is £700.80 per annum (£58.40 per month). The Landlords applied for the rent to be increased to £4020.00 per annum (£336.67 per month). The Rent Officer registered a rent of £4020.00 per annum (£336.67 per month) with effect from 14<sup>th</sup> December 2017. The Tenant referred the determination to the First tier Tribunal.

### **2. DIRECTION**

The Tribunal sent the parties a Direction dated 15<sup>th</sup> March 2018. 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. Extract from Rightmove.co.uk showing Average Asking Prices PCM for EH8 and EH8 9.
2. Details of eight comparable properties being advertised for lease within EH8 9 from Rightmove.
3. Details of 43 Fair rent properties within EH8 9 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 22<sup>nd</sup> March 2018.

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

Siobhan Reilly, Lettings Manager employed by the Landlords' agents, sent the Tribunal an email dated 21<sup>st</sup> March 2018 advising that she was happy with the information provided and she did not feel that they had anything further to add.

### **3. THE INSPECTION**

On the morning of 29<sup>th</sup> March 2018 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 ground floor flat in a 5 storey Grade B listed tenement which dates from the 18<sup>th</sup> century. On the outside of the tenement there is a cast iron rhone/downpipe that had been repaired but there was still evidence of green mould in the area of the downpipe. There is a door entry system to the tenement that was working correctly. The front door step of the Tenement was uneven and in need of repair.

The accommodation comprises living room, two double bedrooms, kitchen, bath room, main hallway and separate corridor leading to a former WC. The internal floor area is approximately 91 square metres.

There is a gas central heating system in the Property. The windows throughout the Property are single pane wooden frame sash and case windows and none of the windows were capable of being properly opened. The Electricity meter board and consumer unit had recently been replaced. The Tenant provided the carpets and floor coverings throughout the Property. No furniture has been provided by the Landlords.

Considering each room in turn:

Living Room:-

The living room has two single sash and case windows which face out to the rear of the Property. The Landlords had recently treated the dampness in the room by plastering internally the external wall and redecorating. Between the two windows there is a gas fire which had been provided by the Tenant. There is a box room off the living room. A ventilator had recently been installed on the external wall of the boxroom. The original ventilator in the window of the boxroom was taped up at the inspection.

Rear Bedroom:-

There is a single sash and case window in the bedroom. The sash cord is broken and the window cannot be opened properly.

The Kitchen:-

There is a single glazed window facing Buccleuch Street. The kitchen units were supplied by the Tenant and are old and worn. The Landlords supplied the sink unit. There is no floor covering in the kitchen and the floor boards are uneven. The appliances were provided by the Tenant. The combination boiler is on the wall of the kitchen.

There was black mould internally on the external wall, which is due to condensation in the Property.

Bathroom:-

The bathroom adjoins Buccleuch Street and is between the kitchen and the front bedroom. It does not have a window. There is a bath, with electric shower, sink and wc in the bathroom. An extractor fan had recently been installed by the Landlords. There was evidence of condensation on the ceiling. There is evidence of dampness at a low level of the internal wall of the bathroom dividing the bathroom and the hall. The Ordinary Member of the Tribunal took a reading with his damp meter and found

the dampness was at a very high level. The area of dampness extended to approximately a metre up the wall both within the bathroom and the hall.

#### Front Bedroom:-

The front bedroom has a single glazed sash and case window facing onto Buccleuch Street. The top cord is broken. The bottom window does not open. The external downpipe runs down the external wall of this room. The downpipe had been repaired last year but there were still areas of high dampness in the external wall. The areas of dampness were (1) an area one metre wide extending down from the ceiling (2) an area extending one metre upwards from the skirting board both sides of the old fireplace.

#### Hall:-

A new electricity supply cable had been installed at ceiling level along the length of the hall which cable had been covered with plastic ducting. The cold water pipe runs parallel to the ducting. The pipe is not lagged and there were drips of condensation visible on the pipe.

#### Rear Garden:-

There is a small garden area at the rear of the Property. The Landlords had recently had the area cleared of weeds. The area was clean and tidy at the inspection. The area cannot be accessed other than by a ladder from the two ground floor flats whose windows face onto it.

The Property is located on the edge of the Meadows public park and is conveniently situated for public transport and local services. There is no on-street parking.

No services are provided by the Landlords.

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

### **4. THE HEARING**

The Landlords did not attend the hearing and were not represented. The Tenant attended the hearing.

In relation to the rental and market evidence the Tribunal provided with their Direction dated 15<sup>th</sup> March 2018 the Tenant advised the Tribunal as follows:-

- Rented properties let very quickly in this area due to the large number of students looking for accommodation.

- The second floor property at 130 Buccleuch Street detailed in the fair rent register is the same size as his property but that property has been fully modernised.
- His property does not have a drying green and there is nowhere to dry clothes out with the Property.
- Parking can be difficult at his Property.
- He had no comments to make in relation to whether or not there is an element of scarcity of rental properties available in the Edinburgh area.
- He did not know the capital value of the Property.

## **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 Landlords' agents which advised *inter alia*:

- *'Repairs have been carried out to the tenement and the Property as follows:*
  - *Common Pipe works (3 shares @£468) £1404*
  - *Plaster renewed internally £5940*
  - *Decoration internally £1740*
  - Total Spend £9084*
- *They provided details of the rents charged for the property since 2012 and their proposed phased increase over two years (£196.70 per month from 14<sup>th</sup> December 2017 for one year and £335 per month for the second year).*
- *They carried out an inspection carried out on 20<sup>th</sup> February 2018 and the issues noted at the inspection were as follows:*
  - *'The front downpipe was blocked again. The downpipe is common but to ensure the repair is carried out promptly the Landlords agreed to meet the repair cost.*
  - *Condensation on ceiling of bathroom. The Tenant confirmed that he uses the fan after showering.*
  - *Bathroom seal defective and causing damage to wall next to bath: plumber instructed to repair.*
  - *Condensation in front bedroom. The Tenant requested that a ventilation fan be fitted in the window like that already in his kitchen.*

*The Landlords' agents explained that this issue will not be helped by the blocked downpipe outside the window.*

- *External window sills require painting and perhaps repair. Quotes requested to carry out these works.*
- *Rear section of garden overgrown blocking light into lounge with no access to cut back.*

*Quote requested to cut this area back, however unknown whether this area is common to all or belongs to our property only. This is not currently causing an issue with no foliage present as it is winter.*

- *Tenants raised concerns that no one is taking their turn cleaning the common stairway. We passed this information on to the list of owners we have and asked that they speak to their tenants.*
- *There is no floor covering on the kitchen floor. Tenant reports that this is due to uneven floorboards in this room. Quote requested to ply the floor to make this even for the Tenant.*
- *We noted on the inspection and previous inspections that no decoration has taken place for a long time in the kitchen and it was noted that even though the Tenants have a ventilation fan in this room, it was not open. This was the same on the previous inspection. The vent in the small room off the lounge which had recently had works completed was also blocked up by the Tenant. This gave us concerns regarding the installation of a further fan on the window in the bedroom as we are not sure it will be utilised.'*

5.3 Rental evidence sent to the parties with the Direction dated 15<sup>th</sup> March 2018:

5.3.1 Extract from Rightmove.co.uk showing Average Asking Prices PCM for EH8 and EH8 9:

- Average asking prices for flats in EH8 9 £1590 per month.
- Average asking prices for flats in EH8 £1332 per month.

5.3.2 Details of eight comparable properties being advertised for lease within EH8 9 from Rightmove:

Address	Accommodation	Time on market	Rent requested	Furnished	Other details
Buccleuch Terrace	2 Bedrooms	2 days	£995 pcm	furnished	Freshly decorated, new kitchen.
Buccleuch Street	2 double bedrooms	20 days	£995 pcm	furnished	Freshly decorated
Buccleuch Terrace	2 bedrooms	1 day	£850 pcm	Not known	Ground floor
5/14 Buccleuch Terrace	2 bedrooms	399 days	£1500 pcm	furnished	Short term let
Buccleuch Terrace	2 bedrooms	28 days	£1050 pcm	furnished	
Buccleuch Street	2 bedrooms	12 days	£1050 pcm	furnished	
Buccleuch Street	2 bedrooms	5 days	£995 pcm	furnished	Top floor flat
Buccleuch Terrace	2 bedrooms		£2850 pcm	furnished	Top floor flat

5.3.3 Details of 43 Fair rent properties within EH8 9 from the Fair Rent eRegister.

The 43 entries date from February 2016 to December 2017. The most recent entries for three room properties are:

Address	Postcode	Rooms	Date registered	Rent	Furniture	Services
130 Buccleuch Street (PF1)	EH8 9NQ	3	14/12/17	£4020	No	No
11/4 Bowmont Place	EH8 9RY	3	27/2/17	£4338.52	No	No
11/3 Bowmont Place	EH8 9RY	3	27/2/17	£4338.52	No	No
2/2 St Leonards Hill	EH8 9RZ	3	14/12/16	£4487.76	No	No



20 Howden Street	EH8 9HL	3	8/9/16	£4800	No	No
130 Buccleuch Street (2F1)	EH8 9NQ	3	1/7/16	£5555	No	No

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.*

**11/3 and 11/4 Bowmont Place, Edinburgh.** These properties are quite modern, built c1990 of cavity brick construction and have floors areas of 104 sq.m, bigger than the subject property. They appear to be housing association property and have ample residents parking available. Adjusting the rent by 2% to reflect that the rent was assessed 10 months before the subject property gives a rent per square metre of £42.55 compared to the subject property which has an assessed rate of £44.17.

**20 Howden Street, Edinburgh.** This is a traditional tenement with a number of different sized flats over 4 floors. There is no indication in the register of which floor this flat is on and looking at the property from the street, there is no reliable indication of its condition. Accordingly it was felt that in the absence of this information, it would be inappropriate to use this entry as a comparable.

**2/2 St Leonards Hill, Edinburgh.**

This is part of the same development of Bowmont Place. The Tribunal noted that this property is located at the end of a cul de sac. The floor area is slightly less than the subject property at 81 sq.m. Adjusting the rent by 2.7% for being one year behind, gives an adjusted rate per square metre of £56.90.

**130 Buccleuch Street (2F1), Edinburgh.**

This property is slightly bigger than F1, 130 Buccleuch Street, Edinburgh at 96 square metres. The Tenant advised that the property has been modernised. The Tribunal accepted this evidence as the fair rent for this property is set at a significantly higher level than the other properties considered and its energy performance certificate rating is band C compared to band D in the subject property. The Tribunal considers this property to be most comparable with the property PF1, 130 Buccleuch Street, Edinburgh as the properties are in the same location and the same size. The rent of flat 2F1 in July 2016 was £5555.00. The Tribunal adjusted this rental figure using the percentage increase in rents detailed in the recent Citylets report of 2.7% per annum. The adjusted rent is £5780. Whilst the Tribunal considered this property to be directly comparable with the property of PF1, 130

Buccleuch Street, Edinburgh they recognised that a further adjustment is required due to the fact that the property has been modernised, which the Tribunal took to mean that it had a new kitchen and bathroom and will also have recently been decorated. Taking an estimate of the cost of providing a new kitchen, completely decorating the interior, including repair of windows and eradication of dampness; and taking a straight line depreciation over 5 to 10 years for the different elements of the cost of necessary modernisation, the Tribunal considered that this further adjustment would amount to £2000 per annum.

These rents at 130 Buccleuch Street do not sit well with the evidence of the rents for the housing association properties which are much more modern and have the benefit of parking which is a significant advantage in this area of Edinburgh. However, the evidence of the flat above in the same block is difficult to ignore and the tribunal considered that the reasonable rent based on the comparable above would be £3780 per annum.

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

The annual rents for the properties in Buccleuch Street and Buccleuch Terrace range from £11,940 to £12,600. These comparable properties are two bedroom properties with kitchen, bathroom, floor coverings, furnishings and appliances provided by the Landlords. The Tribunal considered that as PF1, 130 Buccleuch Street, Edinburgh has no facility to dry clothes and no meaningful rear garden the comparable properties to the subject property would be at the lower end of the range of rents. They also considered that an adjustment was required to reflect the fact that the Landlords of PF1, 130 Buccleuch Street, Edinburgh did not provide any furnishings, appliances, decoration or floor coverings and also the poor condition of the kitchen and windows in the Property. 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, the Tribunal considered that a deduction of £3000 per annum was reasonable to reflect these differences. Therefore taking the lowest level of open market rent, £11940 and deducting this cost, a comparable open market rental would be £8940.

### *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. Case law has determined that when considering the question of scarcity a large area must be considered to avoid an increase in demand being caused by specific local amenities. The Tribunal considered it reasonable to consider the City of Edinburgh when assessing the question of scarcity. The Tribunal in their Direction dated 15<sup>th</sup> March 2018 had asked the parties to make representations to the Tribunal on the question of scarcity. However the parties did not make any such representations.

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.

The City lets report for Q4 2017 includes the following market trends for the lease of two bedroom properties

	Average Rent	Rent Change 1 year	Rent change 3 years	Rent change 5 years	Av TTL (days)	Let within 1 week	Let within 1 month
Edinburgh	£946	2.7%	13.6%	27.2%	24	19%	68%
Scotland	£696	-1.6%	0.0%	9.6%	34	15%	55%

These figures show that two bedroom properties in Edinburgh have seen a significantly higher rent increase over five years and shorter time to let periods than the rest of Scotland.

The Scottish Government report on private sector rent levels in Scotland over the years 2010 to 2017 includes statistics on the average monthly rents for 2 bedroom properties. No specific figures are provided for Edinburgh so Lothian has been used for the purposes of this consideration. The figures provided are as follows:

	2010	2016	2017	2010 to 2017 Change	2016 to 2017 change
Lothian	665	831	888	33.7%	6.9%
Scotland	536	616	643	19.9%	4.4%

These statistics show that Lothian have the highest monthly rents for 2 bedroom properties across Scotland and a significantly larger increase in rents during the period 2010 to 2017 than the rest of Scotland and it appears reasonable to infer that Lothian statistics are heavily weighted by Edinburgh.

The Tribunal determined that there is a strong demand for private rented accommodation in Edinburgh. They infer that the number of people seeking to become tenants of such properties in Edinburgh is higher than the number of houses available and that the demand is substantially higher than the supply. The Tribunal acknowledge there is a suggestion that the element of scarcity in Edinburgh is declining and having regard to all of the circumstances, consider that there is scarcity amounting to 10%.

Consequently the Tribunal determined that a comparable market rent for the Property using the evidence of market rents, after deduction of the adjustment of £3000 and the 10% scarcity deduction of £894, results in a net comparable market rent of £8046 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 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.

The Tribunal acknowledge that the Landlords have carried out repairs to the Property but are concerned that the Property still does not meet the Repairing Standard with the result that it is barely habitable in its present condition. The kitchen fittings are outdated. There are still high levels of dampness in the front bedroom and the wall between the bathroom and the hall which are clearly not caused by condensation. Also there is still widespread evidence of condensation in the Property. The Tribunal consider that the condensation is largely attributable to

factors related to the Property rather than the lifestyle of the Tenant, such as the historic dampness caused by the blocked downpipe at the front of the building, the fact that most of the windows cannot be opened properly and the absence of any facility to dry clothes. Had the Tribunal required to make a rent relief order under the Housing (Scotland) Act 2006 it would have ordered relief to the extent of 50% as there has been dampness in the Property for a long period of time.

As explained the comparable fair rent is £3780 and the comparable market rent is £8046. After deduction of the figure of 50%, to reflect the defects in the Property described, the comparable fair rent is reduced to £1890 and the comparable market rent is reduced to £4023.

**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 £3550 per annum.**

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 14<sup>th</sup> December 2017.

**J Taylor**  
.....  
Chairperson

18<sup>th</sup> April 2018

Photographs taken during the inspection of  
130/1 Buccleuch Street (PF1), Edinburgh, EH8 9NQ



Front GF right



Rear



Photographs taken during the inspection of  
130/1 Buccleuch Street (PF1), Edinburgh, EH8 9NQ



Kitchen



Boiler in the kitchen



Photographs taken during the inspection of  
130/1 Buccleuch Street (PF1), Edinburgh, EH8 9NQ



Rear bedroom window



Broken cord

Photographs taken during the inspection of  
130/1 Buccleuch Street (PF1), Edinburgh, EH8 9NQ



Condensation in the hall



Condensation in the bathroom

Photographs taken during the inspection of  
130/1 Buccleuch Street (PF1), Edinburgh, EH8 9NQ



Damp at side of the toilet



Dampness in the hall

Photographs taken during the inspection of  
130/1 Buccleuch Street (PF1), Edinburgh, EH8 9NQ



Dampness in the front bedroom



Broken cord in the front bedroom



Photographs taken during the inspection of  
130/1 Buccleuch Street (PF1), Edinburgh, EH8 9NQ



New consumer unit



Front door step