

Housing and Property Chamber
First-tier Tribunal for Scotland



Rent (Scotland) Act 1984

Notification Of Decision

REFERENCE NO.	OBJECTION RECEIVED	OBJECTION
FTS/HPC/RR/18/0383	21 February 2018	Landlord

ADDRESS OF PREMISES

31 Lawrence Street, Broughty Ferry, Dundee, DD5 1ES

TENANT

Mrs D Crabb

**NAME AND ADDRESS OF
LANDLORD**

Mrs Alexandra Murray
c/o I B Murray and Son, 87 Perth
Road, Dundee, DD1 4HZ

AGENT

I B Murray & Son
87 Perth Road, Dundee, DD1 4HZ

DESCRIPTION OF PREMISES

The property is a detached cottage circa 1907. The accommodation comprises living room, dining room, two double bedrooms, kitchen, shower room and small bedroom annex. Gas Central heating and partial double glazing. Floor area approximately 80 square metres. There is garden ground at side and rear and off road parking is possible.

SERVICES PROVIDED

None

TRIBUNAL MEMBERS

CHAIRPERSON

Jacqueline Taylor

ORDINARY MEMBER (SURVEYOR)

Mark Andrew

FAIR RENT

£ 7000 p.a.

DATE OF DECISION

19 April 2018

EFFECTIVE DATE

29th January 2018

J. Taylor

Chairperson of tribunal
Date: 23rd 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/18/0383

31 Lawrence Street, Broughty Ferry, Dundee, DD5 1ES ('the Property')

The Parties:

Mrs Alexandra Murray per M/s I B Murray & Son, 87 Perth Road, Dundee, DD1 4HZ ('the Landlord')

M/s I B Murray and Son, 87 Perth Road, Dundee, DD1 4HZ ('the Landlord's representatives')

Mrs D Crabb residing at 31 Lawrence Street, Broughty Ferry, Dundee, DD5 1ES ('the Tenant')

Tribunal members:

Jacqui Taylor (Chairperson) and Mark Andrew (Ordinary Member).

1. BACKGROUND

The Tenant has been a tenant of this property since 1964. The tenancy is a statutory protected tenancy in terms of the Rent (Scotland) Act 1984. The current rent is £7000 per annum (£583.33 per month). The Landlord applied for the rent to be increased to £7800 per annum (£650 per month). The Rent Officer registered a rent of £5664 per annum (£ 472 per month) with effect from 29th January 2018. The Landlord referred the determination to the First tier Tribunal.

2. DIRECTION

The Tribunal sent the parties a Direction dated 22nd 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 had sourced the following rental information:

1. Details of eight comparable properties being advertised for lease within Broughty Ferry from S1 Rent.
2. Details of eighteen comparable properties being advertised for lease within Broughty Ferry from Prime Location.
3. Details of four comparable properties being advertised for lease within Broughty Ferry from Rightmove.
4. Details of 20 Fair rent properties within DD5 1E 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 5th April 2018.

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

Prior to receipt of the Direction the Landlord's Agent, I B Murray and Son, supplied a 'comparable report' covering the period from 9th December 2017 to 9th March 2018 containing 17 local properties, copies of invoices for repairs to the property and photographs.

3. THE INSPECTION

On the morning of 19th April 2018 the Tribunal inspected the Property. The Tenant and her daughter were present at the inspection. The Landlord's representative Mr Murray of I.B. Murray & Son was also present at the inspection.

The property is a detached cottage which dates from approximately 1907.

The accommodation comprises living room, dining room, two double bedrooms, kitchen, shower room and small bedroom annex. The floor area is approximately 80 square metres.

There is a gas central heating system in the property, which was installed with the benefit of a government grant. The Landlord's agent advised that the Landlord maintains the heating system.

The windows throughout the Property are a mixture of single and double glazed windows. The front and back doors of the property are UPVC doors, which had been recently installed. There is a garden which extends to approximately 170 square metres at the side and rear of the Property. It is possible to park a car off the road in the rear garden, albeit that the Tenant does not own a car.

The Tenant explained that when she moved into the Property with her husband in 1964 the property was basically a shell. They installed the bathroom and kitchen fittings and they also installed the electrical wiring, albeit that the Landlord has over the years replaced the bathroom fittings and rewired the Property.

No furniture has been provided by the Landlord. The Tenant has installed the floor coverings throughout the property and has decorated the Property.

The Property is conveniently situated for public transport and local services.

No services are provided by the Landlord.

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

4. THE HEARING

The Landlord's agent attended the hearing. The Tenant did not attend the hearing and was not represented.

In relation to the rental and market evidence provided by both the Landlord's agent (with their written representations) and also provided by the Tribunal (with their Direction dated 22nd March 2018) the Landlord's agent advised the Tribunal as follows:-

- In his opinion, none of the 20 Fair rent properties provided by the Tribunal were comparable as they are all flat properties.
- Very few of the comparable properties provided by the Tribunal and his company are comparable as most of the properties are flats and consequently they do not have a separate garden and do not have the ability to park within the boundaries of the property.
- He conceded that the property at King Street, Broughty Ferry, advertised at £700 per month, is the most comparable property. However he explained that it is not truly comparable as there is no facility for off road parking. He considered the property at Hill Road to also be comparable but he

acknowledged that it is a more modern property, it is located in a more desirable area and has an elevated position.

- He thought that if 31 Lawrence Street were to be upgraded and advertised for rent he would advertise the property at a starting price of £650 per month but due to the desirability of the property he would expect to achieve a higher rent. He explained that a main selling feature would be the ability to park a car within the garden ground of the property.
- The property 31 Lawrence Street is quite unique as it is a detached bungalow with its own garden and ability to park within the boundaries of the property.
- He explained that in his experience other properties available to rent in the area will undoubtedly be provided with kitchen appliances and kitchens and bathrooms in a reasonable condition, they will also have been recently decorated and they are unlikely to be furnished.
- He did not consider capital valuations to be a valid method of assessing the rent of this property.
- When asked if he considered there to be a scarcity of supply of rented properties within Dundee and the surrounding area he did not give a definitive response.
- He considered £7411.76 to be the average asking rent for a two bedroom property from his comparable evidence.

5. THE DECISION

The Tribunal had the following documents before them:-

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

5.2 Written representations from the Landlord's agents which advised *inter alia*:

- 11th January 2018: The Landlord applies for uplift. Increase to £7800 per annum.
- 17th February 2014: The Landlord awarded uplift to £7000. Private Rented Housing Committee decision 22nd May 2014.

Comparisons:

- Claypotts Place, brought Ferry: £9000
- Ballinard Road, Broughty Ferry: £8820.
- Queen Street, Broughty Ferry: £9600.

- Three unidentified properties £9000 each.

Deduction in this case was made of £2000 per annum. A determination in light of evidence stated awarded an annual rental of £7000 per annum. Decision effective from 17th February 2014.

- Works to property since 17th February 2014:
 - Intona 14.11.17 £4184
 - Steven Grant 7.12.17 £1450
 - Dundee Window Centre 13.7.15 £1325.
- Property Condition Photographs were submitted.
- Works to property do not include environmental improvements to rear of the property, including a replacement garden store.
- A review of the rent awarded in the sum of £5564 per annum was requested as the rent level appeared low in light of the evidence presented.

5.3 The rental evidence sent to the parties with the Direction dated 15th March 2018:

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 acknowledged that:

- The rents of seventeen of the properties listed on the excerpt from the Fair Rent Register are dated between 2014 and 2000. They considered this evidence to be too old to be of assistance.
- Of the three other properties on the list:
 - 8F Church Street only has two rooms.
 - 3 Lawrence Street is a flatted property situated above a public house with no off street parking.
 - 31 Lawrence Street is the subject property.

Consequently the Tribunal gained no assistance from this evidence.

The Tribunal also considered the evidence of market rents.

The Tribunal noted that the average rents of the unfurnished two bedroom flatted properties detailed in the Landlord's agents written submissions and the evidence the Tribunal provided with their Direction dated 22nd March 2018 was £600 per month or £7200 per annum. The Tribunal accepted the submission of the Landlord's agent that the evidence of the market rents of these two bedroom flatted properties is not of great assistance as these properties do not have off road parking or garden ground are therefore are not truly comparable with 31 Lawrence Street. However the Tribunal did consider this evidence to be useful as they considered it to be evidence of a minimum / baseline rent of a two bedroom property in Broughty Ferry.

The Tribunal also accepted the landlord's agent's suggestion that the closest evidence of a comparable property was the evidence of the 2 bedroom end terrace townhouse with private enclosed garden in King Street, Broughty Ferry. The rent of that property is £700 per month or £8400 per annum.

Due to the limited directly comparable evidence produced the Tribunal carried out an internet search to determine in any other more directly properties had recently come onto the market and were being marketed as available for rent in Broughty Ferry. They found that two such properties were being advertised:

- Dunvegan Road, Broughty Ferry which is a two bedroom property with garage and garden. The asking rent is £700 per month or £8400 per annum and
- Inchcape Terrace, Broughty Ferry which is a two bedroom property with garden. The asking rent is £675 per month or £8100 per annum

The Tribunal were satisfied that this rental evidence supported the rental evidence of the comparable property at King Street, Broughty Ferry, which had been provided by the Landlord's agents.

Consequently the Tribunal considered that a comparable market rent to 31 Lawrence Street, Broughty Ferry was £ 8400. However the comparable properties mentioned are two bedroom properties with kitchen, bathroom, floor coverings, and appliances provided by the Landlords. The Tribunal considered that an adjustment was required to reflect the fact that the Landlord of 31 Lawrence Street did not provide any appliances, decoration or floor coverings and that the Tenant had installed the kitchen and bathroom. 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 £1400 per annum was reasonable to reflect these differences. Therefore taking the comparable open market rent, £8400 and deducting this cost, a comparable open market rental would be £7000 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. 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 decided that Dundee is an appropriate area to consider in this case.

The Tribunal in their Direction dated 22nd 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 Q1 2018 includes the following market trends for the lease of two bedroom properties:

	Average Rent	Rent Change 1 year	Rent change 5 years	Rent change 10 years	Av TTL (days)	Let within 1 week	Let within 1 month
Dundee	£579	2.5%	3.0%	4.5%	50	11%	33%
Scotland	£703	0.0%	12.5%	16.2%	41	13%	47%

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

The Tribunal determined that these differences are not sufficient to infer that there is scarcity by which that they mean that there is not sufficient evidence that the number of people seeking to become tenants of such properties in the Dundee area is higher than the number of houses available or that the demand is substantially higher than the supply.

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 evidence of 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 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 £ 7000 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 29th January 2018.

J Taylor

.....
Chairperson

....
23rd April 2018

Schedule of photographs of 31 Lawrence Street, Broughty Ferry, Dundee, DD5 1ES



Lawrence Street, Front elevation of property. Garden fence to left hand side.



Central corridor. Bedrooms to right, Living rooms and kitchen to left, Bathroom straight ahead

Schedule of photographs of 31 Lawrence Street, Broughty Ferry, Dundee, DD5 1ES



Dining room – corridor wall and front window (to Lawrence St.)



Sitting room. Fireplace and 'feature wall'. Gas fire fitted by tenant.

Schedule of photographs of 31 Lawrence Street, Broughty Ferry, Dundee, DD5 1ES



Bedroom 1 (front). External wall and front window (to Lawrence St.)



Bedroom 2 (rear). External wall. Skylight window to bedroom

Schedule of photographs of 31 Lawrence Street, Broughty Ferry, Dundee, DD5 1ES



Annex to bedroom 2 – spare bedroom space in extension to rear of property.



Kitchen in rear extension. Access to Sitting room and back door to garden.

Schedule of photographs of 31 Lawrence Street, Broughty Ferry, Dundee, DD5 1ES



Rear garden area with view of kitchen door and window in extension and sitting room window



Rear elevation. 2 kitchen windows and window to bedroom 2 annex. Old skylight to bathroom

Schedule of photographs of 31 Lawrence Street, Broughty Ferry, Dundee, DD5 1ES



Garden gate to road suitable for vehicle parking



Rear and side garden ground.

All photographs taken on 19th April 2018 by Mark Andrew

Schedule of photographs of 31 Lawrence Street, Broughty Ferry, Dundee, DD5 1ES
