

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



**Rent (Scotland) Act 1984**

**Notification Of Decision**

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<b>REFERENCE NO.</b>	<b>OBJECTION RECEIVED</b>	<b>OBJECTION</b>
FTS/HPC/RR/18/0386	15 February 2018	Tenant

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**ADDRESS OF PREMISES**

5 Lingerwood Cottages, Newtongrange, Dalkeith, EH22 4NY

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**TENANT**

Mrs Margaret Wilson

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**NAME AND ADDRESS OF  
LANDLORD**

Castle Rock Edinvar Housing  
Association, 1 Hay Avenue,  
Edinburgh, EH16 4RW

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**DESCRIPTION OF PREMISES**

The property is a single storey stone built end terraced house which dates from approximately 1875. It is understood to be a 'C' listed building. There are private gardens to the front and rear and also a communal courtyard style area of grass to the front of the property.

The accommodation comprises living room (with store cupboard off), one large double bedroom, one smaller double bedroom, kitchen and bathroom. The bathroom was accessed directly from the kitchen. Gas Central heating and single glazing. The internal floor area is approximately 58 square metres.

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**SERVICES PROVIDED**

Communal grass cutting (less than 5% of the rent)

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**TRIBUNAL MEMBERS**

<b>CHAIRPERSON</b>	Jacqueline Taylor
<b>ORDINARY MEMBER (SURVEYOR)</b>	Mike Links

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<b>FAIR RENT</b>	<b>DATE OF DECISION</b>	<b>EFFECTIVE DATE</b>
£ 4950 p.a.	22nd May 2018	22nd May 2018

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**J Taylor**  
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**Chairperson of tribunal**  
**Date: 29 th May 2018**

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# Housing and Property Chamber First-tier Tribunal for Scotland

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**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/18/0386**

**5 Lingerwood Cottages, Newtongrange, Dalkeith, Midlothian, EH22 4NY ('the Property')**

**The Parties:**

**Castle Rock Edinvar Housing Association, 1 Hay Avenue, Edinburgh, EH16 4RW ('the Landlords')**

**Mrs Margaret Wilson residing at 5 Lingerwood Cottages, Newtongrange, Dalkeith, Midlothian, EH22 ('the Tenant')**

**Tribunal members:**

**Jacqui Taylor (Chairperson) and Mike Links (Ordinary Member).**

## **1. BACKGROUND**

The Tenant has been a tenant of this property for approximately 50 years. The tenancy is a statutory protected tenancy in terms of the Rent (Scotland) Act 1984. The current rent is £4036.00 per annum (£336.33 per month). The Landlords applied for the rent to be increased to £5142.84 per annum (£428.57 per month). The Rent Officer registered a rent of £4620.82 per annum (£385.07 per month) with effect from 11<sup>th</sup> January 2018. The Tenant referred the determination to the First tier Tribunal.

## **2. DIRECTION**

The Tribunal sent the parties a Direction dated 4<sup>th</sup> May 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. Details of a 2 bedroom cottage to rent at Lingerwood Cottages Newtongrange, Dalkeith, EH22 being advertised on [www.needaproerty.com](http://www.needaproerty.com)
2. Details of a 2 bedroom cottage to rent at Lingerwood Cottages Newtongrange, Dalkeith, EH22 being advertised on [www.thehouseshop.com](http://www.thehouseshop.com)
3. Details of a 2 bedroom terraced to rent at Gardiner Place, Newtongrange, Dalkeith, EH22 being advertised on rightmove.
4. Details of a 2 bedroom semi detached property being advertised for rent in Dalkeith EH22
5. Details of 20 Fair rent properties within EH22 from the Fair Rent eRegister.
6. The PRHP decision dated 16<sup>th</sup> January 2015 in respect of 43 Seventh Street, Newtongrange, EH22 4JS.
7. The PRHP decision dated 12<sup>th</sup> September 2016 in respect of 21 Abbey Grange, Newtongrange, EH22 4RJ.
8. Details of a 2 bedroom semi detached property being advertised for rent in Fifth Street, Dalkeith EH22

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 15<sup>th</sup> May 2018.

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

### **3. THE INSPECTION**

On the morning of 22<sup>nd</sup> May 2018 the Tribunal inspected the Property. The Tenant and Robert Foggo, the Landlords' representative, were present at the inspection.

The property is a single storey stone built end terraced house which dates from approximately 1875. It is understood to be a 'C' listed building. There are private gardens to the front and rear and also a communal courtyard style area of grass to the front of the property.

The accommodation comprises living room (with store cupboard off), one large double bedroom, one smaller double bedroom, kitchen and bathroom. The bathroom was accessed directly from the kitchen.

The internal floor area is approximately 58 square metres.

There is a gas central heating system in the Property.

The windows throughout the Property are single glazed sash and case windows.

The Tenant provided the appliances, carpets and floor coverings throughout the Property. No furniture has been provided by the Landlords.

The Property is in a semi-rural location and is conveniently situated for public transport and local services. The Landlords provide the service of communal grass cutting.

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

The Tenant did not attend the hearing and was not represented. The Landlords were represented by Robert Foggo, The Income Collection Manager for Castle Rock, Edinvar Housing Association.

Robert Foggo advised the Tribunal as follows:-

- As the Landlords are a Housing Association the rent must satisfy an affordability criteria.
- The Housing Association assesses rents for a property using a points system which is related to the particular features of the property.
- The Energy Performance rating of the property is Band 'E', which is probably due to the single glazed windows and poor insulation in the property.
- He does not have knowledge of the comparable properties detailed in the Direction provided by the Tribunal.
- The Housing Association maintains the grass in the courtyard area. The cost is included with the rent and amounts to approximately £100 per annum.

#### **5. THE DECISION**

The Tribunal had the following documents before them:-

5.1 A copy of form RO1, the Landlords' application for registration of the rent.

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

*'The phasing increase that should have been applied in March 2015 and March 2016 was not applied. They also failed to reregister early in 2017 only applying in December 2017 and receiving reregistration effective on 11<sup>th</sup> January 2018. They*

*apologised for the poor standard of service provided in respect of the administrations of rent, but advised that it resulted in the Tenant being under charged by over £3000 in the period March 2015 to April 2018.*

*The amount of rent requested is in line with their rent setting policy applied to around 6000 properties annually or for fair rent tenants every three years.*

*Re the Property, This is a Category C listed building. Upgrades have been carried out to the bathroom in 2010, kitchen in 2013 and gas central heating was installed in 2014. The property is SHQS compliant.'*

5.3 An email from the tenant's son dated 15<sup>th</sup> February 2018, which stated *inter alia*:

*' For the appeal I would ask the following to be taken into account:*

- *The property has a bathroom directly off the kitchen.*
- *Little maintenance or upgrades have been made to the property.*
- *When the boiler was replaced they put it in a huge cabinet in the living room- which is only 9 feet wide and it is a complete eye sore and limits living space.*
- *Given the age of the property the landlords have not improved poor quality plasterwork on walls.*
- *No help or support provided to help my mother eg putting in a wet room to allow easy access for bathing.'*

5.4 Rental evidence sent to the parties with the Direction dated 4<sup>th</sup> May 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.*

Unusually there was strong evidence available of comparable registered rents. There were 13 three room properties included in the list of fair rent properties within EH22 from the fair rent register. The Tribunal were satisfied that these properties were directly comparable with 5 Lingerwood Cottages.

Address	Post code	Rooms	Registered	Rent	2017 rents adjusted by 2% to bring them up to date with the 2018 rents
1 First Street	EH22 4QH	3	23/4/2018	£4774.08	
15 Lingerwood Road	EH22 4QG	3	21/3/2018	£4774.08	
25 Lingerwood Road	EH22 4QG	3	21/3/2018	£4774.08	

42 Fifth Street	EH22 4PJ	3	21/3/2018	£4774.08	
19 Fourth Street	EH22 4PP	3	24/7/2017	£4858.89	£4956.07
23 Lingerwood Road	EH22 4QG	3	7/7/2017	£4774.08	£4869.56
1 Lingerwood Road	EH22 4PT	3	7/7/2017	£4848.90	£4945.88
8 Tenth Street	EH22 4JF	3	7/7/2017	£4774.08	£4869.56
2 Tenth Street	EH22 4JF	3	7/7/2017	£4774.08	£4869.56
21 Fifth Street	EH22 4PH	3	7/7/2017	£4574.04	£4665.52
9 First Street	EH22 4QH	3	7/7/2017	£4574.04	£4665.52
42 Seventh Street	EH22 4JS	3	7/7/2017	£4333.05	£4419.71
43 Seventh Street	EH22 4JS	3	7/7/2017	£4333.05	£4419.71

Adjusting the 2017 rents by 2% to reflect that the rents were assessed 8 months earlier than the 2018 rents results in an average annual rental of £4752.11 for these thirteen comparable rents.

*The Private Rented Housing Panel Decision in relation to the property 43 Seventh Street, Newtongrange, EH22 4JS*

As the decision was dated 16<sup>th</sup> January 2015 and was consequently over three years old the Tribunal considered it was inappropriate to use this evidence.

*The Private Rented Housing Panel Decision in relation to the property 21 Abbey Grange, Newtongrange, EH22 4RJ*

The rent of this property was assessed at £4480 with the effective date of 12<sup>th</sup> September 2016. The Tribunal considered it reasonable to adjust the rent by 5.4% for being eighteen months behind resulting in an adjusted rent of £4721.92. Whilst the Tribunal consider this property to be comparable with the subject property they recognised that a further adjustment is required due to the fact that this property has

double glazing and solar panels. They considered an annual deduction of £400 to be reasonable resulting in a comparable rent of £4321.92.

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

The evidence of market rents, provided to the parties with the Direction dated 4<sup>th</sup> May 2018 is as follows:

Address	Postcode	Rooms	Date	Rent	Advertised
Lingerwood Cottages	EH22	3	2018	£8100	www.needaproperty.com
Lingerwood Cottages	EH22	3	2018	£8340	www.thehouseshop.com
Gardiner Place	EH22	3	2018	£8340	rightmove
Eighth Street, Dalkeith	EH22	3	2018	£6600	
Fifth Street, Dalkeith	EH22	3	2018	£7800	

The annual rents for these properties range from £6600 to £8340. These comparable properties are two bedroom properties with kitchen, bathroom, floor coverings, and appliances provided by the Landlords. The Tribunal considered that as:

- The bathroom of 5 Lingerwood Cottages leads directly from the kitchen.
- The property has single glazed sash and case windows.
- The combi boiler is located in a large cupboard in the living room and
- There is poor insulation in the property.

The rent of 5 Lingerwood Cottages 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 5 Lingerwood Cottages did not provide any appliances, decoration or floor coverings. 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 £1420 per annum was reasonable to reflect



these differences. Therefore taking the lowest level of open market rent of £6600 and deducting this cost, a comparable open market rental would be £5180.

*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 4<sup>th</sup> May 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.

The Tribunal acknowledged that there is a reasonable supply of similar properties to rent in the Dalkeith/ Midlothian 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.

**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 £ 4950 per annum, inclusive of 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 22<sup>nd</sup> May 2018.

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

29<sup>th</sup> May 2018