

Housing and Property Chamber
First-tier Tribunal for Scotland



RENT (SCOTLAND) ACT 1984

Notification Of Decision

REFERENCE NO.	OBJECTION RECEIVED	OBJECTION
FTS/HPC/RR/18/2604	8 October 2018	Tenant

ADDRESS OF PREMISES

2 Craigmyle Cottages, Torphins, Aberdeenshire AB31 4NJ

TENANT

Robert Gallagher

**NAME AND ADDRESS OF
LANDLORD**

NO AGENT

Craigmyle Estates Limited,
Craigharr House,
Keithhall,
Inverurie, Aberdeenshire AB51 0LN

DESCRIPTION OF PREMISES

Semi-detached bungalow in converted steading in rural surroundings. Accommodation comprises kitchen, living room, two double bedrooms, bathroom with bath and shower and wash-hand basin; porch; garden

The gross internal floor area is 87 square metres

SERVICES PROVIDED

None

TRIBUNAL MEMBERS

CHAIRPERSON

ORDINARY MEMBER (SURVEYOR)

David Bartos
Angus Anderson

FAIR RENT

£ 5100 p.a.

DATE OF DECISION

22 December 2018

EFFECTIVE DATE

22 December 2018

D. Bartos

Chairperson of tribunal

22 December 2018

Housing and Property Chamber First-tier Tribunal for Scotland



Statement of Reasons for Decision of the Housing and Property Chamber of the First-tier Tribunal for Scotland

(Hereinafter referred to as “the Tribunal”)

Under paragraph 10(1) of schedule 5 to the Rent (Scotland) Act 1984

Case Reference Number: FTS/HPC/RR/18/2604

Re :- Property at 2 Craigmyle Cottages, Torphins, Aberdeenshire AB31 4NJ (“the Property”)

The Parties:-

Craigmyle Estates Limited, Craigharr House, Keithhall, Inverurie, Aberdeenshire AB51 0LN (“the Landlords”)

Robert Gallagher, 2 Craigmyle Cottages, Torphins, Aberdeenshire AB31 4NJ (“the Tenant”)

The Tribunal comprised:-

Mr David Bartos	- Chairperson (legal member)
Mr Angus Anderson	- Ordinary (surveyor) member

Background:-

1. Mr Robert Gallagher is the tenant of the Property which is located near Torphins, Aberdeenshire. It is not in dispute that the tenancy is regulated in terms of the Rent (Scotland) Act 1984. The tenancy is covered by sections 43 to 54 of the 1984 Act. The rent under the tenancy is registrable under sections 46 to 50 of the 1984 Act. The tenancy is unfurnished.

2. The previous registered rent was £ 512.50 per calendar month or £ 6150 per annum with no service charge noted. The Landlords applied to the Rent Officer for registration of a fair rent of £ 650 per calendar month or £ 7800 per annum inclusive with no aspect of that figure attributable to services provided by the Landlords.
3. On 27 September 2018 the Rent Officer registered a rent of £ 7500 per annum or £ 625 per month without any service charge, to be effective from 27 September 2018. This was intimated to the Tenant and the Landlords. The Tenant objected to this by letter of appeal to the Rent Officer dated 30 September 2018. The Rent Officer referred the objections to the Tribunal.
4. The Tribunal attended at the Property on 17 December 2018. The Tenant was present. An employee of the Landlords, Mrs Sarah Leahy was present on their behalf. The weather was sunny.
5. The Property is the southmost of two semi-detached bungalows which form the east side of a partially converted square-shaped farm steading on a country estate. The semi-detached bungalow adjoining the Property is No. 1, Craigmyle Cottages. To the west of the Property (and the southern element of No.1) is the courtyard of the steading. On the north side of the courtyard there are covered and gated parking facilities accessible from the yard. On the south side of the courtyard is a roofed gate providing vehicular access into the courtyard and adjacent to it a former stable area which has been used as a workshop.
6. The bungalow at No.1 has been extensively refurbished. It uses the eastern third of the parking facilities as its parking facility. Access to No.1 is obtained through an entrance porch which is located in the north-eastern corner of the courtyard.
7. The steading of which the Property forms part is located about one mile to the east of the village of Torphins. Vehicular access to the steading is from the north via an unclassified road and from there by a rough pot-holed vehicular track with traffic calming road-humps about 250 metres in length.
8. The steading was built in the mid-19th century and appears to have been partially converted in the second half of the 20th century into the two dwellinghouses mentioned. Both dwellinghouses are stone built and share a slate tiled roof. The condition of the roof was good. On the part of the roof pertaining to the Property and facing the courtyard there were three slipped slates and three missing slates. These did not cause any leaks and notwithstanding their presence the roof was wind and watertight.
9. The east side of both dwellinghouses faces onto a garden. The southern boundary of the garden is stone wall which on its south side bounds the verge of the access track. At the eastern end of the stone wall there is a gap in the wall wide enough

for vehicular access. At present it is blocked off with temporary chicken wire fencing. The eastern boundary of the garden is a stone wall and the northern boundary is a post and wire fence which extends eastwards from the north-east corner of No.1. The garden has a gentle grass slope downhill away from the houses. At the foot of the garden it is wet and boggy. There was a dispute over whether the northern part of the garden adjoining the house at No.1 was part of the tenancy of the Property or not. The Property as let has no parking facility in the garden or elsewhere.

10. Pedestrian access into the building within the Property is from the vehicular access track. A path leads over the garden and up to an entrance porch facing east. The porch adjoins the main building. It is wooden-built on a low brick and rendered wall with a sloping felt covered roof. It has brown PVC cladding covering the rendered parts of the wall including the corners of the porch.
11. The porch has wooden framed double glazing window units on two sides including the entrance door itself. There is misting within these units. The wood has wet rot. The paintwork is peeling. Staining to the ceiling indicated past water ingress, although the ceiling was dry when tested with a damp meter. The damp meter revealed minor dampness at the cross bars of the windows and at the foot of the door. There is ceramic tile flooring which has been installed by the Tenant.
12. Within the building the accommodation consists of three bedrooms, living room, kitchen and bathroom with a gross internal floor area of 87 square metres excluding the porch. The porch leads to a central hallway which runs the length of the building. Going right (northwards), it gives access to the living room, going straight on to the bathroom and going left (southwards) it gives access to the bedrooms.
13. The living room covers the width of the building and faces east into the garden. It has heating from a stove located in the fireplace which was supplied by the Tenant. This stove also provides heat which is used to provide hot water to the radiators in the Property and hot water for use by the Tenant. The living room has wooden-framed double glazed windows facing the garden. These have been painted on the outside. Within the one of the double-glazed units is a chip about a centimetre in width with a pinhole to the outside of the unit. There is storage from a cupboard press. The carpet had been supplied by the Tenant. The room has blue painted woodchip wallpaper.
14. The kitchen is reached via the living room. It is a very small kitchen, which but for its square shape might be described as a "galley kitchen". It has a single glazed window facing the courtyard, the outside of which was painted by the Landlords in 2018. It has modern fitted kitchen units and workspaces provided by the Landlords in 2018. There is an integrated hob, oven and fan albeit these are not part of the tenancy having been installed only in 2018. There is a small radiator on the right upon entry from the living room. The door to the kitchen had

been installed by the Tenant. A modern hot water cylinder with immersion heater cylinder also fitted by the Landlords in is located in the kitchen. The kitchen has a modern laminate wood-style floor covering supplied by the Landlords.

15. The bathroom has a bath with an electric shower. These were supplied by the Tenant and installed by the Landlords. The ceramic tile flooring was installed by the Tenant. There is a radiator in the bathroom. There is a double-glazed translucent window facing onto the courtyard. The outside of the window was painted by the Landlords in 2018.
16. The central hallway gives access to the double bedroom facing the rear (courtyard), and the single and double bedrooms which face southwards onto the verge of the access track. The hallway has a double glazed window facing the garden. It has a ceramic tiled floor supplied by the Tenant which leads into the porch and a carpet supplied by the Tenant leading to three bedrooms.
17. The main double bedroom has a double glazed window to the rear (courtyard) with misting in the wooden framed unit. The unit appears to originate from the 1970s or early 1980s. There is a built-in wardrobe in the bedroom and a radiator.
18. At the commencement of the lease the single and double bedrooms formed one larger bedroom which faced southwards onto the verge of the vehicular access track. From this the Tenant formed an extension to the hallway and subdivided the remaining area to form a small bedroom and second double bedroom. The small bedroom has an area of approximately 6 square metres.
19. The smaller double bedroom and single bedroom have wooden framed double glazed windows and radiators. In the smaller double room two of the three double-glazed panels were misted. In the single bedroom all three were misted. The decoration was painted woodchip wallpaper. All carpets in all of the bedrooms were supplied by the Tenant.
20. In 2018 the Landlords installed new light fittings throughout the building together with a new fuse box. Hard wired smoke, heat and CO detectors were installed at this time.
21. The Tribunal took account of their inspection and in addition the following evidence :-
 - Copy form RR1 being the Landlords' application for registration of rent for the properties dated 24 August 2018
 - Copy extract from the Rent Register for the property showing among other matters the rent registered by the Rent Officer for the Property
 - Copy letter of appeal from the Tenant to Rent Service Scotland dated 30 September 2018
 - Copy reference to the Tribunal from the Rent Officer dated 3 October 2018

- Written representations on behalf of the Tenant, including copy Gumtree advertisement for No.1 Craigmyle Cottages
- Written representations on behalf of the Landlords
- Copy tenancy agreement for No.1 between the Landlords and a named individual as tenant dated 19 and 20 July 2018 with date of entry at 20 July 2018
- Copy letter from Landlords to Tenant dated 28 September 2018
- J & E Shepherd valuation report for No.1 dated 27 August 2015
- J & E Shepherd valuation report for the Property dated 10 September 2015
- Citylets Report for Q3 2018
- Scottish Government Private Rented Sector statistics 2010 to 2018
- Local Housing Allowance Rates published by the Scottish Government
- Extract rent register for properties at postcodes AB31 4NP (Blairhead Farmhouse, Campfield), AB31 4NP (farmhouse near Torphins), AB31 4HD (Croft Cottage), and AB31 4DQ (Kennerty, Raemoir) and AB31 4EX (Raemoir)

The Tribunal also took account of the decision of its predecessor PRHP/RR/15/0204 dated 25 September 2015. The Tribunal was not provided with a copy of the tenancy agreement.

The Hearing

22. Following the inspection, the Tribunal held a hearing within the Credo Centre, John Street, Aberdeen AB25 1BT. The hearing had been fixed for 12.00 p.m. but due to transport difficulties for the Tribunal it began at 12.55 p.m. At the hearing the Tenant was represented by Jonathan MacAulay of Aberdeen Law Project at the University of Aberdeen. The Landlords appeared and were represented by their employee Mrs Sarah Leahy.
23. The Tribunal explained to the parties the task of the Tribunal and what was entailed in a fair rent for the purposes of the 1984 Act. Neither party gave oral evidence at the hearing.
24. Both representatives accepted that the assumption in section 48 of the 1984 Act as to demand in the locality not being substantially greater than supply applied. Neither took issue with the locality for that purpose being the City of Aberdeen and the Deeside area of Aberdeenshire.
25. For the Tenant Mr MacAulay submitted that the Tenant was content with the approach of the Committee in 2015, namely the use of market rents as the starting point with a discount in respect of any disrepair or tenant's improvements that would either not be reflected in the market rent or would require to be disregarded under the 1984 Act. He was also content with the approach in 2015 to the Property as a two-bedroomed house. He submitted that the third "bedroom" was more of a storage room than a bedroom.
26. With regard to the size of the Property he submitted that the leased property did

not include car parking albeit that the Landlords tolerated the Tenant parking a car on the access track adjacent to the pathway leading through the wall to the porch. He also submitted that the garden of the Property included ground to the east of the decking adjoining No.1 and was as per the 2015 decision.

27. Beginning with the market rent for a fully modernised property akin to the Property, he submitted that rents in both Aberdeen and Aberdeenshire had fallen since 2015. He relied in particular on the Scottish Government publication "Private Sector Rent Statistics: 2017 – 2018" and page 24 of that publication. This indicated that the mean rent for 2 bedroom properties in Aberdeen and Aberdeenshire had fallen over the 3 years from £ 874/month to £ 654/month. That decrease was matched in the nearest comparable property, namely No. 1 Craigmyle Cottages. There the rent in 2015 of £ 787.50 had fallen to £ 600/month in 2018, despite having been advertised on Gumtree for let in 2018 for £ 700/month. He submitted that the market rent for the Property fully modernised should be taken to be the same as for No.1 namely £ 600/month.
28. From this figure it was submitted for the Tenant that there should be deductions to reflect the lower rent that would be offered by a prospective tenant on account of condition of the property and the statutory disregard of tenant improvements.
29. Mr MacAulay adhered to the table of the discounts sought set out in paragraph 17 of the Tenant's written representations. This set out the estimated capital costs, amortisation durations, and annual and monthly costs. Adding these together amounted to an annual cost of £ 3225. If this was deducted from the starting point of market rent at £ 600/month this would give annual rent of £ 3975 or £ 331/month. However he submitted that this would not be fair on the Landlord and invited the Tribunal to find the fair rent to be £ 443.50/month.
30. On being questioned by the Tribunal with regard to a deduction for porch repair he submitted that this remained reasonable despite the outside cladding and new felt roof that the Landlords had put onto the porch in 2018. He submitted that the porch remained in disrepair. Mr MacAulay was unable to provide any breakdown for the capital cost of insulation claimed of £ 5000. In particular he was unable to confirm how much of this required to be to the loft and how much to the side walls of the building.
31. For the Landlords Mrs Leahy submitted that the Tribunal should decide the fair rent on the basis of an appropriate return on the capital value of the Property. She referred to the valuation report for the Property from 2015 and to Landlords' written representations. The report valued the Property as a three bedroom property with a gross internal floor area of 80 square metres. The open market capital value of the Property was £ 180,000. A gross yield of 4.2% represented a reasonable return on that value. This gave an annual rent of £ 7,560 which was equivalent to £ 630/month. This was consistent with the Rent Officer's decision of £ 625/month.

32. With regard to services provided under the tenancy Mrs Leahy mentioned septic tank cleaning in addition to water filter changing, electrical condition installation certificate and assessment for legionnaire's disease. She was unable to provide a figure in respect of these services. She accepted that the services were to be subsumed within the £ 625/month sought.
33. On questioning from the Tribunal Mrs Leahy submitted that the evidential basis for the yield lay in the Citylets report which for the Aberdeen city post code AB25 gave a figure of 5.5%. She was unable to explain how this figure was then discounted to the 4.2% claimed.
34. Turning to the Tenant's valuation method, she submitted that the Property was to be treated as a three bedroom and not two bedroom property. Even taking the small size of the third bedroom it was of sufficient size for a single bed and had been designed for that purpose by the Tenant. On questioning from the Tribunal as to whether the third bedroom was to be taken as an "improvement" carried out by the Tenant other than in pursuance of the tenancy, she submitted that an improvement that had been present for a substantial period of time, as this had, had ceased to be an improvement in terms of the Act.
35. She maintained that despite the Committee's decision in 2015 the Property should not include the garden area to the east of the wooden decking of No.1. On questioning from the Tribunal she submitted that in the current lease of No.1 the inclusion of "part of garden" represented the decking and access to it. The garden area to the east of the decking had not been let to No.1 because of the occupation of what she submitted was unauthorised occupation by No.2's Tenant. She accepted that the Property had no parking unlike No. 1 which had access to a garage from the courtyard.
36. She accepted that No.1 had been let on the open market in July 2018 for £ 600/month. No.1 had been unoccupied from October 2017 to July 2017. It together with the Property had suffered flood damage in March 2017 which had required repair work to both properties. As a result No.1 was not lettable from March to June 2018. No. 1 contained two bedrooms and had two white goods namely a washing machine and refrigerator. She accepted that it had been marketed for £ 700/month prior to the flood damage. Ultimately as No.1 had not let the £ 600 per month had been accepted.
37. With regard to the deductions claimed by the Tenant, the Tenant did not wish the bathroom to be refurbished. Partial electrical re-wiring had been carried out in March 2018 as part of the post-flood repairs. These were sufficient to allow a satisfactory electrical installation condition report to be obtained. She submitted that the Tenant had refused to allow the re-wiring to be completed but did not submit that the Tenant had breached the lease in not allowing this to be done.

38. On the heating system she did not dispute the findings of the previous Committee submitting merely that the Tenant had not allowed renovation to take place. She did not suggest any breach of the lease in that respect. With regard to the windows she submitted that the sills had been repainted with some repairs carried out. Again no breach was suggested. The floor coverings had been renovated in the kitchen but otherwise the position was as with the heating system. With regard to the white goods, she submitted that a figure of £ 300 for the purchase of those contained within No.1 was a sufficient discount.
39. With regard to the porch, she submitted that no discount was appropriate. She submitted that the Tenant did not provide ventilation when using his tumble dryer in the porch and any damp had been caused through this action, which she submitted was a breach of the tenancy.
40. With regard to the insulation, she thought that No.1 had been possibly refurbished in 2014 before the last decision of the Committee. She submitted that the Landlord had sought to carry out insulation of the external walls but had been prevented by the Tenant from carrying this out. This was a disrepair that was attributable to a breach of the tenancy by the Tenant. When questioned about the improvement to the loft insulation, Mrs Leahy submitted that the Landlord wanted to carry out this work but there was insufficient time. The Tenant had required to move out of the Property following the kitchen flood damage in March 2018. In her submission he had pressurized the Landlords through Aberdeenshire Council to gain early re-entry following essential repairs and this had prevented the works. Mrs Leahy had no submission on the quantification of the insulation deduction. She had no submission to make on the quantification of the cost of a garage for the garden of No.1
41. Mrs Leahy submitted that the Tribunal should take account of the local housing allowance of housing benefit for post codes AB10 to AB36 which for a three bedroom property was £ 748/month.
42. On questioning from the Tribunal she submitted that the registered fair rents for the AB31 postcode were of limited assistance. The farmhouse Cormoir near Torphins at AB31 4NP gave a fair rent of £ 474/month for a property with two attic rooms and two bedrooms in January 2017. It was not comparable. The farmhouse Blairhead, at Campfield property was only 58 square metres. Its fair rent from January 2018 was £ 500/month. If anything this pointed to the fairness of the Rent Officer's finding of £ 625/month for the current larger Property.
43. In response for the Tenant Mr MacAulay submitted that the Landlords' method of calculating fair rent was imprecise. No evidence supporting the figure for gross yield had been produced. To rely on a yield from the urban AB25 postcode for a rural property such as this was unreliable. The market based approach was that to be followed particularly as there was a good comparable present in the shape of

No. 1. With regard to the trend in market rents since 2015, even if the Property was treated a three bedroom – which he contested - he submitted that if anything the lower quartile figures for rent for such properties in the Scottish Government statistics should be followed to illustrate market movement. These showed a decrease from £ 900/month to £ 750/month (16.67% decrease). There was no evidence of any breach of lease by the Tenant that had brought about any of the deductions sought. The Tenant denied any refusal of access.

Relevant Law

44. In considering an objection to the rent registered by the Rent Officer the Tribunal requires to determine for itself what rent is or would be a fair rent under a regulated tenancy of the property in question. If the Tribunal determines that the rent registered by the Rent Officer is a fair rent then it must confirm the rent but if it takes the view that the rent so registered is not a fair rent, then it must determine the fair rent for the property in question without being bound by the Rent Officer's figure.
45. In determining the fair rent the Tribunal is required to strike an equitable balance between the interests of a tenant and landlords respectively. In striking that balance the Tribunal is obliged under section 48(1) of the Rent (Scotland) Act 1984 to have regard to all 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 under the tenancy to the quality, quantity and condition of the furniture.
46. The disregard of personal circumstances means that the Tribunal must disregard a tenant's ability to pay the rent. The assets or financial position of the Landlords are also personal circumstances which have to be disregarded.
47. However in determining the fair rent the Tribunal is obliged under section 48(2) of that Act to assume that the number of persons seeking to become tenants of similar properties in the locality on the terms (other than those relating to rent) of the tenancy is not substantially greater than the number of dwellinghouses in the locality which are available for letting on such terms.
48. The Tribunal is also obliged to disregard any improvement or the replacement of any fixture or fitting carried out, otherwise than in pursuance of the tenancy, by the tenant or any predecessor of his under the tenancy.
49. The task of determining a fair rent under section 48(1) is a composite task which takes account of accepted methods of determining a rent, none of which is regarded as the primary method. (*Western Heritable v. Hunter* (above) at para. [41]). The three accepted methods are:

- (a) having regard to registered rents of comparable dwellinghouses in the area;
- (b) taking market rents of such dwellinghouses and deducting an amount in respect of improvement and the like by the tenant which requires to be disregarded under section 48(3) and an amount if the market rents do not reflect the assumption as to demand not being substantially greater than supply (the assumption as to absence of market imbalance) and
- (c) calculating the appropriate return based on the capital value of the property, taking into account the assumed absence of market imbalance.

The third method has been described as notoriously unreliable, “normally to be used only as a last resort” (*Western Heritable Investment Co. Ltd v. Husband* 1983 S.C. (H.L.) 60, 73).

50. Market rents may be used as a cross-check against registered rents to ensure that where there is no scarcity (market imbalance), registered rents do not come to be markedly out of line with current market conditions and to provide an adjustment for general inflation (Lord Drummond Young in *Wright v. Elderspark Housing Association* 2017 S.L.T. 995; [2017] CSIH 54 at para. [13]). Equally registered rents may be used as a cross-check against market rents (*Western Heritable Investment Co. Ltd v. Hunter* 2004 S.C. 635, para. [41]).

Reasons for Decision

51. The Tribunal considered carefully all the above evidence and written representations together with the observations of the Tribunal members at the inspection.
52. The first issue concerned the size and nature of the valuation subjects. There was a dispute whether the Property should be valued as a two or three bedroom property. This dispute originated from the conversion by the Tenant of the second large bedroom which faced the vehicular access into two smaller rooms, one of which is a double bedroom and the other of which is about 6 square metres in size and currently serves as storage. It was not a dispute that had been raised in earlier decisions by earlier Committees. The Tribunal took the view that the matter was covered by section 48(3)(b) of the 1984 Act. That provision required it to disregard any improvement carried out by the tenant or any predecessor of his under the tenancy otherwise than in pursuance of the terms of the tenancy. The Landlords did not dispute that the sub-division of the room was an improvement and sought the addition of a single bedroom to the valuation subjects. It was common ground that the subdivision had been carried out by the Tenant. It was not suggested that it had been done in pursuance of any tenancy agreement.
53. In these circumstances the Tribunal concluded that the single bedroom consisted of an improvement that had to be disregarded under section 48(3)(b). There was nothing in that section which suggested that an improvement ceased to be

regarded as such merely because of the passage of time since it had been carried out. Indeed the extension of the disregard to improvements carried out by predecessors of a current tenant under the same tenancy, such as an ancestor, clearly point to improvements continuing to have that character despite the passage of time. The Tribunal valued the Property as comprising two bedrooms, and three rooms in all including the living room.

54. The second issue concerned the size of the garden of the Property let to the Tenant. There was no change of circumstances since the Committee's decision of 2015 and in this situation the Tribunal regarded itself as bound by that decision as to the valuation subjects, namely to include the garden to the east of the decking of No.1. In addition the continuing use by the Tenant of that ground without action being taken by the Landlords to regain possession also supports that ground being part of the tenancy of the Property.
55. Turning to the methods of valuation, the Tribunal considered the registered rents mentioned above. The Blairhead farmhouse (Campfield) had a registered fair rent of £ 6000/annum or £ 500/month in January 2018. It comprised two attic rooms plus three rooms of which two are reasonably taken as bedrooms. This appears to suggest a size greater than No.1 Craigmyle Cottages but with a lower rent. That suggested to the Tribunal that the fair rent fixed for Blairhead was due to particular characteristics of the individual property or other factors of which the Tribunal was not aware. In these circumstances it could not form a comparable property to which any material weight could be given.
56. The farmhouse at Cormoir, Torphins was smaller with two attic rooms plus two rooms, being entered in the register with four rooms, greater than that of the Property. It had a registered fair rent of £ 5688/annum or £ 474/month in January 2017. Beyond that, however the Tribunal had little information about that property.
57. The toll house at Kennerty, Raemoir, to the east of Torphins, had three rooms (presumably two bedrooms), a kitchen-diner, a shower room, garden and garage with a registered fair rent of £ 6000/annum or £ 500 per month in February 2018. The two cottages at Catterloch, Raemoir near Banchory were also of three rooms with a kitchen and bathroom and registered fair rents in February 2018 of £ 6000/annum including £ 282.70 as a fixed value of services being £ 477/month net of the services. They had garages. Beyond that, however the Tribunal had little information about these other properties and their condition or size.
58. From its own market knowledge the Tribunal assessed that a property of the size of the Property in a fully modernised condition would let for £ 600 per month at the current time provided that it had parking facilities. In July 2018 No.1 had been let for £ 600 per month. There was no dispute between the parties that No.1 is substantially the same size as the Property. The Tribunal was satisfied that the rent achieved in July 2018 reflected market conditions at that time and in

December 2018 as between a willing lessor and a willing tenant. However No.1 is a fully modernised property and it has a garage for parking. This last feature is particularly attractive for a rural property where public transport is not accessible within reasonable walking distance. In contrast, the Property has many worn and dated features which require replacement and improvement for it to attract rent at the level of No.1.

59. In these circumstances and weighing up the circumstances of the Property, the Tribunal exercising its expertise considered what the Landlord would require to spend to modernise the Property in order to achieve the rent of £ 600 per month or £ 7200 per annum and the approximate lifetime of such replacements and improvements. From the figures for expenditure the Tribunal allocated an annual cost of such expenditure and in order to apply the disregard, deducted the annual cost from the rent of £ 7200 per annum.
60. In addition, over the years the Tenant had installed or replaced the internal fixtures and fittings of the Property. These included the ceramic tile flooring in the bathroom, central hallway in part and porch, the stove in the living room, the door from the living room into the kitchen, the bathroom suite including the shower, and the carpets in the living room and bedrooms and part of the hallway. None of these were required in terms of the tenancy and all fell to be disregarded under section 48(3) of the 1984 Act in the assessment of a fair rent and deducted from the rent of £ 7200 per annum.
61. In the exercise of its expertise and having regard to the figures supplied for the Tenant the Tribunal took the view that to achieve the rent of £ 600 per month the Landlords would require to install a new bathroom at approximate cost of £ 3000 with a rough lifetime of 15 years giving an annual cost of £ 200. While the Landlord had carried out some re-wiring and installed new light fittings, further rewiring requires to be carried out as evidenced by the non-working electricity socket and separate switch in the living room. The Tribunal estimated the cost of this at £ 1000 with a lifetime of say 20 years, to be annualised at £ 50 per annum. With regard to heating, the stove had been installed by the Tenant and the radiators were rusty and of an older design so the value of works to be done by the Landlord to make up for the Tenant's installation and repairs are estimated at £ 5000 to last 20 year giving an annual cost of £ 250 per annum. A full decoration of the Property would be required at an approximate cost of £ 3000 amortised over 5 years to give an annual cost of £ 600 per annum. The single and double glazed decayed windows (other than in the porch) would require replacement with modern versions at a cost of £ 2500 amortised over 15 years giving an annual cost of £ 167 per annum. The Tenant had installed the floor coverings other than in the kitchen so these fell to be disregarded but would cost the Landlords about £ 1100 amortised over 5 years giving an annual cost of £ 220 per annum.
62. In respect of none of the above items did the Landlords suggest that actual work had been prevented through the Tenant's breach of the tenancy.

63. The porch is an important area of storage for the Property and forms part of the tenancy. No.1 has a porch. The Tribunal took the view that while the watertightness of the porch had been stabilised through the new felt roof and new PVC cladding, nevertheless the porch would require new windows and doors to bring it to the level of No.1 which may be estimated at £ 2500 to last 15 years giving a cost of £ 167 per annum. The Tribunal considered the Landlords' submission that the damp in the porch had been caused by the Tenant's breach of his duty as a tenant to exercise reasonable diligence in preventing the Property from damage. However that submission was not supported by any evidence other than the Landlords' Mr Drummond's assertion in his application to the Rent Officer that "renewal of the porch" had been caused by the Tenant's failure to ventilate it while he used a tumble dryer. This suggestion appeared to the Tribunal to be excessive, and was not supported by any other evidence. In addition the damp was mild and present only at the cross-bars of the windows. The windows were old and there was nothing to indicate that the misting within the double glazing and consequent requisite work to the porch had been caused by failure to ventilate. In the circumstances the Tribunal found that the assertion could not be relied upon and the alleged breach had not been proved.
64. The cost of a reasonable refrigerator and washing machine (which were present in No.1) was estimated by the Tribunal at £ 400 with depreciation over 10 years giving a cost of £ 40 per annum.
65. With regard to insulation, the Tribunal was not persuaded that the lack of insulation was a work comprising repairs which the Landlords were entitled to execute without consent of the Tenant. In that event there could have been no breach of tenancy by the Tenant even if he had refused Landlords entry, a matter on which the Tribunal made no finding. With regard to the extent of insulation required to meet the rent level of No. 1, the Tribunal proceeded on the basis that the walls of No.1 were fully insulated. The extent of such insulation and the quantification of such cost was however not vouched for or supported by evidence. In these circumstances the Tribunal was unable to deduct a figure for insulation.
66. Finally the Tribunal took the view that without any parking facility a tenant would not be prepared to take on the tenancy of the Property at the rent level of No.1. The disadvantages of living in the Property without parking are a material deterrent which must be reflected in the fixing of a fair rent. No. 1 has garaged parking with additional space within the courtyard whereas the Property does not. The Tribunal took the view that the Landlords could provide a garage for one car at or near the entrance path at a cost of approximately £ 1000 per annum to a tenant without any material loss in respect of the land taken up thereby.
67. Deducting these Landlords' costs and disregards from the market rent of No.1 would give a rent using the market comparable method of £ 4506 per annum or £

375.50 per month.

68. The Tribunal considered carefully whether the statutory assumption under section 48(2) of the 1984 Act of demand for tenancies of similar properties in the locality on the same terms (other than rent) not being substantially higher than their availability (absence of scarcity) was justified. The purpose of the statutory assumption is to ensure that when market rents have been pushed up by a substantial excess of demand over supply of houses to let, tenants do not have to bear the burden of increases in rent caused by that excess. In the experience of the Tribunal demand for a tenancy of the Property could originate from the City of Aberdeen itself as well as from Deeside. It therefore assessed the locality for this purpose of the assumption as being the City of Aberdeen and the Deeside area of Aberdeenshire. Using its knowledge and experience the Tribunal considered that the assumption of absence of scarcity was justified. No discount from the market rents required to be made in order to apply the assumption.
69. The Landlords' principal submission was that the Property should be valued on the basis of rent generated through an appropriate return (yield) based on the capital value of the Property. However for the reasons set out by the Tenant's representative this did not appear a reliable method. Moreover there was no need to use it when there was (1) readily available evidence of open market let property in the area; and (2) some registered fair rent evidence from the area. Accordingly, the Tribunal rejected the Landlords' principal submission.
70. The fixing of a fair rent is a composite exercise where one method can be used as a cross-check of the figure using another method. Typically registered rents fall to be cross-checked against market rents and vice-versa.
71. Applying that approach the Tribunal considered the registered rents. That for the Cormoir farmhouse from January 2017 could not be considered a guide for rent levels in December 2018. There had been significant movement in the market since then. The Blairhead farmhouse appeared to be larger than the Property and possibly in better condition although no further details beyond the rent register entry were available. The three Raemoir properties all had garages. Making allowances for that, the registered rents for the three Raemoir properties pointed towards a fair rent level of £ 400 to £ 425 per month.
72. The unadjusted market figure of £ 600 per month found by the Tribunal, together the Scottish Government statistics for 2018 suggests that these registered rents are markedly out of line with what landlords in general and tenants negotiate for themselves as rent for properties similar to that of No.1. Nevertheless they are not wholly out of line for the adjusted market figure for the Property.
73. Taking a broad and equitable view of the matter, the Tribunal took the view that £ 425 per month was a rent for the Property which was fair to a landlord and a tenant.

74. The Tribunal is conscious that this represents a decrease of £ 88 per month from the fair rent fixed by its predecessor Tribunal in September 2015. However such decrease is consistent with those recorded by the Scottish Government's statistics as well as that of the rent for No.1. It is public knowledge that, as the Tenant observed in his letter of appeal, there have been falls in the rental value of properties in the Aberdeenshire area. The Tribunal's findings are consistent with that. The improvements carried out by the Landlords to the Property since 2015 have served to reduce the fall in rental value caused by the market.
75. The fair rent to be determined by the Tribunal also includes any amount payable by the Tenant to the Landlords for services whether under the tenancy agreement or any separate agreement (or which a landlord is in fact supplying and the tenant enjoying) which amount is fairly attributable to the provision of those services by the Landlords to the Tenant. The Tribunal was not provided with a copy of the tenancy agreement (lease).
76. The evidence provided by the Landlords to the Tribunal in respect of the payment to be made for services was poor. In the Landlords' application to the Rent Officer they stated that "water filter changes, electrical compliance certificate and legionnaires assessment" were services provided by them under the lease and paid by them but without any vouching of the costs. Mrs Leahy did not rely on any of these and did not put forward any cost. She mentioned septic tank cleaning albeit that this was not in the Landlords' application. She was not in a position to comment on the frequency or cost of any service. No service charge had been registered in 2012 or 2015. In these circumstances the Tribunal did not include in the fair rent any amount in respect of services. The Tribunal observes that the provision of an electrical certificate is now a statutory obligation in any event which the Tenant should expect free of charge.
77. The Tribunal, after considering all the available evidence determined that the rent registered by the Rent Officer was not a fair rent and that a fair rent for 2 Craigmyle Cottages, Torphins, Aberdeenshire was £ 5100 per annum being £ 425 per month.
78. In reaching this decision the Tribunal had regard to all of the requirements of section 48 of the 1984 Act.

D. Bartos

SignedDate: 22December 2018.....

David Bartos, Chairperson