

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/22/0972

1/1, 63 Kent Road, Glasgow, G3 7EG ('the Property')

The Parties:

Glasgow West Housing Association ('the Landlords')

Mrs Margaret Smith ('the Tenant')

Tribunal members:

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

1. BACKGROUND

The Tenant has been a tenant of this property since 1977. The tenancy is a regulated tenancy in terms of the Rent (Scotland) Act 1984. The current rent is £3889.41 per annum (£324.12 per month). The Landlords applied for the rent to be increased to £5595.67 per annum (£466.31 per month). The Rent Officer registered a rent of £4705.76 per annum (£392.15 per month) with effect from 19th March 2022. The Landlords referred the determination to the First tier Tribunal.

2. DIRECTION

The Tribunal sent the parties a Direction dated 23rd August 2022. 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 details of eleven comparable properties being advertised for lease within Glasgow G3 postcode area and also thirteen fair rent properties within Glasgow G3 postcode area 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 26th August 2022.

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

Nicola Carrigan, the Landlords' tenancy manager, sent the Tribunal administration an email dated 26th August 2022 and advised as follows:

'During another recent hearing I was advised to only use immediately local comparable properties. I did not make comparisons to privately let tenancies, and did not make comparisons to properties which were out-with the immediate/postal area. Accordingly, I agree that the following within the list are appropriate to use as comparison: 201 Kent Road 2/1 60 Dorset Street 3/2 6 Breadalbane Street 1/1 37 Beltane Street 1-2 4 Breadalbane Street 2/2 30 Derby Street 1/1. I also included within my own document a property which I considered comparable, that being 79 Kent Road 2/1. As this is not included in the comparables document, I would ask that this is also considered.'

The details of 79 Kent Road 2/1. G3 7EG are as follows: 4 rooms, kitchen, bathroom with full suite. Full central heating. Registered on 23 Feb 2021 at £6,548.04.

The Landlords also clarified that the services they provide for the block 63 Kent Road are as follows:

24x hard surface brushes

3x week killing visits

2x de-moss path visits

24x litter pick visits

2x power wash

Weekly Bulk removal as necessary

Monthly Bin store clean

Total cost for service = £661.94 per annum

Monthly charge to tenants = £5.01 per month, or £60.12 annually

3. THE INSPECTION

On the morning of 24th November 2022 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 first floor flat in a 4 storey traditional sandstone tenement which dates from the 18th century and is located around 1 mile west of Glasgow city centre. There is a door entry system to the tenement that was working correctly.

The accommodation comprises living room with small open plan kitchen area, two double bedrooms, bathroom, main hallway (with two cupboards off). The internal floor area is approximately 53 square metres. The bathroom is "internal" with no natural light, it has a 3 piece white suite, there is no shower. The kitchen has a stainless steel sink and basic modern fittings.

There is a gas central heating system in the Property with new combination boiler installed by the landlord in 2019. The windows throughout the Property are UPVC double glazed windows. The Tenant provided the carpets and floor coverings throughout the Property and all white goods. No furniture has been provided by the Landlords.

The Property is conveniently situated for public transport and local services. There is on-street parking available opposite the Property.

The services provided by the Landlords are as follows:

24x hard surface brushes

3x weed killing visits

2x de-moss path visits

24x litter pick visits

2x power wash

Weekly Bulk removal as necessary

Monthly Bin store clean

Total cost for service = £661.94 per annum

Monthly charge to tenants = £5.01 per month, or £60.12 annually

The Tenant confirmed that the details of the services are correct.

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

4. THE HEARING

Both the Tenant and the Landlords' representative Nicola Carrigan attended the conference call hearing which took place at 1pm on 24th November 2022.

Nicola Carrigan advised the Tribunal as follows:

- She confirmed the correct position of the flat at 79 Kent Road, Glasgow that is listed as a comparable property is flat 0/1. However, on reflection she no longer considered this to be comparable as it is a much larger three bedroom property.
- She acknowledged that 3/2, 201 Kent Road, Glasgow, G3 7HD; 3/2, 60 Dorset Street, Glasgow, G3 7AJ; 1/1, 6 Breadalbane Street, Glasgow, G3 7BN and 2/2, 4 Breadalbane Street, Glasgow, G3 7BN have separate kitchens and consequently are not directly comparable with the subject Property.
- She acknowledged that 1/2, 37 Beltane Street, Glasgow, G3 7AH and 1/1, 30 Derby Street, Glasgow, G3 7TG are one bedroom flats and consequently are not directly comparable with the subject Property.
- In relation to the evidence of market rents provided by the Tribunal she did not consider them to be useful comparisons as the rents are higher than rents charged by social landlords. She also explained that the particular properties detailed on the list of comparable market rents provided by the Tribunal are not directly comparable with the subject Property. Most of the properties are modern properties. The two traditional tenement properties listed are not directly comparable to the subject Property as they are not comparable sizes to the subject Property. 16 Blantyre Street, Glasgow is a one bedroom property and 2/3, 68 Kent Road, Glasgow, G3 is a much larger style property and the accommodation includes a dining kitchen.
- In connection with scarcity of supply of rental properties in the locality of the subject Property she believes that the level of scarcity is very high. There are very few properties available to lease and there is an unprecedented demand. Glasgow West Housing Association has ten applicants for every house that they have available for lease.

The Tenant did not make any material oral representations to the Tribunal.

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, already detailed.

5.3 Rental evidence sent to the parties with the Direction dated 23rd August 2022:

5.3.2 Details of eleven comparable properties being advertised for lease within postcode area G3 :

Address	Accommodation	Rent requested	Furnished	Other details	Advertised
Overnewton Street G3	1 Bedroom, Living Room with dining area, kitchen and Bathroom	£695 pcm (8,340 pa)	Unfurnished	Modern 4 storey development, double glazing, modern fitted kitchen with white goods	Cairn Letting Added 4 August 2022 Removed from website - probably let
Dorset Street G3	1 Bedroom, Living room, Kitchen, Bathroom	£695 pcm (8,340 pa)	Unfurnished	Lower ground floor/main door flat in 5 storey modern development, double glazing, modern fitted kitchen with appliances, electric heating	Now let
St Vincent Street G3	1 Bedroom, Living Room with dining area, kitchen and Bathroom	£775 pcm (9,300)	Unfurnished	Modern 4/5 storey development, electric heating, modern fitted kitchen with white goods, communal landscaped gardens	Glasgow Property Letting Available August 2022
Elliot Street G3	1 Bedroom, Living Room, Hall with dining area, Kitchen, Bathroom	£865 pcm (10,380 pa)	Unfurnished	Ground floor flat in modern 3/4 storey development, electric heating, modern fitted kitchen with integrated appliances, double glazing, communal landscaped gardens	D.J. Alexander Available August 2022

Address	Accommodation	Rent requested	Furnished	Other details	Advertised
16 Blantyre Steet G3	1 Bedroom, Living Room with open plan Kitchen, Bathroom	£750 pcm (9,000)	Furnished	Traditional tenement, double glazing, internal bathroom, modern fitted open plan kitchen with white goods	Property Bureau Added 22 June 2022 Removed from website - probably let.
Kent Road G3	1 Bedroom, Living Room with dining area, Kitchen, Bathroom	£910 pcm (10,920 pa)	Furnished	2nd floor flat in modern 4 storey development, lift access, electric heating, modern fitted kitchen, secure non-allocated parking to rear	Added by agent 1 August 2022
42 Elderslie Street G3	1 Bedroom, Living Room, Kitchen, Bathroom	£795 pcm (9,540 pa)	Newly Furnished	Modern 4 storey development, electric heating, modern fitted kitchen, white goods, single glazed, private parking TBC	KPM Residential Available 22 August 2022
Dorset Street G3	1 Bedroom, Living Room, Kitchen, Bathroom	£840 pcm (10,080 pa)	Furnished	Top floor flat in 4 storey modern development, electric heating, modern fitted kitchen with white goods	Martin and Co Added 25 July 2022 Let agreed
Kent Road G3	2 Bedrooms (one described as small study), Living Room with Dining area, Kitchen, Bathroom	£750 pcm (9,000 pa)	Unfurnished	Attic flat in modern 4 storey development, lift access, electric heating, double glazing, modern fitted kitchen, white goods	Harvey Lets Available 16 August 2022

Address	Accommodation	Rent requested	Furnished	Other details	Advertised
2/3, 68 Kent Road G3	2 Bedrooms, Living Room, Dining Kitchen, Bathroom	£1,100 pcm (13,200 pa)	Part furnished	Traditional tenement, very large rooms, south facing, modern fitted kitchen, gas central heating original features, log burner	Ben Property August 2022 - Removed from market due to excessive demand - viewings on 19 August
Berkeley Street G3	2 Bedrooms, master en-suite shower room Living Room with dining area, Kitchen, Bathroom	£1,195 pcm (14,340)	Furnished	4th Floor of 6 storey modern development, gas central heating, double glazed, large modern fitted kitchen, white goods, lift access, private underground parking space	Tay Letting Available September 2022

5.3.3 Details of 13 Fair rent properties within G3 from the Fair Rent eRegister.

Address	Building Type/ Age	Rooms	Effective Date	Rent	Noted Services	Furniture	CH	LL
Subjects: 1/1, 63 Kent Road, Glasgow G3 7EG	Tene ment pre 1919	3 Rooms 2, Living-Kitchen, Bathroom, Full suite	19/03/2022	£4705.76 pa	£60.24	None	Ful l	Glasg ow West HA Ltd
3/2, 201 Kent Road, Glasgow, G3 7HD	Tene ment pre 1919	3 Rooms 3, Kitchenette, Bathroom, Full suite	24/03/2021	£4673.18 pa	None	None	No ne	Glasg ow West HA Ltd

Address	Building Type/ Age	Rooms	Effective Date	Rent	Noted Services	Furniture	CH	LL
3/1, 1172 Argyle Street, Glasgow, G3 8TE	Tene ment, pre 1919	3 Rooms 3, kitchenette, Bathroom, full suite, yard shared	26/04/2021	£5071.46 pa	£81.36	None	Full	Glasgow West HA Ltd
3/2, 60 Dorset Street, Glasgow, G3 7AJ	Tene ment, pre 1919	3 Rooms 3, Kitchen, Bathroom, Full suite	26/04/2021	£5075.18 pa	£85.08	None	Full	Glasgow West HA Ltd
1/1, 6 Breadalbane Street, Glasgow, G3 7BN	Tene ment, pre 1919	3 Rooms 3, Kitchen, Bathroom, Full suite	17/05/2021	£4990.10 pa	£79.32	None		Glasgow West HA Ltd
1/2, 37 Beltane Street, Glasgow, G3 7AH	Tene ment, pre 1919	2 Rooms 2, Living-Kitchen, Bathroom, Full suite, yard shared	02/06/2021	£3572.38 pa	£57.36	None	Full	Glasgow West HA Ltd
2/2, 4 Breadalbane Street, Glasgow, G3 7BN	Tene ment, pre 1919	3 Rooms 3, Kitchen, Bathroom, Full suite	22/06/2021	£5095.34 pa	£105.24	None	Full	Glasgow West HA Ltd
1/1, 30 Derby Street, Glasgow, G3 7TG	Tene ment, pre 1919	2 Rooms 2, Kitchen, Bathroom, Full suite, yard shared	21/09/2021	£5100.00 pa	None	None	Full	The Nortic Trust
2/2, 1359 Argyle Street, Glasgow, G3 8AD	Tene ment, pre 1919	2 Rooms 2, Kitchen, Bathroom, full suite	28/09/2021	£4632.20 pa	£120.00	None	Full	Yorkhill Housing Association
1/1, 35 Regent Moray Street, Glasgow, G3 8AL	Tene ment, pre 1919	2 Rooms 2, Kitchen, Bath/shower-room, full suite, garden shared	28/09/2021	£3738.68 pa	None	None	Full	Yorkhill Housing Association

Address	Building Type/ Age	Rooms	Effective Date	Rent	Noted Services	Furniture	CH	LL
1/1, 16 Regent Moray Street, Glasgow, G3 8AQ	Tene ment, pre 1919	3 Rooms 3, Kitchen, Bathroom, full suite, yard shared	01/10/21	£4576.16 pa	£63.96	None	Full	Yorkhi ll Housi ng Assoc iation
2/2, 30 Baliol Street, Glasgow, G3 6UU	Tene ment pre 1919	3 Rooms 3, Kitchen, Bathroom, Full suite	03/12/20 21	£4606.39 pa	£81.24	None	Full	Chari ng Cross Housi ng Assoc iation
1/2, 27 St Vincent Crescent, Glasgow, G3 8LQ	Tene ment pre 1919	2 Rooms 2, Kitchenette, Bathroom, Full Suite	09/03/20 22	£3704.10 pa	£49.92	None	Full	Glasg ow West HA Ltd
2/2, 12 Hastie Street, Glasgow, G3 8AE	Tene ment pre 1919	3 Rooms 3, Kitchenette, Bathroom, Full Suite, yard shared	24/03/20 22	£3803.14 pa	None	None	Full	Yorkhi ll Housi ng Assoc iation

5.3.4 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 case of *Wright v Elderspark 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.

5.3.5 The Tribunal considered the evidence of registered rents in the Fair Rent Register.

Address		The Tribunal's comments on how similar the properties are to the subject Property.
3/2, 201 Kent Road, Glasgow, G3 7HD	£4673.18 pa	The Tribunal consider this property to be reasonably comparable with the subject Property, but it could be slightly larger.
3/1, 1172 Argyle Street, Glasgow, G3 8TE	£5071.46 pa	The Tribunal consider this property to be reasonably comparable with the subject Property, but it could be slightly larger and is situated closer to the west end area than the subject Property which results in the property being not directly comparable to the subject Property.
3/2, 60 Dorset Street, Glasgow, G3 7AJ	£5075.18 pa	The Tribunal find that this property is larger than the subject Property as it has a separate kitchen.
1/1, 6 Breadalbane Street, Glasgow, G3 7BN	£4990.10 pa	The Tribunal find that this property is larger than the subject Property as it has a separate kitchen.

Address		The Tribunal's comments on how similar the properties are to the subject Property.
1/2, 37 Beltane Street, Glasgow, G3 7AH	£3572.38 pa	The Tribunal find that this property is not directly comparable with the subject Property as it has one bedroom.
2/2, 4 Breadalbane Street, Glasgow, G3 7BN	£5095.34 pa	The Tribunal find that this property is larger than the subject Property as it has a separate kitchen.
1/1, 30 Derby Street, Glasgow, G3 7TG	£5100.00 pa	The Tribunal find that this property is not directly comparable with the subject Property as it has one bedroom.
2/2, 1359 Argyle Street, Glasgow, G3 8AD	£4632.20 pa	The Tribunal find that this property is not directly comparable with the subject Property as it has one bedroom.
1/1, 35 Regent Moray Street, Glasgow, G3 8AL	£3738.68 pa	The Tribunal find that this property is not directly comparable with the subject Property as it has one bedroom.
1/1, 16 Regent Moray Street, Glasgow, G3 8AQ	£4576.16 pa	The Tribunal find that this property is larger than the subject Property as it has a separate kitchen.
2/2, 30 Baliol Street, Glasgow, G3 6UU	£4606.39 pa	The Tribunal find that this property is significantly larger than the subject Property as it has a separate kitchen. The EPC register details the property size as 94 square metres.
1/2, 27 St Vincent Crescent, Glasgow, G3 8LQ	£3704.10 pa	The Tribunal find that this property is not directly comparable with the subject Property as it has one bedroom.

Address		The Tribunal's comments on how similar the properties are to the subject Property.
2/2, 12 Hastie Street, Glasgow, G3 8AE	£3803.14 pa	The Tribunal find that this property is similar size to the subject Property. The EPC register details the property size as 55 square meters. However, the property is closer to the west end area than the subject Property which results in the property being not directly comparable to the subject Property.

The Tribunal found the evidence of comparable fair rents not to be particularly consistent. They gained most assistance from the comparable evidence of the property 3/2, 201 Kent Road, Glasgow but when comparing the features of the property with the subject Property recognised that services are included in the rent of the subject Property. The Tribunal determined that the comparable fair rent of the subject Property is **£4705.76** per annum inclusive of services.

5.3.6 The Tribunal also considered the evidence of market rents.

The annual rents of the properties advertised on the s1 Homes, rightmove and cylets web sites range from £8340 to £14340 per annum. All of these comparable properties (apart from 16 Blantyre Street, Glasgow and 2/3, 68 Kent Road, Glasgow) are modern properties which the Tribunal considered would be leased in good decorative order, probably with fully fitted kitchens, white goods and all floor coverings provided by the landlords. They are also likely to have fully fitted bathrooms with shower facilities. Some may also have private parking. The Tribunal did not consider these properties to be directly comparable with the subject Property as they are modern properties and therefore the Tribunal gained little assistance from this evidence.

The property at 16 Blantyre Street, Glasgow is a one bedroom property and consequently the Tribunal gained little assistance from this comparison.

The property 2/3, 68 Kent Road, Glasgow is a much larger style property with a separate dining kitchen and is partly furnished. Consequently, the Tribunal gained little assistance from this comparison.

5.3.7 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 comparable fair 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.

5.3.8 The Tribunal determine that the fair rent for the property is £4705.76 per annum, inclusive of services (which are less than 5% of the rent).

In reaching this decision the committee have had regard to all the considerations required to be taken into account in terms of Section 48 of the Rent (Scotland) Act 1984.

This decision takes effect from the 24th November 2022.

6. Appeals

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

J Taylor

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Chairperson

29th November 2022