

Housing and Property Chamber
First-tier Tribunal for Scotland



Rent (Scotland) Act 1984

Notification Of Decision

REFERENCE NO.	OBJECTION RECEIVED	OBJECTION
FTS/HPC/RR/17/0002	5 January 2017	Tenant

ADDRESS OF PREMISES

24 Bread Street (2F4), Edinburgh, EH3 9AF

TENANT

Miss Catherine Scott

NAME AND ADDRESS OF
LANDLORD

AGENT

Scottish Midland Co-Operative
Society Ltd
Hillwood House, 2 Harvest Drive,
Newbridge, EH28 8QJ

DESCRIPTION OF PREMISES: Second floor flat in 4 storey and attics tenement with retail shops on ground floor and 16 flats on upper floors. Approximately 125 years old, of traditional grey sandstone construction with pitched roof. Accommodation comprises living room/kitchen, double bedroom and bathroom. Gas central heating with combi-boiler. Single glazed sash and casement windows. In mixed residential and commercial (mainly retail) area close to city centre, with local shopping and amenities
Remarks: kitchen is not fitted and white goods and floorcoverings not provided by landlord. No shower or shower attachment.

SERVICES PROVIDED

None

TRIBUNAL MEMBERS: George Clark (Legal Member) Mike Links (Ordinary Member)

FAIR RENT	DATE OF DECISION	EFFECTIVE DATE
£ 5,580.00 p.a.	7 April 2017	7 April 2017

G Clark

Chairperson of tribunal

Date 7 April 2017

Housing and Property Chamber First-tier Tribunal for Scotland



STATEMENT OF REASONS

PROPERTY: 24(2F4) BREAD STREET, EDINBURGH EH3 9AF

Chamber Reference: FTS/HPC/RR/17/0002

INTRODUCTION

1. This is a reference to the Housing and Property Chamber of the First-tier Tribunal for Scotland for the determination of a fair rent under the Rent (Scotland) Act 1984 by the tenant, Miss Catherine Scott ("the tenant") in relation to 24(2F4) Bread Street, Edinburgh EH3 9AF. The landlords are Scottish Midland Co-Operative Society Limited, having a place of business at Hillwood House, 2 Harvest Drive, Edinburgh EH28 8QJ ("the landlords").
2. The registered rent paid by the tenants in respect of property was £3,600 per year. The landlords applied for rent of £7,140 per year for the property. The Rent Officer determined a rent of £5,655 per year. The tenant referred the Rent Officer's determination to the Housing and Property Chamber of the First-tier Tribunal for Scotland.
3. The tenant was present at the inspection and the subsequent hearing. The landlords were not present or represented at the inspection or the hearing.
4. The Tribunal comprised George Clark (Legal Member) and Mike Links (Ordinary Member).

THE DOCUMENTATION

5. The Tribunal considered all the documents referred to it by the parties, namely the landlords' Application for Registration of a Rent dated 13 October 2016, the Rent Officer's determination dated 13 December 2016, the tenant's letter to the Rent Officer of 21 December 2016 and the tenant's written representations to the Tribunal, received on 1 February 2017. The landlords did not make any written representations to the Tribunal.

THE INSPECTION

6. The inspection took place on 16 March 2017. The Legal Chair of the Tribunal introduced the Tribunal to the tenant and the Tribunal proceeded to inspect the property.

DESCRIPTION OF THE PROPERTY

7. The property forms part of the second floor within a four storey and attics tenement building containing, on the ground floor, retail shop units and, on the upper floors, 16 residential flats. The building is approximately 125 years old and is of traditional construction having 600mm solid grey sandstone walls and a pitched roof, presumably covered in slates or tiles. There is a small drying area to the rear.

8. The accommodation comprises a living room/kitchen, double bedroom and bathroom. There is gas central heating with a combi boiler also providing hot water, and a gas fire in the living area. The system was installed by the tenant under a Scottish Government incentive scheme and at no cost to the tenant. The age of the electrical wiring is unknown, but there is a modern consumer unit. The kitchen area contains a small number of floor units and wall units, a free standing cooker, supplied by the landlords and a washing machine supplied by the tenant. The linoleum in the kitchen area was supplied by the landlords, but the carpets and other floorcoverings were supplied by the tenant. The bathroom is dated and contains a bath, wash hand basin and toilet. There is no shower or shower attachment. The windows are single glazed and of timber sash and casement type. The external frames are in poor condition and require to be re-painted and pointed. The decoration inside the property is fair, but there is evidence of movement having caused a "draw" in the wallpaper due to structural movement at the joint of the rear wall and internal division wall. In addition, some of the floors are off-level. This movement is likely to be the result of historic settlement in the building. The Tribunal noted that there is no smoke detector in the living room of the property and no heat detector in the kitchen area.
9. The property is let unfurnished.
10. The property is located in a mixed residential and commercial (largely retail) area close to The Usher Hall, Royal Lyceum Theatre and Princes Street in Edinburgh's city centre, with additional local shopping and other amenities and good bus transport nearby.
11. The gross internal floor area of the property is 44 square metres or thereby.

THE HEARING

12. The hearing took place at George House, 126 George Street, Edinburgh. The tenant told the Tribunal she had appealed the decision of the Rent Officer because the rent increase proposed by the landlord and decided by the Rent Officer represented a very large increase on the rent she was currently paying. She was aware that a tenant had moved in to a top flat in the building in August 2016 and was paying £600 per month, but that flat had a fully fitted kitchen and a separate living room and fitted wardrobes, and the white goods were supplied by the landlords.
13. The tenant told the Tribunal that she had moved in to the property in early 1990. Prior to that, she had lived in another flat on the same floor of the building. The landlords owned the whole tenement and the tenants had been decanted while upgrading works were carried out, the tenant returning in early 1990, but not to her original flat. The landlords had told her in a recent conversation, that, so far as they were concerned, her house was let as an empty shell. She was responsible for decoration and had taken advantage of a Scottish Government scheme to have central heating installed. The landlords had had no involvement with the application and the central heating engineers had fitted the new electrical consumer unit at that time.

DECISION AND REASONS

14. In terms of section 48(1) of the Rent (Scotland) Act 1984, as amended, the duty of the Tribunal when determining what rent would be a fair rent under a regulated tenancy, is to:-

"have regard to all the circumstances, (other than personal circumstances), and, in particular, to apply their knowledge and experience of current rents of other 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, to the quantity, quality and condition of the furniture".

15. Disrepair or defects attributable to the tenant should be disregarded, as should any improvements made by the tenant, otherwise than in pursuance of the terms of the tenancy (section 48(3)). Improvements by the landlord should be taken into account. In reaching its determination, the Tribunal complied with its duty as set out above.
16. The Tribunal considered carefully all the evidence presented, together with the observations made by the tenant at the hearing. In particular, the Tribunal considered carefully which of the three alternative methods of ascertaining a fair rent was most appropriate in this case.
17. The three accepted methods used in Scotland are;-
 - (a) determining a fair rent by having regard to registered rents of comparable houses in the area;
 - (b) taking market rents and then discounting for any scarcity element and making any appropriate disregards as required by section 48(3), or;
 - (c) calculating the appropriate return based on the capital value of the property, taking into account the element of scarcity. None of these methods is regarded as being the primary method, and the method chosen by the Tribunal will depend in each case upon the evidence available.
18. The Tribunal was aware of the need to proceed on the basis of the best available evidence, using other available evidence as a check where possible. There was no evidence available to the Tribunal of registered rents of comparable properties in the area and the Tribunal determined that the best method to choose was to look at market rents and make appropriate disregards. The Tribunal was not persuaded that return based on the capital value of the property was the appropriate method to use in relation to a regulated tenancy.
19. The Tribunal had available to it the rental figures being sought for a number of one-bedroom flats in the area. They ranged from £595 per calendar month ("pcm") to £650 pcm, but all of them were in a fully modernised condition, with fitted kitchens and with white goods and floorcoverings supplied by the landlords and most of them had a separate kitchen and living room. The Tribunal was of the view that the market rental for a fully modernised, one bedroom flat with a living room/kitchen in the area of the property was £600 pcm.
20. The concept of scarcity is an essential feature of the fair rent scheme under the Rent (Scotland) Act 1984. It is contained within section 48(2) of that Act. The principle behind the inclusion of this section was that tenants "*in a situation of scarcity of supply*" (in other words, where there are more prospective tenants than available houses) should be protected from market forces. It is this factor that distinguishes a fair rent under the 1984 Act from an open market rent. Section 48(2) requires that a neutral market with no scarcity of houses be assumed. In that situation, prospective tenants can be assumed to be willing to pay only what the property is worth, with no additional premium being paid in order to secure a property that is difficult to come by. If that situation does not exist, and there is a shortage of houses, (thus artificially pushing up rents) then section 48(2) requires that the tenant be protected from the financial implications of that.
21. The Tribunal considered whether any discount should be made for scarcity in this case, but was satisfied that in the central Edinburgh area as a whole, there could not be said to be scarcity of similar properties to let at the present time and neither party had presented evidence to the Tribunal that demand for properties in the area substantially exceeded supply. The Tribunal was satisfied that no deduction required to be made in relation to scarcity for this type of property at this point in time.
22. The Tribunal noted the comments made by the tenant in her written representations. She stated that the property had not benefitted from any investment or upgrading since the rent had last been set in November

2013. At that time, the rent had been increased from £262.50 to £300 pcm, which she had considered a more realistic and reasonable increase. The flat had not been upgraded to the standard of other flats in the stair and there were various items of disrepair. The Tribunal also noted that the tenant's primary concern was the level of increase being proposed, but was of the view that it had to assess the matter by paying due regard to the rents passing in similar flats in the area, discounting appropriately to take account of the condition of the property.

23. Accordingly, having taken all relevant factors into account, the Tribunal determined that a Fair Rent for the property was **£5,580.00** per year (£465 pcm). In reaching this decision, the Tribunal had regard to all the evidence presented to it, and to all the circumstances that must be taken into account in terms of section 48 of the Rent (Scotland) Act 1984.

G Clark

Signed

George Clark, Solicitor

Legal Chair

Housing and Property Chamber of the First-tier tribunal for Scotland

7 April 2017