



PRIVATE RENTED HOUSING PANEL

RENT (SCOTLAND) ACT 1984

Notification Of Decision By The Private Rented Housing Committee

REFERENCE NO:	OBJECTION RECEIVED	OBJECTION
RAC/G40/602	15 October 2007	Landlord

ADDRESS OF PREMISES

2/3, 24 Dalmarnock Road, Bridgeton, Glasgow, G40 4AA

TENANT

Mr M McLaughlin

NAME AND ADDRESS OF LANDLORD

RS Gillies

AGENT

Hacking & Paterson
1 Newton Terrace
Glasgow
G3 7PL

DESCRIPTION OF PREMISES

Second floor traditional tenement flat circa 1900 comprising two rooms kitchen and dark shower room with w.c.

SERVICES PROVIDED

None

COMMITTEE MEMBERS

CHAIRMAN
PROFESSIONAL MEMBER
LAYMEMBER

Mrs I Montgomery BA(Hons) NP
Mr M Links FRICS
Mr C Harvey MA

FAIR RENT	DATE OF DECISION	EFFECTIVE DATE
£ 2700.00 p.a.	7 December 2007	7 December 2007

I Montgomery

Chairman of Private Rented Housing Committee

7th December 2007.

Date

PRIVATE RENTED HOUSING COMMITTEE

STATEMENT OF REASONS

INSPECTION AND HEARING: -7th December 2007

PROPERTY: -2/3, 24 DALMARNOCK ROAD, BRIDGETON,
GLASGOW G40 4AA.

INTRODUCTION

1. The Committee comprised Mrs. I.R. Montgomery (Chairman), Mr. M. Links (Surveyor) and Mr. C. Harvey (Lay member). The landlord is R.S Gillies, who is represented by Hacking and Paterson, 1 Newton Terrace, Glasgow G3 7PL. The tenant is Mr. M. McLaughlin. This reference to the Private Rented Housing Committee for the determination of a Fair Rent under the Rent (Scotland) Act 1984 in respect of the second floor traditional tenement flat at 2/3, 24 Dalmarnock Road, Bridgeton arises from dissatisfaction on the part of the landlord.
2. The previous rent was £1,700.00 per annum. The landlord applied for a rent of £2,150.00 per annum. The rent determined by the Rent Officer was £1,850.00 per annum. By letter dated 31st October 2007 the landlord's agents intimated to the Panel that they now consider a rent of £2,700.00 per annum should be registered.

DESCRIPTION OF THE PROPERTY

3. On the morning of the 7th December 2007, the Committee inspected the property which comprised a second floor traditional tenement flat. The tenement building was built around 1900, and is located in a mixed residential/commercial area with good access to shopping and transport. There are shop premises on the ground floor. The tenement building is of four storey red sandstone construction. Externally, the building appeared to be in a reasonable state of repair and the stonework has been pointed. There has been settlement over the years but this appeared to be historic rather than

recent. Weeds could be seen in some of the gutters but this did not appear to have had any adverse effect upon the building itself. The roof is probably tiled, (as is the building adjacent to it) but this was not visible from street level. There is a door entry system at the front of the building which was operational at the time of the inspection.

4. The accommodation extends to two rooms, a small dark kitchen and dark shower-room. The property has no central heating and is single glazed throughout. The tenant complained of the windows being draughty. The lounge is of good size with a triple bay window. The tenant has supplied a gas fire. The bedroom is a good sized double bedroom with one large window. It has built-in wardrobes supplied by the landlord and has the advantage of a small boxroom leading from it, which could be used as a dressing room or for storage. This boxroom also has a window. It has the potential for conversion to a small en-suite bath or shower room. The kitchen is small and dark with basic cupboards and units provided by the landlord. The tenant has added additional more modern cupboards. The shower room is small and the tenant has upgraded the shower which was supplied by the landlord. The tenant has provided his own heater. The flat was in good decorative order throughout and the tenant has provided his own flooring. There is a raised asphalted back court at first floor level which was tidy at the time of inspection.

5. The landlord was not represented at the inspection.

DOCUMENTATION

6. In addition to the Inspection Report, case summary sheet and extract from the Rent Register, the Committee also considered:
 - a) Form RR1 dated 25th June 2007;
 - b) Letter from Hacking and Paterson dated 2nd October 2007;

- c) Notification from the Scottish Executive of a Fair Rent appeal, dated 4th October 2007;
- d) Written representations from the tenant dated 17th October 2007;
- e) Letter from Hacking and Paterson dated 31st October 2007 enclosing written representations;
- f) List of recently registered rent decisions provided by the clerk plus details of these properties.

HEARING

7. The tenant did not attend the hearing but was represented by his two nieces, Mrs. Rose Docherty and Mrs. Sally O'Neill. The landlord did not attend the hearing and was not represented.

8. Mrs. O'Neill advised the Committee that she lived next door to the property now under consideration in a two bedroom flat which she rents for the sum of £240 per month. She advised the Committee that her rent has stayed the same for eight years. She produced a copy of her Tenancy Agreement which shows a date of entry of 1st November 1998. She stated that her property has double glazing and, although the property does not have central heating, her landlord supplies heaters. She expressed the opinion that her flat is in a better state of repair than the flat now being considered. She confirmed that she had no personal connection with her landlord. Mrs. Docherty advised that she resides at 3/2 24 Dalmarnock Road, which is one floor above the flat under inspection, and has the same landlord as the tenant in this case. Hacking and Paterson are the agents for her property also. She stated that she is paying £200 per month for a flat which is similar to the flat now under consideration, except that her flat has one extra bedroom. She also has the benefit of a regulated tenancy. Her flat has no double glazing or central heating. Her rent has also stayed static for some years. Mrs. O'Neill and Mrs. Docherty were aware of another house similar to the property now being considered but with a bigger kitchen, which was rented from a Housing Association. The Housing

Association had fixed the rent at £167 per month. They also knew of another property on the same landing as the tenant's flat, which is being leased for £250 per month. That flat was said to be bigger and has the benefit of a large bathroom with a bath. It also has central heating but no double glazing. This rent has also remained unchanged for the past four years.

THE DECISION

9. In terms of section 48(1) of the 1984 Act, the duty of the Committee 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"*. 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)). There were no such defects in this particular case, nor was any furniture provided. Improvements by the landlord are taken into account. In reaching its determination, the Committee complied with its duty as set out above.

10. The Committee considered carefully all the evidence presented, together with the observations made by the Committee members at the inspection. In particular, the Committee considered carefully which of the three alternative methods of ascertaining a fair rent was most appropriate in this case. 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 Committee will depend in each case upon the evidence available. In this case, neither party produced any evidence as to capital values or registered rents of comparable houses. Mrs Docherty and Mrs O'Neill did, however, provide oral evidence, supported by the evidence of Mrs O'Neill's Tenancy Agreement, as to other rents passing for similar properties in the same area.

11. Mindful of the observations by the Lord President in **Western Heritable Investment Co. Ltd v Hunter (2004)**, the Committee was aware of the need to proceed on the basis of the best available evidence, using other available evidence as a check where possible. In this case, the addresses of three possible comparable properties had been provided by the clerk. These properties were, however, located in a different area of Glasgow and the Committee did not regard these properties as being useful comparables.

12. The Committee considered carefully the evidence of Mrs O'Neill and Mrs Docherty. We considered both these witnesses to be credible and reliable witnesses, and we accepted their evidence as to the rents which were passing for other properties in the same tenement building. However, the rents being charged had remained static for some years, and indeed had remained static for as long as eight years in the case of the property rented by Mrs O'Neill. The tenants of all of the properties described by Mrs O'Neill and Mrs Docherty were in the fortunate position of having their rents held at figures set some years ago and these rental figures did not represent useful comparables for the purposes of valuing a fair rent for the property in question at this point in time. The Committee decided that these rents could not be used as comparable registered rents, nor were they useful indicators of market rents at the present time. These rents have remained artificially low because, for whatever reason, the landlords have chosen not to seek an increase. They are not representative of the current rental market. The

exception to this was the property which had its rent fixed by a Housing Association. However, Housing Associations work on a not-for-profit basis and rents charged by Housing Associations do not equate to an open market rent. This property also had to be rejected as not being a useful comparable.

13. Looking at all the evidence, the Committee concluded that the best method to adopt in this case was taking market rents and then discounting for any scarcity element and making any appropriate disregards as required by section 48(3). Section 48(3) requires that defects or issues of disrepair caused by the tenant, or improvements carried out by the tenant should be disregarded when valuing the property for the purpose of fixing a Fair Rent. This is because the tenant is not entitled to benefit from defects in the property for which he or she is responsible, and nor should he or she be penalised for improvements he or she has made. There were no issues of disrepair attributable to the tenant in this case and no furniture is provided. The Committee ignored the improvements made by the tenant when proceeding to value this property.

14. The Committee had knowledge of other properties available for rent in the same area as this property, including a property at 805 Dalmarnock Road, Glasgow G40 4QB which was very similar to the property now under consideration. This property comprises lounge, hall, kitchen, double bedroom and shower room and is supplied with no white goods other than a cooker. It has no double glazing or central heating. It is of a similar age and type of construction located within the general vicinity of the property now under consideration. The rent being asked is £285 per month. The property has only just come onto the market and is not available for let until 5th January 2008. The Committee were mindful of the fact that rents asked for are not always achieved, but using their knowledge and experience of the property market in the area, the Committee considered this asking price to be realistic. Furthermore, the Committee took the opportunity to seek information

regarding the local rental market from the Letting Agents who occupy one of the shop units directly below the flat in question. The information provided indicated that the achievable rent for a property of similar size to the property now under consideration would be in the region of £360 per month, provided it was fully equipped with white goods (washing machine, fridge/freezer and cooker) and a working smoke alarm. Without white goods the achievable rental figure would drop to about £275 to £300. This information was consistent with the figure being asked for 805 Dalmarnock Road. The Committee therefore accepted £285 per month as a realistic assessment of the market rent for a property of the same size and general location as the flat now under consideration at this point in time.

15. The Committee did not, however, consider that the flat now under consideration would achieve a market rent of £285 per month in the condition in which it must be assessed. The flat being considered is not supplied with any white goods, not even a cooker. Disregarding the tenant's improvements, means that what is being valued is a property without white goods or floor coverings, with a basic shower and very basic kitchen cupboards. The Committee considered that there would be considerable market resistance to such a property. We accordingly assessed the market rent for the property *in the condition at which it must be valued* as £225 per calendar month. That equates to an annual figure of £2,700. The Committee then proceeded to consider whether any further deductions required to be made in terms of section 48(2) (the factor commonly referred to as "scarcity").

16. 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.

17. The Committee considered whether any discount should be made for scarcity in this case, but was satisfied that in the area of Glasgow as a whole, there could not be said to be scarcity of similar properties to let at the present time. The Committee was satisfied that no deduction required to be made in relation to scarcity for this type of property at this point in time.

18. Having taken all relevant factors into account, the Committee determined that a Fair Rent for the property was £2,700.00 per annum. In reaching this decision, the Committee had regard to all documentary and other evidence, and all the circumstances that required to be taken into account in terms of section 48 of the Rent (Scotland) Act 1984.

19. In section 49 of the Rent (Scotland) Act 1984, it is declared that the amount to be registered shall include any sums payable by the tenant for services. In this case no services are provided.

20. The effective date is 7th December 2007.

Signed . **I Montgomery**Chairman)

Date 20th December 2007