



PRIVATE RENTED HOUSING PANEL

RENT (SCOTLAND) ACT 1984

Notification Of Decision By The Private Rented Housing Committee

REFERENCE NO:	OBJECTION RECEIVED	OBJECTION
RAC/ML2/608	13 November 2007	Tenant

ADDRESS OF PREMISES

28 Pather Street, Wishaw. ML2 8BJ

TENANT

Mr T O'Connell

NAME AND ADDRESS OF LANDLORD	AGENT
Wishaw & District H.A. 55 Kirk Road Wishaw ML2 8BL	N/A

DESCRIPTION OF PREMISES

Main door flat in two storey tenement circa 1890 with double glazing and gas central heating comprising two rooms, kitchen and dark bathroom.

SERVICES PROVIDED

Communal ground maintenance, communal T.V. aerial and communal lighting.

COMMITTEE MEMBERS

CHAIRMAN	Mr R Handley LLB
PROFESSIONAL MEMBER	Mr A English FRICS
LAYMEMBER	Mr S Campbell

FAIR RENT	DATE OF DECISION	EFFECTIVE DATE
£ 3222.72 p.a. (Incl. of variable services of less than 5%)	29 February 2008	9 November 2007

R Handley

Chairman of Privat Rented Housing Committee

1 March 2008

Date

STATEMENT OF REASONS

PRIVATE RENTED HOUSING COMMITTEE

HELD ON: 29 FEBRUARY 2008

PROPERTY: 28 PATHER STREET, PATHER, WISHAW

INTRODUCTION

This is a reference to the Private Rented Housing Panel for the determination of a fair rent under the Rent (Scotland) Act 1984 by the tenant Mr T O'Connell in relation to property at 28 Pather Street, Pather, Wishaw ("the dwellinghouse"). The landlords of the dwellinghouse are Wishaw and District Housing Association Limited, 55 Kirk Road, Wishaw. The original rent paid by Mr O'Connell was £2,022.96 per annum. The landlord applied for a rent of £2,623.08 per annum. The Rent Officer determined a rent of £2,528.64 per annum. The reference arises from the dissatisfaction expressed on the part of Mr O'Connell.

THE DOCUMENTATION

The Committee had the following documents before it: the RR1 Application, the tenant's appeal letter, the Rent Register pages and written representations from Mr O'Connell and the landlord. Mr O'Connell also produced a document entitled "Review of Rent Setting Process" at the Hearing.

THE INSPECTION

Mr O'Connell was present at the inspection as was a representative of the landlord (Mr Stevenson). Both Mr O'Connell and Mr Stevenson attended a Hearing held immediately after the inspection. Mr Robert Shea, Clerk to the Private Rented Housing Panel, introduced Mr O'Connell and Mr Stevenson to the Committee.

Mr O'Connell accepted that he had no particular concerns regarding the general condition of the dwellinghouse. He explained that he had been a

tenant in the dwellinghouse for around 20 years. The dwellinghouse had been refurbished about 12 years previously. He told the Committee that the communal garden area to the rear of the dwellinghouse was well maintained and a charge was included in the rent to cover the costs of providing this service.

DESCRIPTION OF THE DWELLINGHOUSE

The dwellinghouse is a ground floor flat in a two storey row of terraced houses located at 28 Pather Street, Pather, Wishaw. It is stone built with a tiled roof and was built circa 1890. It has gas central heating and double glazing. It is located near shops, schools, churches, a community centre, public houses and the town centre.

Mr O'Connell has sole access to a small garden to the front of the dwellinghouse and shared access to a well maintained garden area at the rear of the dwellinghouse.

The dwellinghouse comprises a living room, one bedroom, a kitchen and a bathroom. The front door opens to a hallway. The living room, bedroom and bathroom are located off the hall.

The living room has a double window which overlooks the rear garden area. A gas fire has been supplied by the landlord.

The galley kitchen (off the living room) has modern units, a sink and storage cupboards. Mr O'Connell supplies the cooker. A door leads to the rear garden area.

The bathroom has a WC, wash hand basin and bath.

The electrical system throughout the dwellinghouse is modern. The dwellinghouse is in reasonable standard of repair and decorative order.

The landlord maintains the common landscaped area, a communal TV amplifier and communal lighting.

THE HEARING

As indicated Mr O'Connell and Mr Stevenson attended the Hearing. The Chairman introduced the Committee to both parties and asked Mr

O'Connell if he wished to explain to the Committee why he had made an application to the Committee and why he considered that the proposed rent was too high. Mr O'Connell told the Committee that he had been a tenant in the dwellinghouse for 20 years and prior to that had lived in another property which was also owned by the landlord. He submitted that the proposed increase in rent was well in excess of any previous increase. He referred the Committee to the document entitled "Review of Rent Setting Process" and suggested that the proposed increase was not in accordance with the criteria detailed in this document. He felt that the proposed increase was well above the rate of inflation and was unfair. The Committee asked Mr O'Connell if he had any knowledge of rents which related to similar properties in Wishaw. Mr O'Connell was unable to provide the Committee with any such information.

Mr Stevenson told the Committee that the landlords had introduced a new policy in 2004 which had been implemented in March 2005. He explained that the landlord restricted increases in their properties to £90 plus RPI plus 1%. He provided details of similar properties at 37, 39 and 64 East Hamilton Street, Wishaw (which all had an annual rent of £2,528.64) and properties at 329 and 337 and 339 Caledonian Road, Wishaw (which all had an annual rent of £2,519.04). He accepted that none of the tenants in these properties had made application to the Committee for the determination of a fair rent under the Rent (Scotland) Act 1984.

DECISIONS AND REASONS

Section 48 of the Act provides that:

(1) In determining for the purposes of this part of the Act what rent is or would be a fair rent under a regulated tenancy of a dwellinghouse, it shall be the duty of the rent officer or, as the case may be, of the Rent Assessment Panel*, subject to the provisions of this section, to have regard to all 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 dwellinghouse 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.

(2) For the purposes of the determination it shall be assumed that the number of persons seeking to become tenants of similar dwellinghouses in the locality on the terms (other than those relating to the rent) of the regulated tenancy is not substantially greater than the number of such dwellinghouses in the locality which are available for letting on such terms.

In terms of section 48 of the Rent (Scotland) Act 1984, the Committee is required to fix a rent that is or would be a fair rent under a regulated tenancy.

In Scotland there are three accepted methods of determining a fair rent. These are:

- (a) determining a fair rent by having regard to registered rents of comparables 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);
- (c) calculating the appropriate return based on capital value of the property, taking into account the element of scarcity.

None of these methods is regarded as the primary method.

No evidence was produced in relation to capital values. Given the lack of available evidence, the Committee decided it was not appropriate to proceed on the basis of capital value.

Mr O'Connell was unable to provide the Committee with specific information or evidence about comparable rents (either in the open market or under registered rents terms) which could assist the Committee determine a fair rent for the dwellinghouse. Mr Stevenson provided the Committee with details of Registered Rents of nearby properties (which were owned by the landlord) but since the rents in these properties were set using the landlord's criteria, the Committee did not feel that it was appropriate to use these properties as comparables.

The Committee considered that to establish a fair rent it was appropriate to compare open market rents and thereafter review what might be an appropriate deduction for scarcity and to make any other appropriate deductions (if any).

The Committee was of the view that there was no scarcity in relation to properties similar to the dwellinghouse in its locality. This was confirmed by the large numbers of properties available to let in local Estate Agencies, in websites such as "Lettingweb.com" and local newspapers such as "The Hamilton Advertiser". Indeed it was noted that one particular two bed roomed flat in Wishaw was offered for rent on "special offer" ie the first month's rent was half price. All these circumstances confirmed the Committee's view that there was no scarcity of properties similar to the dwellinghouse in the Wishaw area.

The Committee had details of a one bedroom flat situated close to the railway station. This was available for a monthly rent of £365. However this was a newly refurbished property. The Committee also noted that a two bed roomed flat (again close to local amenities) was available for a monthly rent of £395. However this flat was decorated and furnished. From its own experience, knowledge and from the information available on the internet and in local Estate Agents, the Committee was of the opinion that a fully furnished two bed roomed flat in Wishaw would be available for rent of around £350 per month ("the market rent").

However the Committee considered that a number of deductions should be made to take account of various factors.

Thus:

Market rent (per month)	£ 350
Less allowance **	£50
Less allowance ***	<u>£35</u>
	<u>£85</u>
	<u>£265</u>

* Now the Private Rented Housing Panel

** The Committee recognised that some prospective tenants would consider a property with furniture (regardless of condition) more desirable than an unfurnished property. Consequently the Committee considered it appropriate to take account of this factor.

*** The Committee considered it appropriate to make a further deduction in rent re a property put on the market entirely unfurnished (ie no cooker and no carpets etc).

Consequently the Committee considered that a fair annual rent for the dwellinghouse was £3,180.00. The Committee noted that the landlord provided services and that the charges for the provision of these services were apportioned amongst other tenants/residents. The Committee considered that the charge made by the landlord was reasonable (£42.72) and accordingly this sum should be added to the above. Taking into account all the circumstances which the Committee is required to take into account, the Committee concluded that a fair rent for the dwellinghouse would be £3,222.72 per year.

..... **R Handley** Chairman

..... 9/3/08 Date