

**PRIVATE RENTED HOUSING PANEL****RENT (SCOTLAND) ACT 1984****Notification Of Decision By The Private Rented Housing Committee**

REFERENCE NO:	OBJECTION RECEIVED	OBJECTION
RAC/AB12/665	4 December 2008	Tenant

ADDRESS OF PREMISES

1 Auchlunie House, Auchlunies Estate, Blairs, Aberdeen, AB12 5YS

TENANT

JP Raine Esq.

NAME AND ADDRESS OF LANDLORD

The James Gray Nicol Trust

AGENT

Bell Ingram Ltd.
17 Albert Street
Aberdeen
AB25 1XX

DESCRIPTION OF PREMISES

Semi detached cottage with outbuilding in rural setting circa 1900 with partial double glazing comprising living room, three bedrooms, kitchen, bathroom, study and store.

SERVICES PROVIDED

Garden and grounds maintenance and emptying the septic tank

COMMITTEE MEMBERS

CHAIRMAN
SURVEYOR
LAYMEMBER

Mrs J Taylor LLB Dip LP NP
Mr A Anderson FRICS
Mr A McKay

FAIR RENT	DATE OF DECISION	EFFECTIVE DATE
£4920.00 p.a. (Incl. of services of £ 720.00p.a.Non Variable)	11 February 2009	11 February 2009

J Taylor

Chairman of Private Rented Housing Committee

24/2/09

Date

STATEMENT OF REASONS

in connection with

INSPECTION HELD ON 11th February 2009

of the property

I Auchlunies House, Auchlunies Estate, Blairs, Aberdeen

1. THE PARTIES

The landlords are the trustees of the James Gray Nicol Trust and they are represented by Bell Ingram Limited 17 Albert Street, Aberdeen.

The tenant is J P Raine esq. His tenancy commenced on 30th November 1983 and it is a registered tenancy in terms of the Rent (Scotland) Act 1984.

2. BACKGROUND

The current rent is £4400 per annum. The landlords applied for the rent to be increased to £5160. The Rent Officer registered a rent of £5050 per annum with effect from 7th November 2008. The Tenant referred the determination to the Private Rented Housing Panel ('PRHP').

3. THE INSPECTION

The committee inspected the property, which is a ground floor flat in a former mansion house.

The accommodation comprises three bedrooms, kitchen, living room, study, bathroom and store.

The window in the lounge is double glazed. The remainder of the windows in the property are single glazed.

There is no central heating in the property. There is a coal fire in the lounge and the tenant had installed solid fuel stoves in several of the rooms. There is an immersion heater in the kitchen which provides the hot water for the property.

There is an open fronted garage pertaining to the property and a communal septic tank which is shared with three other properties.

There are extensive communal gardens grounds which extend to perhaps two or three hectares. These are shared with the eight other properties within the estate. The landlords provide the services of garden and grounds maintenance and employs a handyman/ gardener for two days per week to carryout this work. They also provide the service of arranging for the septic tank to be emptied.

4. THE HEARING

No hearing had been requested by the parties. However the landlords' agents and the tenant's wife Regina Weger- Raine provided the following additional information at the inspection:-

- Regina Weger- Raine advised that there had been no investment in the property since the commencement of the lease. In relation to the adjacent property, Flat 2, she advised that that property has the benefit of roof insulation, electric central heating, fitted carpets and floor coverings, updated kitchen, bathroom fittings and decoration and generally it is a more desirable main door property. This was accepted by the landlords' agents.
- The handyman/ gardener cuts the grass in the summer, keeps the access driveways clear and trims the plants ad shrubs as necessary throughout the year.
- The landlords' agents confirmed that the adjacent property, flat 2 had been leased in February 2008 for £550 per month. Flat 2 was a two bedroom property but had a similar floor area to flat 1. Central heating had been installed in flat 2. The rent of the property included the costs pertaining to the grounds and garden maintenance and emptying of the septic tank.

5. THE DECISION

The committee had the following documents before them:-

- A copy of form RR1, the landlord's application for registration of the rent.
- A copy of the lease dated 29th November 1985.
- Faxed letter from the landlords' agents with detailed figures of the service charges since 2006:-

Year	Gardener/handyman	Supplies and Maintenance	Septic Tank
2006	£5096	£314	£285
2007	£5152	£1903	
2008	£5728	£505	

- **Written Representations from the tenant, which state:-**

'Flat 1 Auchlunies House has been adapted from what was the old kitchen for the main house. It consists of a large room and three smaller rooms, with a kitchen, a bathroom and a store room. There is no central heating in the property, and only one of the windows is double glazed. There is no insulation in the loft.

The large stone walled living room is heated by a small open fire. This is inadequate to heat such a large space. In the winter we now tend to live in the bedroom, where a stove (which we bought and installed) is on for twenty four hours a day. The other bedroom, which has an ill fitting window, is becoming too damp to use. Outside of our living area the flat can become bitterly cold.

Two stoves and an open fire require a great deal of coal, wood and coke, and when the kitchen and bathroom are in use they have to be heated by electricity. The costs of keeping the rooms we use tolerably warm are therefore very high. The coal fire does not heat the water so there is an additional expenditure on electricity for that purpose.

These days, when most people are used to living with central heating, it may be necessary to add that the maintenance of fires in an old house requires a great deal of time and effort on a daily basis.

The landlords' case for a higher rent is based on their claim that they are charging for services, which they say have gone up. The latest increase in charges is the largest which has ever been made, although there has been no actual increase in the services provided. Mr Donald Anderson, the gardener, is employed for two days a week, as he has been for years, and he does what he can in that time. The yard outside the flat and the large back garden, are kept in order by us. Maintaining the garden in good shape requires additional expenses which we have paid out of our own pocket for many years without comment.

We have lived for twenty five years in flat 1, and during that time there have been no improvements made to the property by the landlord. In view of this, and for the reasons stated above, we would like to suggest that a fair rent for the flat should not exceed £390 per month.

As a comparison with a similar property in this area, we can mention number 4 Mary Brae on the Blairs estate, a three bedroomed house with a recently installed oil fired central heating, for which the monthly rent is still below £300.'

- **Letter from the Tenant's wife dated 25th November 2008, which states:-**

'The rent for Flat 1, Auchlunies House, Blairs, Aberdeen has recently been increased by £650 per annum.

I would like to raise my objection in the light of the fact that this is the largest single increase which has been asked for so far, for a flat which has had no significant improvement or upgrading since my husband and I arrived there twenty five years ago.

Although the flat is in beautiful surroundings, it is not centrally heated, and is bitterly cold in winter. There is no loft insulation and only one of the windows is double glazed. I hope I have not missed the deadline to raise my objection, but I have sustained a broken ankle and could therefore not respond any earlier. I am unable to stay in the flat in my present condition.

I cannot understand how this large increase came about. Services have not changed, I look after a large part of the garden, keep it planted and looking good and generally have to do a lot of clearing around our flat ie raking up leaves, clearing snow etc.emptying the septic tank is not new, it must have taken place previously and as far as I could make out, that was the only new figure appearing on the page.'

The committee had obtained details of many properties available to lease in the area, from news paper advertisements and the internet. In particular, the following properties were available for lease:-

➤ Cotbank Cottage, Ardoe

This is a two bedroomed property with electric heating . The Advertised rent was £ 775 per month.

➤ Property at Kingseat, Newmacher

The property is a three bedroom self contained flat in a renovated hospital building. The Advertised rent was £ 950 per month.

➤ Flat 2 Auchlunies House, Auchlunies Estate, BLairs.

The accommodation is over two floors with separate entrance. The accommodation comprises lounge, two bedrooms, kitchen and bathroom. The property has electric central heating. The property was leased in February 2008. The rent was £550 per month, which included the monthly service charge for gardens and grounds maintenance and emptying the septic tank.

The committee considered the documents provided and the evidence mentioned. The committee were mindful of the terms of section 48(1) of The Rent (Scotland) Act 1984, which requires the committee '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.'

As there are many properties with similar accommodation available for lease in the area, the committee accepted that there is no scarcity in supply and that therefore the market rent is the fair rent.

The committee reviewed the evidence of the market rents and considered that the best evidence of comparable market rents to be the evidence of the rent of the adjoining property, Flat 2 Auchlunies House. The committee considered the property Flat 1 Auchlunies House to be directly comparable with the adjoining property Flat 2 Auchlunies House. The properties are approximately the same size. The parties had advised that the two

properties had similar floor areas, even though flat 2 had two bedrooms. The tenant had advised that Flat 2 has the benefit of roof insulation, electric central heating, fitted carpets and floor coverings, updated kitchen, bathroom fittings and decoration and generally it is a more desirable main door property. This was accepted by the landlords' agents during the inspection. Due to these differences between the two properties the committee considered that a reasonable deduction was required to reflect these differences. They considered that the cost of installing central heating and roof insulation, replacing the bathroom and kitchen fittings, decorating the property and replacing the floor coverings would be approximately £ 15,000.

They considered that this capital expenditure would have a reasonable average life expectancy of 10 years which justified a reduction of £1500 from the annual market rent of flat 2. The market rent amounts to £6600 per annum (£550 per month), which comprises £5700 per annum (£475 per month) rent and £900 per annum (£75 per month) service charges. Therefore the adjusted annual market rent amounts to £4200 per annum, excluding services. The committee noted that the market rent of Flat 2 had been set in February 2008 and they considered whether an adjustment was required for inflation. They acknowledged that market rents of properties of this size had remained largely static over the last year and therefore no adjustment for inflation was required.

The committee considered that the landlords' charges for the services of garden and grounds maintenance and the charges for emptying the septic tank. They noted that there have been marked variations in the annual charges over the last three years. They ranged from £5410 (2006), £7055 (2007) to £6233 (2008). The charge for emptying the septic tank of £285 is a three yearly charge that was last charged in 2006.

The committee acknowledged that the Landlords are seeking to charge an annual service charge of £8100 per annum, including the charge for emptying the septic tank. They considered this charge to be particularly high given the range of annual charges stated. The committee calculated the average annual service charge over the last three years for grounds and garden maintenance, which amounted to £6232.66. Given the marked annual variation in the service charge referred to the committee considered that this average annual service charge was a reasonable amount attributable to the service charge for the garden/ grounds maintenance. The committee considered the three yearly charge for emptying the septic tank of £285. They acknowledged that this charge is divided between four properties and they considered the charge to be reasonable. The committee acknowledged that inflation is at a low level and that a small adjustment for inflation was reasonable.

The committee noted that there is no provision in the lease agreement for the service charge or indeed for variation of it, and therefore they determined that the service charges are non variable.

The committee decided that the fair rent for the property was £4920 per annum, including £720 per annum attributable to the garden/ grounds maintenance charge and the charge for emptying the septic tank. For the reasons stated the committee determined that the said service charge of £720 per annum is non variable.

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 Eleventh Ninth day of February Two thousand and nine.

..... **J Taylor**

Chairperson, 24th February 2009