



PRIVATE RENTED HOUSING PANEL

RENT (SCOTLAND) ACT 1984

Notification Of Decision By The Private Rented Housing Committee

REFERENCE NO:	OBJECTION RECEIVED	OBJECTION
RAC/G52/669	15 December 2008	Tenant

ADDRESS OF PREMISES

28 Gladsmuir Road, Glasgow, G52 2HX

TENANT

Mrs M Findlay

NAME AND ADDRESS OF LANDLORD

Gauld Properties Ltd.
22 Milnpark Street
Glasgow
G41 1BB

AGENT

N/A

DESCRIPTION OF PREMISES

Lower cottage flat within two storey block of four flats circa 1930 with gas central heating comprising four rooms, kitchenette and bathroom with relative garden grounds.

SERVICES PROVIDED

None

COMMITTEE MEMBERS

CHAIRMAN
PROFESSIONAL MEMBER
LAYMEMBER

Mrs I Montgomery BA(Hons) NP
Mr R Buchan BSc FRICS
Mr J Riach

FAIR RENT	DATE OF DECISION	EFFECTIVE DATE
£ 4200.00 p.a.	31 March 2009	31 March 2009

I Montgomery

Chairman of Private Rented Housing Committee

31st March 2009

Date



PRIVATE RENTED HOUSING COMMITTEE
STATEMENT OF REASONS
INSPECTION and HEARING: 31st March 2009

PROPERTY: - Lower Cottage Flat situated at 28 Gladsmuir Road,
Hillington, Glasgow G52 2HX.

Introduction

1. The Committee comprised Mrs I.R. Montgomery (Chairman), Mr R. Buchan (Surveyor) and Mr J. Riach (Housing member). The landlord is Gauld Properties Ltd, 22 Milnpark Street, Glasgow G41 1BB. The tenant is Mrs Mary Findlay. This reference to the Private Rented Housing Committee for the determination of a Fair Rent under the Rent (Scotland) Act 1984 (hereinafter referred to as "the 1984 Act") in respect of the property arises from dissatisfaction on the part of the tenant.
2. The previous rent for the property was £3,600 per annum. The landlord applied for a rent of £4,680 per annum. The rent determined by the Rent Officer effective from 4th December 2008 was £4,288 per annum.

Inspection

3. On 31st March 2009, the Committee, accompanied by the Clerk, Mr Robert Shea, inspected the property, which is a lower cottage flat forming part of a two-storey block of four flats. The property has the exclusive use of the front garden and rear garden ground. The property is situated in Glasgow in the well-established residential suburb of Hillington and is conveniently located for access to shops and transport.
4. The property was built circa 1935, and is of a design common in Glasgow. There was a large hole in the gutters, which means that the property in its

present condition does not meet the repairing standard contained in section 13 of the Housing (Scotland) Act 2006.

5. The main lounge is accessed from the entrance hall, and is of good size. The front entrance door is warped and the tenant advised that in wet weather she has significant problems closing it. The lounge has a triple bay window and a walk-in cupboard in one corner. The property also has a sitting room which, on one side, gives access to a kitchenette (approximately 6'6" square) and, on the other, a small room (approximately 6'6" x 12'), which the tenant uses as an extra bedroom. This room is adequate for use as a single bedroom (although it can accommodate a double bed) and has one window. The location of this room, (off the sitting room and in close proximity to the kitchenette), makes it suitable for use as a dining room if preferred. The tenant has supplied her own gas fire in the lounge. The bathroom has the benefit of natural ventilation and light from a window, and the landlord supplied the bath and WC. The tenant has replaced the old sink which was provided. All the bathroom fixtures are old and would benefit from being replaced. The main bedroom is a good sized double room with one window. The tenant complained of damp being a problem in this room, although the problem was not apparent on the day of the inspection. The tenant has replaced the work surfaces and units in the kitchenette.

6. The Committee noted that the wiring was old and does not meet modern standards. The fuse box appeared to be the original box supplied when the house was built. The tenant advised the Committee that the property has never been rewired in the 60 years of her occupation of it. That account of the history of the wiring was consistent with the condition of the wiring as seen on the day of the inspection. A central heating system was installed under the Scottish Government EAGA scheme about four years ago. The property has single glazed windows with the exception of one double glazed unit which was supplied by the landlord.

7. The landlord was not represented at the inspection.

Hearing.

8. The hearing was attended by the tenant's son, who presented a written and an oral submission. He argued that the capital value of property has decreased significantly, and that this should be reflected in the rental value. He argued that rents are artificially inflated by the existence and availability of Housing Benefit (now Allowance). He argued that if public funds were not being used to subsidise the system, rents would fall dramatically. He submitted that the rent being sought for a property which the landlord had never refurbished was excessive.
9. The landlords submitted a written note of submissions dated 23rd December 2008. They argued that "*These properties are similar in location and construction to those owned by Western Heritable Investment Company Ltd where a judgement was made on 19th September 2007 where a fair rent was determined at £4,930 per annum.*" They also sought a rental figure of £4,930.

Documentation.

10. In addition to the Inspection Report, the case summary sheet and the extract from the Rent Register, the Committee also considered:
 - a) Form RR1;
 - b) The notification letter from the Rent Registration Service relative to the Fair Rent reference;
 - c) The written representations made by the landlord;
 - d) Letters dated 23rd and 30th November 2008 from the tenant;
 - e) The decision notice and Statement of Reasons issued in relation to each of the three comparable properties listed in the table of decisions supplied by the clerk.

The Decision.

11. 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)). The Committee was not made aware of any such defects in this particular case, and no furniture is provided in terms of the tenancy. Improvements by the landlord are taken into account. In reaching its determination, the Committee complied with its duty as set out above.

12. 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, market rents or registered rents of comparable houses.

13. 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, neither of the parties produced any evidence relative to market rents or registered rents passing in comparable regulated tenancies. The Committee did, however,

have before it evidence of other registered rents, which had been fixed by Committees in the period from April – July 2008. The Committee also had the benefit of its members own knowledge and experience of the rents passing and being asked in the local market.

14. The Committee noted that there were a considerable number of properties of a similar size, style and amenity available for let in the general locality. Some of these properties had been available for some weeks, suggesting that, at present, supply of such properties is greater than demand. The Committee considered that the recent downturn in the economy was having an effect on the local housing market and that, in those circumstances, rents fixed nearly one year before may no longer be representative of the present levels of rent being achieved. That being so, it was decided that the best method to use in this case was the market rent less any discount for scarcity approach.

15. The Committee took account of the submissions made on behalf of the parties. Calculating a Fair Rent by reference to the capital value method involves estimating significant factors, such as the capital value of the property and the level of return appropriate to the landlord's investment. This method is not generally used when there is sufficient evidence available to allow either of the other two methods to be used. The Committee did not consider the use of this method to be appropriate in this case. While the availability of public funds may have an impact upon rental levels, that is not a factor which the Committee can take into account. While section 48(2) of the 1984 Act requires that a neutral market with no scarcity of houses be assumed, it does not make provision for an adjustment to be made to remove the impact of any other factors affecting the market. With regard to the submissions made on behalf of the landlord, the Committee is required to consider the current market situation and is not bound by previous decisions where the market has changed in the intervening period. The Committee must determine the Fair Rent on the basis of the situation as it is now.

16. Using its knowledge and experience, the Committee considered that a market rent for an unfurnished four apartment property of the type and in the locality of the present property, would be a minimum of £450 per month. The Committee had knowledge of other properties of similar size, style and location where rents higher than £450 per month were being asked, but these were properties which had benefited from a higher degree of upgrading. The Committee was aware that rents sought are a less reliable indicator than rents achieved, but, based on its knowledge of the local market, was satisfied that £450 -£500 for an unfurnished flat of this size with floor coverings and white goods was a readily achievable rent, even in the present market. However, the property under consideration, being unfurnished and without white goods or carpets, would be unlikely to achieve anything above the low end of that range. The Committee considered that there would be a degree of market resistance to a property where the incoming tenant would be faced with the costs of providing floor coverings and obtaining and installing white goods. The Committee considered also that the condition of this property, which has had minimal upgrading that can be attributed to the landlord, would adversely impact upon the level of rent likely to be achieved.

17. For the purpose of calculating a fair rent, the Committee must take no account of any improvements made by the tenant. The property being valued therefore, is not the property in its condition as seen, but is the property stripped of any improvements made by the tenant. The Committee is therefore looking at a property which has not been rewired since it was built, and which is without a modern kitchen or bathroom. The Committee considered that the property would require to be rewired and have its bathroom and kitchen upgraded before it could be offered for let in the current market. The front entrance door would also require to be repaired or replaced so that it could be opened and shut without difficulty.

18. The Committee considered that in its present condition the wiring in this property is below acceptable standard and potentially dangerous. The Committee considered that it would not meet the repairing standard as set

out in section 13 of the Housing (Scotland) Act 2006. As the property could not legally be let in a condition that falls below the repairing standard, the Committee considered that the cost of rewiring the property must be factored into the determination of the fair rent. The Committee considered that the lack of kitchen fittings and the outdated bathroom suite would also make the property difficult to let in its present condition, especially at a time when there is an ample supply of available properties on the market. The Committee considered that the cost of rewiring the property and upgrading the kitchen and bathroom, carrying out general repairs to bring the property up to the repairing standard (including fixing or replacing the front door and the gutters) and then redecorating, must be taken into account when calculating the fair rent.

19. The property has a central heating system installed under the Scottish Government EAGA system. The system was installed for the benefit of the tenant, but it was not paid for by her, and she has no responsibility for its upkeep. She is not entitled to take it with her should she leave the property. Whilst the central heating system was not paid for by the landlord, nor can it be regarded as a "tenant's improvement". It cannot therefore be disregarded under section 48(3)(b) of the Rent (Scotland) Act 1984. The property must be valued as having the benefit of central heating.

20. The Committee determined that a market rent for a property of this type with single glazed windows and gas central heating, with a functional kitchen and in adequate decorative order would be £5,400. This property falls short of that, for the reasons previously given. The Committee considered that the costs of rewiring the property, replacing the kitchen and bathroom fittings, repairing the front door and carrying out general repairs and redecorating thereafter would be in the region of £12,000. The Committee considered that these costs could reasonably be spread over 10 years. The costs were not so substantial as to require them to be spread over any longer period. The Committee accordingly considered that the sum of £1,200 should be deducted from the market rent in order to

achieve a fair rent. The net figure is therefore £4,200 which equates to £350 per month.

21. The Committee then proceeded to consider whether any deduction required to be made in terms of the factor commonly referred to as "scarcity". 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.
22. As mentioned above, the Committee considered that there appeared to be a surplus of supply over demand in relation to the availability of properties for rent, which is the opposite of the scarcity situation. The Committee 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, therefore, that no deduction required to be made in relation to scarcity for this type of property at this point in time.
23. 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.
24. Having taken all relevant factors into account, the Committee determined that a Fair Rent for the property was £4,200.00 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.

25. The effective date is 31st March 2009.

Signed **I Montgomery**Chairman)
