



PRIVATE RENTED HOUSING PANEL

RENT (SCOTLAND) ACT 1984

Notification Of Decision By The Private Rented Housing Committee

REFERENCE NO:	OBJECTION RECEIVED	OBJECTION
RAC/AB56/670	17 December 2008	Tenant

ADDRESS OF PREMISES

1 North Cottages, Braes of Enzie, Buckie, Aberdeen, AB56 5ES

TENANT

Mr W J McKandie

NAME AND ADDRESS OF LANDLORD

The Crown Estates Commissioners
7 The Square
Fochabers
Moray
IV32 7DG

AGENT

Messrs Smith Gore
7 The Square
Fochabers
Moray
IV32 7DG

DESCRIPTION OF PREMISES

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

SERVICES PROVIDED

None

COMMITTEE MEMBERS

CHAIRMAN
SURVEYOR
HOUSING MEMBER

Mrs I Montgomery BA (Hons) NP
Mr M Andrew FRICS FAAV
Mrs L Robertson

FAIR RENT	DATE OF DECISION	EFFECTIVE DATE
£3300.00 p.a.	12 February 2009	12 February 2009

I Montgomery

Chairman of Private Rented Housing Committee

Date

12th February 2009



PRIVATE RENTED HOUSING COMMITTEE

STATEMENT OF REASONS

INSPECTION: -12th February 2009

PROPERTY: -1 North Cottages, Braes of Enzie, Buckie, AB56 5ES.

INTRODUCTION

1. The Committee comprised Mrs. I.R. Montgomery (Chairman), Mr. M. Andrew (Surveyor), and Mrs L. Robertson, (Housing member).
2. The landlords are The Crown Estate Commissioners, represented by agents Smith Gore, 7 The Square, Fochabers, Moray IV32 7DG. The tenant is Mr. William J. McKandie. 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 semi detached cottage known as 1 North Cottages, Braes of Enzie, Buckie AB56 5ES arises from dissatisfaction on the part of the tenant.
3. The previous rent was £2,800.00 per annum. The landlord applied for a rent of £3,360.00 per annum. The rent determined by the Rent Officer was £3,240.00 per annum.

DESCRIPTION OF THE PROPERTY

4. On the morning of the 12th February 2009, the Committee, accompanied by the Clerk, carried out an inspection of the property. The property is situated in a rural setting on the road from Keith to Buckie. It has pleasant open views on all sides, and there are several other properties in the immediate vicinity. The nearest shops and facilities are in the town of Buckie, approximately five

miles to the North East. It has garden ground to the front and rear. The garden was covered by snow on the day of the inspection, but appeared to be mature and well maintained. There is a small burn running long the front boundary of the property, adjacent to the roadside.

5. The property is a semi detached cottage built around 1900, and the accommodation is all on one level. It is a stone built property which, according to the tenant, has not been fitted with any form of insulation. It was, however, comfortably warm on the day of our inspection, despite very cold weather conditions. It has an entrance door to the front and rear of the property. The front door was a basic external door with a three lever mortise lock and a letter box. The rear door has a single glazed half panel of the same type as the internal door leading into the kitchen. There is a double door system, and a small vestibule between the rear door and the kitchen. The property is double glazed throughout, with the exception of the smallest of the three bedrooms and the rear entrance doors. The property has oil fired central heating installed by the tenant, and water is heated by means of a back boiler. There is a working coal fire in the living room to supplement the central heating system.
6. The accommodation extends to three bedrooms, a living room, a spacious kitchen and bathroom. There is a fixed shower in the bathroom, which has been added by the tenant and therefore must be disregarded for the purposes of this assessment. The tenant has replaced the bath, wash hand basin and WC. The kitchen is well lit and spacious and the tenant advised that the landlord had extended the small original kitchen. The kitchen is fully fitted with attractive timber units and modern work surfaces. The tenant advised that he had had these fitted. He stated that the landlord had supplied a traditional kitchen sink and draining board. The living room is of reasonable size with a traditional fire place and a coal fire. The window overlooks the front garden. There is a very small hallway behind the front door, which

serves as a small corridor between the living room and the main bedroom. This was a double room, which showed some signs of damp below the window area. The plaster board had apparently been replaced relatively recently, but, despite this black marks were clearly visible. The other two single bedrooms were small, one particularly so. No services or furniture are provided by the landlord.

7. The landlord was not represented at the inspection.

DOCUMENTATION

8. In addition to the Inspection Report, case summary sheet and extract from the Rent Register, the Committee also considered:
- a) Form RR1 dated 30th September 2008;
 - b) Letter of appeal from tenant dated 10th December 2008;
 - c) Notification from the Scottish Executive of a Fair Rent appeal, dated 15th December 2008
 - d) Written representations from the tenant dated 5th January 2009;
 - e) Written representations from the landlords dated 6th January 2009.

HEARING

9. As neither party had requested a hearing no hearing took place.

THE DECISION

10. 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)). Improvements by the landlord are taken into account. In reaching its determination, the Committee complied with its duty as set out above.

11. The Committee noted that the tenant had refitted the kitchen and had fitted a shower in the bathroom. For the purposes of this valuation exercise, we disregarded the shower. We took account of the *size* of the kitchen but took no account of the fitted units and work surfaces supplied by the tenant. We valued the property as if the kitchen were still equipped only with a traditional sink and draining board. The bathroom suite has also been replaced by the tenant, but there had been a bathroom suite there before. We treated the bathroom as if it was an older style bathroom, but considered that any impact on the valuation would be minimal. In reaching our decision, we took no account of the central heating system which was installed by the tenant. We did, however, take account of the double glazing units which have been installed by the landlords.

12. We noted that there was evidence of damp below the window of the main bedroom. We noted also that the room contained an overabundance of furniture and other personal property belonging to the tenant and his family. We considered that it was likely that this was contributing significantly to the problem by impeding the circulation of air and heat within the room. We considered that the damp evident below the window was more likely to be an occupier related problem than a structural problem. In any event, the extent of the problem was not of such significance as to have any material impact upon the valuation of the property.

13. We noted the tenant's complaints that the door locks on the external doors were of the three lever rather than the five lever type. The Committee

considered that, while it was regrettable that more secure locks had not been selected at the time the doors were fitted, this would not have any significant impact upon the rental figure that could be obtained for the property in the open market.

14. The tenant also complained that sewage from the septic tanks of two neighbouring houses ran into the burn which runs along the boundary of the property. He complained that in the summer this caused a foul smell. There was no smell on the day of the inspection, which was hardly surprising given the very cold and snowy conditions. The tenant's evidence on this issue has not been challenged by the landlords despite being clearly set out in the tenant's correspondence. The most likely cause of the problem is that the drain carrying the sewage from nearby properties has cracked leading to seepage into the small burn and causing a bad smell in certain weather conditions. The Committee considered that this would detract from the appeal of the property in certain weather conditions.
15. The tenant also complained of having experienced "blow downs" of soot from the chimney. This happened in windy conditions. The Committee found no evidence of any significant problem with the chimney and considered that this would be an occasional incident only caused by weather conditions. We did not consider that this would have any material impact upon rental value.
16. The Committee considered carefully all the evidence presented, together with the observations made by the Committee members at the external 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.

17. 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, in the absence of any evidence from the parties, the Committee was obliged to rely on its own knowledge and experience of the rents passing and being asked in the local market. We did not have available to us any up-to-date evidence as to registered rents of comparable regulated tenancies. We proceeded to consider the case using the market rent less any discount for scarcity approach.
18. Using its knowledge and experience, and having regard to other properties available for let in the area, the Committee considered that a market rent for a double glazed and centrally heated, unfurnished three bedroom property of the type and in the locality of the present property, even with such defects as have been accepted, would be a minimum of £350 per month. However, this property must be valued as if it has no central heating and no modern kitchen, as these are tenant's improvements. The bathroom must also be valued as functional but not modern in style. We considered that a total of £75 per month should be deducted from the open market figure to take account of these factors, leaving a net figure of £275 per month.
19. We 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")

of the 1984 Act . The concept of scarcity is an essential feature of the fair rent scheme under the Rent (Scotland) Act 1984. 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.

20. The Committee considered whether any discount should be made for scarcity in this case, but was satisfied that in the area of Morayshire 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.
21. 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, however, no services are provided.
22. Having taken all relevant factors into account, the Committee determined that a Fair Rent for the property was £3,300.00 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.

23. It should be noted that any increase in rent imposed in consequence of this decision must be applied in accordance with the provisions of section 33 of the Rent (Scotland) Act 1984 and The limits on Rent Increases (Scotland) Order 1989 No 2469 (s168). These provisions specify the limits for the phasing in of significant increases.

24. The effective date is 12th February 2009.

I Montgomery
Signed .. Chairman)
Date .. 27th February 2009