



PRIVATE RENTED HOUSING PANEL

RENT (SCOTLAND) ACT 1984

Notification Of Decision By The Private Rented Housing Committee

REFERENCE NO:	OBJECTION RECEIVED	OBJECTION
RAC/G12/699	27 May 2009	Tenant

ADDRESS OF PREMISES

M/D, 41 Crosbie Street Glasgow, G20 0BQ

TENANT TENANT'S AGENT

Mr A Whyte Mrs C Kinnear, 143 Hyndland Road, Glasgow

NAME AND ADDRESS OF LANDLORD

Cromdale Investments Ltd.

AGENT

Speirs Gumley Property Management
194 Bath Street
Glasgow
G2 4LE

DESCRIPTION OF PREMISES

Unmodernised two storey semi detached house circa 1920 with double glazing comprising living room, two bedrooms, kitchen and bathroom.

Gross floor area = 82 square metres

SERVICES PROVIDED

None

COMMITTEE MEMBERS

CHAIRMAN
SURVEYOR
HOUSING MEMBER

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

FAIR RENT

£4000.00 p.a.

DATE OF DECISION

14 August 2009

EFFECTIVE DATE

14 August 2009

I Montgomery

Chairman of Private Rented Housing Committee

14th August 2009

Date



PRIVATE RENTED HOUSING COMMITTEE
STATEMENT OF REASONS
INSPECTION and HEARING: 14th August 2009

PROPERTY: - M/D, 41 Crosbie Street, Glasgow G20 OBQ.

1. The Committee comprised Mrs I.R. Montgomery (Chairman), Mr M. Links (Surveyor) and Mr C. Harvey (Housing member). The landlord is Cromdale Investments Ltd., represented by Speirs Gumley Property Management, 194 Bath Street, Glasgow G2 4LE. The tenant is Mr A. Whyte, who was represented by Ms C. Kinnear. 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 £2,900 per annum. The landlord applied for a rent of £3,750 per annum. The rent determined by the Rent Officer effective from 15th June 2009 was £3,600 per annum.

Inspection

3. On 14th August 2009, the Committee inspected the property, which is an unmodernised two storey semi detached house built around 1920. The property is situated in a desirable residential suburb of Glasgow and is conveniently located for access to shops and transport. It is within a short walking distance of Maryhill railway station.
4. The property is constructed of brick covered by roughcast and appeared to be structurally sound. It has a pitched and slated roof and has been double glazed at the expense of the landlord. The few stone steps leading to the front door of the property are showing signs of age, but are capable of

being used safely. The stone steps which give directly onto street level were in good repair on the day of the Committee's inspection. It was raining on the day of the inspection, and one downpipe at the front of the property appeared to be blocked as rainwater could be seen running down it. The property has the benefit of the exclusive use of a large area of garden.

5. The accommodation extends to three rooms, kitchen and bathroom and the property has a gross floor area of 82 square metres. The living room has a small triple bay window and is of good size. The kitchen has not been upgraded and is as supplied by the landlord. The boiler is housed in a large cupboard in the kitchen and there is an additional pantry. The tenant advised that there had been a problem of leaking water in the pantry, but that this problem has been sorted. The ceiling in the first of the two bedrooms had reportedly collapsed one and a half years ago due to water ingress, but this has also been repaired. The tenant complained that there is still an occasional problem with damp in this room, but the walls and ceiling were dry when tested in the course of the inspection. The second bedroom is also of good size, and has a pleasant open outlook over neighbouring gardens. Superficial settlement cracks are apparent in this room but are of no structural significance. The bathroom has not been upgraded and is basic but functional. No shower is supplied by the landlord. The bathroom has the benefit of natural ventilation and light from a window. The wiring in the property appeared to be reasonably modern, although the tenant complained of a lack of sufficient sockets.
6. The tenant has made a number of improvements to the property. He advised that in 1995 he had installed the central heating system at his own expense and without the aid of a grant. A combi boiler has also been installed. The tenant has also installed a downstairs WC, wash hand basin and shower unit in space that had formerly been a storage cupboard. He received some assistance from a grant to do so, but stated that he paid the major part of the work from his own resources. He has also fitted smoke detectors to both levels of the property at his own expense.

7. The tenant and his representative were both present during the inspection. The landlord was not represented at the inspection.

Documentation.

8. In addition to the Inspection Report, the case summary sheet and the extract from the Rent Register, the Committee considered:
 - a) Form RR1;
 - b) The notification letter from the Rent Registration Service relative to the Fair Rent reference;
 - c) The written representations made on behalf of the tenant;
 - d) The written representations made on behalf of the landlord;
 - e) Letter dated 4th June 2000 from Speirs Gumley.

Hearing.

9. The hearing took place on the same day as the inspection. Ms Kinnear attended the hearing on behalf of the tenant. The landlord was not represented at the hearing.

10. Ms Kinnear adopted the arguments she had set out in the written submissions lodged on behalf of the tenant. She argued that the landlord failed to carry out repairs within a reasonable timescale. She argued that the proposed increase could not be justified. She was unable to offer any information regarding rents passing in the area, but acknowledged that the property at 6 Prince of Wales Gardens, Glasgow, (which the landlords refer to in their written submissions), could well be similar to the property occupied by the tenant. She argued that the present system of Housing Allowance has the effect of subsidising landlords and results in prejudice to those tenants who do pay their rent from their own resources. She argued that these properties were built for the benefit of war veterans and queried whether covenants existed preventing the landlord from using these properties for commercial gain. She asked the Committee to keep the rent at the level of £2,900, which is the figure which had been fixed when the Fair Rent was last determined three years ago.

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 should be taken into account. In reaching its determination, the Committee complied with its duty as set out above.

12. The Committee is specifically prevented by the wording of section 48(1) from having regard to the personal circumstances of either party. That being so, we can have no regard to the financial circumstances of either party. Whether or not a tenant is in receipt of Housing Allowance is not a factor that is relevant to the calculation of a Fair Rent. The Committee is charged with the task of calculating a Fair Rent in accordance with the provisions of section 48(1). If a party wishes to argue that specific restrictions in the Deed of Conditions relative to a particular property impose a limitation upon the ability of the owners to let the property for commercial gain, that is a matter that he or she would require to pursue elsewhere. We disregarded these issues, as we are required to do.

13. The tenant's representative raised a number of issues in the written representations regarding the condition of the property. The Committee cannot have regard to past problems which have now been sorted. The

Committee must value the property as it is seen on the day of inspection. By that date, the steps leading from street level to the path and the path itself were in a reasonable state of repair. The gutters and downpipes were in reasonable order, except for one minor area of blockage. There was no evidence of ongoing water penetration within the property.

14. 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.

15. 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 capital values or registered rents passing in comparable regulated tenancies. The landlord's agents, however, made reference to market rental evidence, and the Committee also had the benefit of its own knowledge and experience of the rents passing and being asked in the local market. In these circumstances, the Committee decided that the best method to use in this case was the market rent less any discount for scarcity approach.

16. The Committee noted that the landlord's agents had made reference to a property situated at 6 Prince of Wales Gardens, Glasgow. The Committee carried out an external inspection of this property, and found it to be very similar in size, location and state of repair as the property now under consideration, although it is in the style of a bungalow rather than a villa. The Committee was informed by the landlord's agents that this property was let as an Assured Tenancy to an existing tenant as from 1st June 2009 for an annual rental of £4,200. It was let on an unfurnished basis and had the benefit of double glazing and central heating.
17. The Committee noted the examples given by the landlord's agents of rents being sought in the current market. Rents being sought, however, are a less reliable indicator of market rental levels than rents actually passing, as the rental figure hoped for by the landlord may not ultimately be achieved. Using its knowledge and experience, the Committee accepted that properties of the type and in the locality of the present property *could* achieve rents in the range of £400 to £495 pcm as argued by the landlord, but we considered that those that did so would be properties which had benefited from a higher degree of upgrading. The property under consideration must be valued without taking account of any of the tenant's improvements, and therefore must be valued without the benefit of central heating, furnishings, white goods or floor coverings, and with basic and rather old kitchen and bathroom facilities. The Committee considered that there would be considerable market resistance to a property in that condition in the private rented sector, particularly at the present time when there are plenty of properties available for prospective tenants to choose from. Prospective tenants are likely to be reluctant to incur the high costs of laying floor coverings and installing white goods, and even more reluctant to meet the costs of modernising the kitchen and bathroom. The Committee considered that these factors would adversely impact upon the level of rent likely to be achieved.
18. Having considered all the evidence, the Committee considered that the best evidence available was the evidence of the rent actually being

achieved by the landlord for a very similar property nearby, i.e. the property at 6 Prince of Wales Gardens, Glasgow. The assertion by the landlord that this property could have achieved a higher rental figure if offered for let on the open market is no more than speculation on the part of the landlord's agents. The rental being achieved for 6 Prince of Wales Gardens is £4,200 but it has the benefit of central heating. The Committee considered that the cost of installing central heating in a property of this size would be in the region of £3,000 and the system installed would have a likely life span of around 15 years. The Committee accordingly considered that the sum of £200 per annum should be deducted from the sum of £4,200 in order to achieve a market rent for the property now under consideration. The net figure is therefore £4,000, which equates to £333.33 per month.

19. 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.

20. 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. On the contrary, there appears 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 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 no services are provided.

22. Having taken all relevant factors into account, the Committee determined that a Fair Rent for the property was £4,000.00 per annum. In reaching this decision, the Committee had regard to all the evidence, and to all the circumstances that must be taken into account in terms of section 48 of the Rent (Scotland) Act 1984.

23. The effective date is 14th August 2009.

Signed .. **I Montgomery**Chairman)