



PRIVATE RENTED HOUSING PANEL

RENT (SCOTLAND) ACT 1984

Notification Of Decision By The Private Rented Housing Committee

REFERENCE NO:	OBJECTION RECEIVED	OBJECTION
RAC/EH9/712	26 August 2009	Landlord

ADDRESS OF PREMISES

1F2, 94 Causewayside, Edinburgh, EH9 1PU

TENANT

Mr A Marshall

NAME AND ADDRESS OF LANDLORD

Clydesdale Securities Co. Ltd.

AGENT

Ross & Liddell
60 St Enochs Square
Glasgow
G1 4AW

DESCRIPTION OF PREMISES

1st floor tenement flat built 1907 with gas central heating comprising 3 rooms, dark kitchen and shower room. Estimated gross internal floor area is 62 square metres.

SERVICES PROVIDED

None

COMMITTEE MEMBERS

CHAIRMAN
SURVEYOR
LAYMEMBER

Mr E Miller LLB (Hons) Dip LP NP
Mr R Buchan BSc FRICS
Mrs C Anderson

FAIR RENT	DATE OF DECISION	EFFECTIVE DATE
£ 4,800.00 p.a.	30 October 2009	30 October 2009

E Miller

Chairman of Private Rented Housing Committee

Date

9/11/09

PRIVATE RENTED HOUSING COMMITTEE

STATEMENT OF REASONS

INSPECTION – 30 October 2009

**PROPERTY - Flat 1F2, 94 Causewayside,
Edinburgh, EH9 1PU ("the Property")**

INTRODUCTION

1. The Committee comprised Mr E K Miller (Chairman), Mr R Buchan (Surveyor) and Mrs C Anderson (Housing Member).
2. The landlord is Clydesdale Securities Company Limited c/o Ross & Liddell Limited, 63 St Enoch Square, Glasgow, G1 4AW.
3. The tenant is Mr A Marshall residing at Flat 1F2, 94 Causewayside, Edinburgh, EH9 1PU. 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 Property arises from dissatisfaction on the part of the landlord.
4. The previous rent was £3,100 per annum. The landlord applied for a rent of £4,800 per annum. The rent determined by the Rent Officer was £4,000 per annum.

DESCRIPTION OF THE PROPERTY

5. On the morning of 30 March 2009, the Committee, accompanied by the Clerk to the Committee Mr Robert Shea carried out an inspection of the Property. The Property is a first floor flat in a traditional, circa 1900, Edinburgh four-storey tenement. Access to the Property is taken by way of a common close and stair at the rear of the premises. There is a good variety of shops and facilities in the neighbouring area.

6. The accommodation within the Property comprises a large living room, a good sized bedroom, a second public room, a small kitchen and small shower room.

The windows in the Property were in poor condition.

The Property had a modern gas boiler. The kitchen and bathroom, according to the tenant, had been put in by the landlord in the 1970s and was very dated and in need of modernisation.

The tenant had installed a gas fire in the lounge.

DOCUMENTATION

7. The Committee considered all documents provided by the landlord and the tenant. All documentation provided was taken account of at the Hearing.

HEARING

8. The landlord had requested a hearing and this took place at the Apex International Hotel, Grassmarket, Edinburgh. The tenant had indicated that he did not wish to participate in the hearing and this was confirmed with the tenant by the Clerk during the inspection. Ms Caroline Clark appeared for the landlord at the hearing.

As part of her submission she provided the Committee with details of two bedroom flats within the EH9 postcode. Generally, from the information provided, two bedroom modernised flats in the same area appeared to be letting in the region of £600-£650 per calendar month. Ms Clark accepted, however, that this Property was not modernised and would require money to be spent on it prior to letting. If it were to be let in its current condition then this would reduce the rent achievable. Notwithstanding this likely reduction Ms Clark submitted that the Property would still achieve the figure of £4,800 per annum that they were seeking (i.e. £400 per month).

The Committee enquired whether, in Ms Clark's view, there was any scarcity in the Edinburgh area at the moment. She was of the view that there was not. Although the amount of rented Property available had fallen slightly over the last few months there was still a good supply and tenants were not having to wait long to obtain properties.

THE DECISION

9. 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 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"*. Disrepair or defects attributable to the tenants should be disregarded, as should any improvements made by the tenants, 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.

10. 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.

11. The Committee first considered whether to use registered rents as comparables. No comparables had been provided to the Committee and therefore the Committee did not consider this an appropriate method to assess whether it was a fair rent. The Committee then considered whether to calculate an appropriate return based on the capital value of the Property. Taking into account the recent fluctuations (both upward and currently downward) in the capital values of Property in Scotland and the lack of any information on capital values highlighted by the landlord and tenant, the Committee did not consider it appropriate to assess the fair rent on the basis of a capital return to the landlord. The Committee therefore proceeded to consider the case using the market rent less tenant's improvements less any discount for scarcity approach.
12. Using its knowledge and experience, and having regard to other properties available for let in the area both highlighted by the parties and also from the Committee's own investigations, the Committee considered that a market rent for a single glazed, well decorated, centrally heated, unfurnished, modernised, carpeted two bedroom Property of a type and in the locality of the Property, would be around £600 per month. However, the Committee were of the view that the overall current condition of the Property would have a significant detrimental effect on the rental value achievable in its current condition. The windows at the Property would require to be modernised and the kitchen and bathroom would both require to be replaced. A landlord might well wish to consider some alterations to the current layout to make it more suitable to the modern tenant. Redecoration would also undoubtedly be required throughout. The improvements carried out by the tenant to the Property were minimal and the Committee did not feel these would have any particular effect on the rent achievable. The Committee considered that taking into account the current condition of the Property, the figure of £4,000 per annum sought by the landlord would be a fair open market figure.
13. The Committee 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 tenants be protected from the financial implications of that.

14. The Committee considered whether any discount should be made for scarcity in this case but was satisfied that in Edinburgh as a whole, and as accepted by the landlord at the Hearing, 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.
15. 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 tenants for services. In this case, however, no services are provided.
16. Having taken all relevant factors into account, the Committee determined that a Fair Rent for the Property was £4,800 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.
17. 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.

18. The effective date is 30 October 2009.

E Miller

Signed: (Chairman)

Date: 9/11/09