



PRIVATE RENTED HOUSING PANEL

RENT (SCOTLAND) ACT 1984

Notification Of Decision By The Private Rented Housing Committee

REFERENCE NO:	OBJECTION RECEIVED	OBJECTION
RAC/EH15/755	21 June 2010	Landlord

ADDRESS OF PREMISES

1F2, 10 Marlborough Street, Edinburgh, EH15 2BG

TENANT

Mr Gordon

NAME AND ADDRESS OF LANDLORD

Mrs J McGregor

AGENT

James Gibb  
Property Management  
4 Atholl Place  
Edinburgh  
EH3 8HT

DESCRIPTION OF PREMISES

First floor traditional tenement flat circa 1870 comprising living room, two bedrooms, dining kitchen with scullery, bathroom and separate w.c.

Gross floor area – 73 square metres

SERVICES PROVIDED

None

COMMITTEE MEMBERS

CHAIRMAN  
SURVEYOR  
HOUSING PANEL MEMBER

Mr S Walker LLB(Hons) Dip. LP ACI Arb  
Mr D Marshall FRICS  
Mr M Innes

FAIR RENT	DATE OF DECISION	EFFECTIVE DATE
£3800.00 p.a.	3 August 2010	3 August 2010

**S P Walker**

Chairman of Private Rented Housing Committee

Date

30th July 2010



**PRIVATE RENTED HOUSING COMMITTEE  
STATEMENT OF REASONS**

**PROPERTY:**

**1F2, 10 Marlborough Street, Edinburgh, EH15 2BG**

**INSPECTION:**

**3<sup>rd</sup> August, 2010**

## **STATEMENT OF REASONS**

### **INTRODUCTION**

1. This is a reference to the Private Rented Housing Committee for the determination of a fair rent under the Rent (Scotland) Act 1984 by the tenant, Mr A Gordon ('the tenant'), in relation to the property known as 1F2, 10 Marlborough Street, Edinburgh, EH15 2BG.
2. The original rent paid by the tenant, Mr A Gordon in respect of property was £2,650.00 per year. The landlord applied for rent of £4,150.00 per year for the property. The Rent Officer determined a rent of £3,600.00 per year. The tenant referred the Rent Officers determination to the Private Rented Housing Committee.
3. Only the tenant and his wife attended the inspection. The tenant requested a Hearing.
4. The Committee comprised

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Chairman	Mr. S Walker
Surveyor	Mr D Marshall
Housing Member	Mr M Innes

### **THE DOCUMENTATION**

5. The Committee considered all the documents referred to it by the parties. In particular, the application and the written representations from both the tenant and landlord.

## THE INSPECTION

6. The inspection took place on 3<sup>rd</sup> August, 2010. The tenant and his wife attended the inspection.
7. Mr Robert Shea, Clerk to Committee, introduced the Committee to the parties. The Committee proceeded to inspect the property.

## DESCRIPTION OF THE PROPERTY

8. The property is a first floor Victorian tenement flat comprising two bedrooms, kitchen, scullery, bathroom and separate WC and livingroom. The property extends to 73 square metres approximately. There is no central heating and the windows are the original sash and case which are in need of repair. There is evidence of historic water penetration in the external wall of the scullery. The property is situated in the heart of Portobello and close to local amenities.

## THE HEARING

9. The hearing took place at the Leith Community Centre on 3<sup>rd</sup> August, 2010. The tenant and his wife attended. The Chairman opened the hearing and gave the tenant and his wife an opportunity to address the Committee. The tenant and his wife considered that a rent increase given the state of repair of the property was unacceptable. They did not produce any evidence of comparable properties or rents.

## DECISIONS AND REASONS

10. Section 48 of that Act as amended provides that:

### **48.— *Determination of fair rent.***

*(1) In determining for the purposes of this Part of this Act what rent is or would be a fair rent under a regulated tenancy of a dwelling-house, it shall be the duty of the rent officer or,*

*as the case may be, of the private rented housing committee, subject to the provisions of this section, to have regard to all 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, to the quantity, quality and condition of the furniture.*

*(2) For the purposes of the determination it shall be assumed 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 in the locality which are available for letting on such terms.*

*(3) There shall be disregarded—*

*(a) any disrepair or other defect attributable to a failure by the tenant under the regulated tenancy or any predecessor in title of his to comply with any terms thereof, and*

*(b) any improvement (including any improvement to the furniture provided for use under the tenancy), or the replacement of any fixture or fitting carried out, otherwise than in pursuance of the terms of the tenancy, by the tenant under the regulated tenancy or any predecessor in title of his, and*

*(c) if any furniture is provided for use under the regulated tenancy, any deterioration in the condition of the furniture due to any ill-treatment by the tenant, any person residing or lodging with him, or any sub-tenant of his.*

*(4) In the application of this section to a converted tenancy, the references in subsection (3) above to the tenant under the regulated tenancy shall include references to the tenant under the tenancy before the conversion.*

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”.*

12. 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 (other than some water penetration in the scullery and windows in the flat are in disrepair), 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 *supra*.
13. The Committee considered carefully the observations made by the tenant and his wife, and 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.
14. 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.
15. In this case, neither party produced evidence of comparable rents.
16. 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. The Committee 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 method at (b) *supra*.

17. The Committee from its own experience, knowledge and information available on the internet and from local letting agents considered that comparable properties comprising of two bedrooms in the Edinburgh area averaged around £500.00 pcm.
18. 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.
19. The Committee considered whether any discount should be made for scarcity in this case, but was satisfied that in the area of Edinburgh 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.

20. The Committee considered that a number of deductions should be made to take account that any new tenant would require central heating, new carpets, new kitchen, new bathroom and double glazing in respect of the property. The Committee considered that the appropriate market rent in respect of the property was £6,000.00 per year. The Committee further considered that a deduction was appropriate of £2,200.00 per year in respect of improvements which would be required to the property.
21. Accordingly, having taken all relevant factors into account, the Committee determined that a Fair Rent for the property was **£3,800.00** per year. 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.

# S P Walker

Signed .....

**Steven P Walker**  
**Advocate & Barrister**

**Chairman**  
**Private Rented Housing Committee**

**12<sup>th</sup> August, 2010**