



PRIVATE RENTED HOUSING PANEL

RENT (SCOTLAND) ACT 1984

Notification Of Decision By The Private Rented Housing Committee

REFERENCE NO:	OBJECTION RECEIVED	OBJECTION
RAC/FK8/784	18 October 2010	Landlord

ADDRESS OF PREMISES

Braehouse Touch, Cambusbarron, Stirling, FK8 3AH

TENANT

Mr Miller

NAME AND ADDRESS OF LANDLORD

Touch Estate Trust

AGENT

Managed Estates
1 Springkerse Road
Stirling
FK7 7SN

DESCRIPTION OF PREMISES

Detached cottage circa 1900 with oil fired central heating, single glazing, large outside store and large garden area comprising four rooms, utility room, kitchen and bathroom.

Gross floor area = 127 square metres

SERVICES PROVIDED

None

COMMITTEE MEMBERS

CHAIRMAN
SURVEYOR
HOUSING PANEL MEMBER

Steven Walker LLB(Hons) Dip LP ACI Arb.
Ian Mowatt BSc. FRICS
Christine Anderson

FAIR RENT	DATE OF DECISION	EFFECTIVE DATE
£ 7100.00 p.a.	13 December 2010	13 December 2010

S Walker

Chairman of Private Rented Housing Committee

14th December, 2010

Date



**PRIVATE RENTED HOUSING COMMITTEE
STATEMENT OF REASONS**

PROPERTY:

Braehouse, Touch, Cambusbarron, Stirling, FK8 3AH

INSPECTION & HEARING

13th December, 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 landlord, Touch Estate Trust, Touch, Cambusbarron, Stirling, FK8 3AQ ('the landlord') in relation to the property known as Braehouse, Touch, Cambusbarron, Stirling, FK8 3AH ('the property'). The landlord is represented by Mr William Anderson, Managed Estates, 1 Springkerse Road, Stirling, FK7 7SN ('the agent').
2. The original rent paid by the Mr. Alistair Miller ('the tenant') in respect of property was £6,200.00 per year. The landlord applied for rent of £9,000.00 per year for the property. The Rent Officer determined a rent of £6,600.00 per year. The landlord referred the Rent Officer's determination to the Private Rented Housing Committee.
3. Only the tenant attended the inspection. Both parties requested a hearing.
4. The Committee comprised

Chairman	Mr Steven Walker
Surveyor	Mr Ian Mowatt
Housing Member	Mrs Christine Anderson

THE DOCUMENTATION

5. The Committee considered all the documents referred to it by the parties.

THE INSPECTION

6. The inspection took place on 13th December, 2010. Only the tenant attended the inspection.
7. Mr Robert Shea, Clerk to Committee, introduced the Committee to the tenant. The Committee proceeded to inspect the property.

DESCRIPTION OF THE PROPERTY

8. The property is located from the main road at the end of a 1.4 mile farm track. The road is in a poor state of repair and was extensively iced and snow covered during the inspection. The property is a detached stone cottage constructed c. 1900 half of the roof is slate and the other half is asbestos cement sheeting. There is a large garden and outbuilding. Internally, the property comprises two bedrooms (one with open fireplace), living room (with open fireplace), dining hall, kitchen, bathroom, utility room. There is oil fired central heating throughout. The property is not close to local amenities or shops.

HEARING

9. The tenant and the agent attended the hearing which was held at the Cambusbarron Community Centre on 13th December, 2010. The Chairman opened the hearing by introducing the Committee and then invited the parties to address the Committee. The Chairman invited the agent to address the Committee first and to provide the Committee with more detail of the comparable properties referred to in his written representations. The key submissions are summarised as follows;-
10. The agent advised the Committee that more appropriate analogous properties were to be found on the Touch Estate where two to three bedroom modernised properties were being rented from £725 pcm (for a two bedroom property) to £675 pcm (for a three bedroom property).

The agent advised that these properties were close to the main road and that Braehouse would command a rental premium as it was some distance from the main road. Accordingly, the agent was of the view that the appropriate fair market rent should be £9,000 per year or £750 pcm.

11. The Chairman then invited the tenant to address the Committee. The tenant advised the Committee that all of the agent's comparable properties were extensively refurbished and double glazed. The tenant further advised that there were difficulties associated with the access to the property. The access road is potholed and oil and coal cannot be delivered to the property. In adverse weather, the bin collection and the post is also prevented. The main water supply pipe to the property is exposed and freezes in cold weather leaving the property without any water. The windows of the property are all in need of replacement and there is some damp present in the property. There is also an asbestos roof on half of the property. The tenant referred to comparable properties in Kippen and Fintry which he advised were being rented from £350 pcm (for a two bedroom property) to £500 (for a three bedroom property). The tenant advised the Committee that a fair market rent for the property was a maximum of £450 pcm.
12. In reply, the agent said that the concrete asbestos roof would have no effect on the rental value of the property. He further said that the comparables referred to by the tenant are likely to be very basic properties at the very lowest end of the market. The agent conceded that the water supply difficulties are not helpful and would impact on the market rent.
13. The Chairman asked if either party wished to make any other comments. Both parties declined and the Chairman concluded the hearing.

DECISIONS AND REASONS

14. 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.

15. 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".

16. 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. The Committee noted that in terms of an addendum to the lease, the tenant had consented to all tenant financed improvements being treated as landlord improvements. Accordingly, the Committee must assess the property treating the improvements as landlord's improvements. In reaching its determination, the Committee complied with its duty as set out *supra*.
17. The Committee considered carefully all the evidence presented by the parties. In particular, the Committee considered carefully which of the three alternative methods of ascertaining a fair rent was most appropriate in this case.
18. 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.

19. In this case, both parties produced evidence of comparable rents.
20. 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*.
21. The Committee from its own experience, knowledge and information available on the internet and from local letting agents considered that comparable properties for the rental of two bedroom properties in the Stirling area averaged around £675.00 pcm.
22. 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.

23. The Committee considered whether any discount should be made for scarcity in this case, but was satisfied that in the area of Stirling 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.
24. The Committee considered that a number of deductions should be made to take account that any new tenant would require a new kitchen, repaired windows, and the damp and water supply problems remedied. The Committee was also of the opinion that the access difficulties to the property together with the inconvenience of being unable to receive deliveries of oil and coal to the property result in the property being less marketable. The Committee considered that the appropriate market rent in respect of the property was £8,100.00 per year. The Committee further considered that a deduction was appropriate of £1,000.00 per year in respect of improvements which would be required to the property and to reflect the inconvenience and decreased marketability due to the access difficulties.

25. Accordingly, having taken all relevant factors into account, the Committee determined that a Fair Rent for the property was **£7,100.00** 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 Walker

Signed

Steven P Walker

Advocate & Barrister

Chairman

Private Rented Housing Committee

6th January, 2011