

# Housing and Property Chamber First-tier Tribunal for Scotland

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**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') issued under section 26 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 on an application under Schedule 5, paragraph 8 of The Rent (Scotland) Act 1984**

**Chamber Ref: FTS/HPC/RR/22/2296**

Flat 3/1, 110 Byres Road, Glasgow, G12 8TB ('the Property')

**The Parties:**

**Glasgow West Housing Association Limited, Samaritan House, 5 Royal Crescent, Glasgow G3 7SL ('the Landlords')**

and

**Olive Millen, residing at Flat 3/1, 110 Byres Road, Glasgow, G12 8TB ('the Tenant')**

**Tribunal members:**

**Paul Doyle (Legal Member)**

**Carol Jones (Ordinary Member).**

## **BACKGROUND**

1. The Tenant has occupied this property since 1977. The current lease between the parties was entered into on 01/10/1982. The tenancy is a regulated tenancy in terms of the Rent (Scotland) Act 1984. The current rent is £4,609.56 per annum. On 29 April 2022, the Landlord applied for the annual rental to be increased to £5,253.68. On 13 June 2022, the Rent Officer registered an annual rental of £5,253.68 effective from 25 July 2022. The tenant appealed the Rent Officer's determination to the First-tier Tribunal.

2. To determine the fair rent for the Property the Tribunal are required to consider the rentals of comparable properties and whether there is a scarcity of supply of rental properties in the locality.

3. The tenant made written representations on 15 August 2022. The landlord made written representations on 31 August 2022

4. The Tribunal sent the parties a Direction in advance of the hearing which explained that in determining the fair rent for the Property the Tribunal are required to consider the rentals of comparable properties and whether there is a scarcity of supply of rental properties in the locality. The Tribunal advised that they have sourced the following rental information:

(i) Details of seven comparable properties being advertised for lease within Glasgow (Postcode area G12 and G11).

(ii) Details of eight Fair rent properties within Glasgow (Postcode area G12) from the Fair Rent eRegister.

Copies of the extracts were provided to parties.

5. The parties were directed to provide the Tribunal with representations and any further information with regards to the rental information of comparable properties and whether there is scarcity of supply of rental property in the locality by 16 September 2022. Neither party provided the Tribunal with any representations in response to the Direction.

### THE INSPECTION

6. At 10.00am on 21 September 2022 the Tribunal inspected the Property. It was a dry bright, late summer's morning. The tenant was present at the inspection. The landlord's representative did not attend. The case file reveals that the landlord has been given timeous intimations of the date, time, and place of the inspection.

7. The property is a top floor flat in a traditional victorian sandstone built tenement with commercial properties to the ground floor. Entry to the common passage and stair is controlled by an Entryphone system. Three flights of stone steps in a generously proportioned close lead to the front door of the property. A small entrance vestibule opens on to a large central hallway (with 2 large cupboards off) providing access to all rooms. The property has two double bedrooms (one to the front and one to the rear) a large living room (with walk in cupboard) to the front of the property, a bathroom with a 3 piece sanitary suite to the rear of the property and a large kitchen with small dining area overlooking the drying green to the rear of the property. The gross internal area is approximately 84 square metres. The property is situated in a densely populated area within the Hillhead district of Glasgow and is surrounded by a mix of similar styles of housing and a large variety of commercial properties. This district forms part of the west end of Glasgow close to Glasgow University and around 2 miles north-west of the city centre. The property benefits from double glazing and gas central heating. The property was completely refurbished in 1985. The windows were replaced around 20 years ago and the gas central heating system was renewed in January 2022. The

property is generally in good internal condition. It was noted that there is a damp patch in the rear corner of the kitchen at the top of the walls/ceiling and the tenant informed the Tribunal that a communal roof repair may have been carried out recently. There is also evidence of historic settlement and a number of communal repairs are required to the fabric of the close/handrails/windows and the external close door etc.

8. The Tenant has provided the carpets, floor coverings and decor throughout the Property, and the gas oven, hob and the white goods in the kitchen and a large feature fire surround in the living room. The services provided by the Landlords are maintenance of the main door entry system and stair cleaning. The Property benefits from good local amenities and transport links to the city centre.

### THE HEARING

9. The tenant chose not to attend the hearing. The landlord was represented by Ms N Carrigan who adopted the terms of her written submission and told us that although the landlord is aware of higher open market rentals in the immediate vicinity, the landlord restricts their submission to saying that the rent officer's assessment is the correct figure for rental from 25 July 2022.

### THE DECISION

10. The Tribunal had the following documents before them:-

1. The landlord's application for registration of the rent for the property, dated 29 April 2022
2. The rent officer's notification of appeal, dated 8 July 2022
3. ROCAS Rent Register Page for the property.

11. The Tribunal obtained details of comparable fair rents of two bedroomed flatted dwellinghouses from the Fair Rent eRegister and market rentals from internet sources, which were circulated to parties in advance of the hearing. A schedule of those comparable fair rents and market rentals available to the tribunal is attached to this decision.

12. The Tribunal Members were mindful of the terms of section 48(1) of The Rent (Scotland) Act 1984, which requires the Tribunal 'to have regard to all of 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, and to the quantity, quality and condition of the furniture'. Also, Section 48(2) requires them

to 'assume 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 which are available to let on such terms.'

13. The Tribunal recognised that the three methods of assessing the rent in Scotland are (1) determining the fair rent by reference to comparable registered rents in the area. (2) determining the fair rent by reference to market rents of comparable properties allowing for appropriate deductions for scarcity and (3) determining the fair rent by reference to the anticipated annual return based on the capital value of the property. They acknowledged that none of these methods is the primary method. The task of determining a fair rent is a composite task which takes account of these three methods. The appropriate method depends on the facts and circumstances of each case. The Tribunal also gave consideration to the observations of the Lord President in Western Heritable Investment Co Ltd v Hunter (2004) and also the case of Wright v Elderpark Housing Association (2017) which requires the Tribunal to proceed on the best available evidence and use the other evidence as a cross check, where possible.

#### Registered Rents

14. The Tribunal identified eight potentially comparable properties in the G12 postcode area with registered fair rents. Each of those properties is a two bedroomed flatted dwellinghouse, so they are directly comparable. The range of rental is from £4,916.30 per annum to £5,253.68 per annum. At first sight, that puts the proposed rental at the top end of the scale, but the most directly comparable registered rental is for the flat immediately below this property, which is identical to this property. The registered rental for that property (2/1 110 Byres Road, G12) is £5,253.68 per annum.

15. There is one direct and reliable comparison. In Wright v Elderpark Housing Association [2017] CSIH 54 Lord Drummond Young said:

"..., it will frequently be appropriate for the rent officer or committee to begin with the rents that have been registered for comparable properties falling under Part VI of the Act (housing association properties), and to use the private rented market as a cross-check, making allowance for any scarcity in accordance with subsection (2) of section 48".

16. Fair rent for this property, when compared with registered rents, is in the region of £5,250.00 per annum.

17. Comparison of registered rents indicates that the rent officer's determination is the correct rental figure for this property.

*The Tribunal also considered the evidence of open market rents.*

18. The Tribunal also considered the evidence of market rents.

19. The annual rents for the properties advertised for rental in the G12 area in the three months to the date of hearing are in the region of £12,480.00 to £16,800.00 per annum. The properties are in

Gibson Street, G12,  
Great George Street, G12  
Cranworth Street, G12  
Byres Road, G12  
Dudley Drive G12  
Polwarth Street, G12,

20. The median figure for comparable market rental in the G12 area is £14,640. The comparable open market properties are two-bedroom properties with living room, kitchen, bathroom, floor coverings and most have furnishings and appliances provided by the Landlords.

21. The Tribunal considered that an adjustment was required to reflect the fact that the Landlords of this property did not provide any furnishings, appliances, decoration, floor coverings or shower in the bathroom. Taking an estimate of the cost of upgrading the subject property to the standard of the comparable properties marketed for rental in the three months to the date of hearing, and taking a straight line depreciation over 5 to 10 years for the different elements of the cost of decoration, floor coverings and providing the furnishings and appliances/shower, the Tribunal considered that a deduction of £1,400 per annum was reasonable to reflect these differences.

22. The Tribunal considered the open market rent to be £14,640; deducting the cost of fitting a shower/associated tiling works, floor coverings, decoration, furnishing, and appliances/white goods estimated at £1,400, a comparable open market rental would be £13,240 per annum. The Tribunal considered whether to make a deduction to reflect any current elements of disrepair but decided this was not appropriate as the noted repairs were not of a nature or scale which would affect the rental value of the property.

### *Scarcity*

23. When the Tribunal fix a fair rent they must do so on an assumption that the number of persons seeking to become tenants of similar properties in the locality of the Property is not substantially higher than the number of similar dwelling houses which are available for lease. Case law has determined that when considering the question

of scarcity, a large area must be considered to avoid an increase in demand being caused by specific local amenities. The Tribunal considered it reasonable to consider the City of Glasgow when assessing the question of scarcity. The parties did not make representations to the Tribunal on the question of scarcity.

24. The time taken to let properties and rent increases are factors that contribute to determining if scarcity exists. The City lets report for Q2 2022 says that market conditions in Glasgow are marked by strong growth and short time to let. Average rental is £997 pcm and time to let is only 14 days. Rentals have increased by an average of 13% in the last year.

25. The City lets report for Q2 2022 says

High demand and low supply once again combined to push Scottish rents up 9.9% year on year to an all-time high of £970 per month and kept Time To Lets low

26. Private housing and social housing are two strands of the same market for rental properties. There is a huge imbalance in the social housing strand of the market where supply is overwhelmed by demand. There is therefore a significant demand for social housing in the Glasgow area, which can best be interpreted as a scarcity of social housing.

27. The Tribunal determined that there is still a strong demand for private rented accommodation in Glasgow. The number of people seeking to become tenants of such properties in Glasgow is higher than the number of houses available and that the demand is substantially higher than the supply.

28. Taking an holistic view of all the available evidence, the tribunal finds that there is scarcity amounting to 10%.

29. The Tribunal determined that a comparable market rent for the Property using the evidence of market rents, after deduction of the adjustment of £1,400 and the 10% scarcity deduction of £1,464, results in a net comparable market rent of £11,776 per annum.

*The Tribunal considered if it was appropriate to use a return on the capital valuation of the Property.*

30. The Tribunal was not provided any evidence of capital valuations of the Property. The Tribunal were mindful that the capital valuation method has been described as notoriously unreliable '*normally to be used only as a last resort*' (Western Heritable Investment Co Ltd v Husband 1983 SC (HL) 60, 73). Given the strong evidence of comparable fair rents and market rents and the absence of evidence of capital

valuations the Tribunal determined that it was appropriate to proceed to assess the fair rent of the Property without using the capital valuation method.

31. The Tribunal are mindful that fixing the rent is a composite task. If the tribunal took a mid-point between the adjusted open market rent of £11,776.00 and the fair registered rent of £5,253.68, the tribunal would be driven to the conclusion that a fair rent for the property is now £8,514.84 per annum.

32. The landlord is a housing association providing social housing in Glasgow. The landlord takes the view that rentals should not be driven up by a buoyant open market, and restricts their submissions to asking for confirmation of the rent officers determination.

33. As both parties ask for this case to be determined by reference to registered fair rents alone, mindful of the dicta in Wright v Elderpark Housing Association [2017] CSIH 54 we look to the one directly comparable registered fair rent. The Tribunal took account of comparable figures of open market properties and comparable figures for registered fair rents. Having done so, in the light of parties' submissions, we found the registered rent for one directly comparable property one floor below this property, and on the same stair, to be the best comparison.

34. The tribunal finds that a fair rent for the property is £5,253.68 per annum, inclusive of service charge.

35. In reaching this decision the Tribunal have had regard to all the considerations required to be taken into account in terms of Section 48 of the Rent (Scotland) Act 1984.

36. This decision takes effect from 25 July 2022

**P Doyle**

Chairperson

6 October 2022

## Details of Fair rent properties within G12 from the Rent eRegister

Address	Building Type/Age	Rooms	Effective Date	Rent	Noted Services	Furniture	CH	Tenancy	Landlord
<b>Subjects: 3/1, 110 Byres Road, Glasgow G12 8TB</b>	<b>Tenement Pre 1919 Over commercial</b>	<b>3 Rooms 3, Kitchen, Bathroom, Full suite, yard shared</b>	<b>25/07/2022</b>	<b>£5253.68 pa</b>	<b>£66</b>	<b>None</b>	<b>Full</b>	<b>Contractual 01/10/1982</b>	<b>Glasgow West Housing Association Ltd</b>
2/1, 110 Byres Road, Glasgow G12 8TB	Tenement Pre 1919 Over commercial	3 Rooms 3, Kitchen, Bathroom, Full suite	25/07/2022	£5253.68 pa	£66	None	Full	Contractual 27/10/1983	Glasgow West Housing Association Ltd
3/1, 136 Byres Road, Glasgow G12 8TD	Tenement Pre 1919	3 Rooms 3, Kitchen, Bathroom, Full suite	23/01/2022	£4990.10 pa	None	None	Full	Contractual 28/05/1983	Glasgow West Housing Association Ltd
1/1, 118 Byres Road, Glasgow G12 8TB	Tenement Pre 1919	3 Rooms 3, Kitchen-Diner, Bathroom, Full suite, yard shared	30/05/2021	£4990.10 pa	None	None	Full	Contractual 07/03/1997	Glasgow West Housing Association Ltd
1/1, 102 Byres Road, Glasgow 8TB	Tenement Pre 1919	3 Rooms 3, Kitchen-Diner, Bathroom, Full suite, yard shared	26/04/2021	£5084.42 pa	£94.32	None	Full	Contractual 21/04/1994	Glasgow West Housing Association Ltd



Address	Building Type/Age	Rooms	Effective Date	Rent	Noted Services	Furniture	CH	Tenancy	Landlord
3/2, 61 Cecil Street, Glasgow G12 8RW	Tenement Pre 1919	3 Rooms 3, Kitchenette, Bathroom, Full suite	26/02/2021	£4348.68 pa	£102.96	None	Full	Contractual 28/06/1995	Glasgow West Housing Association Ltd
2/1, 132 University Place, Glasgow G12 8TA	Tenement Pre 1919	3 Rooms 3, Kitchen, Bathroom, Full suite, yard shared	05/03/2021	£4988.06 pa	£71.76	None	Full	Contractual 28/02/1987	Glasgow West Housing Association Ltd
2/1, 102 Byres Road, Glasgow G12 8TB	Tenement Pre 1919	3 Rooms 3, Kitchen-Diner, Bathroom, Full suite, yard shared	06/03/2021	£5120.18 pa	£203.88	None	Full	Contractual 28/02/1987	Glasgow West Housing Association Ltd
1/2, 136 Byres Road, Glasgow G12 8TD	Tenement Pre 1919 Over commercial	3 Rooms 3, Kitchen-Diner, Bathroom, Full suite, yard shared	06/03/2021	£4916.30 pa	None	None	Full	Contractual 28/09/1986	Glasgow West Housing Association Ltd

Properties in G12 advertised on s1Homes.com, rightmove.co.uk and [citylets.co.uk](http://citylets.co.uk) (1 x one bedroom flat in G11 included - very close to subjects)

August/September 2022

Address	Accommodation	Rent requested	Furnished	Other details	Adverstised Agent/Date
Dumbarton Road G11	1 Bedroom, Living Room with open plan Kitchen, Bathroom	£665 pcm	Yes	Located in a traditional tenement above commercial premises close to the bottom of Byres Road, modern fitted open plan kitchen with appliances, modern bathroom fittings.	D.J. Alexander Available 08/09/2022
Polwarth Street G12	2 Bedooms, Living Room, Kitchen with separate dining room, Bathroom	£1,040 pcm	Yes	Basement flat in traditional tenement. Described as very spacious with new fitted kitchen and appliances, modern bathroom fittings.	D.J. Alexander Available 08/09/2022

13 Dudley Drive G12 9SE	2 Bedrooms, Living Room, internal small Kitchen and Bathroom	£1,100 pcm	Yes	Top floor flat in traditional tenement with bay window in Living Room. Converted from large one bedroom flat, internal kitchen formed from recesses with modern fittings /appliances, gas central heating, double glazed windows.	Property Bureau Available 08/09/2022
Byres Road G12	2 Bedrooms, Living Room with open plan Kitchen, Bathroom	£1,250 pcm	Yes	First floor flat in traditional tenement above shops/located on the corner of Havelock Street opposite the subject property. Bay window in Living room/open plan Kitchen, modern bathroom and kitchen fittings with appliances, gas central heating and double glazing.	Bensons Sales and Letting Available 04/09/2022
Cranworth Street G12	2 Bedrooms, Living Room, Kitchen, Bathroom	£1,295 pcm	No	Top floor flat in traditional tenement. Described as well presented, bay window in Living Room, modern fully fitted kitchen with appliances, modern galley bathroom, gas central heating, double glazed windows.	Tay Letting Available 23/09/2022
B/2, 168 Great George Street, Glasgow G12 8AJ	2 Bedrooms (master ensuite shower room), Living room, Kitchen, Bathroom	£1,395 pcm	Yes	Basement flat in traditional tenement. Described as luxury, fully furnished and modern fully fitted kitchen/luxury shower room, gas central heating	GSPC Glasgow Available 28/09/2022

Gibson Street G12	2 Bedrooms, Living Room, Kitchen, Bathroom	£1,400 pcm	No	First floor flat in traditional tenement. Described as newly refurbished, spacious, double glazed windows, fresh decor, gas central heating, modern kitchen with appliances and modern bathroom fittings.	KPM Residential Available August 2022
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