

Housing and Property Chamber
First-tier Tribunal for Scotland



Rent (Scotland) Act 1984

Notification Of Decision

REFERENCE NO.	OBJECTION RECEIVED	OBJECTION
FTS/HPC/RR/18/0870	17 April 2018	Not Applicable

ADDRESS OF PREMISES

43 Wanlock Street, Glasgow, G51 3AB

TENANT

Mrs Elaine McCracken

**NAME AND ADDRESS OF
LANDLORD**

Govan Housing Association
35 McKechnie Street, Glasgow, G51
3AQ

AGENT

N/A

DESCRIPTION OF PREMISES

The property is a brick built mid terraced dwelling-house with gardens to the front and rear. The property was built in 1996, and offers 5 rooms, spread over three floors, with a large kitchen, a bathroom and a separate WC. The property benefits from double glazed windows (throughout) and has gas central heating.

SERVICES PROVIDED

The property is let unfurnished. The Landlord is responsible for repairs to the fabric of the building. The Tenant is responsible for internal decoration.

TRIBUNAL MEMBERS

CHAIRPERSON

Paul Doyle

ORDINARY MEMBER (SURVEYOR)

Robert Buchan

ORDINARY MEMBER

FAIR RENT	DATE OF DECISION	EFFECTIVE DATE
£6,887 per annum	3 July 2018	20 March 2018

P Doyle

Chairperson of tribunal

3 July 2018

Date

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier tribunal for Scotland (Housing and Property Chamber)

STATEMENT OF DECISION: Under paragraph 10(1) of Schedule 5 to the Rent(Scotland) Act 1984

Chamber Ref: FTS/HPC/RR/18/0870

PROPERTY – 43 Wanlock Street, Glasgow G51 3AB

Tribunal Members

Paul Doyle – Legal Member
Robert Buchan – Surveyor Member

Introduction

1. This is a reference to the Housing and Property Chamber of the First-tier Tribunal for Scotland for determination of a fair rent under the Rent (Scotland) Act 1984 by the landlord, Govan Housing Association, 35 McKechnie Street, Glasgow G51 3AQ (“The Landlord”) in respect of the mid-terraced dwelling-house at 43 Wanlock Street, Glasgow G51 3AB. The tenant is Mrs Elaine McCracken (“the Tenant”).

2. The registered rent paid by the tenant in respect of the property was £3590 per annum. The landlords applied to the rent officer for an assessment of fair rent. The rent officer determined a rental of £5300.64 per annum. The Tenant referred the rent officer’s determination to the Housing and Property Chamber of the First-tier Tribunal for Scotland.

3. Only the Tenant (and her family) was present at the inspection which took place at 10.00am on 25 June 2018. A hearing took place at 11.30am within the Tribunal Hearing Centre in York St, Glasgow. The Tenant attended that hearing with her husband, the Landlord was neither present nor represented.

4. Paul Doyle (legal member) and Robert Buchan (surveyor member) were the Tribunal members.

DOCUMENTATION

5. Neither party referred to any documentary evidence, but the Tribunal intimated the following documents in advance of the hearing.

- Citylets quarterly report 2018 (first quarter)
- Scottish Government - Private Sector Rent Statistics, Scotland, 2010 to 2017

- Details of comparable properties available for rent in the area
- Extracts from the Register of Fair Rents (comparable rentals in the area)

Neither party made any written representations to the Tribunal.

THE INSPECTION

6. The inspection took place at 10:00am on 25 June 2018. The Tenant welcomed the Tribunal members into the property. The Tribunal members introduced themselves and then inspected the property.

The PROPERTY

7. The property is a brick built mid terraced dwelling-house with gardens to the front and rear. The property was built in 1996, and offers 5 rooms, spread over three floors, with a large kitchen, a bathroom and a separate WC. The property benefits from double glazed windows (throughout) and has gas central heating.

8. The property is let unfurnished. The Landlord is responsible for repairs to the fabric of the building. The Tenant is responsible for internal decoration.

9. The property is located in the Govan area of Glasgow, immediately adjacent to the River Clyde. There is reasonable local shopping and good public transport links. The gross internal floor area of the property is 120 sq m or thereby.

The HEARING

10. The hearing took place at 11.30am within the Tribunal Hearing Centre in York St, Glasgow. Only the Tenant (supported by her husband) attended that hearing, the Landlord was neither present nor represented. No representations were made by the Landlord.

11. The Tenant (helped by her husband) explained that her family have lived in the property since it was completed in 1996. The Tenant is a protected tenant, transferring into the property from another regulated tenancy. The Tenant explained that the increased rental is £142.55 per month more than she now pays, whilst her wages have only increased by 1% per annum. She compares the proposed rental to rentals paid in other similar properties in the terrace, and believes that she is being asked to pay more than her neighbours, and in any event the increase in rental of approximately 47% cannot be justified.

DECISION AND REASONS

12. In terms of section 48 (1) of the Rent (Scotland) Act 1984 (as amended), the Tribunal's duty 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.”

13. Disrepair or defects attributable to the tenants should be disregarded, as should any improvements made by the tenant, otherwise than in pursuance of the terms of the tenancy (section 48(3) of the Act). Improvements by the landlord should be taken into account. In reaching its determination the Tribunal applied those duties.

14. The Tribunal considered carefully all the evidence presented and considered which of the three alternative methods of ascertaining a fair event would be most appropriate in this case.

15. The three accepted methods used in Scotland are

- (a) Determining a fair event 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) of the Act
- (c) Calculating the appropriate return based on the capital value of the property, taking into account the element of scarcity.

No one of these methods is regarded as being the primary method. The Tribunal’s duty is to take a holistic view of the evidence available, and adopt a composite approach to comparable rentals.

16. The Tribunal was aware of the need to proceed on the basis of the best evidence available, using other available evidence as a check where possible. The calculation of an appropriate return based on the capital value of the Property did not appear appropriate given (1) the imprecision of such a calculation which invariably requires the use of contentious variables (in particular the decapitalisation rate) compared to the relative ease of using comparable rents and (2) the readily available evidence of open market let property and registered fair rents in the area of the Property. Extracts from the Register of fair rents provides evidence of registered rents of comparable properties in the area. The Committee decided that the best method to use in this case is an assessment of both local registered rents and local market rents and then applying the appropriate disregards.

17. The documentary evidence of comparative rentals tells the tribunal that 3 bedroomed houses in the area have recently been let for £695.00 pcm. A traditional three bedroomed house on Kinning Road, Govan was recently let for £750pcm. The recent Citylets report tells the Tribunal that 2 bedroomed flats in the area are consistently let for £550.00pcm. However this property is

unusual in the rental market in its size and type. Few recent open market comparables of 4 bedroom houses were available and when considering the various statistics provided in the supporting documentation referred to above, it was noted that the sample size for 4 bedroom properties was significantly smaller than for other sized properties with no differentiation made between houses and flats. The larger properties are often houses in multiple occupation (HMOs) and so supporting much higher levels of rent than a house let to a single family. Accordingly, the tribunal felt that more appropriate comparisons would be provided by considering 3 bedroom houses in the area, which evidence was available, together with other local rental evidence, and adjusting the comparables for their differences.

18. The tenant told the tribunal that she had asked her neighbours about rent increases they had had, and was told that their rent increases were far more modest. The Tribunal consulted the Register of Fair Rents (sharing the information with the tenant) and found that 1 Wanlock Street (an identical property,) last had its rent assessed in 2016, and in 2016 rental of £4380 pa was fixed. Numbers No 9, 31, 37, 23, 25, 27 & 35, all identical properties in Wanlock Street, all had rentals in the region of £4,300pa assessed in 2016. Each one of those properties is due to have a fair rental re-assessed next year.

19. The Register of Fair Rents also discloses that an identical property at 37 Wanlock Street had rental assessed at £6,900 pa in April 2016. No reason for the difference was apparent.

20. The fixing of a fair rent is a composite exercise where one method can be used as a cross check of the figure found using another method. Typically registered rents fall to be cross checked against market rents, and vice versa. Applying that approach the Tribunal finds that the weight of reliable evidence , taken from comparative figures in the Register of Fair Rents and comparative market rentals in the area, tells us that a three bed roomed house commands a rental of £695 pcm. The subject property is a larger property. It is reasonable to expect it to attract a rental of at least £750 pcm. Placing reliance on the comparative rentals found by the Tribunal (and intimated to the parties before the inspection and hearing) the Tribunal finds that a fair market rental for this property is 750pcm, which is £9,000 per annum.

21. The tenant has redecorated the property. The tenant has provided flooring throughout the property. It was obvious to Tribunal members that the property does not have adequate provision for detecting fires in the property. To meet the repairing standard set out in the Housing (Scotland) Act 2006 the Landlord must install hardwired and interconnected smoke and heat detectors throughout the property.

22. Using their own skill and experience the Tribunal assess the cost of carrying out those works as follows

Redecoration throughout - £2000

Reflooring the entire property - £2000
Installation of hardwired interconnected smoke, and heat detectors. -
£1,000

23. Using their own skill and experience, the Committee amortise the cost of all of those works over five years, giving an annual cost of £1,000.

24. From a market rental of £9,000 per annum, deductions totalling £1,000 are to be made, reducing the annual rental for this property to £8,000 per annum.

25. The rent officer assessed a rental of £5,300.64. £8,000 per annum is market rental which the tribunal considered could be expected. A fair market rental must fall somewhere on that spectrum. Because of the absence of representations from the Landlord and the lack of reliable evidence provided by an unrepresented Tenant, it is only fair to take the mid-point in that spectrum, which indicates that a fair rental of £6,887 per annum (or £574pcm) is the current fair rental for this property.

26. The concept of scarcity is an essential feature of a 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) of the Act requires that the tenant be protected from the financial implications of that.

27. The Tribunal has to determine whether the number of people looking for tenancies in similar dwelling houses in the area of the property (on the same terms as this tenancy) is not substantially higher than the number of dwelling-houses available for letting on those terms. The Tribunal must exclude excessive demand caused by desirable local amenities. The Tribunal recognises that an easily definable "large area" in this case is Glasgow as a whole.

28. The materials available to the Tribunal indicated that the demand for four and five bedrooled properties across Glasgow as a whole is not substantially greater than the number of dwelling-houses in Glasgow available for letting. The statistics provided in the Citylets report did not provide figures for 4 bedroom properties in Glasgow but indicated that the time taken to let 3 bedroom properties was consistently longer than for other sized properties in most quarters over the last 4 years. The Tribunal cannot therefore make a discount from the market rent on the grounds of market imbalance or scarcity.

29. The assessed rent of £574 per calendar month is higher than the registered rent for other neighbouring properties, but this reflects the fact that those properties will be reassessed next year on a different cycle; the difference in assessed rentals reflects the Tribunal's duty to take account of open market rents. The Tenant should be aware that the Landlords are not obliged to charge rent at this level and that there are legal provisions requiring any increase in rent to be introduced in a staged process.

30. For these reasons, the Tribunal found that the rent registered by the rent officer is not a fair rent in terms of section 48 of the 1984 act. The Tribunal concluded that a fair rent for the property is £6,887 per annum - or £574 per month - in terms of section 48 of the 1984 Act. That rental shall take effect from the date of registration, which was 20 March 2018.

31. In reaching this decision the Tribunal had regard to all of the requirements of section 48 of the 1984 Act.

Appeals

32. In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them

Signed
Legal Mem

P Doyle

Date 3 July 2018

Photographs taken during the inspection of
43 Wanlock Street, Glasgow G51 3AB



Front



Rear



Kitchen



Bathroom

Photographs taken during the inspection of
43 Wanlock Street, Glasgow G51 3AB



Street



View from bedroom window