

Housing and Property Chamber

First-tier Tribunal for Scotland



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/22/0166

Flat 0/1, 17 Langside Road, Glasgow, G42 7AQ ('the Property')

The Parties:

Govanhill Housing Association Limited, Samaritan House, 79 Coplaw Street, Glasgow G42 7 JG ('the Landlords')

and

Mrs Elizabeth McEwan, residing at Flat 0/1, 17 Langside Road, Glasgow, G42 7AQ ('the Tenant')

Tribunal members:

Paul Doyle (Legal Member)

Mike Links (Ordinary Member).

BACKGROUND

1. The Tenant has rented this property from the Landlord since 28 October 1994. The tenancy is a regulated tenancy in terms of the Rent (Scotland) Act 1984. The current rent is £5,109.70 per annum. On 24 November 2021, the Landlord applied for the annual rental to be increased to £5,839.16. The Rent Officer registered an annual rental of £5,534.16 effective from 13 February 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 parties were asked to provide the Tribunal with representations and any further information about rent levels of comparable properties and whether there is scarcity of supply of rental property in the locality. Both the tenant and the landlord made written representations on 23 May 2022.

THE INSPECTION

4. At 10.30am on 22 August 2022 the Tribunal inspected the Property. It was a damp, grey, 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.

5. The property is a ground and first floor maisonette in a brick built block of flats which was completed in 1994. It is situated in a densely populated area with mixed styles of housing. The property enters from a common close, entry to which is controlled by an entry phone system. The front door opens onto a central hallway providing access to the living room and kitchen/dining room. One flight of stairs leads to the first floor where there are three bedrooms, and a bathroom (with a three piece sanitary suite). The property benefits from double glazing and gas central heating. The gas central heating system was renewed in March 2022. The living room has a patio door leading to a small patio. The master bedroom has a glazed door leading to a balcony.

6. The Tenant provided the carpets and floor coverings throughout the Property, and the gas oven, hob, and the white goods. The services provided by the Landlords are maintenance of the main door entry system, stair cleaning and central area maintenance. The Property benefits from good local amenities and transport links to the city centre.

THE HEARING

7. Only the tenant attended the hearing. The landlord was neither present nor represented. The tenant expanded on the terms of her written submission and said that a newly build block of flats close by, aimed at the private mid-market, attracted a comparable rent to the rent asked for by the landlord in the social housing market. The tenant said that the property has suffered from an infestation of rats, and that the landlord had failed to respond to her telephone calls and emails.

THE DECISION

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

1. The landlord's application for registration of the rent for the property, dated 21 November 2021

2. The rent officer's proposed increase in rental, dated 20 January 2022

3. ROCAS Rent Register Page for the property.

9. The Tribunal obtained details of comparable fair rents of three bedroomed, ground floor, flats from the Fair Rent eRegister and market rentals from internet sources, which were circulated to parties in advance of the hearing.

10. 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.'

11. 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 Elderspark 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

12. The Tribunal identified seven potentially comparable properties in the G42 postcode area with registered fair rents. Only one of those properties has three bedrooms. Two of those properties are one bedroomed flats. The remaining four properties have two bedrooms.

13. The potentially comparable two bedroomed properties were at

1/2, 595 Cathcart Road, Glasgow G42
3/1, 91 Coplaw Street, Glasgow, G42

0/1, 93 Govanhill Street, Glasgow G42

0/1, 142 Coplaw Street, Glasgow G42

Those properties had registered rents ranging from £4855.16 (with a service element of £82.80) to £5163.88 (with a service element of £59.04).

14. Two bedroomed properties in the area have recently registered rents in the region of £5,000 per annum.

15. It is not realistic to compare one bedroomed flatted dwellinghouses with a three bedroomed maisonette.

16. 3/2, 91 Coplaw Street, Glasgow, G42 is a modern flatted dwellinghouse with three bedrooms, a living room, a kitchen, & a bathroom. It has gas central heating and is owned by the same landlord. On 26/06/2022 the rent officer determined a rental of £6,275.65 for that property (with a service element of £225.15)

17. 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".

18. It is a matter of agreement that the windows throughout the property are leaking, and the patio and balcony doors are warped and past their useful life. The landlord concedes that plans were made to replace all glazed units (windows and doors) four years ago. Those plans have been altered because the replacement of the glazed units requires removal of the kitchen and bathroom fittings. It is anticipated that the significant work required will be undertaken within the next year. In the meantime, the windows and glazed door units are draughty.

19. If the property was in perfect condition, comparison of registered rents would attract a fair rental figure of about £6,000 per annum. Taking account of the significant works required to this property, taking account of the length of time the works have been outstanding, and taking account of the length of time which will pass before the works commence, it is realistic to reduce the figure for this property. Fair rent for this property, when compared with registered rents, is in the region of £5,500 to £5,600 per annum.

20. 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.

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

22. The annual rents for the properties advertised for rental in the G42 area in the three months to the date of hearing are in the region of £10,200 per annum. These are not comparable properties because they are two-bedroom properties with living room, kitchen, bathroom, floor coverings, furnishings and appliances provided by the Landlords.

23. This is a three bedroomed maisonette, not a two bedroomed flatted dwellinghouse. The Tribunal found no directly comparable properties currently or recently available on the open market.

Scarcity

24. 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. The Tribunal had no evidence before it that indicated there was not a reasonable balance between supply and demand in the area and decided that scarcity was not, therefore, an element which affected the rental levels.

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

25. The Parties had 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 the absence of reliable evidence of either market rents or 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.

26. The Tribunal are mindful that fixing the rent is a composite task and consequently, after consideration of all these factors, the Tribunal decided that a fair rent for the Property is £5,534.16 per annum, which includes a service element of £225.24. The Tribunal took account of the registered rent for smaller, two bedroomed, properties nearby, and found the registered rent for one directly comparable nearby property to be the best comparison after making allowance for the fact that significant remedial work has been outstanding for this property for a period of time measurable in years.

27. 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.

This decision takes effect from 13 February 2022

P Doyle
Chairperson

22 August 2022