

Housing and Property Chamber
First-tier Tribunal for Scotland



RENT (SCOTLAND) ACT 1984, SCHEDULE 5 PARAGRAPH 10(1)

NOTIFICATION OF DECISION OF FIRST-TIER TRIBUNAL FOR SCOTLAND

REFERENCE NO:	OBJECTION RECEIVED	OBJECTION
PRHP/RR/16/0244	11 July 2016	Tenant

ADDRESS OF PREMISES

8 Fairfield Gardens, Govan, Glasgow G51 3PR

TENANT

Mr James Wright

AGENT Govan Law Centre, Units 4 & 6, 18-20 Orkney Street, Glasgow G51 2BX

NAME AND ADDRESS OF LANDLORD

Elderpark Housing Association
31 Garmouth Street,
Glasgow G51 3PR

AGENT

Not applicable

DESCRIPTION OF PREMISES

2 storey mid-terraced house erected approximately 1986 in the Govan area of Glasgow. Accommodation comprises kitchen with dining area, living room, three bedrooms, bathroom with bath shower, toilet and wash-hand basin, downstairs toilet, garden. Gas central heating. Double glazing throughout requiring replacement. The gross internal floor area is 91 square metres.

SERVICES PROVIDED

None

COMMITTEE MEMBERS

CHAIRMAN
SURVEYOR

D Bartos
R Buchan

FAIR RENT	DATE OF DECISION	EFFECTIVE DATE
£ 5400 p.a.	2 October 2017	14 June 2016

*services:

(sgd) David Bartos

Chairman of First-tier Tribunal, Housing and Property Chamber

Date 2 October 2017

Housing and Property Chamber
First-tier Tribunal for Scotland



**Statement of Reasons for Decision of the Housing and Property Chamber of the
First-tier Tribunal for Scotland**

(Hereinafter referred to as “the Tribunal”)

Under paragraph 10(1) of schedule 5 to the Rent (Scotland) Act 1984

Case Reference Number: PRHP/RR/16/0244

Re : Property at 8 Fairfield Gardens, Govan, Glasgow G51 3PR (“the Property”)

The Parties:-

James Wright, 8 Fairfield Gardens, Govan, Glasgow G51 3PR (“the Tenant”)

Elderpark Housing Association, 31 Garmouth Street, Glasgow G51 3PR (“the Landlords”)

The Tribunal comprised:-

Mr David Bartos	- Legal member and Chairperson
Mr Robert Buchan	- Surveyor member

Background:-

1. The Tenant is the tenant of the Property by virtue of a statutory protected tenancy. The tenancy commenced in 1986 upon the construction of the Property. The Tenant has lived there since that time. The rent was registrable under section 56 of the Rent (Scotland) Act 1984 and section 43(2)(b) of the Housing (Scotland) Act 1988 preserved the status of the previous tenancy for this tenancy. No furniture has been provided by the Landlords under the tenancy. There are no services provided by the Landlords under the tenancy.

2. By application dated 22 April 2016 the Landlords applied to the Rent Officer for registration of a fair rent. At the time of the application the Tenant was paying rent of £ 291.67 per month or £ 3500 per annum. In his reference to the Tribunal the Rent Officer noted that the previous registered rent was at this level.
3. On 14 June 2016 the Rent Officer registered a rent of £ 4791.96 per annum to be effective from 28 July 2016 (equivalent to £ 399.33 per month). This was intimated to the Tenant and the Landlords. The Tenant objected to this through his solicitor's letter of appeal to the Rent Officer dated 5 July 2016 and received on 7 July 2015. The Rent Officer referred the objection to the then Private Rented Housing Panel.
4. On or about 18 August 2016 a committee of the Private Rented Housing Panel ("PRHP") inspected the Property and a hearing of the reference took place. Both hearing and inspection had been intimated to the parties, and the Tenant's solicitors. The Tenant was present at both the inspection and the hearing. His representative was present at the hearing. Following the hearing the committee made a decision dated 10 September 2016 to fix the fair rent at £ 6200 per annum (equivalent to £ 516.67 per month).
5. The Tenant appealed the decision of the committee to the Inner House of the Court of Session. By its decision dated 4 August 2017 the Court of Session upheld the appeal and quashed the decision of 10 September 2016. The Court remitted the reference to a differently constituted Committee with a direction :

"to apply the approach discussed within Lord Drummond Young's opinion of even date when determining a fair rent in terms of section 48 of the Rent (Scotland) Act 1984".

Within paragraph [24] of Lord Drummond Young's opinion he stated :

"First, we [the court] do not endorse any submission that the private rented sector and the registered social rented sector are wholly distinct and that accordingly the Committee ought only to have regard to rents in the latter sector. Both sectors may be relevant. Secondly the method followed by the Committee should be that set out in Western Heritable Investment Co. Ltd v. Hunter 2004 S.C. 635 as described at paragraphs [12] and [13] above; both registered rents and market units should be taken into account if evidence exists. It is important, however that the rent should be determined on the basis of properties that truly are comparable."

6. The Tribunal attended at the Property on 21 September 2017 at 10.00 a.m. commencing the inspection at 10.15 a.m. The date and time of the inspection had been intimated to both parties. The Tenant was present. There was no attendance by or on behalf of the Landlords. It was dry but overcast after rain

at the time of the inspection. The Property is a terraced house built in the mid 1980s on the west side of Fairfield Gardens in the Govan area of Glasgow. It is south of Govan Road and east of Elder Park. There is on-street parking. There are frequent bus links to the city centre from Govan Road.

7. The accommodation consists of three bedrooms, living room, dining kitchen, bathroom with toilet, and downstairs toilet. The Property has a gross internal floor area of 91 square metres. From the front door a corridor provides access to the living room, the kitchen, the downstairs toilet (which faces the front) and to the staircase leading to the first floor. The living room faces the rear garden of the Property. The kitchen which faces both the front and rear can also be reached via the living room. It has a dining area and a back door leading to the Property's own back garden. The kitchen fittings are in good condition.
8. On the first floor there is a bathroom with toilet, and bath with shower above it. This faces the front of the Property. There are two double and one single bedrooms all of which face the rear garden. In the largest bedroom there is a walk-in wardrobe.
9. There are deep walk-in cupboards in the kitchen and downstairs corridor and in the upstairs corridor.
10. The living room has a fireplace with a gas fire. The kitchen has a combination boiler. There is gas central heating with radiators in all rooms.
11. There is double glazing within wooden units in every room. This was glazing installed at the time of construction of the Property. In the living room the middle and lower units have condensation within them causing misting. This is also the case for the double-glazed door leading to the garden in the kitchen. In the living room and on the first floor the handles on the window units were stiff and incapable of being turned fully.
12. All decoration throughout the Property has been carried out by or on behalf of the Tenant. It is dated and in need of renovation. All carpets and floor coverings have been provided by the Tenant. The surfaces of the internal doors are scuffed and damaged.
13. The Property includes its own garden to the rear with a garden shed.
14. The Tribunal noted that there were no heat and inadequate smoke detectors in the Property as required by the repairing standard. The electrical system did not appear to have been tested recently and the light fitting in the bathroom did not meet current standards.
15. The Tribunal took account of their inspection and in addition the following documentary evidence : -

- Copy form RR1 being the Landlords' application for registration of rent for the Property dated 22 April 2016
- Copy extract from the Rent Register for the Property showing among other matters the rent registered by the Rent Officer for the property on 14 June 2016
- Copy reference to PRHP from the Rent Officer dated 7 July 2016
- Copy letter of appeal from agents for the Tenant dated 5 July 2016
- Written representations from the Landlords dated 26 July 2016
- Archived note of letting relating to house at Elderpark Gardens
- Archived note of letting relating to houses at Uist Street, Craigton Road and Greenfield Street, and note of marketing to let of house at Craigton Road, Glasgow.
- Citylets Report for Q2 2016
- Scottish Housing Regulator Landlord report 2016/2017 response
- Copy letter from the Landlords to the Tribunal dated 1 September 2017 with attached Landlords' charges for 3 bed houses

The Citylets Report and archived notes had been obtained by the Tribunal and copies had been intimated to the parties, and the Tenant's agents by notice dated 29 August 2017. Ms Flanigan did not have the letter from the Landlords dated 1 September 2017 with its attachment at the hearing, but she indicated that there was no prejudice to the Tenant and that the hearing could continue.

Relevant Law

16. In considering an objection to the rent registered by the Rent Officer the Tribunal requires to determine for itself what rent is or would be a fair rent under a regulated tenancy of the property in question. If the Tribunal determines that the rent registered by the Rent Officer is a fair rent then it must confirm the rent but if it takes the view that the rent so registered is not a fair rent, then it must determine the fair rent for the property in question without being bound by the Rent Officer's figure.
17. In determining the fair rent the Tribunal is required to strike an equitable balance between the interests of a tenant and landlords respectively. In striking that balance the Tribunal is obliged under section 48(1) of the Rent (Scotland) Act 1984 to have regard to all 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 under the tenancy to the quality, quantity and condition of the furniture.
18. The disregard of personal circumstances means that the Tribunal must disregard a tenant's ability to pay the rent. The assets or financial position of the Landlords

are also personal circumstances which have to be disregarded. That the Landlords are a housing association is also a personal circumstance to be disregarded.

19. However in determining the fair rent the Tribunal is obliged under section 48(2) of that Act to assume that the number of persons seeking to become tenants of similar properties in the locality on the terms (other than those relating to rent) of the tenancy is not substantially greater than the number of dwellinghouses in the locality which are available for letting on such terms.
20. The Tribunal is also obliged to disregard any improvement or the replacement of any fixture or fitting carried out, otherwise than in pursuance of the tenancy, by the tenant or any predecessor of his under the tenancy.
21. The task of determining a fair rent under section 48(1) is a composite task which takes account of accepted methods of determining a rent, none of which is regarded as the primary method. (*Western Heritable v. Hunter* (above) at para. [41]). The three accepted methods are:
 - (a) having regard to registered rents of comparable dwellinghouses in the area;
 - (b) taking market rents of such dwellinghouses and deducting an amount in respect of improvement and the like by the tenant which requires to be disregarded under section 48(3) and an amount if the market rents do not reflect the assumption as to demand not being substantially greater than supply (the assumption as to absence of market imbalance) and
 - (c) calculating the appropriate return based on the capital value of the property, taking into account the assumed absence of market imbalance.

The third method has been described as notoriously unreliable, “normally to be used only as a last resort” (*Western Heritable Investment Co. Ltd v. Husband* 1983 S.C. (H.L.) 60, 73).
22. Market rents may be used as a cross-check against registered rents to ensure that where there is no scarcity (market imbalance), registered rents do not come to be markedly out of line with current market conditions and to provide an adjustment for general inflation (Lord Drummond Young in the Court of Session decision in the current case at para. [13]). Equally registered rents may be used as a cross-check against market rents (*Western Heritable Investment Co. Ltd v. Hunter* 2004 S.C. 635, para. [41]).

The Hearing

23. At the conclusion of the inspection the Tribunal held a hearing at 11.45 a.m. at Wellington House, 134-136 Wellington Street, Glasgow. This hearing (to commence at 11.30 a.m.) had been intimated to both parties. The Tenant and his solicitor Deirdre Flanigan of the Govan Law Centre appeared. There was no appearance by or for the Landlords.

24. The Tenant gave evidence. He spoke to the windows not working and to being unable to understand why anybody could ask for a 37% increase in the rise of rent, being from the existing £ 291.67 per month. In his view given their assets the Landlords had no reason to seek such an increase. He said that the Landlords went to the Rent Officer every 3 years to register a rent. When this occurred Rent Officers visited the Property. In the past this had led to 5% increases. In the present case in 2016 the Rent Officer had visited but not inspected the house. He had simply sat in the kitchen and filled out forms telling the Tenant that he could appeal his decision. The Tenant could not understand how the Tribunal could compare the rents of social housing to private open market rents.
25. The Tribunal accepted the Tenant's evidence of facts (rather than opinion) as credible and reliable.
26. The Tribunal considered carefully all the above evidence and written representations together with the observations of the Tribunal members at the inspection.
27. The Tribunal had the following comparable annual registered rents:
- Rent of £ 4791.96 (£399.33 per month) for 11 Fairfield Gardens, Govan
 Rent of £ 4552.44 (£379.37 per month) for 12 Fairfield Gardens, Govan
 Rent of £ 4791.96 (£399.33 per month) for 16 Fairfield Gardens, Govan
 Rent of £ 4791.96 (£399.33 per month) for 21 Fairfield Gardens, Govan
 Rent of £ 4791.96 (£399.33 per month) for 15 Fairfield Gardens, Govan
- The rents for 11, 12, 16, and 21 Fairfield Gardens were registered on 27 June 2016 while the rent for 15 Fairfield Gardens was registered on 14 June 2016.
28. Registered rents were set by the Rent Officer with no explanation or reasoning as to how the rent was set or what factors had been taken into account in that process.
29. The Tribunal were able to use their knowledge and experience of market rents from the Govan area of Glasgow. The Tribunal had the following comparable market rents:
- Rent of £ 7200.00 (£600 per month) for 2 bedroomed house at Elderpark Gardens, Govan marketed from 7 November to 15 December 2016
 Rent of £ 8400.00 (£700 per month) for 4 bedroomed house at Craigton Road, Govan marketed from 28 December to 29 December 2016
 Rent of £ 9000.00 (£750 per month) for 3 bedroomed house at Greenfield Street, Govan marketed from 19 October to 8 November 2016.

30. For the Tenant Ms Flanigan submitted that from the point of view of a market rent the Property should be seen at the lower end of the market as indicated by its housing association status. Leaving out that housing association status, under reference to the information on page 6 of the Citylets Q2 2016 report, she submitted that the average market rent for a 3 bedrooomed property over the whole of Glasgow was £ 1040 per month. Ms Flanigan felt that a housing association rent should be 33% of the private rented sector reflecting the scarcity of housing association tenancies and said that the average rent for a housing association property of “3 apartments” was according to the Scottish Housing Regulator Report £ 77.69 per week or £ 336.36 per month. From that figure there should be an allowance for age and disrepair of the Property of about £ 36 per month leaving as a market and fair rent of £ 300 per month. This would be an increase of £ 8.33 per month which would be fair and in line with the current inflation rate.
31. With regard to the comparable market rents produced by the Tribunal Ms Flanigan submitted that the rent for the property at Elderpark Gardens was a realistic figure as a private market rent as were the rents in the other comparables produced by the Tribunal. She submitted that due to the difficult economic situation they should be given little weight as they reflected different aspects of the same market and were artificially supported by housing benefit.
32. For the Landlords, in their housing manager’s letter of 1 September 2017, they supported the figure of £ 399.33 per month which they had sought and obtained as a fair rent from the Rent Officer. In their letter of 1 September they also stated that this rent had been based on their rent-setting formula for Scottish secure tenancies. They did not make any submission on comparable market rents. Their only other reference was to a schedule of rents which they actually charged for 3 bedrooomed properties. From the letter and the Landlords’ July 2016 representations, the Tribunal took it that these were covered by the rent-setting formula. Another oddity of this schedule was that it included a charge of £ 383.82 monthly for 7 Fairfield Gardens when the registered fair rent was £ 2350 per annum. For these reasons the Tribunal placed no reliance on the Landlords’ schedule.

Reasons for Decision

33. The difficulty with Ms Flanigan’s approach was that as Lord Drummond Young stated in paragraphs [15] to [17] of the Court of Session decision, the 1984 Act does not give any basis for treating housing association lets in a manner different from private rented housing generally. Under the scheme in the Act both must be taken as different aspects of a single market. For these reasons the Tribunal rejected her approach.

34. Using its knowledge of market rents and taking account of the market rents in the above comparables, and the Tenant's representations presented by the Tenant's agents the Tribunal considered that a three bedroomed unfurnished flat of the size of the Property in a satisfactory state of repair with modern fixtures and fittings including double glazing and central heating in the Govan area of Glasgow would let in the open market for about £ 650 per month.
35. The Tribunal took the view that in order to achieve that market rent an allowance would have to be made for the costs to the Landlords of upgrading including the installation of new double glazing throughout, smoke detectors, testing of the electrical system (which bore to have been last inspected in 2005), full redecoration, new doors, a new bathroom and downstairs toilet, and new loft insulation. Over the years the Tenant had installed all of the laminate flooring and carpets which fall to be disregarded under section 48 but would also have to be replaced to achieve the market rent of £ 650 per month.
36. Taking the limited lifetimes of the upgrades into account the Tribunal estimated their cost at £ 1600 per annum or £ 133.33 per month. Making such a monthly deduction from £ 650 the Tribunal considered that leaving aside the assumption as to no market imbalance (no scarcity) a fair rent would be £ 516.67 per month or £ 6200 per annum.
37. The next question is whether the number of persons seeking to become tenants of similar dwellinghouses in the "locality" of the Property on the terms (other than relating to rent) of the tenancy is not substantially higher than the number of such dwellinghouses which are available for letting on such terms.
38. Case law has determined that in deciding whether the assumption exists a Tribunal must assess the rental market over a "large area" to exclude excessive demand caused by specific local amenities such as proximity to city centre shops, offices and transport links or a hospital or university. "Locality" must be decided in that context.
39. The Tribunal recognised that an easily definable "large area" in this case would be Glasgow as a whole. For the Tenant, Ms Flanigan took no issue with that approach and the Tribunal decided that Glasgow would be the "locality" for the purposes of the assumption.
40. Was the number of persons seeking to become tenants of similar properties in Glasgow on the terms (other than those relating to rent) of the tenancy substantially greater than the number of dwellinghouses in Glasgow available for letting on such terms ? In this context "substantially" means by a large amount. Ms Flanigan submitted that the demand for 3 bedroomed properties across Glasgow as a whole was not substantially greater than the supply and therefore the assumption applied. The Tribunal found that this submission was well founded and accepted it. There was therefore no discount from the market

rent on the grounds of market imbalance or scarcity. It followed that on a market evaluation a fair rent would have been £ 516.67 per month.

41. 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.
42. The fixing of a fair rent is a composite exercise where one method can be used as a cross-check of the figure using another method. Typically registered rents fall to be cross-checked against market rents and vice-versa.
43. Applying that approach the Tribunal found that the comparable registered rents pointed to a figure of £ 400 per month. These were from properties very close to the Property. That said, the Tribunal found the identical nature of the rents inexplicable. From the information provided by the Landlords it appears that these registered rents were based on the rent formula used by the Landlords, although for some reason, unbeknown to the Tribunal, this has been followed to the penny by the Rent Officer. The market figure found by the Tribunal suggests that these registered rents are markedly out of line with what landlords in general and tenants negotiate for themselves as rent for properties similar to that of the Tenant. Even allowing for the inherent lack of precision in fixing a market rent, the registered rents are markedly below the level of open market rents in the area. Taking a broad and equitable view of the matter, while leaving out the Landlords' personal circumstances as a housing association, the Tribunal took the view that £ 450 per month was an appropriate level for a rent which was fair to a landlord and a tenant.
44. The Tribunal appreciated that this will be more than the registered rent for other nearby properties but this is the result of the Tribunal taking account of open market rents, which the law requires it to do. Equally the Tribunal appreciated that this was a substantial increase from the existing registered rent. It is not clear to the Tribunal why in 2013 the existing registered rent was fixed at the level it was. His reasoning is not available but it is possible that in setting it the Rent Officer did not take sufficient account of 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.
45. Accordingly for these reasons the Tribunal found that the rent registered by the Rent Officer was not a fair rent in terms of section 48 of the 1984 Act. The Tribunal concluded that a fair rent for the property was £ 5400 per annum or £ 450 per month in terms of section 48 of the 1984 Act. That shall take effect from the date of registration which was 14 June 2016.

46. In reaching this decision the Tribunal had regard to all of the requirements of section 48 of the 1984 Act which it required to apply.

Signed(sgd) David Bartos.....Date: 2 October
2017.....

David Bartos, Chairperson

Photographs taken during the inspection of
8 Fairfield Gardens, Glasgow G51 3PR



Front



Street

Photographs taken during the inspection of
8 Fairfield Gardens, Glasgow G51 3PR



Rear



Kitchen

Photographs taken during the inspection of
8 Fairfield Gardens, Glasgow G51 3PR



Boiler



Bathroom