

**PRIVATE RENTED HOUSING PANEL****RENT (SCOTLAND) ACT 1984****Notification Of Decision By The Private Rented Housing Committee**

<b>REFERENCE NO:</b>	<b>OBJECTION RECEIVED</b>	<b>OBJECTION</b>
PRHP/RR/13/0003	8 May 2013	Tenant

**ADDRESS OF PREMISES**

9 North Bughtlin Gate, Edinburgh, EH12 8XL

**TENANT**

Ms Pamela Burton

**NAME AND ADDRESS OF LANDLORD****AGENT**

Castle Rock Edinvar Housing Association  
1 Hay Avenue,  
Edinburgh  
EH16 4RW

None

**DESCRIPTION OF PREMISES**

Mid-terrace house roughcast brick and tiled roof built as part of public housing development in East Craigs in 1970s. Accommodation comprises a porch, lounge, hall area, kitchen, two double bedrooms, bathroom with bath and shower, toilet and wash-hand basin. There is a garden to the front and rear.  
The gross internal floor area is 80 square metres.

**SERVICES PROVIDED**

Common areas in and adjacent to North Bughtlin Gate, North Bughtlin Bank and North Bughtlin Brae maintained by Castle Rock Edinvar Housing Association

**COMMITTEE MEMBERS****CHAIRMAN**

D Bartos

**SURVEYOR**

D Marshall

**HOUSING PANEL MEMBER**

I Kitson

<b>FAIR RENT</b>	<b>DATE OF DECISION</b>	<b>EFFECTIVE DATE</b>
£ 5 825 p.a.	25 June 2013	1 May 2013

\*services: inclusive of non-variable services of £ 45

**D Bartos**

Chairman of Private Rented Housing Committee

Date 25 June 2013



**Statement of Reasons for Decision of the Private Rented Housing Committee**

(Hereinafter referred to as "the Committee")

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

Case Reference Number: PRHP/RR/13/0003

**Re : Property at 9 North Bughtlin Gate, Edinburgh EH12 8XL**

**The Parties:-**

**Castle Rock Edinvar Housing Association, 1 Hay Avenue, Edinburgh EH16 4RW ("the Landlords")**

**Ms Pamela Burton, 9 North Bughtlin Gate, Edinburgh EH12 8XL ("the Tenant")**

**The Committee comprised:-**

Mr David Bartos	- Chairperson
Mr Donald Marshall	- Surveyor member
Mrs Irene Kitson	- Housing member

**Background:-**

1. Mrs Pamela Burton is the tenant of the house at 9 North Bughtlin Gate, Edinburgh by virtue of a Scottish Secure Tenancy Agreement with the Landlords' (using their previous name) dated 31 March 2004. This tenancy agreement replaced the previous tenancy agreement which began on 4 September 1979. The house was owned by a housing association. Accordingly the previous tenancy of the house was covered by the Rent (Scotland) Act 1971 and then sections 55 to 59 of the Rent (Scotland) Act 1984. Its rent was registrable under section 56 of the 1984 Act. Those provisions of the 1984 Act were preserved for the existing Scottish Secure Tenancy by virtue of article 5 of the

Housing (Scotland) Act 2001 (Scottish Secure Tenancy etc) Order 2002.

2. The previous registered rent for the house was £ 297. 65 per calendar month or £ 3 571. 76 per annum inclusive of services charge. The Landlords applied to the Rent Officer for registration of a rent of £ 4 457. 88 per annum inclusive of any services or furniture to be registered as a fair rent. In their application the Landlords sought the fair charge for the services element to be £ 95. 88 per annum as a variable amount.
3. On 29 February 2012 the Rent Officer registered a rent of £ 4 330. 59 per annum including a variable amount for services of £ 95. 88 per annum for the property. This was intimated to the Tenant by letter of 26 April 2013. The Tenant objected to this by letter of appeal to the Rent Officer bearing the date 16 May 2013 but received on 8<sup>th</sup> May 2013. The Rent Officer referred the objections to the Committee.
4. By letter of 14 June 2013, the Clerk of the PRHP, on behalf of the Committee, requested the Landlords to provide, (1) details of the contract costs for common ground maintenance from Glendale for the 133 properties over the past two years including invoices and the budget for the next year; (2) details of the administration work being charged for and the basis for the 15% figure being used; (3) confirmation of the location of the 133 properties and the common grounds being charged for as services; (4) an explanation of the discrepancy between £ 7.99/month being sought for services in the application to the Rent Officer, the £ 7.72 sought in the written submission to the PRHP and the £ 6.84 being sought in the letter to the Tenant of 18 February 2013. The Landlords responded with their e-mail to the PRHP of 20 June 2013. In it they did not provide any details of the past contract costs and explained that the budget for 2012/13 and 2013/14 was yet to be fixed. The 15% figure covered the costs of payment of invoices from their contractor for the services, procurement and management of the contract for the services, the budgeting and management accounting connected therewith and office overheads. A location drawing was attached showing the location of 101 properties being served. It was clarified that the £ 7. 72/month sought in the written submission was being sought for the services. In the event no material as to costs of the services was provided by the Landlords before the hearing on 21 June 2013.
5. The Committee attended at the property on 21 June 2013. The Tenant was present. The Landlords were not represented at the inspection. The weather was sunny. The house has a ground and first floor with a loft. It forms part of a terrace of such houses on the south-west side of

the long winding cul-de-sac street known as North Bughtlin Gate. It is the third house from the southern end of the terrace. The south-west elevation of the house faces onto grassy ground adjoining the car park at the end of another cul-de-sac North Bughtlin Bank, which itself branches off from North Bughtlin Gate. The terrace comprises white roughcast buildings with tiled roofs. It forms part of a larger residential development of similar houses which was built in the late 1970s most of which are owned and let by the Landlords as a housing association. Externally the structural condition of the house appeared to be good and the house was wind and watertight on the day of inspection. The house is situated in the North Bughtlin area of East Craigs at the west edge of Edinburgh. It is about a three quarters of a mile north of the shopping area of Glasgow Road (the A8) and by road about half a mile east of the Maybury Road leading from the A8 to the Barnton Crossroads with Queensferry Road (the A90) with ready vehicular access to these main roads. The area is wholly residential but within about 10 to 15 minutes' walk there is a supermarket and pharmacy and other amenities and a bus terminus with regular buses to the centre of Edinburgh.

6. The accommodation of the house consists of living room and kitchen on the ground floor and two double bedrooms and bathroom on the first floor with total a gross internal floor area of 80 square metres. The front of the house faces south-west towards North Bughtlin Bank. Access is obtained through a garden with a rowan tree. There is an entrance porch which leads to the living room which also faces south-west. At the far end of the living room there is entry to a hallway from which there is access to the kitchen, the staircase and to the rear garden with drying poles and line which faces onto North Bughtlin Gate. In practice, given that it faces onto North Bughtlin Gate this rear entrance serves in practice as the front entrance. The staircase leads to a hallway on the first floor from which there is access to a larger double bedroom which faces North Bughtlin Bank and a smaller double bedroom and bathroom which face North Bughtlin Gate. The bathroom has an electric shower above the bath and modern fittings installed by the Landlords. The larger bedroom also has a built in wardrobe separating it from the smaller bedroom. Off the upper hallway there is storage in the shape of an airing cupboard and a further cupboard adjoining the bathroom and above the stairs. On the ground floor there is an outside cupboard accessible from the rear garden (adjacent to the kitchen), and a walk-in cupboard accessible from the ground floor hallway, adjacent to the living room. The property has gas fired central heating powered by a boiler in the porch. The boiler was recently installed by the Landlords. The property has double glazing. The kitchen units were installed by the Landlords about 4 to 5 years ago. The washing machine, refrigerator and cooker were installed by the

Tenant. The flooring in the kitchen comprises an old vinyl sheet. That in ground floor hallway is laminate flooring and that in the living room is partly a carpet and partly the original floorboards. The staircase and the bedrooms have twist carpets. All of the floor coverings were provided by the Tenant. The Landlords have not provided any furniture in the house. The gardens to the front and rear of the house are grassed.

7. The Committee took account of their inspection and in addition the following documentary evidence :-

- Pages 3, 31, and 32 of the Scottish Secure tenancy agreement for the property
- Copy form RO1 being the Landlords' application for registration of rent for the house dated 14 February 2013
- Copy letter from the Landlords to the Tenant dated 18 February 2013
- Copy letter from the Tenant to the Rental Officer of the Scottish Government dated 16 May 2013 (received on 8 May 2013)
- Copy extract from the Rent Register for the property showing among other matters the rent registered by the Rent Officer for the property on 26 April 2013
- Copy extract from the Rent Register for the property showing among other matters the rent registered by the Rent Officer for the property effective from 1 May 2010
- Copy extract from the Rent Register for the property showing among other matters the rent registered by the Rent Officer for the property effective from 1 May 2007 with attached sheet showing breakdown of services charges
- Written representations (undated) from the Tenant to the PRHP
- Written representations from the Landlord to the PRHP with attached papers including grounds maintenance specification
- Written representations from the Tenant to the PRHP dated 11 June 2013
- Copy e-mail from the Landlords to the PRHP dated 20 June 2013 with Open Space Maintenance drawing dated Feb. 2002

### The Hearing

8. At the conclusion of the inspection the Committee held a hearing within Thistle House, 91 Haymarket Terrace, Edinburgh EH12 5HE. The Tenant appeared. There was no appearance by or for the Landlords.

9. The Committee explained to the Tenant the task of the Committee and what was entailed in a fair rent for the purposes of the 1984 Act. The Tenant explained that she felt that an increase of £ 60 per month was quite a lot and that rent of £ 340 per month or £ 350 per month was more acceptable. This would be without taking account of services. She did not know the rent of other comparable properties and did not put forward any examples of such properties. She confirmed that the Landlords had carried out ground maintenance services to the shaded garden areas on the Open Space Maintenance plan lodged by the Landlords with the PRHP. She was content that the Maintenance Specification Summary of the Landlords was accurate as to the work carried out to those areas. The Tenant presented the Committee with extracts from the rent register and covering letters sent to her in 2007 and 2010. The extract from 2007 indicated that the fair rent registered with effect from 1 May 2007 was £ 3 225. 11 per annum including £ 42. 72 in respect of services which was broken down to landscaping of £ 3. 25 per month and area cleaning of £ 0. 31 per month. That with effect from 1 May 2010 was £ 3 571. 76 per annum including £ 45 in respect of services. The Committee invited the Tenant to explain why there was no claim for administration in the services charge from 2007 but such a claim was included in the letter to her from the Landlords of 18<sup>th</sup> February 2013. However the Tenant confirmed that she had not received any explanation why administration charges had been included in the letter but not previously.
10. The Tenant also spoke of the rowan tree in the North Bugtlin Bank facing garden requiring tree surgery. It shaded the garden but not the lounge. The Committee found the Tenant's evidence credible so far as it went and accepted it.
11. The Tenant appeared to be under the impression that the Committee would fix the rent that she had to pay. The Committee explained that it did not decide what rent she would have to pay. That was a matter for the Landlords having regard to the fair rent fixed by the Committee. The task of the committee was to fix that rent. It was pointed out to the Tenant that the finding of the Rent Officer did not form an upper limit for the fair rent to be fixed by the Committee and that it was in no way bound by that finding. It was also emphasized that the Committee could not take account of the Tenant's personal circumstances such as her ability to pay.

## **Reasons for Decision**

12. The Committee considered carefully all the evidence presented, together with the observations of the Committee members at the inspections.
13. In considering the objections of the Tenant to the rent registered by the Rent Officer the Committee requires to determine for itself what is or would be a fair rent under a regulated tenancy of the property in question. If the Committee determine that the rent registered by the Rent Officer is a fair rent then they must confirm the rent but if they take the view that the rent so registered is not a fair rent, then they must determine the fair rent for the property in question. That the application to the Rent Officer may have contained errors does not affect the obligation of the Committee to determine the fair rent under section 48 as applied by section 56, of the Rent (Scotland) Act 1984.
14. In determining the fair rent the Committee is obliged 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 dwellinghouse 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. In determining the fair rent the Committee are obliged 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. The Committee are 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.
15. The Committee considered which method should be applied for determining a fair rent. The three accepted methods are :
  - (a) having regard to registered rents of comparable dwellinghouses in the area;
  - (b) taking market rents and deducting an amount in respect of improvement and the like which requires to be disregarded and an amount if the market rents did not reflect the assumption as to demand not being substantially greater than supply (the assumption as to absence of scarcity) and
  - (c) calculating the appropriate return based on the capital value of the property, taking into account the assumed absence of scarcity.
16. None of these methods is regarded as the primary method.

17. No comparable registered rents were made available to the Committee. However, the Committee's investigations with letting agents and internet sources disclosed a number of two bedroom properties in the area which had let or had been available for let. 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 in the area. Accordingly, the Committee considered that to determine a fair rent it was appropriate to compare open market rents for similar properties in the locality of the property
18. A modern two bedroom flat in Burnbrae Drive, in a new privately owned development to the south of the house, nearer the A902 Mayburn Road was being advertised at £ 695 per calendar month for a fully furnished let. A one bedroom upper villa, in Craigievar Square, East Craigs, to the south of the house was being advertised at £ 525 per calendar month. To the east of Drumbrae South Road, in Durar Drive an unfurnished two double bedroom flat was being marketed at £ 525 per calendar month and in Alan Breck Gardens furnished flat of similar size at £ 500 per calendar month. Applying its knowledge and experience the Committee took the view that the Clermiston area in which the Durar Drive and Alan Breck Gardens properties were situated were seen as a less sought after location than the Bughtlin area of the house in question. The modern flat in Burnbrae Drive, by contrast was in a much more sought after location and was very new.
19. The Committee was not addressed on whether or not the market rents for comparable properties in the locality reflected the demand for tenancies of such properties being not substantially greater than supply (the absence of scarcity). However using its knowledge and experience the Committee considered that there was no scarcity of such properties and that the assumption of an absence of scarcity was reflected in the market rents for comparable tenancies in the locality which it took as the area of the whole of the City of Edinburgh in general, and the North West quarter in particular.
20. In all the circumstances and weighing up the various circumstances of the comparable properties, the Committee exercising its expertise took the view that the house, given its location, size and general condition, but freshly decorated throughout, with cooker, refrigerator and washing machine and with fresh floor coverings throughout, but no other furnishings could be reasonably let for £ 550 per calendar month or £ 6 600 per annum. By contrast the property in issue was wholly unfurnished. Its existing decoration was worn and dated and required



full redecoration. The floor coverings (apart from the laminate flooring in the ground floor hallway) were equally worn or tired and would require replacement for a fresh let to achieve the level of £ 550 per month mentioned.

21. Given that the internal replacements and improvements by the Tenant as well as the white goods supplied by the Tenant require to be disregarded in the fixing of the fair rent for the house under the existing tenancy, the Committee considered what the Landlords would require to spend in relation to the Tenant's replacements and improvements in order to achieve the rent of £ 6 600 per annum and the approximate lifetime of such replacements, improvements, or appliances. The Committee then spread these costs over the estimated lifetime of the items in order to obtain an annual figure of expenditure to achieve that annual rent but which in order to apply the disregard, was deducted from that rent.
22. In the exercise of its expertise the Committee took the view that the combined cost of a cooker, refrigerator and washing machine would cost £ 1 000 with an overall average lifespan of three appliances of 10 years giving an annual cost of £ 100 per annum. The combined costs of the new floorings was determined to be £ 1 600 with an overall lifespan of 5 years giving an annual cost of £ 320. The cost of decoration was determined to be £ 2 000 to last 5 years giving an annual cost of £ 400 per annum.
23. Subtracting these deductions totalling £ 820 per annum from £ 6 600 per annum the Committee determined that a fair rent for the house alone would be £ 5 780 per annum being £ 481. 67 per month.
24. The fair rent to be determined by the Committee also includes any amount payable by the Tenant to the Landlords whether under the tenancy agreement or any separate agreement (or which a landlord is in fact supplying and the tenant enjoying and which there is every reason to suppose will continue) which amount is fairly attributable to the provision of services by the Landlords to the Tenant. The Committee was not provided with a full copy of the tenancy agreement (lease). In particular it was not given any information of any provision within the lease or other agreement as to the Landlords being allowed to vary the sums payable to them. Given the terms of section 49(6) of the Rent (Scotland) Act 1984, and the lack of evidence as to the terms entitling the Landlords to vary the sums payable for services, the Committee took the view that it could not even assess whether any terms as to the right to vary were reasonable. The Committee is aware that the Rent Officer has in the past noted the sums as being variable, but the Committee is not bound by the Rent Officer's determination

and must satisfy itself as to the reasonableness of the terms of variation. If no terms are put forward by the Landlords (or the Tenant) the Committee cannot even consider their reasonableness and there can be no possibility of noting the amount payable in respect of those services as variable.

25. The evidence provided by the Landlords to the Committee in respect of the payment to be made in respect of services was inadequate. It comprised nothing more than the e-mail of 20<sup>th</sup> June 2013 and the plan attached to it and the ground maintenance specification. No evidence as to past or future costs was supplied by the Landlords to the Committee. The Committee was disappointed by the Landlords' approach in this respect. In effect the Landlords were asking the Committee to find that the cost of supplying the services had increased per rented house from £ 45 per annum to £ 92. 64 per annum (although originally they had claimed for £ 95.88 per annum) without any evidence as to the increased costs either since the last fixing of fair rent in 2010 or into the future.
26. In these circumstances the Committee decided that it had no evidence before it to allow it to make any finding of fact as to any increase in the cost of supplying the services in the specification to the Tenant since 2010. The Tenant accepted that the services in the specification were being provided. The Landlords have a contractor CD Environmental who has been procured through a tendering process. As we understood the e-mail of 20 June, CD Environmental have yet to produce their charges for their services for 2012/13 as well as for 2013/14. It is reasonable to expect from this that the services involving ground maintenance of the common landscaped areas on or adjacent to properties of North Bugtlin Bank, on the south side of North Bugtlin Gate, north side of Bugtlin Gate between the cul-de-sac turning circle and North Bugtlin Brae and North Bugtlin Brae shown on the Open Space Maintenance Plan dated February 2002 will continue. In the whole circumstances the Committee are prepared to accept the figure for the services registered as part of the fair rent in 2010 as evidence of the continuing element of the cost of those services payable by the Tenant as part of the fair rent for the house. Accordingly the Committee find £ 45 per annum or £ 3. 75 per month as fairly attributable to common ground maintenance services which the Tenant receives from the Landlords. That is to be added to the rent for the house alone.
27. The Committee also noted that the Landlords were claiming for an administration charge of 15% within the near doubling of the claim for services to £ 92. 64 per annum. This does not appear to have been claimed before. As it was the Committee did not have any figures to

justify the increase from £ 45 per annum to a figure which with the addition of 15% thereon, would equal £ 92. 64 per annum. The Committee accepts that the cost of provision of communal services can include administrative costs. However the Committee observes that on the face of it, the services element of the fair rent did not previously contain a separate administration charge as evidenced in the breakdown of the services figure in the registration of fair rent in 2007. The £ 3. 56 per month charge at that time was divided between £ 3. 25 in respect of landscaping and £ 0. 31 in respect of area cleaning. Presumably the provision of these services at that time required administration but there was either no cost or it was subsumed within the costs for services given. It appears to the Committee therefore that if in the future the Landlords wish to seek to claim a percentage for administration costs for services where previously none such were claimed, they should provide evidence as to why such costs are now being charged when none were charged previously.

28. A similar situation exists in relation to the number and location of units between which the services costs are divided. In the Landlords' written submission it was submitted that the costs were divided between 133 properties but the plan produced showed only 101 properties benefiting from the works on the areas shown on the plan. Again, the discrepancy between the claim and the evidence was wholly unexplained. This was a quite unsatisfactory situation which, had the Landlords supplied figures of actual cost, would have caused difficulty for the Committee.
29. The Committee, after considering all the available evidence determined that the rent registered by the Rent Officer was not a fair rent and that a fair rent for 9 North Bughtlin Gate, Edinburgh was £ 5 825. 04 per annum inclusive of non-variable services of £ 45 or £ 485. 42 per month inclusive of non-variable services of £ 3. 75.
30. In reaching this decision the Committee had regard to all of the requirements of section 48 of the 1984 Act which it required to apply by virtue of section 56 of that Act.
31. As the Landlords are a housing association, section 60(2) of that Act applies and the date of registration shall be deemed to be the date on which the rent determined by the Rent Officer was registered, namely 26 April 2013.

D Bartos

Signed ..... Date: 25 June  
2013.....

David Bartos, Chairperson