



**PRIVATE RENTED HOUSING PANEL**

**RENT (SCOTLAND) ACT 1984**

**Notification Of Decision By The Private Rented Housing Committee**

**REFERENCE NO:**

RAC/EH11/847

**OBJECTION RECEIVED**

1 March 2012

**OBJECTION**

Landlord

**ADDRESS OF PREMISES**

2F3, 244 Dalry Road, Edinburgh, EH11 2JG,

**TENANT**

Mrs G Cunningham

**NAME AND ADDRESS OF LANDLORD**

A Allan Trust

**AGENT**

James Gibb Property Management  
4 Atholl Place  
Edinburgh  
EH3 8HT

**DESCRIPTION OF PREMISES**

Second floor flat in 4 storey stone built mid-tenement (circa 1890) with commercial premises on part of ground floor. comprising livingroom, 1 bedroom, store room, bathroom and kitchen/dining area.

gross internal area 48 metres squared approx

**SERVICES PROVIDED**

None

**COMMITTEE MEMBERS**

**CHAIRMAN**

Steven Walker

**SURVEYOR**

Ian Mowatt

**HOUSING PANEL MEMBER**

Christine Anderson

**FAIR RENT**

£ 3,700.00 p.a.

**DATE OF DECISION**

3 May 2012

**EFFECTIVE DATE**

3 May 2012

**S Walker**

Chairman of Private Rented Housing Committee

Date

15 May 2012



**PRIVATE RENTED HOUSING COMMITTEE  
STATEMENT OF REASONS**

**PROPERTY:**

**2F3, 244 Dalry Road, Edinburgh, EH11 2JG**

**INSPECTION:**

**3 May 2012**

## **STATEMENT OF REASONS**

### **INTRODUCTION**

1. This is a reference to the Private Rented Housing Committee for the determination of a fair rent under the Rent (Scotland) Act 1984 by the landlord, A Allan Trust ('the landlord'), in relation to the property known as 2F3, 244 Dalry Road, Edinburgh, EH11 2JG. The landlord's agent is James Gibb Property Management, 4 Atholl Place, Edinburgh, EH3 8HT ('the agent').
2. The original rent paid by the tenant, Mrs Grace Cunningham ('the tenant') in respect of property was £3150.00 per year. The landlord applied for rent of £5,000.00 per year for the property. The Rent Officer determined a rent of £4,500.00 per year. The landlord's agent referred the Rent Officers determination to the Private Rented Housing Committee.
3. Only the tenant attended the inspection. Neither party requested a Hearing.
4. The Committee comprised

|                |                |
|----------------|----------------|
| Chairman       | Mr. S Walker   |
| Surveyor       | Mr I Mowatt    |
| Housing Member | Mrs C Anderson |

### **THE DOCUMENTATION**

5. The Committee considered all the documents referred to it by the parties. In particular, the application and the written representations from both the tenant and landlord.

## **THE INSPECTION**

6. The inspection took place on 3 May 2012. The tenant attended the inspection.
7. The Clerk to Committee introduced the Committee to the tenant. The Committee proceeded to inspect the property.

## **DESCRIPTION OF THE PROPERTY**

8. The property is a second floor flat in a four storey stone built mid tenement building constructed c. 1890 with shops on the ground floor and comprising of living room, one bedroom, storeroom, bathroom and kitchen/dining room and extending to a floor area of 48 metres squared or thereby. The property is situated in Edinburgh and close to local amenities.

## **DECISIONS AND REASONS**

9. Section 48 of that Act as amended provides that:

### ***48.— Determination of fair rent.***

*(1) In determining for the purposes of this Part of this Act what rent is or would be a fair rent under a regulated tenancy of a dwelling-house, it shall be the duty of the rent officer or, as the case may be, of the private rented housing committee, subject to the provisions of this section, to have regard to all 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, to the quantity, quality and condition of the furniture.*

*(2) For the purposes of the determination it shall be assumed 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 in the locality which are available for letting on such terms.*

*(3) There shall be disregarded—*

*(a) any disrepair or other defect attributable to a failure by the tenant under the regulated tenancy or any predecessor in title of his to comply with any terms thereof, and*

*(b) any improvement (including any improvement to the furniture provided for use under the tenancy), or the replacement of any fixture or fitting carried out, otherwise than in pursuance of the terms of the tenancy, by the tenant under the regulated tenancy or any predecessor in title of his, and*

*(c) if any furniture is provided for use under the regulated tenancy, any deterioration in the condition of the furniture due to any ill-treatment by the tenant, any person residing or lodging with him, or any sub-tenant of his.*

*(4) In the application of this section to a converted tenancy, the references in subsection (3) above to the tenant under the regulated tenancy shall include references to the tenant under the tenancy before the conversion.*

10. In terms of section 48(1) of the 1984 Act, the duty of the Committee 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".*

11. Disrepair or defects attributable to the tenant should be disregarded, as should any improvements made by the tenant, otherwise than in pursuance of the terms of the tenancy (section (48(3)). Improvements by the landlord should be taken into account. In reaching its determination, the Committee complied with its duty as set out *supra*.
12. The Committee considered carefully all the evidence presented, together with the observations made by the tenant and Committee members at the inspection. In particular, the Committee considered

carefully which of the three alternative methods of ascertaining a fair rent was most appropriate in this case.

13. The three accepted methods used in Scotland are;-

(a) determining a fair rent 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), or;

(c) calculating the appropriate return based on the capital value of the property, taking into account the element of scarcity. None of these methods is regarded as being the primary method, and the method chosen by the Committee will depend in each case upon the evidence available.

14. The Committee was aware of the need to proceed on the basis of the best available evidence, using other available evidence as a check where possible. The Committee had the benefit of its own knowledge and experience of the rents passing and being asked in the local market. In these circumstances, the Committee decided that the best method to use in this case was the market rent less any discount for scarcity method at (b) *supra*.

15. The Committee from its own experience, knowledge and information available on the internet and from local letting agents considered that comparable properties for the rental of one bedroom properties in the Edinburgh area averaged around £440.00 pcm.

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

17. The Committee considered whether any discount should be made for scarcity in this case, but was satisfied that in the Edinburgh area as a whole, there could not be said to be scarcity of similar properties to let at the present time. On the contrary, there appears to be a surplus of supply over demand in relation to the availability of properties for rent, which is the opposite of the scarcity situation. The Committee was satisfied that no deduction required to be made in relation to scarcity for this type of property at this point in time.
18. The Committee considered that a number of deductions should be made to take account that any new tenant would require improvements to the bathroom, kitchen/white goods, gas fire, and floor coverings in respect of the property. The Committee considered that the appropriate market rent in respect of the property was £5,300.00 per year. The Committee further considered that a deduction was appropriate of £1600.00 per year in respect of improvements which would be required to the property.
19. Accordingly, having taken all relevant factors into account, the Committee determined that a Fair Rent for the property was **£3,700.00** per year. In reaching this decision, the Committee had regard to all the

evidence, and to all the circumstances that must be taken into account in terms of section 48 of the Rent (Scotland) Act 1984.

**S Walker**

Signed : .....

**Steven P Walker**

**Advocate & Barrister**

**Chairman**

**Private Rented Housing Committee**

**23 May 2012**