



PRIVATE RENTED HOUSING PANEL

RENT (SCOTLAND) ACT 1984

Notification Of Decision By The Private Rented Housing Committee

REFERENCE NO:	OBJECTION RECEIVED	OBJECTION
RAC/TD14/766	7 July 2010	Landlord

ADDRESS OF PREMISES

31 Swan Court, George Street, Eyemouth, TD14 5JG

TENANT

Miss Crombie

NAME AND ADDRESS OF LANDLORD

Cairn H.A.
43 London Street
Edinburgh
EH3 6LX

AGENT

N/A

DESCRIPTION OF PREMISES

Modernised purpose built self contained flat circa 1980 with gas central heating and double glazing comprising one room, kitchenette and shower room.

SERVICES PROVIDED

Warden service, Out of hours alarm service, Handyman/Gardner, Window cleaning, Cleaning of communal areas, Access to communal facilities including common lounge, laundry facilities and guest bedrooms.

COMMITTEE MEMBERS

CHAIRMAN
SURVEYOR
HOUSING PANEL MEMBER

Mr E Miller LLB (Hons) DIP LP NP
Mr D Marshall FRICS
Mr M Innes

FAIR RENT	DATE OF DECISION	EFFECTIVE DATE
£4191.08 p.a.(Incl. of services of £1911.44 p.a variable)	25 August 2010	25 August 2010

E Miller

Chairman of Private Rented Housing Committee

Date

22/9/2010

PRIVATE RENTED HOUSING COMMITTEE

STATEMENT OF REASONS

INSPECTION – 25 August 2010

PROPERTY - 31 Swan Court, George Street, Eyemouth, TD14 5JG ("the Property")

INTRODUCTION

1. The Committee comprised Mr E K Miller (Chairman), Mr D Marshall (Surveyor Member) and Mr M Innes (Housing Member) accompanied by the Clerk, Mr Robert Shea.
2. The landlord is Cairn Housing Association Limited, 22 York Place, Edinburgh, EH1 3EP.
3. The tenant is Miss Kennethina Crombie of Flat 31, Swan Court, George Street, Eyemouth, TD14 5JG.
4. This reference to the Private Rented Housing Committee for the determination of a fair rent under the Rent (Scotland) Act 1984 in respect of the Property arises from dissatisfaction on the part of the landlord.
5. The previous rent was £3,002.64 (£250.22 monthly). The landlord had applied for a rent of £4,264.08 (£355.34 monthly). The rent determined by the rent officer was £3,929.26 (£327.43 monthly).

DESCRIPTION OF THE PROPERTY

6. On the morning of 25 August 2010 the Committee carried out an inspection of the Property. The Property forms part of a larger block containing self-contained sheltered apartments over three storeys. The larger block is situated in a pleasant location within Eyemouth. There is good access to all local amenities within walking distance and would

generally be considered a very suitable location for elderly persons. The larger block has attractive well maintained gardens surrounding it.

7. The Property is a second floor sheltered flat comprising a good sized living room with a small sized bedroom area off the living room, a small kitchen and a reasonable sized bathroom. The Property had double glazing and central heating. The kitchen and bathroom were a little dated but still adequate and overall the Property was in good condition. The Property had a pleasant aspect over the surrounding area.

Within the larger block there were additional communal facilities in the form of a residents lounge, a laundrette and other small meeting areas on the various floors within the larger block. A warden service was also provided. The communal facilities were all in good condition.

The larger block was built in the early 1980s originally by The Royal British Legion and had subsequently been taken over by the landlord.

Various services in the form of guest rooms, the warden service, heating, maintenance of communal areas, etc. were carried out by the landlord. Reference is made to the actual service charge account for 2009 and the forecast services for 2010 and 2011 as annexed to this Decision. The said service charge account details in full the various services provided by the landlord.

DOCUMENTATION

8. The Committee considered all documents provided by the landlord and the tenant including copies of the tenancy agreements, the submissions of the landlord, the landlord's rent setting policy and the service charge accounts. All documentation provided was taken account of at the Hearing.

HEARING

9. The landlord had requested a Hearing at which only the landlord wished to attend. The Hearing was held at Abbotsford Court, Galashiels (the Committee having carried out further inspections of other properties belonging to the landlord on the same date as this Hearing). The landlord was represented by Mrs Elaine Morrison of Cairn Housing Association who was the service manager for the area. Mrs Morrison submitted that the rent officer's view of the fair rent was too low. The landlord had a detailed rent setting policy that aimed to ensure that the rents set by the landlord were affordable, comparable to other providers, sufficient to cover the running costs and set within a rent setting mechanism which addressed equality and consistency throughout the landlord's housing. The landlord was concerned that the rent set by the rent officer was less than that being charged to non-Fair Rent tenants. Given that all tenants within the block had the same type of properties and services this could lead to difficulties amongst the residents. The landlord's view was that it was inherently unfair for the Fair Rent tenants to gain this advantage.

The Committee were conscious that the form of sheltered housing provided by the landlord was targeted and specific to a certain category of person and it would might therefore be difficult to draw comparables. The landlord had not produced any comparable evidence at the Hearing. Mrs Morrison for the landlord indicated that she was aware of other charges set by comparable housing associations in the Borders and they were at similar or higher levels. She agreed to produce documentation in relation to this to the Committee subsequent to the Hearing. Mrs Morrison subsequently provided confirmation in relation to Eildon Housing Association who, for a similar property, were charging a rental of £202.24 and Waverley Housing Association who were charging £236 per month.

THE DECISION

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 dwellinghouse 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". Disrepair or defects attributable to the tenants should be disregarded, as should any improvements made by the tenants, otherwise than in pursuance of the terms of the tenancy (Section (48(3)). Improvements by the landlord are taken into account. In reaching its determination, the Committee complied with its duty as set out above.

11. The Committee considered carefully all the evidence presented, together with the observations made by the 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. 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.

12. The Committee first considered whether to use registered rents as comparables. No comparables had been provided by the Clerk or the landlord or tenant and on that basis the Committee did not consider it appropriate or indeed possible to use this as a method of a valuation. The Committee then considered whether to calculate an appropriate return based on the capital value of the Property. Taking into account the non-profit making nature of the landlord as a registered charity and the lack of any information provided to the Committee by any of the parties on capital value, the Committee did not consider it appropriate to assess the fair rent on the basis of a capital return to the landlord. The Committee therefore proceeded to consider the case using the market rent less tenant's improvements, less any discount for scarcity approach.

13. Using its knowledge and experience, and having regard to other properties available for let in the area both highlighted by the landlord (in relation to other housing associations) and by the Committee's own investigations into bed-sit properties available for let on the open market, the Committee were of the view that the market rent for a single-glazed well decorated unfurnished bed-sit sheltered housing property in a complex of a type and in the locality of the present property, would be around £190 per month. There were no elements of disrepair to be disregarded arising from the tenant's actions and similarly there were no tenant's improvements to be taken account of. Taking account of the landlord's submissions (particularly in relation to the rents charged by other Housing Associations, these being the best available comparables) and the rents charged to other tenants within the larger block for identical properties, the Committee decided that no deduction from the open market figure should be applied and that the rental sought of £189.97 by the landlord was the correct one.
14. The Committee then proceeded to consider whether any deductions required to be made in terms of Section 48(2) (the factor commonly referred to as "scarcity") of the 1984 Act. The concept of scarcity is an essential feature of the fair rent scheme under the Rent (Scotland) Act 1984. 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 tenants be protected from the financial implications of that.

15. The Committee considered whether any discount should be made for scarcity in this case but was satisfied that in the area of the Borders as a whole and from the submission of the landlord who advised that whilst they could normally re-let the properties fairly quickly there was not an excessive level of applications made when properties became vacant. The landlord was a non-profit making body and therefore a rise in rents due to scarcity would be less likely to apply due to their rent setting policy. 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.
16. In Section 49 of the Rent (Scotland) Act 1984, it is declared that the amount to be registered shall include any sums payable by the tenants for services. In this case, numerous communal services were provided by the landlord as part of the sheltered housing complex. The services were provided across the board to all tenants. The communal corridors within the block provided access to more than one property in each area and could therefore not be allocated to any individual property. The figure for services sought was £131.44 per month and there was an additional heating service of £33.93. Reference is again made to the service charge account annexed to the Decision which details all of the services provided. The Committee considered each of the services in turn. The Committee were satisfied that with the exception of void elements which were included in the service charge account that the services sought were fair and appropriate. In relation to the question of void elements previous case law has held that this is a "landlord's risk" to be treated in the same way as the default by a tenant in the payment of rent and should therefore properly be covered by the landlord in assessing the basic rent rather than as part of a service charge. The Committee noted that the estimated void costs by the landlord for the larger block including heating was approximately £2,260 per annum and this equated to approximately £57.00 per annum per resident and on the heating account £16.00 per annum per resident of the smaller flats. The Committee were satisfied that this should be deducted from the services amounts payable by the tenant. The Committee were satisfied that the figures within the landlord's accounts for depreciation and administration were appropriate. The

Committee were also satisfied that the terms for the variation of the services were reasonable taking into account the principles set out in Firstcross Ltd -v- Teasdale & Others and that they could properly and reasonably be classed as variable.

17. In terms of its decision the Committee was of the view that the rent (inclusive of monthly variable services) should be £4,191.08 comprised of £2,279.64 for rent and £1,911.44 for variable services (this being the amount sought by the landlord under deduction of the sum of £57.00 and £16.00 in relation to the void element of the services charges). In reaching its decision, the Committee had regard to all documentary and other evidence and in all the circumstances that required to be taken into account in terms of Section 48 & 49 of the Rent (Scotland) Act 1984.
18. It should be noted that any increase in rent imposed in consequence of this decision must be applied in accordance with the provisions of Section 33 of the Rent (Scotland) Act 1984 and The Limits on Rent Increases (Scotland) Order 1989 No. 2469 (s168). These provisions specify the limits for the phasing in of significant increases.
19. The effective date is 25 August 2010.

E Miller

Signed: (Chairman)

Date: 21/9/2010

Edinburgh Service Area

SERVICE CHARGE ACCOUNT



Swan Court	ACTUAL SERVICES 31/03/2009	FORECAST SERVICES 31/03/2010	FORECAST SERVICES 31/03/2011
INCOME			
Service Income	(45,065)	(47,318)	(47,318)
Guest Room	(321)	84	(84)
Void services		1,704	1,704
Total	(45,386)	(45,698)	(45,698)
EXPENDITURE			
Warden Costs:			
Salary	6,613	6,728	6,728
National Insurance	500	496	496
Flat Rental	2,633	2,634	2,634
Electricity	360	228	239
Gas	866	898	718
Telephone	5	76	76
Other Costs		46	46
	10,977	11,106	10,937
Communal Costs:			
Electricity	4,461	5,212	5,473
Gas	2,166	2,248	1,798
Cleaners Salary	312	376	376
Window Cleaning	2,380	2,346	2,346
Cleaning Materials	1,304	578	578
Gardener/Handyman salary	9,617	9,838	9,838
Gardener/Handyman NI	496	482	482
Gardening/Handyman materials	37	380	380
Call box income/expenditure	511	510)	0
	21,283	20,950	21,271
Repair & Maintenance:			
Laundry contract	790	688	688
Lift contract	716	810	810
Emergency lighting	305	250	250
Fire Equipment Repair	390	0	0
Fire Equipment contract	1200	530	530
Heating Repair	2420	0	0
Heating contract	474	474	474
Other Repairs	229	45	45
Insurance	164	162	162
	6,688	2,959	2,939
Depreciation of Equipment	4066	3208	3208
Administration	3364	3135	3512
Total Costs	46,378	41,356	41,887
Surplus/Deficit for year	992	(4,342)	(3,811)
Surplus/Deficit B/FWD	3,989	4,981	639
Surplus/Deficit C/FWD	4,981	639	(3,172)

NOTES

brackets = surplus, no brackets = deficit

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Edinburgh Service Area

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SERVICE CHARGE ACCOUNT



Swan
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ACTUAL HEATING 31/03/2009	FORECAST HEATING 31/03/2010	FORECAST HEATING 31/03/2011
(10,190)	13,586	(14,265)
560	560	560
(10,190)	(13,026)	(13,705)

INCOME

Heating Income
Voids Heating

Total

Tenant Heating:

Electricity

Gas

Total Costs

12,988	13,480	10,784
2,798	454	(2,921)
(3,642)	(844)	(390)
(844)	(390)	(3,312)

NB Surplus figures are showing in brackets e.g. (3312)

