



**PRIVATE RENTED HOUSING PANEL**

**RENT (SCOTLAND) ACT 1984**

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

REFERENCE NO:	OBJECTION RECEIVED	OBJECTION
RAC/FK9/852	6 April 2012	Landlord

**ADDRESS OF PREMISES**

41 Strathallan Court, Cornton Road, Bridge of Allan, FK9 4BW

**TENANT**

Mrs J Scobie

NAME AND ADDRESS OF LANDLORD	AGENT
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Bield Housing Association Ltd  
1 Bonnethill  
1 Caldrum Place  
Dundee  
DD3 7HB

**DESCRIPTION OF PREMISES**

Bungalow in a terrace forming part of a sheltered housing complex built in the 1980s. The Accommodation comprises a hall area, lounge, bedroom, kitchen, bathroom with bath and walk-in shower area, toilet and wash-hand basin

**SERVICES PROVIDED**

Scheme staff to clean common parts of sheltered housing scheme, to provide support service including emergency assistance service, Maintenance, lighting, heating, furnishing of communal lounge, guest rooms, laundry, office, corridor and other common parts for sheltered housing residents. Maintenance of common gardens and grounds. Window cleaning. Payment of rates, taxes and outgoings for Scheme Manager's house. Accumulation of capital fund for furnishings, other moveables in connection with communal areas and replacement of communal amenities. General management of communal services.

**COMMITTEE MEMBERS**

<b>CHAIRMAN</b>	D Bartos, LLB(Hons), FCI Arb
<b>SURVEYOR</b>	R Buchan BSc., FRICS
<b>HOUSING PANEL MEMBER</b>	S Brown

FAIR RENT	DATE OF DECISION	EFFECTIVE DATE
£ 6 296. 31 p.a.*	24 October 2012	29 February 2012

\*inclusive of non-variable services £ 1 596. 31

**D Bartos**

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**Chairman of Private Rented Housing Committee**

*24<sup>th</sup> October 2012*

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**Date**



**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: RAC/FK9/852

**Re : Property at 41 Strathallan Court, Cornton Road, Bridge of Allan**

**The Parties:-**

**Bield Housing & Care, 1 Bonnethill Gardens, 1 Caldrum Terrace, Dundee DD3 7HB ("the Landlords")**

**Mrs J Scobie, 41 Strathallan Court, Cornton Road, Bridge of Allan FK9 4BW**

**The Committee comprised:-**

Mr David Bartos	- Chairperson
Mr Robert Buchan	- Surveyor member
Mrs Susan Brown	- Housing member

**Background:-**

1. Mrs J. Scobie is the tenant of the house at 41 Strathallan Court, Cornton Road, Bridge of Allan by virtue of a Scottish Secure Tenancy Agreement with the Landlords (under their former name Bield Housing Association Ltd) dated 15 May 2003. This tenancy agreement replaced the previous tenancy agreement which began on 21<sup>st</sup> December 1983. The house was owned by a housing association. Accordingly the previous tenancy of the house was covered by sections 55 to 59 of the Rent (Scotland) Act 1984 and 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

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

2. The previous registered rent for No. 41 was £ 363. 59 per calendar month or £ 4 363.08 per annum inclusive of service charge. The Landlords applied to the Rent Officer for registration of a rent of £ 3 294 per annum inclusive of any services or furniture to be registered as a fair rent. In their application the Landlords specified the fair charge for the services element to be £ 1 747 per annum as a variable amount.
3. On 29 February 2012 the Rent Officer registered a rent of £ 4 230. 72 per annum including a variable amount for services of £ 1 746. 72 per annum for the property. This was intimated to the Landlords by letter of 29 February 2012. The Landlords objected to this by letter of appeal to the Rent Officer dated 2 April 2012. The Rent Officer referred the objections to the Committee.
4. The Committee attended at the property on 20 June 2012. The tenant of No. 41 was not present but her daughter was present. The Landlords were not represented at the inspection. The weather was sunny. No. 41 is a bungalow. It forms part of a terrace of bungalows which faces onto a grassy and landscaped central square which appears well maintained. There are a total of 16 such "cottages" in four terraces facing the square. They form part of a larger 49 unit sheltered housing complex owned and run by the Landlords. The bungalow terraces were built in the early 1980s. They are white roughcast buildings with tiled roofs. Externally the structural condition of the house appeared to be good and the house was wind and watertight on the day of inspection. There are some parking spaces in the square. The property and the sheltered housing complex as a whole is situated about half a mile south of the main centre and shopping area of Bridge of Allan.
5. The accommodation of No. 41 consists of one double bedroom, living room, kitchen and bathroom. The double bedroom, the bathroom and the living room are accessed directly from a central hallway. The kitchen faces the front of the property and is accessed from the livingroom. The bedroom faces to the rear. The bathroom has a modern walk-in shower area and non-slip flooring. This was installed by the Landlords within the last 2 to 3 years. Storage is provided by a walk-in cupboard from the central hallway and two further cupboards in the hallway. The units in the kitchen appear to be dated and from the original construction of the property. The property has central heating powered by a boiler in the kitchen. The property has double glazing. The rear of the property looks out onto a grassy area which appears to

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be communal. The property has an emergency alarm system which can be used by a resident to call for help to the property.

6. The Committee took account of their inspection and in addition the following documentary evidence :-
- Scottish Secure tenancy agreement for the property
  - Copy form RO1 being the Landlords' application for registration of rent for the properties dated 26 November 2011
  - Copy letter from the Landlords to the tenant dated 26 November 2011
  - Copy extract from the Rent Register for the property showing among other matters the rent registered by the Rent Officer for the property on 29 February 2012
  - Copy letter from the Rent Officer to the Landlord dated 29 February 2012
  - Copy schedule of Budgeted Landlord costs for the year 1 April 2011 to 31 March 2012 for 16 units
  - Copy letter of appeal dated 2 April 2012
  - Copy reference from the Rent Officer dated 5 April 2012
  - Copy letter from the Landlords to the PRHP dated 19 April 2012
  - Schedule of Budgeted Landlord Service costs for year 1 April 2012 to 2013
  - Letter from the Landlords to the PRHP dated 6 July 2012
  - Letting details for 3 properties in Bridge of Allan

### **The Hearing**

7. At the conclusion of the inspections the Committee held a hearing within the Allan Community Centre, Fountain Road, Bridge of Allan. The Landlords were represented by their Housing Operations Manager (North) Tracey Howatt. There was no appearance by or for the Tenant.
8. Ms Howatt submitted that the reason for the appeal lay in the Landlords' application for registration from November 2011. The application form sought registration of a rent of £ 3 294 per year. Through her error that figure however did not include an amount for services which it should have done. The figure sought by the Landlords for services was £ 1 747 per year. When added to the basic rent figure of £ 3 294 the sum which the Landlords were truly seeking as a registered fair rent was £ 5 041 per year. The rent which was being currently being paid was shown in section 10 of the application form as

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£ 387. 36 per month equating to £ 4 648 per year. Ms Howatt confirmed that she had signed the form.

9. Ms Howatt explained that she had not seen the extracts of the Rent Register for the property. She submitted that the letter of appeal explained the lateness of the objection to the registered rent.
10. The Committee provided letting details for 3 potentially comparable properties to Ms Howatt at the hearing. She had no comment to make on them. She did not offer any examples of comparable lets. Following the hearing the Committee served a notice on the Landlords giving them a further opportunity to comment on the details and to provide further information in respect of comparable properties but no further comment on this aspect of the appeal was received.
11. Ms Howatt also made submissions in respect of the amount claimed for services. She indicated that there had been no increase in the amount paid for services for a three year period and that the Landlords were looking for a percentage increase to bring the amounts paid by the tenants into line with the amounts paid by tenants under assured or Scottish Secured tenancies. She was unable to say what the percentage increase sought was. She submitted that all of services (a) to (i) in the schedule to the tenancy agreements were provided. She submitted that residents had use of a communal lounge and their guests could request the use of guest room facilities. Referring to the Schedule of Budget she submitted that "Light and Power" covered the communal laundry facility, kitchen, lounge, emergency lighting for the communal corridor and other communal facilities. "Miscellaneous" covered television aerial costs and a licence and that further information could be supplied. With regard to "Management" this included costs from running the Landlords' office in Dundee. "Income" was obtained from the "day centre". In answer to questions from the Committee she explained that some flats in the complex were for two persons. They were slightly larger than the properties in issue.
12. Following the hearing the Committee served a notice on the Landlords requiring them to produce information in relation to the costs of services provided under the tenancy agreement and the frequency of variations in service charge. Despite a reminder the Landlords did not provide the information sought.

### **Reasons for Decision**

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13. The Committee considered carefully all the evidence presented, together with the observations of the Committee members at the inspections.
14. The first issue for the Committee was whether it could consider the Landlords' objections or appeal on the basis that they/it was made after the expiry of 28 days from the service by the Rent Officer of the notification of registered rent on the Landlords. Paragraph 7(1)(b) of schedule 5 to the Rent (Scotland) Act 1984 provides that if objections/an appeal are received after the expiry of the 28 day period the Rent Officer has a discretion to either refer the objections/appeal to the Committee (and in effect waive the lateness) or seek the directions of the Committee on whether the referral should be made although late.
15. In the present case the Rent Officer seems to have referred the objections/appeal direct to the Committee without seeking their directions, so the Committee concluded that it had no option but to consider the objections/appeal. However the Committee did observe that the notifications of registered rent from the Rent Officer in the present cases did not accurately set out the consequences of the lateness of an objection or appeal. In the future it would be of assistance to all involved in the objections/appeal process for the Rent Officer to provide an accurate statement of the position in the event that objections are received late.
16. In considering the objections of the Landlords to the rent registered by the Rent Officer the Committee 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 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.
17. 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

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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.

18. 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.
19. None of these methods is regarded as the primary method.
20. 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 one 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
21. A one bedroom flat at Queen's Court nearer the centre of Bridge of Allan was being advertised at £ 450 per calendar month. A one bedroom flat at 2 Munro Gate, in the general vicinity of Strathallan Court and slightly further from the centre was marketed and let in June 2011 for £ 450 per calendar month. Another flat at Munro Gate was marketed in March and April of 2011 and let for £ 450 per calendar month. Using its knowledge and experience the Committee did not understand there to have been any material increase in rental levels since spring 2011.

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22. 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 areas of Stirling and Bridge of Allan.
23. All three flats used as comparables had modern fixtures and fittings and were furnished lets. By contrast the property in issue was unfurnished. In these circumstances the Committee exercising its expertise took the view that an equivalent unfurnished let could reasonably be let for £ 425 per calendar month. In addition, to attract rentals comparable with the comparable lets the properties in issue would require modern kitchen units, and other fixtures. The property in issue would also require a new bathroom. The committee exercising its expertise took the view that it was reasonable for a new kitchen to cost in the region of £ 4 000 which over a life of 10 years would give rise to a cost of £ 400 per annum which should also be deducted from the rent from the comparable lets.
24. Applying these deductions the Committee determined that a fair rent for No. 41 would be £ 4 700 per annum being £ 391. 66 per month.
25. The fair rent to be determined by the Committee also includes any amount payable by the tenants to the Landlords whether under the tenancy agreements or separate agreements or otherwise which are fairly attributable to the provision of services by the Landlords to the tenants. The Committee noted that the tenancy agreement provided that the Landlords were entitled to provide services in connection with the tenancy as set out in the schedule to the tenancy agreement and that it was a condition of the tenancy that the tenant pay for the services. However the tenancy agreement does not provide for the sums payable to the Landlords in respect of the services as varying according to the cost from time to time of the services. The tenancy agreement allows for variation of the sums payable for services but does not link the variation of the sums payable for services to their cost to the Landlords and indeed does not provide any limit on, or any standard according to which, the Landlords can vary the sums payable for the services. Given the terms of section 49(6) of the Rent (Scotland) Act 1984, the Committee took the view that any amount in the rent to be noted in respect of services could not be noted as variable.

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26. The Committee was advised by Ms Howatt that all of the services (a) to (i) in the schedule to the tenancy agreement were provided by the Landlords to the tenant of the property. Following the hearing the Committee issued a Notice to the Landlords requiring the production of all documentation showing or tending to show the annual costs of the provision of the various possible services together with the number and addresses of the houses involved in the receipt of those services. However the Landlords did not provide any such documentation in response to the Notice. The Committee was therefore left with nothing more than two "Schedules of Budgeted Landlord Costs". One was for the year from 1 April 2011 with costs allocated between 16 units giving a monthly charge of £ 145. 56. The other was for the year from 1 April 2012 with costs allocated between 49 units giving a monthly charge of £ 154. 94. The former schedule appears to have been the basis for the amount in respect of services sought by the Landlords in their application and which was accepted by the Rent Officer.
27. The 16 units are the "cottages" of square at Strathallan Court which are similar to No. 41. These are one person tenancies only. By contrast the 49 units include units for 2 or more persons. Most of the services relate to use of the common parts of the Landlords whole scheme. The common parts of the Landlords' scheme (as opposed to the common parts of the terraces at No. 41) include a communal lounge, kitchen, laundry facility, and guest rooms with communal corridors. These are all situated in a two storey building near the entry to Strathallan Court before one reaches the square. Given that some of the 49 units would have more than one tenant while others such No. 41 would have only one tenant who could have use of the communal facilities, it seemed to Committee only equitable that units such as the properties in question should not have to bear an equal charge with other larger units. In these circumstances the Committee took the view that the Schedule with costs allocated between the 16 units of the square represented a fairer basis for determining a fair amount payable for the services.
28. Looking to the figure in that Schedule of Budgeted Costs the Committee took the view that they were reasonable estimates of the cost of provision of the services in the schedule to the tenancy agreements apart from the head of "Miscellaneous" for £ 1 529. 08 and the Allowance for Voids of £ 877. 96. In her submission Mrs Howatt suggested that "Miscellaneous" covered the costs of a television aerial and licence. No vouching for this has been provided, however despite being requested and the head does not appear in either schedule under "Service Maintenance" but under "Communal Areas". Given the unspecified nature of this cost and the Landlords' failure to provide further information, the Committee is unable to accept Ms Howatt's

submission as reliable and accordingly unable to find that the head of "Miscellaneous" represents the reasonable cost of a service provided to the tenants. An "Allowance for Voids" is not a service and so cannot be taken into account. Using the Schedule for 2011 to 2012, the sum of £ 25 541.06 would appear to be a reasonable estimate of the amount payable for services by the 16 one bedroom houses, giving a figure of £ 1 596. 31 per annum as the non-variable annual figure in respect of services. That gives £ 133. 02 per month as fairly attributable to services which the tenant of the property receives from the Landlords.

- 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 No. 41 Strathallan Court was £ 6 296. 31 per annum inclusive of non-variable services of £ 1 596. 31.
- 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 29 February 2012.

**D Bartos**

Signed .....Date: 24 October 2012.....

David Bartos, Chairperson