

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

REFERENCE NO:	OBJECTION RECEIVED	OBJECTION
RAC/AB11/864	4 July 2012	Landlord

ADDRESS OF PREMISES

3/R, 35A Union Street, Aberdeen, AB11 5BN,

TENANT

Mrs O Laughlin

NAME AND ADDRESS OF LANDLORD AGENT

John Charles Emslie
Esq
Emslie Commercial Properties
53 Forest Road
Aberdeen
AB15 4BN

DESCRIPTION OF PREMISES

3rd floor flatted dwellinghouse in traditional tenement (c1890) comprising lounge with small bedroom off, 2 bedrooms, kitchen and toilet extending to approx 104 sqm

SERVICES PROVIDED

None

COMMITTEE MEMBERS

CHAIRMAN	E Miller
SURVEYOR	A Anderson
HOUSING PANEL MEMBER	M Scott

FAIR RENT	DATE OF DECISION	EFFECTIVE DATE
£ 4,200	22 August 2012	22 August 2012

E Miller

Chairman of Private Rented Housing Committee

19/9/12
Date

PRIVATE RENTED HOUSING COMMITTEE

STATEMENT OF REASONS

INSPECTION – 22 August 2012

PROPERTY - 3/R, 35a Union Street, Aberdeen, AB11 5BM ("the Property")

INTRODUCTION

1. The Committee comprised Mr E K Miller (Chairman), Mr A Anderson (Surveyor Member) and Mr M Scott (Housing Member).
2. The Landlord is John Charles Elmslie, c/o Elmslie Commercial Properties, 53 Forest Road, Aberdeen, AB15 4BM ("the Landlord").
3. The Tenant is Mrs Olive Laughlin of 35a Union Street, Aberdeen, AB11 5BM ("the Tenant").
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 Tenant.
5. The previous rent was £1574 per annum. The Landlord had applied for a rent of £4,000 per annum. The rent determined by the Rent Officer was £3,600 per annum.

DESCRIPTION OF THE PROPERTY

6. On the morning of 22 August 2012 the Committee carried out an inspection of the Property. The Property comprises part of a large tenement of four storeys and attic. The ground floor of the tenement is retail premises with the first to third floors being office properties, with the exception of the Tenant's third floor residential property. The attic storey was not developed. It was understood that the Landlord owns the whole block with the exception of the ground floor retail premises. The

tenement is situated on Union Street, Aberdeen. This is the main shopping thoroughfare within Aberdeen. There is good access to all local amenities within walking distance and would generally be considered a reasonably attractive location for renting a property. The block did not appear to have any communal gardens or open space. The block appeared to be in good condition.

7. The Property itself was a third floor flat. Overall the flat was large (gross internal area 104 sq m) and the rooms were generally spacious. The accommodation comprised a good sized living room with a small bedroom directly off this. The small bedroom did not have any ceiling light. There was a large but dated kitchen, two good sized bedrooms and a toilet. The toilet was dated and comprised only a toilet and wash hand basin. There were no showering or bathing facilities within the Property.

The Committee noted that the Tenant had moved into the Property 48 years ago. At that point the Property had no furnishings or floor coverings. As a result the Tenant had completely decorated and carpeted the Property. She had installed the modest kitchen facilities and generally looked after the internal parts of the Property. The only works carried out by the Landlord and his predecessors were the recent replacement of the lower sashes of the rear windows and replacement of the gas water geyser in the kitchen with a small immersion heater above the kitchen sink to provide hot water facilities. The toilet and small bedroom off the lounge had no direct lighting and the ceiling lights generally within the Property were extremely dated.

DOCUMENTATION

8. The Committee considered all documents provided by the Landlord and the Tenant. These comprised a brief written submission from the Tenant, and some inadequate details regarding service provision by the Landlord. Nonetheless the documentation provided was taken account of at the Hearing along with the relevant statutory forms completed by the parties.

HEARING

9. The Landlord had requested a Hearing and according this was held in Conference Room 4, The Credo Centre, 14-20 John Street, Aberdeen, AB25 1BT. The Landlord did not attend but was represented by his employee, Mr John Anderson. The Tenant was also present at the Hearing. The Tenant submitted that the rent set by the Rent Officer was too high. She highlighted the fact that she had lived in the Property for 48 years. When she first moved into the block only the ground floor was in retail/commercial usage and the rest of the building was tenanted. Over the years the flats had been converted to office space. She was now the only resident in a commercial building. When she moved in the Property it had been completely derelict and an empty shell. It was she that had carried out all the works including decoration and floorcoverings. She highlighted that there was only one socket in each room, which was inadequate. She also highlighted that there were trailing ceiling cables from the hall light to the toilet and from the second hall ceiling light to the outside light in the communal stairs. There was no ceiling light in the small bedroom. She also highlighted that there was only a toilet and wash basin and no shower.

The Landlord's employee had been given little or no instruction by his employer. Accordingly, though no fault of his own, he was unable to make any meaningful contribution.

Neither party produced any evidence of comparable regulated tenancies or other open market tenancies in the area.

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 either party. The Committee had carried out some investigation but had only been able to identify a couple of other regulated tenancies within the immediate area. Neither of these were for similarly sized properties and, given the Committee did not have the benefit of seeing these other properties, were unable to determine whether they would provide a suitable comparison. Accordingly the Committee did not consider this an appropriate method of valuation in this particular case.

The Committee also considered whether to use the method of assessing a reasonable return based on the capital value of the property to assess an appropriate rent. The Committee had no knowledge, however, of the price paid for the Landlord for the larger block or the proportion of the price allocated to the residential property. This made it difficult to ascertain an

accurate capital value, particularly given the Property was the only residential part of the tenement. Accordingly the Committee were not in a position to make any determination based on this method.

The Committee then assessed the matter using the market rent less tenant's improvements less any discount for scarcity approach. The Committee had, through its own investigations obtained details of several other properties that had been let in Union Street and the surrounding area together with details of the extent of each property.

13. Using its knowledge and experience and having regard to other properties for let in the area that the Committee's own investigations had uncovered, the Committee were of the view that the market rent for a double-glazed, centrally heated, well decorated, unfurnished, two and a half bedroom, city centre residential property would be around £10,800 per annum. A slightly higher rental may be achieved should an HMO Licence be obtained. However the Property did not currently have an HMO Licence and it therefore was not appropriate to assess any higher rental on the basis that it may be able to obtain such a Licence. The Committee were satisfied that there were no elements of disrepair to be disregarded arising from the Tenant's actions. The Tenant's improvements did however need to be taken into account. Without the work carried out by the Tenant over the years the Property would simply be an empty shell. The Landlord would need to spend a significant sum to ensure the Property could achieve its full market rent. The Property would need to be valued on the basis that it was being let with no proper kitchen unit and merely sink in the kitchen, no proper bathroom, poor electrics and wiring, no central heating, in poor decorative order and without the benefit of any flooring. Without any of these items the rental achievable would be significantly lower as few tenants would be willing to rent such a property. The Committee were of the view that the lack of a proper kitchen would reduce the rental achievable by £750 per annum. The lack of proper washing and bathroom facilities would reduce the rental achievable by £850 per annum. The poor electrics and lighting costs would reduce the rent achievable by £600 per annum. The lack of a central heating system

would reduce the rental achievable by £750 per annum. The redecoration requirements would also reduce the rental achievable by £750 per annum. The lack of any proper flooring coverings would also reduce the rental achievable by £750 per annum. Whilst the Landlord had recently replaced some of the lower sashes on rear windows generally the windows across the Property were very dated. This would reduce the rental achievable by £600 per annum. The Committee noted that plasterwork repairs were required within the Property, particularly within the main bedroom. This would reduce the rental achievable by a further £350 per annum. The Committee had also noted during its inspection that there was no proper entry system to the Property nor any entry door buzzer to alert the Tenant that anyone was at the front door. Due to the rest of the block being let as offices this meant that in the evening the Tenant was the only person in the block. This situation meant that visitors to the Tenant would have to 'phone in advance to let her know they were coming and the Tenant would require to travel several flights of steps to let them in. The Committee were of the view that this would also act as a brake on the rent achievable and would reduce the rent achievable by a further £600 per annum. The Committee were also of the view that prospective tenants would be less willing to pay for a flat in which the rest of the block was let commercially. This would further reduce the rental achievable by £600 per annum.

In summary, the open market rent of the Property, properly modernised, was £10,800 per annum but the Committee were applying a discount of £6,600 per annum. This led to a rent determination at £4,200 per annum.

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 Aberdeen as a whole there was no scarcity. The Committee considered the latest City Lets report and noted that whilst the time to re-let vacant properties had fallen significantly the rentals levels over the last five years for similar Properties had remained more or less static. If there was a significant level of demand then this would, inevitably, have led to rental increases. On the basis there had been little or no rental increases since 2008 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 clear that the amount to be registered shall include any sums payable by the tenants for services. In this case the Landlord was claiming additional sums for services in respect of buildings insurance for the block, the cost of communal stair lighting and the cost of cleaning common areas (principally the stairwell). The Committee noted that the Tenant had never previously paid a share of the buildings insurance. The Committee also noted that it was well established that insurance was not a service or benefit provided to the Tenant. It was for the protection of the Landlord's interest in the building. Accordingly it was not appropriate to allow this to be recharged to the Tenant as a service. In relation to communal lighting the Tenant had advised during the course of the Hearing that a tenant on the first floor had recently discovered that the electricity for the stairs had been coming from her supply, and that the Landlord had since been obliged to pay this charge and was seeking to now recover it from the

various tenants within the building, the Tenant having never been charged previously by the Landlord for this. Given the Landlord had no contractual right to introduce this, the Committee were not satisfied that this would be an appropriate sum to be paid by the Tenant. The Committee also noted that the Landlord had previously given the Tenant a letter confirming she would not be liable for any share of the lighting. The Committee could not see on what basis the Landlord had introduced this to his application. In relation to the charge for cleaning of the communal areas, the Committee noted that this charge had only recently been introduced by the Landlord. The Committee also noted that it had never been charged to the Tenant previously and there appeared to be no contractual basis for the Landlord to introduce a charge for this service. Accordingly the Committee were satisfied that no services should be added to the rent payable by the Tenant.

17. In terms of its Decision the Committee was of the view that a fair market rent for the Property was £4,200 and there would be no additional sums for services. 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 and 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 22 August 2012

E Miller

Signed: (Chairman)

Date: 19/9/2012