



**PRIVATE RENTED HOUSING PANEL**

**Rent (Scotland) Act 1984**

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

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<b>REFERENCE NO.</b>	<b>OBJECTION RECEIVED</b>	<b>OBJECTION</b>
PRHP/RR/14/0234	6 October 2014	Landlord

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**ADDRESS OF PREMISES**

1A Torphichen Place, Edinburgh, EH3 8DY

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**TENANT**

Ms Shirley Yuill

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<b>NAME AND ADDRESS OF LANDLORD</b>	<b>AGENT</b>
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Mr Graeme Johnston 9 Dykehead Crescent, Airdrie, ML6 6PU	
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**DESCRIPTION OF PREMISES**

Basement flat in Victorian corner tenement. Accommodation sitting room, double bedroom, kitchen, utility room and bathroom.

Remarks: No central heating or double glazing. Kitchen units, white goods, floorcoverings and bathroom fittings provided by tenant. No garden or off-street parking. Property located at very busy junction. In mixed, but predominantly commercial area close to Haymarket Station.

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**SERVICES PROVIDED**

None

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**COMMITTEE MEMBERS**

**CHAIRPERSON**  
**SURVEYOR MEMBER**

George Clark  
Charles Reid Thomas

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<b>FAIR RENT</b>	<b>DATE OF DECISION</b>	<b>EFFECTIVE DATE</b>
£ 3960.00 p.a.	27 November 2014	27 November 2014

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**George Clark**

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**Chairperson of Private Rented Housing Committee**

**27 November 2014**  
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**PRIVATE RENTED HOUSING COMMITTEE  
STATEMENT OF REASONS**

**PROPERTY:**

**1A Torphichen Place, Edinburgh EH3 8DY**

**INSPECTION:**

**27 November 2014**

## **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 ("the Act") by the landlord, Mr Graeme Johnston, 9 Dykehead Avenue, Airdrie ML6 6PU, in relation to the property known as 1A Torphichen Place, Edinburgh EH3 8DY. It is an appeal against a determination of the Rent Officer registered on 29 August 2014.
2. The present rent paid by the tenant, M's Shirley Yuill, 1A Torphichen Place, Edinburgh EH3 8DY ("the tenant") in respect of the property is £2,250 per year. The landlord applied for a rent of £5,400 per year for the property. The Rent Officer determined a rent of £3,800 per year. The landlord referred the Rent Officer's determination to the Private Rented Housing Committee.
3. Only the tenant attended the inspection. The Tenant had indicated a desire to attend the hearing, but, at the inspection, confirmed that she was content for the Committee to determine the matter on the basis of her written submissions. The Landlord did not request a Hearing.
4. The Committee comprised

Chairman	George Clark
Surveyor	Charles Reid Thomas

### **THE DOCUMENTATION**

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

considered evidence obtained from property websites as to one-bedroomed properties currently available for let in the Haymarket, West End and Gorgie/Dalry areas of Edinburgh.

### **THE INSPECTION**

6. The inspection took place on 27 November 2014. The tenant attended the inspection.
7. The Chairman introduced the Committee to the tenant. The Committee proceeded to inspect the property.

### **DESCRIPTION OF THE PROPERTY**

8. The property is a basement flatted dwellinghouse, forming part of a three storey plus basement, stone-built, Victorian corner tenement of flats in an area of mixed, but predominantly commercial, properties, close to Haymarket Station. The property adjoins West End Police Station and is situated at an extremely busy road junction. The accommodation comprises a sitting room, one double bedroom, a boxroom, kitchen, utility room and shower room. There is a small basement area to the front, but no off-street parking. There is a water heater, but no central heating and the windows are not double glazed. The property is close to local amenities. The kitchen is fitted with floor and base units and the shower room has reasonably modern fittings, but both rooms were fitted by the tenant and the white goods, laminate and other floor coverings were also all fitted by the tenant. The property was rewired by the landlord in 2003/4 and the front and side doors and the sitting room window were replaced at that time.

## DECISIONS AND REASONS

9. Section 48 of the 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.*

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".*

10. 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 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.

12. 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.

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) *above*.

13. The Committee from its own experience, knowledge and information available on the internet and from local letting agents considered that comparable properties for the open-market rental of 1-bedroomed properties of this type in the Haymarket/West End/Dalry areas averaged around £560 per calendar month (£6,720 per annum). The Committee had access to details of a number of one-bedroom flats advertised for rent in the area of the property and the rental figures ranged from £525 to £595 per month (£6,300 to £7,140 per annum).
14. 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.

15. The Committee considered whether any discount should be made for scarcity in this case, but was satisfied that in the area, there could not be said to be scarcity of similar properties to let at the present time. 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. The Committee considered, however, that a number of deductions should be made to reflect improvements carried out by the tenant and to take into account expenditure that the landlord might expect to incur if the property were to be re-let to a new tenant. In her written submissions, the tenant had advised the Committee that, when she had moved in to the property in 1986, there was nothing in the kitchen apart from a free-standing tap. There had been a free-standing gas cooker in the middle of the sitting room floor, but no gas connection. There had been a toilet, a sink and a multi-level cast iron bath. The property had belonged to a long-running family trust and everything in the property from the flooring upwards had been supplied and paid for by her. She had also met the entire cost of redecoration over the period of the tenancy. The landlord had rewired the property in 2003/4 and had replaced the front and side doors along with the sitting room window, but the kitchen and bathroom units, fittings and fixtures, the floorcoverings and all the white goods belonged to the tenant. The landlord had installed a water heater in 2003/4, but had not fitted a thermostat. As a result, the tenant could not afford to use the water heater, as there was no way of controlling the temperature. The landlord had recently purchased the property from the trust without having seen it and had assumed that major renovations were required, after which the rent could be increased, but, as a result of the works carried out by the tenant over the years, no such renovations were required and no work had been done by the new owner. The other properties that the tenant had seen on the market for rent all seemed to be of a high specification with central heating and double glazing, carpets and floorcoverings throughout, with white goods, good quality fitted kitchens and bathrooms, many with a door entry system, the use of a private garden and car parking. The tenant was of the view that all



of these factors should be borne in mind by the Committee when looking at rent comparisons. The landlord did not, in his written submissions, challenge the evidence of the tenant as to the condition of the property when she had moved in or the improvements, upgrading and repair works she had carried out during the tenancy and the tenant's evidence on these matters was, therefore, accepted by the Committee.

17. The landlord, in his written submissions, stated that he regarded the rent determined by the Rent Officer to be unreasonable, particularly as the increase would have to be phased over 3 years, and that the property would only deteriorate further, due to appropriate maintenance and repairs being unaffordable. He had been unable to find any properties nearby where the rent was anywhere near as low as that proposed by the Rent Officer. The Committee, however, rejected return on capital value as the basis of fixing the rent (see Paragraph 13 above) and had sufficient comparative rental figures to enable it to arrive at its decision.
18. The Committee considered that the appropriate market rent in respect of the property was £6,720.00 per year. The Committee further considered that a deduction was appropriate of £2,740.00 per year in respect of improvements carried out by the tenant and of improvements which would be required to the property were it to be re-let. These deductions reflected the absence of central heating and double glazing and the fact that the kitchen and bathroom fittings, white goods and floorcoverings all belonged to the tenant, as well as the fact that the redecoration had been carried out by the tenant at her own expense.
19. Accordingly, having taken all relevant factors into account, the Committee determined that a Fair Rent for the property was **£3,960** per year (£330 per month). 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.

**George Clark**

**George Clark**

**Solicitor, Chairman, Private Rented Housing Committee**

**27 November 2014**