



PRIVATE RENTED HOUSING PANEL

Rent (Scotland) Act 1984

Notification Of Decision By The Private Rented Housing Committee

REFERENCE NO.	OBJECTION RECEIVED	OBJECTION
PRHP/RR/15/0129	20 and 29 April 2015	Tenant and Landlord

ADDRESS OF PREMISES

The Old Schoolhouse, Glen Estate, Innerleithen EH44 6PX

TENANT

Christopher Airey and Mrs Marilyn Airey

NAME AND ADDRESS OF LANDLORD

The Trustees of Glen Settlement
Glen House, Innerleithen EH44 6PX

AGENT

CKD Galbraith
5-7 Bnak Street
Galashiels TD1 1EN

DESCRIPTION OF PREMISES

Detached, one and a half storey stone house with slate roof, erected in rural setting, off private road on Glen Estate, around 1880, with sun lounge extension added at a later date. Accommodation comprises, on ground floor, living room, double bedroom, further public room, sun lounge (currently used as a bedroom), utility area, kitchen with pantry off and bathroom and, on upper floor, 3 bedrooms and bathroom. Good-sized garden ground to front, side and rear. Detached garage. Single glazed windows. Gas central heating (installed by Tenant). Unfurnished let, White goods not supplied by Landlord.

SERVICES PROVIDED

Water

COMMITTEE MEMBERS

CHAIRPERSON

George Clark

SURVEYOR MEMBER

Carol Jones

HOUSING MEMBER

Christine Anderson

FAIR RENT

£ 6,700.00 p.a.

DATE OF DECISION

17 August 2015

EFFECTIVE DATE

4 April 2015

G CLARK

Chairperson of Private Rented Housing Committee

17 August 2015

Date



PRIVATE RENTED HOUSING COMMITTEE

STATEMENT OF REASONS

PROPERTY:

The Old Schoolhouse, Glen Estate, Innerleithen EH44 6PX

INSPECTION: 17 August 2015

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, Glen Settlement, whose lead Trustee is Tessa Tennant, Glen House, Innerleithen EH44 6PX ('the landlord'), and by the tenants, Christopher Airey and Mrs Marilyn Airey ('the tenants') in relation to the property known as The Old Schoolhouse, Glen Estate, Innerleithen EH44 6PX. The landlord's agent is CKD Galbraith, 5-7 Bank Street, Galashiels TD1 1EN ('the agent').
2. The registered rent paid by the tenants in respect of property was £4980.00 per year. The landlord applied for rent of £10,320.00 per year for the property as at 4 April 2015. The Rent Officer determined a rent of £6,225.00 per year. The landlord's agent and the tenants referred the Rent Officer's determination to the Private Rented Housing Committee.
3. The tenants and the landlord attended the inspection and the subsequent hearing.
4. The Committee comprised George Clark (chairman), Carol Jones (surveyor member) and Christine Anderson (housing member).

THE DOCUMENTATION

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

THE INSPECTION

6. The inspection took place on 17 August 2015. Tessa Tennant's husband, William Staempfli, represented her at the inspection, but both attended the hearing. The tenants attended the inspection and the hearing. Mike Thompson of CKD Galbraith, the landlord's agent, also attended the inspection and the hearing. The Chairman of the Committee introduced the Committee to the parties. The Committee proceeded to inspect the property.

DESCRIPTION OF THE PROPERTY

7. The property is a detached, one and a half storey stone house with a slate roof, erected on Glen Estate around 1880, with a sun lounge extension added at a later date. The accommodation comprises, on the ground floor, living room, one double bedroom, further public room, sun lounge (currently used as a bedroom), utility area, kitchen with pantry off, and bathroom, and, on the upper floor, 3 bedrooms and a further bathroom. The property is situated on a large sloping plot with gardens (landscaped by the tenants) a detached brick/roughcast garage and a range of sheds and greenhouses. Other than the garage, the outbuildings belong to the tenants. The nearest shops and other facilities are in the village of Innerleithen. The property is located in a rural setting on a private road leading through Glen Estate and situated just south-west of Innerleithen and around 10 miles south-east of Peebles.

8. The windows of the property are single glazed. The kitchen had at the start of the tenancy in 1984 comprised a sink with a small draining board and some shelving. The tenants had installed a fitted kitchen (which the tenants had since replaced with more modern units and fittings) and a Rayburn cooker, two heating systems (one served by the Rayburn and the other by a wood burning stove in the living room), upgraded the wiring and bathrooms, some insulation and re-plastering of walls and ceilings, and had converted an area behind the kitchen into a pantry. All floor coverings and decor are also by the tenant.

THE HEARING

9. Both parties had requested a hearing and this took place at the Traquair Arms Hotel in Innerleithen. Mr Thompson and Mr Staempfli presented the case for the landlord, and told the Committee that the landlord had appealed the decision of the Rent Officer because the rent determination was low compared with other properties on the Estate. The landlord appreciated that the tenants had carried out improvements, but the landlord owned a number of properties on the estate which had been improved at the landlord's expense, so knew the costs involved in bringing a house such as the present property up to standard. The landlord was not aware of any such property in the area which was the subject of a registered rent and did not argue the question of scarcity.
10. In the landlord's opinion, the capital value of the property was £300,000. The landlord had applied a discount of £28,000, based on the costs of comparable improvements made at Kennels Cottage on the Estate, for a modernised kitchen, bathroom and window upgrades, central heating in all rooms and satisfactory electrics. The landlord was of the view that a 3.8% return on capital was reasonable and had, using that rate of return, arrived at an annual rent of £10,335. This also was in line with the rate of return on capital in respect of the property at 2 Fethan View on the Estate, which was comparable with the present property as originally let in that it was heated by an open fire and had an unimproved kitchen and bathroom. The current rent for 2 Fethan View was £6,468 per annum, with a capital value of £190,000, producing a rate of return on capital of 3.4%. The other two properties at Fethan View had been improved, with oil-fired central heating throughout, renovated kitchens and rewiring. The rent for 2 Fethan View was discounted by approximately 20% compared with the other two properties, to take account of its unimproved condition, and the rate of return on capital for the other two properties was 4%.
11. The landlord accepted that the Committee's assessment had to be based on what was there in 1984 when the property was first let out. There was no condition report from that time to use as a guide, but it was a habitable house which had been occupied by the town's doctor. It had a kitchen (admittedly nothing like the present one put in by the tenants), 2 bathrooms and a very basic heating system consisting of 3 electric night storage heaters. The landlord accepted that the tenants had made significant improvements to the property, but the landlord knew, from experience, what the cost of installing a kitchen and central heating, together with improving the bathrooms would be and used this knowledge to calculate a rental discount of approximately 20%. The landlord also drew the attention of the Committee to Appendix IV of its written submissions, which contained a list of repairs to the property carried out by the landlord in recent years.
12. The landlord asked the Committee to take into account other market rents on the Estate. After the inspection, but prior to the hearing, the landlord had shown the Committee the property on the Estate known as The Kennels. The landlord considered that it had been improved (in that case by the landlord) to a standard similar to the present property. The current rent for The Kennels was £12,360.72 per annum, providing a rate of return on capital of 3.8%, based on a capital value of £325,000. The Kennels had a large stable block to the rear, but the landlord did not accept that the stable block was usable or

that it accounted for the difference in rent between The Kennels and the present property. In the landlord's view, this demonstrated that the market rent for the Old Schoolhouse was £12,360 per annum and applying the discount of 20% to reflect the fact that it was the tenants who had upgraded it, a fair rent should be £10, 335 per annum, which was the same figure as that arrived at using a return on capital basis.

13. The landlord told the Committee that 1 Fethan View was currently on the market for rent at £8,400 per annum and the previous tenants of that property had moved to Valley Cottage, which was considerably more remote and where the rent was also £8,400 per annum. Valley Cottage had 2 reception rooms, 2 bedrooms, kitchen, bathroom and sunroom, with solid fuel central heating and a back boiler.
14. The tenants then presented their case to the Committee, referring to their written representations. They accepted that it was unfair to describe the property (as they had done in their written representations) when the tenancy started in 1984 as a "shell", but the initial rent (£30 per week) was commensurate with the state of the property at that time. The house was in a poor condition, but it was wind and water tight. It had a free standing sink with drainer, two cupboards and a drawer. The only work surface was the top of the washing machine. It had no central heating system, merely an open fire with a back boiler, which heated water but did not provide any space heating in other rooms and 3 night storage heaters. Since 1984 there had been no improvements carried out by the landlord – all the upgrading had been done by the tenants. In 1984, the Estate properties had all been in very poor condition. The farmhouse, for example, was open to the elements. The only reason that the Old Schoolhouse had been wind and water tight was that it had been the factor's house in the 1960s and 1970s. Despite its condition, the tenants had taken it on as they could see its potential and looked on it as their long-term home. The lease had been the standard one used by the Estate at that time and the then agent for the landlord, Mr Tom Renwick had given permission for the tenants to do any works on the house that would improve its condition, the only proviso being that any works which would affect the outward appearance of the house would require prior written consent from himself as agent. The Estate had little or no money at that time for improving its houses and this was why the tenants were encouraged to do it themselves.
15. This arrangement had worked well for many years. Any rent increases were agreed verbally, as were improvements works carried out by the tenants, but the situation had changed around 2008 and repairs were now carried out by the landlord on a "crisis management" basis. In 2009, the landlord had asked the Private Rented Housing Panel what they needed to do to increase the rent and had been told quite bluntly that they needed to invest in the property by paying for the things that the tenants had been funding up until then. The landlord did nothing and, as a result, a bedroom ceiling had collapsed due to leakage of water through the roof and there had been further damage caused by water ingress. The landlord was also now contending that improvement work carried out by the tenants was not authorised. Accordingly, when the tenants had had electrical rewiring work to bring the property up to latest standards carried out at a cost, including re-plastering and redecoration, of in excess of £11,477, the landlord had contributed only £1,500, contending that this was sufficient to cover the necessary work.
16. In their written submissions, the tenants argued that the rent increase of 24% determined by the Rent Officer was unreasonable, as there had been no material improvements carried out by the landlord since the previous registered rents were set in 2009 and 2012. Published statistics indicated that the general increase in private rents in Scotland between 2011 and 2014 was in the order of 6.3%. The tenants argued that such an increase would be justifiable, but not the 24% set by the Rent Officer or the increase of over 100% suggested by the landlord. The Housing Acts did not guarantee landlords a right to return on capital and it was a fair rent, not a market rent, by comparison with other properties, that the Committee had to determine, so the Committee should have regard to independent indices, not market

rents set for Short Assured Tenancies. The tenant also argued that scarcity was relevant for improved properties in this location.

17. Finally, the tenant commented on the fact that Appendix IV of the landlord's written submissions indicated that approximately £11,000 had been spent by the landlord in maintenance and repairs in recent years. This was, in the main, for repair work and not improvements and most of the work predated the last rent assessment in 2012.
18. The landlord and the tenants made concluding remarks to the Committee. The landlord said that they were running a property business and had to be sure that they rented properties on the Estate at the market rate. They fully accepted that the tenants had looked after the property very well, but the matter was complicated by the fact that the tenants had made capital improvements to a property they did not own. The tenants responded by saying that at no time had they ever sought compensation for any of the works they had carried out and at no time had the landlord indicated that any of the works the tenants had done were matters that the Estate would have instructed.

DECISIONS AND REASONS

19. 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.

20. 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".


21. 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*.

22. The Committee considered carefully all the evidence presented, together with the observations made by the tenant and the landlord at the inspection and the hearing. In particular, the Committee considered carefully which of the three alternative methods of ascertaining a fair rent was most appropriate in this case.
23. 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.
24. 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. There was no evidence available to the Committee of registered rents of comparable properties in the area and the Committee was not persuaded that return based on the capital value of the property and others on the Estate was the appropriate method to use, as the other properties on the estate were let on Short Assured tenancies and the capital value of the properties would reflect the landlord's ability to recover vacant possession, the capital value of the present property being considerably less than that of other houses on the Estate because of the tenants' security of tenure (the landlord's own valuations suggested a capital value of £100,000 with a sitting tenant, as opposed to £300,000 with vacant possession). 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 and making any appropriate disregards, at (b) *supra*.
25. The Committee from its own experience, knowledge and information available on the internet, from the landlord and from local letting agents considered that a market rent for a single glazed, well decorated, centrally heated, unfurnished, carpeted, four bedroom property of a type and in the locality of the present property was £850.00 per calendar month (£10,200 per annum). The Committee was aware that the passing rent for 1 Fethan View was £8,100 per annum (although it was currently being advertised for let at £8,400 per annum). This was an improved, but smaller property than The Old Schoolhouse. Kennels Cottage was currently let out at £12,360 per annum, was improved and of a comparable size to the present property, but the Committee did not accept the landlord's contention that the ability to utilise the adjacent stables building had no impact on the rental figure achieved, noting that it appeared to be used partly as a workshop and stores, partly as an office, partly as kennelling for dogs and relatively recently as stabling for horses. The landlord had advised the Committee that Valley Cottage was currently let out at £8,400 per annum, but, whilst it had central heating, a renovated kitchen and a similar number of rooms to the subject property it was somewhat smaller than The Old Schoolhouse and was in a more remote location. The Committee was also aware of a modern property in Clovenfords available for rent at £9,900 per annum, but did not consider that a different style of house in a different location provided a suitable comparison. The Laundry House was a two-storey wing of Glen House, with an annual rental of £12,000.36, but the Committee did not regard it as a suitable comparison to a detached house on a more remote part of the Estate. Glen Farmhouse was considerably larger than the present property, with a much higher vacant possession value. Its rental was £12,645.12 per annum. Finally, the Committee considered 2

Fethan View, which was a smaller 5-apartment, mid-terraced, unimproved property, with a current rent of £6,468 per annum.

26. The Committee noted the argument put forward by the tenants that average increases in rents across Scotland in the period from 2011-2014 had been around 6%, but felt that it had ample evidence of current rental values available to it.
27. 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.
28. The Committee considered whether any discount should be made for scarcity in this case, but was satisfied that in the Borders area as a whole, there could not be said to be scarcity of similar properties to let at the present time and while the tenants suggested that scarcity might be relevant for improved properties in the area the committee were not persuaded that demand for properties on the Estate substantially exceeded supply. 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.
29. The Committee considered that a number of deductions should be made to take account of the fact that the property had been let in an unimproved state, with a very basic kitchen, no central heating, no insulation, dated bathrooms and electrical wiring, and no floor coverings. The Committee concluded that most of the work carried out to the property in recent years by the landlord was of a repairing nature rather than improvement work and also disregarded, as it was required to do, the improvements carried out by the tenants.
30. Accordingly, having taken all relevant factors into account, the Committee determined that a Fair Rent for the property was **£6,700.00** per year. In reaching this decision, the Committee had regard to all the evidence presented by the parties, and to all the circumstances that must be taken into account in terms of section 48 of the Rent (Scotland) Act 1984.

G CLARK

Signed.....

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George Clark, Solicitor
Chairman

Private Rented Housing Committee 17 August 2015