

**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/15/0205	16 July 2015	Tenant

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**ADDRESS OF PREMISES**

206 (3F1) Easter Road, Edinburgh EH7 5QH

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**TENANT**

Ms William Ross

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**NAME AND ADDRESS OF LANDLORD**

Riccarton Properties LLP  
Stanswood Road,  
Fawley  
Near Southampton SO45 1AB

**AGENT**

Redpath Bruce LLP  
103 West Regent Street,  
Glasgow G2 2DQ

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**DESCRIPTION OF PREMISES**

Third floor flat in 4 storey sandstone tenement from late 19<sup>th</sup> century in Easter Road area of Edinburgh. Accommodation comprises kitchen, living room, one double bedroom, bathroom with bath toilet and wash-hand basin  
The gross internal floor area is 69 square metres.

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**SERVICES PROVIDED**

None

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**COMMITTEE MEMBERS****CHAIRMAN**

D Bartos

**SURVEYOR**

R Buchan

**HOUSING MEMBER**

C. Harvey

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<b>FAIR RENT</b>	<b>DATE OF DECISION</b>	<b>EFFECTIVE DATE</b>
£ 3850 p.a.	9 November 2015	9 November 2015

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**David Bartos**

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**Chairman of Private Rented Housing Committee**

**Date 9 November 2015**  
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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: PRHP/RR/15/0205

Re : Property at 206 (3F1) Easter Road, Edinburgh EH7 5QH (“the Property”)

The Parties:-

Riccarton Properties LLP, Stanswood Road, Fawley, Southampton, Hampshire SO45 1AB (“the Landlords”)

William Ross, 206 (3F1) 206 Easter Road, Edinburgh EH7 5QH (“the Tenant”)

**The Committee comprised:-**

Mr David Bartos	- Chairperson
Mr Robert Buchan	- Surveyor member
Mr Christopher Harvey	- Housing member

**Background:-**

1. The Tenant is the tenant of a flat on the third floor at 206 Easter Road, Edinburgh by virtue of a statutory protected tenancy. The statutory protected tenancy took effect in 1987. It is covered by sections 43 to 54 of the Rent (Scotland) Act 1984. The rent under the tenancy is registrable under sections 46 to 50 of the 1984 Act. No furniture has been provided by any landlord under the tenancy.
2. The previous registered rent was £ 286.67 per calendar month or £ 3440 per annum. The Landlords applied to the Rent Officer for registration of a fair rent of £ 3960 per annum. There are no services provided by the Landlords under the tenancy.

3. On 19 June 2015 the Rent Officer registered a rent of £ 3850 per annum or £ 320.83 per month to be effective from 2 August 2015. This was intimated to the Tenant and the Landlords. The Tenant objected to this by letter of appeal to the Rent Officer dated 8 July and received on 14 August 2015. The Rent Officer referred the objections to the Private Rented Housing Panel and a Private Rented Housing Committee was formed to determine the matter.

### **The Inspection**

4. The Committee attended at the Property on 7 October 2015 at 10.30 a.m. The date and original time of 10.00 a.m. for the inspection had been intimated to both parties. The Tenant was present. One member of the Committee was present at 10.00 a.m. There was no attendance by or on behalf of the Landlords either at the original time or at 10.30 a.m. The weather was overcast. The Property is a flat on the third floor of a late Victorian tenement on the east side of Easter Road in the east end of Edinburgh. It is near Albion Road and within 400 metres from the home ground of Hibernian F.C. There is limited on-street parking. There are frequent bus links to the city centre. There are shopping facilities on Easter Road within a short walking distance.
5. The blonde sandstone tenement, which forms number 206 Easter Road comprises three floors above the ground floor. The Property is on the top floor in the southern part of the tenement building. It is on the left side of the internal stairwell.
6. The accommodation consists of one double bedroom, living room, kitchen, and bathroom with toilet. It has a gross internal floor area of 69 square metres. From the front door a hallway provides access to all rooms. On the right is the living room which faces west onto Easter Road. On the left is a boxroom followed by the bedroom, the bathroom and the kitchen. The bedroom, bathroom and the kitchen all face the rear of the tenement.
7. The living room has a window facing Easter Road. It has a traditional fireplace and a storage press. It has a box room the rear of which adjoins the kitchen. There is a radiator. There is no floor covering. The fireplace continues to be used.
8. The kitchen has an internal alcove which once served as a bed recess. It has a storage press. There is a walk-in cupboard. It retains its original fireplace with an old range within it. The range is not used. The Tenant has provided the vinyl flooring. The decoration of the kitchen including its ceiling is in a poor condition. The Tenant provides his own cooker, refrigerator and washing machine. The only kitchen unit is below an old stainless steel sink facing the rear window. There is a radiator in the internal alcove.

9. The bathroom is narrow with a rear window. It has a bath, toilet and washbasin. It has no shower. The Tenant has supplied the vinyl floor.
10. The bedroom is next to the bathroom. It has a window facing the rear of the tenement with an open outlook. It has a Worcester combination gas powered boiler. It has a sticker stating,  
 "Safety Warning. Immediately dangerous. Do not use. The gas appliance/installation is dangerous and has been disconnected for your safety."  
 and details what has to be done before the appliance can be used again. The boiler is not housed in any unit. The ceiling shows signs of historic leaks and is in need of redecoration. There is no evidence of dampness. The room has an original fireplace. It is not in use. Its decoration is in poor condition.
11. Linking the rooms together is the hallway. Near the front door there is wallpaper peeling down from the cornicing. There is dampness in at least two places at or about the cornicing slightly in from the front door. There is a spacious box room off the hallway between the bedroom and the front door. It contains the gas meter. The cabling for the smoke alarm in the hallway has become detached from the ceiling and is sagging. The decoration is generally in poor condition.
12. The windows in the Property are double glazed. The boiler is not in operational condition. There is no running hot water in the Property.
13. The tenement has had common repairs carried out to its outer wall and chimney heads in recent time. The fabric of the building is in fair condition.
14. There is a drying green area at the rear of the tenement which is available for use by the Tenant. It is overgrown and does not appear to be in regular use or maintenance.
15. The Committee took account of their inspection and in addition the following documentary evidence : -
  - Copy form RR1 being the Landlords' application for registration of rent for the Property dated 2 May 2015
  - Copy extract from the Rent Register for the Property showing among other matters the rent registered by the Rent Officer for the Property on 19 June 2015
  - Copy reference to PRHP from the Rent Officer dated 14 July 2015
  - Copy letter of appeal from the Tenant dated 8 July and received 14 July 2015
  - Written representations from the Tenant dated 7 August 2015
  - Written representations from the Redpath Bruce dated 5 August 2015

- Local housing allowance rates for August 2015 from Directgov website.
- Citylets Quarterly Reports Q2 and Q3 from 2015
- Scottish Government Private Sector Rent statistics 2010 to 2014

### **The Hearing**

16. At the conclusion of the inspection the Committee held a hearing at 12.00 hrs at George House, 126 George Street, Edinburgh EH2 4HH. The Tenant appeared. There was no appearance by or on behalf of the Landlords. The hearing had been fixed for 11.00 a.m. but prior to the commencement of the hearing the Committee confirmed with the reception that no person had arrived for the hearing other than them (and the Tenant).
17. The Committee explained to the Tenant the task of the Committee and what was entailed in assessing a fair rent for the purposes of the 1984 Act. The Tenant stated that he had been resident at the Property since 1987. He explained that he felt that the current rent seemed reasonable. The rent had last gone up in 2012. He did not have any real idea of rent levels for one bedroom flats in the area and did not put forward any examples of such properties. The Tenant had no comment to make on the Local Housing Allowance rates document put forward by the Landlords in support of the increase sought.
18. In answer to questions from the Committee the Tenant stated that he had not complained to the Landlords about the boiler not working. The boiler had broken down 4 or 5 years ago. He simply assumed that the landlords would arrange for the work to be done. He didn't mind the lack of hot water and heating. A gas engineer instructed by the Landlords had attended to inspect the boiler. She had said to him that she would report the boiler to the Landlords. She had placed the sticker on the boiler. Another gas engineer Mr R.D. Hall had told him in August 2014 that the Landlords intended to fit a new boiler. At that time he discovered that new landlords had acquired the Property.
19. The leak in the bedroom had occurred 3 or 4 years ago. It was separate from the hallway leak. The bedroom leak had not recurred. The leak near the front door could have been in 2013 or 2014. It was possible that the damp found by the Committee reflected old leaks.
20. The smoke alarm had been fitted a few months ago by the Landlords replacing an old battery-powered one. The cabling had come down, he had tried to stick it back with duct tape but it had gone down again.
21. He confirmed that he had supplied the floor coverings in the Property. With regard to his reference to "violent tremors" of the building referred to in his written representations, the Tenant elaborated that he had first noticed a change in 2002. The shaking happened regularly.

22. The Tenant submitted that he thought that a rent increase when the Landlords had done nothing was unreasonable. To him £ 66 per week seemed a reasonable amount for what there was at present. The assumption in valuation of demand not being substantially higher than supply was explained to the Tenant. He was aware his general medical practitioner had been required to move practice due to a large increase in population in the Leith area. This to him suggested an increase in demand.
23. The Committee found the Tenant's evidence credible so far as it related to facts and accepted it.
24. The Tenant also explained that he was in arrears with his rent although this was not connected to the boiler matter. It was pointed out to him that the Committee could not take account of the Tenant's personal circumstances such as his ability to pay.
25. After the hearing the Committee invited the parties to make representations on the issue of market imbalance which is discussed below and on the sources of information used by the Committee in deciding that issue. Neither party did so. While the Tenant submitted written representations to PRHP dated 23 October 2015 these were not concerned with market imbalance. They did nothing more than take issue with the representation from Redpath Bruce which suggested that the double glazed windows had been installed by the landlords at the request of the Tenant.

### **Decision**

26. The Committee considered carefully all the above evidence and submissions together with the observations of the Committee members at the inspection.
27. In considering the objection of the Tenant 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 determines that the rent registered by the Rent Officer is a fair rent then it must confirm the rent but if it takes the view that the rent so registered is not a fair rent, then it must determine the fair rent for the property in question without being bound by the Rent Officer's figure.
28. In determining the fair rent the Committee is required to strike an equitable balance between the interests of a tenant and Landlords respectively. In striking that balance the Committee is obliged under section 48(1) of the Rent (Scotland) Act 1984 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 dwelling-house 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.

29. However in determining the fair rent the Committee is obliged under section 48(2) of that Act to assume that the number of persons seeking to become tenants of similar properties in the locality on the 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.
30. The Committee is also 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.
31. There are three accepted methods of determining a fair rent, none of which is regarded as the primary method. 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 by the tenant which requires to be disregarded and an amount if the market rents did not reflect the assumption mentioned above under section 48(2); and
  - (c) calculating the appropriate return based on the capital value of the property, taking into account the assumed absence of market imbalance.
32. The committee were given no comparable registered rents and for this reason this method was not employed.
33. The Committee were able to use their knowledge and experience of market rents from the Easter Road area of Edinburgh. 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 above areas. Accordingly, the Committee considered that to determine a fair rent it was appropriate to apply open market rents for similar properties in the area of the Property together with any appropriate deductions.
34. The Landlords relied on the figures in the Valuation Office Local Housing Allowance rates for Lothian for August 2015. These are calculated for the purposes of housing benefit. The figure of £ 116.52 per week (or £ 506.30 per month) given for a one bedroomed property reflected neither the Committee's awareness of the specific market levels in the Easter Road area nor the condition of the Property itself. It was therefore of no assistance.

35. The Committee took account of the Tenant's position that there should be no increase in the fair rent given the lack of improvement of the Property since the last review in 2012. However that would disregard the rise in market rents since that time which, to the extent that it was consistent with the assumption in section 48(2), was a factor which had to be taken into account.
36. The Committee found that they were being tasked with setting a fair rent for a property which does not meet the Repairing Standard under section 13 of the Housing (Scotland) Act 2006. The Property could not be let in its current condition and so there could be no directly comparable evidence of similar rents. The lack of hot water and central heating might be seen as relatively temporary but the kitchen is as basic as can be found in having only a kitchen sink and a cooker point and complete redecoration would be an upheaval at least. In addition, the vast majority of open market rentals in the area is of furnished accommodation.
37. Accordingly, the Committee determined that they would use their knowledge and experience of furnished rentals with a deduction for the amortised annual cost to a landlord for the furnishings commonly found in these lets to arrive at a figure for an unfurnished let and would also deduct sums for the cost of repairing the heating, for redecoration and for the installation of modern kitchen and bathroom fittings. They thought that it would then be appropriate to apply a further reduction for the inconvenience to say the least to a potential tenant of not having these basic amenities as just deducting the cost of providing them hardly seemed adequate to strike the equitable balance between landlord and tenant that is inherent in the concept of a fair rent.
38. Using its knowledge of market rents the Committee considered that a one bedroom furnished flat in a satisfactory state of repair with modern fixtures and fittings with gas central heating present in the Easter Road area of Edinburgh would let for about £ 600 per month. The Committee took the view that to achieve the rent of £ 600 per month or £ 7200 per annum the Landlords would require to provide the following works with the following approximate costs:
  - completely refurbish the lounge, bedroom and hallway for £ 5000 to last roughly 10 years giving an annual cost of £ 500
  - install a new fitted kitchen for £ 4000 to last roughly 10 years giving an annual cost of £ 400
  - install new bathroom fittings, bath and electric shower for £ 3000 to last roughly 10 years giving an annual cost of £ 300
  - a new boiler with repair and repositioning of radiators for £ 4000 to last roughly 15 years giving an annual cost of £ 267
  - new carpets in the living room, hall and bedroom and kitchen and bathroom flooring for £ 1000 to last roughly 5 years at an annual cost of £ 200



- kitchen cooker, washing machine, fridge/freezer for £ 1000, dining table and 4 chairs for £300, double bed and mattress/pillows for £ 300, wardrobe for £150; settee and armchair for £ 600, coffee table and media furniture for £150, totalling £ 2500 all to last roughly 10 years at an annual cost of £ 250
39. The deductions of these annual costs leads to a figure of £ 440 per month. As noted above, the Committee considered that there should be a deduction of more than just the cost of providing the furnishings, modern fittings and repairs to reflect the inconvenience even of the landlord just attending to these matters and a prospective tenant requiring to tolerate the existing condition. This was necessary in order to strike the equitable balance between landlord and tenant which is inherent in a fair rent. This additional deduction is inevitably a matter purely of judgement and in this case the Committee considered that a 10% end adjustment would be appropriate to strike that balance. On this basis a rent of £ 396 per month would be a fair rent leaving aside the assumption as to the absence of market imbalance.
  40. As already noted, in fixing a fair rent the Committee must do so on the assumption that the number of persons seeking to become tenants of similar dwellinghouses in the locality of the Property on the terms (other than relating to rent) of the tenancy is not substantially higher than the number of such dwellinghouses which are available for letting on such terms.
  41. The purpose of this assumption is to ensure that when market rents have been pushed up by a shortage of houses to let, tenants do not have to bear the burden of that increase over what would otherwise be fair.
  42. Case law has determined that for the purposes of the assumption a committee must assess the rental market over a “large area” to exclude excessive demand caused by specific local amenities such as proximity to city centre shops, offices and transport links or a hospital or university. The committee recognised that an easily definable large area in this case would be Edinburgh as a whole. It is bounded by the Firth of Forth to the north and by the A720 bypass and connecting “ring roads” on the remaining sides. In the experience of the Committee demand for a tenancy of the Property could originate from the whole City of Edinburgh. Accordingly an assessment of the whole of Edinburgh was appropriate in determining whether rents were being pushed up by a shortage of housing to let. It therefore assessed the locality for this purpose of the assumption as being the City of Edinburgh.
  43. No representations regarding market rentals or the rental market were made by either the Landlords or the Tenant. The Committee considered the state of the market and in particular considered statistics compiled by the Scottish Government covering Lothian and a particularly helpful, up to date and informative bulletin prepared by Citylets, a privately owned Scottish portal for

advertising property to let which advises that 80,000 properties to let were advertised during the year. The Committee also had access to the Rightmove website providing details of property let and their time to let.

44. The Scottish Government report indicated that in the Lothians as a whole, on average, rents for 1 bedroom properties increased by 12 % between 2010 and 2014. During this time, inflation has been almost 0% with fears of deflation. The Citylets reports for the second and third quarters of 2015 indicated similar statistics, and that, in Edinburgh, average rents for one bedroomed properties had risen by nearly 18 % in the last year. These increases are significantly higher than in Scotland as a whole.
45. The Committee were also aware that such properties were letting in only a few days or less. It was clear to the Committee that there was exceptional demand for private rented accommodation. This has been reflected in the many recent calls for the re-introduction of rent controls.
46. In these circumstances the Committee infers that not only is the number of persons seeking to become tenants of similar dwellinghouses in Edinburgh higher than the number of such houses available but that such demand is substantially higher than such supply. In short the Committee does not think that to apply the market rent with the said deductions would give effect to the assumption that the Committee are obliged to make.
47. The question is, what should a fair rent be, giving effect to the assumption ? This is a matter which is inherently imprecise. The private rental market has been transformed both on the demand and supply side by many factors such as the introduction of short assured tenancies, the “buy to let” market, the lack of new local authority housing coupled with the right to buy legislation significantly reducing the Local Authority estate, the rise of university students, modern short term employment contracts and the lack of affordability of home ownership. However, against the background of inflation being at or around 0% for most of 2015, about 1.5% in 2014 and 2.5% in 2013; and of a bank base rate at 0.5% since 2009, the 18% average rise in rents in Edinburgh over the last 3 years gives the Committee a useful indicator as to the level of market imbalance. Taking all of these factors into account in the exercise of its experience and judgment the Committee takes the view that a 15 to 20% deduction would result in a rent giving effect to that assumption.
48. If such a deduction is applied to the figure of £ 396 per month the resulting rent is between £ 317 and 336 per month. On this basis it appeared to the Committee that the rent registered by the Rent Officer of £ 3850 per year or £320.83 per month was a fair rent and confirmed that rent.

49. In reaching this decision the Committee had regard to all of the requirements of section 48 of the 1984 Act.

**David Bartos**

Signed .....

.....Date: 9 November

2015.....

David Bartos, Chairperson