

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

REFERENCE NO:	OBJECTION RECEIVED	OBJECTION
PRHP/RR/15/0243	31 August 2015	Tenant

ADDRESS OF PREMISES

130 (PF1) Buccleuch Street, Edinburgh EH8 9NQ

TENANT

Ms Brian Porterfield

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

DESCRIPTION OF PREMISES

Ground floor flat in 5 storey Grade B listed tenement from late 18th century in the southside Meadows area of Edinburgh. Accommodation comprises kitchen, living room, two double bedrooms, bathroom with bath and shower and wash-hand basin
The gross internal floor area is 91 square metres.

SERVICES PROVIDED

None

COMMITTEE MEMBERS**CHAIRMAN
SURVEYOR**

D Bartos
R Buchan

FAIR RENT	DATE OF DECISION	EFFECTIVE DATE
£ 700.80 p.a.	9 November 2015	17 July 2015

David Bartos

Chairman of Private Rented Housing Committee

Date 9 November 2015



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/15/0243

Re : Property at (PF1) 130 Buccleuch Street, Edinburgh EH8 9 NQ ("the Property")

The Parties:-

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

Brian Porterfield, 130 Buccleuch Street, Edinburgh EH8 9 NQ ("the Tenant")

The Committee comprised:-

Mr David Bartos	- Chairperson
Mr Robert Buchan	- Surveyor member

Background:-

1. The Tenant is the tenant of a flat on the ground floor at 130 Buccleuch Street, Edinburgh by virtue of a statutory protected tenancy. He has been tenant there since 1974. The tenancy 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 £ 290 per calendar month or £ 3480 per annum. The Landlords applied to the Rent Officer for registration of a fair rent of £ 3840 per annum or £ 320 per month. There are no services provided by the Landlords under the tenancy.

3. On 7 August 2015 the Rent Officer registered a rent of £ 3840 per annum or £ 320 per month to be effective from 28 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 24 August and received on 27 August 2015. The Rent Officer referred the objection to the Private Rented Housing Panel.

The Inspection

4. The Committee attended at the Property on 9 October 2015 at 10.00 a.m. The Tenant was present. There was no attendance by or on behalf of the Landlords despite having been invited to attend. The weather was dry and overcast. The Property is a flat on the ground floor of a late eighteenth century tenement on the west side of Buccleuch Street in the south side area of Edinburgh. It is adjacent to the east end of the Meadows and near the Arts and Social Science faculties of the University of Edinburgh. There is no on-street parking. There are frequent bus links to the city centre. There are shopping facilities on Clerk Street and Nicolson Street within a short walking distance.
5. The sandstone tenement, which forms number 130 Buccleuch Street is a Grade B listed building. It comprises four floors above the ground floor including a converted attic floor. The Property is on the ground floor in the northern part of the tenement building. It is on the righthand side of the internal stairwell. On the outside of the tenement facing Buccleuch Street there is a rhone or downpipe that is leaking. It is causing mould and dampness on the outside wall of tenement. The downpipe and dampness is on the outside wall of the front bedroom of the Property. The tenement has a door entry system. While the system alerts the Property of the presence of a visitor the door opening system from the Property is not functioning.
6. The accommodation consists of two double bedrooms, living room, kitchen, and bathroom with toilet and two storage rooms. It has a gross internal floor area of 91 square metres. From the front door a hallway provides access to all rooms. Branching from the hallway on the left is a long thin corridor which leads to a former toilet room. Next left is the living room which faces west onto an area of communal garden ground which adjoins the Meadows. At one time the thin corridor, disused toilet room and living room had been one room. Next from the hallway is an entry to the rear bedroom which also faces west onto the garden ground. On the far right is the kitchen which faces onto Buccleuch Street. On the right of that is the front bedroom which faces onto Buccleuch Street. Between the front bedroom and the kitchen is the bathroom.

7. The living room has two single glazed sash and case windows facing onto the rear garden. Between them is a fireplace within which the tenant has installed a gas fire. The left window has been sealed in and cannot be opened. The right window can be opened in its lower but not its upper half. In the area of this window there is significant rising damp. At this window in the corner of the room there is an entry to a box room which served formerly as a kitchen. It has a rear window. There is substantial penetrating and rising damp in this box room. The tenant has supplied the old wall units in the box room. The living room has a radiator. The tenant has supplied the carpet.
8. The rear bedroom has a one single glazed sash and case window facing onto the rear garden. The upper sash cord is broken. There is significant damp in the vicinity of this window and also on the northern (party) wall of the room. The radiator in the room is adjacent to the internal wall bounding the kitchen. The room has a built-in wardrobe.
9. The kitchen has an internal walk-in cupboard. It has a single glazed window facing Buccleuch Street. It has old and worn wall units and worktop. There is a stainless steel sink. The kitchen suffers from high levels of dampness on the northern (party) wall. There is mould and fungus on the ceiling. The floorboards adjacent to the window have been replaced. They are not flush with the remaining old floorboards. Dampness and softness was noted in the old flooring. The decoration of the kitchen including its ceiling is in a poor condition. The Tenant provides his own cooker, refrigerator and washing machine. There is a radiator below the window. The gas powered combination boiler is in the kitchen.
10. The bathroom adjoins Buccleuch Street but does not have a window onto it. It has a fan with ventilation pipe into the street which is missing its cap on the street side. It has a bath with electric shower, toilet and washbasin. The bath has a waterproof panel above it in place of tiling.
11. The front bedroom is next to the bathroom. It has a single glazed sash and case window facing onto Buccleuch Street. The window is heavily affected by condensation and mould. There are high levels of damp on the wall facing Buccleuch Street. The leaking downpipe is on that wall. The ceiling has been repaired and replastered. It has not been redecorated. The Tenant has supplied the carpet in the room. He uses a dehumidifier in the room.
12. All windows have peeling paint and require repainting and restoration to full use.

13. There is a garden area at the rear which is overgrown. It has had litter deposited in it. It cannot be accessed other than by a ladder from the two ground floor flats whose windows face onto it.
14. 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 28 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 7 August 2015
 - Copy reference to PRHP from the Rent Officer dated 27 August 2015
 - Copy letter of appeal from the Tenant dated 24 August and received 27 August 2015
 - Written representations from the Redpath Bruce (agents for the Landlords) dated 11 September 2015
 - Local housing allowance rates for August 2015 from Directgov website.
 - List of registered rents on the eRegister on the www.gov.scot website printed on 11 September 2015
 - Citylets Quarterly Reports Q2 and Q3 from 2015
 - Scottish Government Private Sector Rent statistics 2010 to 2014

The Hearing

15. 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. The Landlords had indicated to the Committee that they did not wish to attend the hearing. The hearing had been fixed for 11.00 a.m. but due to the extensive requirements of the inspection, it required to be postponed to 12.00 hrs. The Tenant was informed of this at inspection. Prior to the commencement of the hearing the Committee confirmed with the reception that no person had arrived for the hearing at the original time.
16. The Committee explained to the Tenant the task of the Committee and what was entailed in a fair rent for the purposes of the 1984 Act. The Tenant stated that the Rent Officer had visited the Property but had only carried out a cursory inspection, unlike the Committee. He did not think that the increase fixed by the Officer was fair. Nothing had been done to the house since the last increase. The central heating had been installed in about 2008 or 2009. He was unsure if it had been put in before or after the 2009 review. The rent had gone up with the central heating going in.

17. The Tenant advised that landlords had not carried out an inspection since the bathroom improvement and the boiler installation into the kitchen. Redpath Bruce had represented the previous landlords Northumberland and Durham as well as the present landlords. It was possible that new joists had been put in at the same time as the new kitchen floorboards. There was a cellar underneath the kitchen. The bathroom had been put in at the same time as the floorboards and these had been put in well before the boiler. The last time any repair work had been done was the wall panel above the bath which had been put in since 2012.
18. The Tenant said that he had telephoned the agents 4 or 5 months ago at about the end of May. He had telephoned about the rhonepipe, the intercom and the "mushroom end" terminal for the fan ven pipe from the bathroom. He had complained about the dampness by telephone every time that the rent had gone up. It had been brushed to one side. He didn't have an emergency number for the agents. At the inspection he had shown the Committee a dehumidifier that he had to use in the front bedroom which filled quickly with water.
19. He denied that there had been any regular maintenance carried out to the Property since the last rent review. He appreciated that decoration was for him to carry out but it was "like the Forth Bridge". By the time you were finished you had to re-start.
20. He did not have any real idea of rent levels for two bedroom flats in the area and did not put forward any examples of such properties. With regard to the registered rent figures produced by Landlords these related to 120 Buccleuch Street. That was owned by Edinvar housing association. Their rents were less and the flats were kept in good repair. More was done for their tenants. He knew this from visiting. Edinvar had modernised them although maybe the rooms were not quite as big as his. 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.
21. The Tenant had no views as to demand for properties such as his being significantly higher than supply. He confirmed that there was no real entrance to the garden at the back and never had been as long as he had been tenant.
22. The Committee found the Tenant's evidence credible so far as it related to facts and accepted it subject to the Committee finding that the only work done since the last rent review had been the installation of the wall panel above the bath in the bathroom. It rejected the

Landlords' representations in so far as inconsistent with the Tenant's evidence.

23. After the hearing the Committee invited the parties to make representations on the issue of market imbalance which is discussed below and on the material referred to by the Committee in connection with that issue. Neither party did so.

Decision

24. The Committee considered carefully all the above evidence and submissions together with their observations at the inspection.
25. 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.
26. 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.
27. 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.
28. 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.

29. 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, while making the assumption in section 48(2) of no market imbalance.
30. The committee were given various registered rents for 3 room flats at 120 Buccleuch Street, which is the neighbouring tenement. The only recent one of these was of about £ 365 per month from May 2015 for a first floor flat. The difficulty for the Committee was that it had no information as to the condition of that property or its size. It also included a figure for services which were not provided in the current let. It also related to a tenement which did not appear to have the same maintenance issues as that at No.130. The other figures were from 2013 and these also appeared to differentiate between ground floor and upper flats. For these reasons the Committee took the view not to use registered rents as a method for fixing a fair rent.
31. The Committee were able to use their knowledge and experience of market rents from the south side 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.
32. The Landlords also relied on the figures in the Valuation Office Local Housing Allowance rates for Lothian for September 2015. These are calculated for the purposes of housing benefit. The figure of £ 145.43 per week (or £ 632 per month) given for a two bedroomed property reflected neither the Committee's knowledge of general market levels in the southside area of Edinburgh nor the condition of the Property itself. It was therefore of no assistance.

33. 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.

34. The vast majority of open market rentals in the area are of furnished accommodation and the Committee determined that it would use evidence of furnished rentals with a deduction for the cost of furnishings commonly found in such lets. Using its knowledge of market rents the Committee considered that a two bedroomed furnished flat in a satisfactory state of repair with modern fixtures and fittings with gas central heating present in the Property in the southside area of Edinburgh would let for about £ 775 per month. The cost of furnishing such a flat would require the following reasonably estimated costs:
 - carpets in the living room, hall, bedrooms and kitchen and bathroom flooring for £ 1200 to last roughly 5 years at an annual cost of £ 240
 - kitchen cooker, washing machine, fridge/freezer for £ 1000, dining table and 6 chairs for £500, double beds and mattress/pillows for £ 600, wardrobe for £150; settee and armchair for £ 600, coffee table and media furniture for £150, totalling £ 3000 all to last roughly 10 years at an annual cost of £ 300

35. The total annual cost of £ 540 for furnishing such a flat gives a monthly cost of £ 45 per month which would leave the rent for an unfurnished property in good condition similar in size to the Property at £ 730 per month.

36. However the Property is unusual. It is not lettable in its present state of condition. It is in a poor state of decoration and repair. The kitchen fittings are outdated. Much more significantly the Committee was unable to close its eyes to the high levels of dampness which pervaded the whole Property in every room. This matter does not appear to have been detected by the Rent Officer in his inspection. The levels of damp were exceptional in the experience of the Committee and have very evidently been in existence here for many years and known about by Redpath Bruce as landlords' agents. Such levels of dampness are a well known health hazard. The clear view of the Committee was that these levels were such that made the Property not reasonably fit for human habitation. This is in clear breach of the repairing standard in section 13(1)(a) of the Housing (Scotland) Act 2006 with which the Landlords required to comply. Had the Committee required to make a

rent relief order under the 2006 Act, it would have ordered relief to the extent of the maximum permissible level of 90%.

37. On one view given that the Property was not reasonably fit for human habitation the Tenant should not require to pay for occupation of such a dwellinghouse. On the other hand he has occupied and continues to occupy the Property and does receive some benefit from that. Having regard to the need to fix a fair rent which strikes an equitable balance between the Tenant and the Landlords the Committee took the view that leaving aside the assumption in section 48(2) as to market imbalance, a fair rent would be 10% of the figure estimated as the rent of a similar unfurnished property. That would be 10% of £ 730 per month leaving a figure of £ 73 per month.
38. As already noted, in fixing a fair rent the Committee must do so on an 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.
39. 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.
40. 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.
41. 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 reports 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.

42. The Scottish Government report indicated that in Lothian, on average, rents for two-bedroomed properties increased by 17.2 % between 2010 and 2014. During this time, inflation has been almost 0% with fears of deflation.
43. The most recent Citylets report indicated similar statistics, and that, in Edinburgh, average rents for two bedroomed properties had risen by 8.5 % in the last year and 20% in the last 3 years. These increases are significantly higher than in Scotland as a whole.
44. The Committee were also aware that 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.
45. 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 rents with the said deductions would give effect to the assumption that the Committee are obliged to make.
46. The question is, what adjustment has to be made to the market rent in order to give 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, whilst inflation has been at or around 0% for most of 2015, about 1.5% in 2014 and 2.5% in 2013; and bank base rate has been at 0.5% since 2009, the 20% average rise in rents in Edinburgh over the last 3 years gives the Committee a pointer 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 20% deduction would result in a rent giving effect to that assumption.

47. The application of that adjustment to the figure of £ 73 per month gives a fair rent for the Property taking account of the assumption in section 48(2) of £ 58.40 per month. The Committee, after considering all the available evidence determined that the rent registered by the Rent Officer was not a fair rent and that the fair rent was £ 58.40 per month or £ 700.80 per annum.
48. In reaching this decision the Committee had regard to all of the requirements of section 48 of the 1984 Act.

D BARTOS

Signed Date: 9 November
2015.....

David Bartos, Chairperson