

**PRIVATE RENTED HOUSING PANEL****Rent (Scotland) Act 1984****Notification Of Decision By The Private Rented Housing Committee**

REFERENCE NO.	OBJECTION RECEIVED	OBJECTION
PRHP/RR/15/0284	21 October 2015	Landlord

ADDRESS OF PREMISES

42 Parkhead Drive, Upper Villa, Edinburgh, EH11 4SP

TENANT

Mrs Helen Ross

NAME AND ADDRESS OF LANDLORD

Stewarts (Edinburgh) Holdings Ltd
C/o 2 Renaissance View, Dirleton, North
Berwick, EH39 5HL

AGENT

Gladstones Ltd
23 Jarnac Court, Dalkeith, Midlothian, EH22
1HU

DESCRIPTION OF PREMISES

First floor flat in 2 storey semi-detached villa from late 1930s in the Parkhead area of Edinburgh. Accommodation comprises kitchen, living room, two double bedrooms, single bedroom, bathroom with bath and shower, toilet and wash-hand basin. Garden included. The gross internal floor area is 75 square metres.

SERVICES PROVIDED

None

COMMITTEE MEMBERS

CHAIRPERSON
SURVEYOR MEMBER
HOUSING MEMBER

David Bartos
Robert Buchan

FAIR RENT	DATE OF DECISION	EFFECTIVE DATE
£ 6540 p.a.	26 February 2016	26 February 2016

D Bartos

Chairperson of Private Rented Housing Committee

26 February 2016

Date



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/15/0284

Re : Property at 42 Parkhead Drive, Edinburgh EH11 4SP (“the Property”)

The Parties:-

Stewarts (Edinburgh) Holdings Limited, c/o Renaissance View, Dirleton, North Berwick, EH39 5HL (“the Landlords”)

Mrs Helen Ross, 42 Parkhead Drive, Edinburgh EH11 4SP (“the Tenant”)

The Committee comprised:-

Mr David Bartos	- Chairperson
Mr Robert Buchan	- Surveyor member

Background:-

1. The Tenant is the tenant of the Property by virtue of a statutory protected tenancy. The tenancy commenced in about 1938 upon the construction of the Property. The Tenant has lived there since that time. 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 £ 267.50 per month, £802.50 per quarter or £ 3210 per annum. There are no services provided by the Landlords under the tenancy. The Landlords applied to the Rent Officer for registration of a fair rent of £ 1575 per quarter.
3. On 9 October 2015 the Rent Officer registered a rent of £ 5140 per annum (or £ 428.33 per month) to be effective from 9 October 2015. This was intimated

to the Tenant and the Landlords. The Landlords objected to this by letter of appeal to the Rent Officer dated 15 October and received on 19 October 2015. The Rent Officer referred the objection to the Committee.

4. An inspection and hearing were fixed originally for 10 December 2015. On 25 November 2015, the Tenant's representative, her niece Mrs Anne Blair, requested a postponement of the inspection and hearing on the basis that the Tenant was elderly, was suffering stress as a result of the Landlords' application and that she, Mrs Blair would be unavailable to attend on that date due to work commitments. The Landlords opposed this request on the basis that sufficient notice had been given, they would be inconvenienced, and there would be no reason for the Tenant to be unable to cope with the inspection and represent herself having been present at the Rent Officer's inspection. In response Mrs Blair stated that she had accompanied the Tenant at the Rent Officer's inspection and that but for the representation the Tenant would be unable to attend the hearing. The Committee considered the submissions carefully. The Committee required to balance the prejudice to the Tenant from the inspection and hearing proceeding and the prejudice to the Landlords from it not proceeding. Given the extent of the rent increase sought by the Landlords and the potential prejudice caused to an elderly Tenant through not being represented at a hearing where there would be reference to comparable properties and technical material relating to rental levels generally, the Committee decided to postpone the hearing in the interests of fairness.
5. The new date for the inspection and hearing was fixed for 12 February 2016. The Committee attended at the Property on that date at 10.00 a.m. The date and time of the inspection had been intimated to both parties. The Tenant was present. She was accompanied by her niece and representative Mrs Blair and a Mr Robert Costigan. There was no attendance by or on behalf of the Landlords. The weather was sunny. The Property is an upper flat on the first floor of a late 1930s villa on the north side of Parkhead Drive in the Parkhead area of Edinburgh. It is near the main A71 Calder Road artery leading to Gorgie and the centre of Edinburgh as well as to shopping at Hermiston Gait. There is on-street parking. There are frequent bus links to the city centre.
6. The building is in traditional 4-in-a-block style with the subject Property on the first floor and each flat has their own front door. The building benefits from cavity insulation. The gutters appear rusty and require cleaning and maintenance work. One of the chimney stacks requires pointing and re-rendering. There are a number of roof tiles that have slid off the roof both at the back and front of the building.
7. The accommodation consists of two double bedrooms, a single bedroom, living room, kitchen, and bathroom with toilet. It has a gross internal floor area of 75 square metres. The front door to the Property is on the ground floor. From it a staircase leads to the corridor from which access is taken to all of the

rooms. On the right is a double bedroom and the living room both of which face the front of the building. Ahead is the second double bedroom. On the left is the single bedroom, the bathroom and the kitchen. The kitchen, the second double and single bedrooms all face north.

8. The living room has wooden panelling on the walls installed by the Tenant or her late husband. It has a low-level central heating radiator running along the walls also installed by the Tenant's late husband. This provides heating for the room. The kitchen is a galley kitchen with dated fittings. They have all been installed by the Tenant or her late husband. The ceiling has old polystyrene tiles. There is a Vokera Compact HE boiler in the kitchen which has been installed by the Landlords.
9. The bathroom includes a bath and shower. All of the bathroom fittings were installed by the Tenant except for the wash-basin and the radiator. In the corridor there is a hatch to a loft. The loft has remnants of old insulation. It is unfloored and heavily littered with old piping, wiring and other remnants of former installations left by tradesmen over the years.
10. There is a storage cupboard off the staircase. The double bedrooms have the "strip" radiators installed by the Tenant's late husband. The single bedroom, bathroom and corridor have conventional radiators installed by the Landlords.
11. Windows are double-glazed. The units are functional but dated. All decoration throughout the Property has been carried out by the Tenant.
12. All carpets and floor coverings have been provided by the Tenant.
13. The Property includes its own garden to the rear of the villa. Access to it is via a path from the front door. The garden comprises a grass lawn. There are two sheds which have been installed by the Tenant. The lawn is well maintained.
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 7 August 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 9 October 2015
 - Copy reference to PRHP from the Rent Officer dated 19 October 2015
 - Copy letter of appeal from Gladstones agents for the Landlords dated 15 October 2015 including print from Citylets website advertising let of a 2 bedroomed Parkhead flat

- Written representations from the Tenant's representative dated 2 November 2015
- Written representations from the Landlords' agents dated 29 October 2015 enclosing prints from Lettingweb website advertising lets for Carrick Knowe flat, and Sighthill (Calder Gardens) flat, and pages 3 and 10 of Citylets Report for Q1 2015
- Written representations from the Landlords' agents received on 25 January 2016 enclosing prints from Lettingweb website advertising lets for Carrick Knowe flat, two flats on Gorgie Road, Broomhouse Crescent flat, a Sighthill house, and a council let in West Pilton and pages 4 and 12 of Citylets Report for Q3 2015
- Citylets Report for Q3 2015
- Scottish Government Private Sector Rent statistics 2010 to 2014
- Decision under reference PRHP/RR/15/0224

The last three items had been obtained by the Committee and copies had been intimated to the parties by notice dated 25 November 2015.

The Hearing

15. At the conclusion of the inspection the Committee held a hearing at noon at George House, 126 George Street, Edinburgh EH2 4HH. Mrs Anne Tyler, Finance Manager of Gladstones appeared on behalf of the Landlords. Mrs Blair appeared on behalf of the Tenant accompanied by the Tenant and Mr Costigan.
16. The Committee considered carefully all the above evidence and written representations together with the observations of the Committee members at the inspection.
17. 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.
18. 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.

19. The disregard of personal circumstances means that the Committee must disregard the fact that the Tenant is elderly and any question of the affordability of the rent to her.
20. 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.
21. 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 hers under the tenancy.
22. 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 do not reflect the assumption as to demand not being substantially greater than supply (the assumption as to absence of market imbalance) and
 - (c) calculating the appropriate return based on the capital value of the property, taking into account the assumed absence of market imbalance.
23. The Committee were given no comparable registered rents and for this reason this method was not employed.
24. The Committee were able to use their knowledge and experience of market rents from the Parkhead 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 area 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.
25. The Landlords' submission was not straightforward. The properties put forward as comparables by them had market rents which varied from £ 825 per month (an unfurnished 3 double bedroomed flat in Carrick Knowe) to £

1100 per month (a furnished modern 3 double bedroomed house in Sighthill). They relied also on the Citylets report for average rents for 3 bedroomed properties in EH11 in the third quarter of 2015 of £ 967 per month. They also put forward a refurbished unfurnished three bedroomed flat let by them in Parkhead Loan in January 2015 for £ 710 per month (£ 8520 per annum).

26. They submitted that the Committee should take the lowest figure of these, namely the £ 710 per month and from this deduct a cost for modernisation and refurbishment to achieve a comparison of condition to the other comparables. The refurbishment was to be based on an estimated capital cost of £ 22200 to be amortised over 10 years giving an annual cost of £ 2220 or £ 185 per month. Deducting the £ 185 figure from the £ 710 figure would give £ 525 per month which they submitted was a fair rent.
27. In their written submission the Landlords' principal position was that the market conditions were in line with the section 48(2) assumption referred to above and no further discount was necessary to give effect to it. They sought to distinguish the case PRHP/RR/15/0224 on the basis that it related to two-bedroomed flats where the demand was greater as evidenced by the shorter letting times for such properties compared to three bedroomed properties as evidenced by the statistics in the Citylets Q3 report.
28. The Landlords' alternative or secondary position was that if the Committee found that market conditions were not in line with the section 48(2) assumption and a discount was required to give effect to that assumption, the comparables and the Citylets report pointed to a higher starting figure of say the average EH11 figure of £ 967 per month. From that the deduction for refurbishment should be applied giving a figure of £ 782 per month before any deduction necessary to give effect to the assumption. If 20% was deducted to give effect to the assumption this would give a figure of £ 626 per month which Mrs Tyler submitted was low.
29. On any view the Landlords submitted that the rent should not be lower than that paid for a three bedroomed Council letting such as the one for which demand had been expressed in West Pilton at a rent of £ 114.57 per week or £ 497 per month.
30. At the hearing Mrs Tyler adhered to the written submission. With regard to the question of the section 48(2) assumption and the issue of market imbalance she pointed to the figure for the lowest quartile of the four year cumulative change in rent levels from 2010 to 2014 on page 47 of the Scottish Government Private Sector Rent Statistics. That showed a 6.7% increase in rents and should be preferred to the median figure of 10.1% or the mean of 16.1%. She was unable to indicate why the lowest quartile figure should be used rather than the median or mean figure. With regard to the locality to be

assessed for the purpose of applying the section 48(2) assumption Mrs Tyler had no difficulty with the City of Edinburgh as a whole being looked at.

31. For the Tenant, Mrs Blair was not able to comment on market rents for fully modernised properties in the Parkhead area. She submitted that the Tenant's principal concern was the level of increase being sought in comparison to the existing rent. The Tenant was unable to understand why such an extreme increase was sought. This was distressing to someone in the Tenant's stage of life where she had lived all but 8 years of her life at the Property. Mrs Blair accepted, very fairly on behalf of the Tenant, that the Committee could not take the Tenant's personal circumstances into account but explained that it was the level of increase that was the main issue for the Tenant.
32. Using its knowledge of market rents and taking account of the submissions and evidence presented by Mrs Tyler, the Committee considered that an unfurnished 3 bedroomed flat in a satisfactory state of repair with modern fixtures and fittings including double glazing and central heating in the Parkhead area of Edinburgh would let for about £ 730 per month. EH11 is a wide area stretching from Haymarket near the City Centre to the City Bypass with varying rental levels. Given this disparity the Committee did not find the average rental figure for EH11 of assistance in this case nor were the comparables from Gorgie or Carrick Knowe of assistance. The house from Sighthill is materially different to the Property and general rental levels in the Parkhead area approximate more closely to the £ 710 monthly figure for the Landlords' letting in early 2015 than the Broomhouse comparable given.
33. The Committee accepted the Landlords' submission on the quantum of deduction necessary to achieve the rent for a modernised property. Making such a deduction of £ 185 per month the Committee considered that leaving aside the assumption as to no market imbalance a fair rent would be £ 545 per month or £ 5280 per annum.
34. 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.
35. The purpose of the 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.
36. 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. “Locality” must be decided in that context.

37. In its notice dated 25 November 2015 issued to the parties the Committee invited the parties to comment on whether either party had an issue with the “locality” for the purposes of the assumption being the City of Edinburgh. At the hearing both parties accepted that they had no issue with the locality being the City of Edinburgh as a whole for this purpose.
38. The Committee considered market evidence 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.
39. The Scottish Government report indicated that in Lothian, on average, rents for 3 bedroomed properties increased by 16.1% between 2010 and 2014. During this time, inflation has been almost 0% with fears of deflation. The Citylets report indicated a similar statistic of 15.5% for increase in rent for such properties in Edinburgh from 2012 to 2015. These increases are significantly higher than in Scotland as a whole.
40. For the Landlords it was submitted that there was no substantially greater demand than supply. This was on the basis that there were a lot of properties available for let in Edinburgh. There was no shortage or scarcity. The time taken for lets of 3 bedroomed properties in the Edinburgh was 30 days as opposed to 19 days for 2 bedroomed properties. The time taken for the former was not indicative of demand substantially exceeding supply.
41. The question is whether 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. In this context “substantially” means by a large amount. The Committee observed that the market for 3 bedroomed properties differed significantly from that for 2 bedroomed properties in relation to the time taken to let. In addition whilst there had been substantial rent increases over the past 3 to 5 years, the rent increase for 3 bedroomed properties in Edinburgh over the past year had been a modest 2% compared to 8.5% for 2 bedroomed properties.
42. In short the Committee took the view that while there was a demand greater than the supply it could not be said that it was substantially greater than the supply of three bedroomed dwellinghouses in Edinburgh as whole. The

application of the market rent with the deduction for modernisation gave effect to the assumption that the Committee are obliged to make.

43. Accordingly for these reasons the Committee found that the rent registered by the Rent Officer was not a fair rent in terms of section 48 of the 1984 Act. The Committee concluded that a fair rent for the property was £ 6540 per annum or £ 545 per month.
44. In reaching this decision the Committee had regard to all of the requirements of section 48 of the 1984 Act which it required to apply.
45. As emphasized at the hearing the Committee does not fix the rent due under the tenancy. It merely fixes what is a fair rent under section 48 of the 1984 Act. At the hearing Mrs Tyler indicated that the rent had been last increased in 2004. The 1984 Act provides for the making of legislation in the form of Orders limiting the amount of rent increase that a landlord can seek in a tenancy under the 1984 Act. The parties should ascertain the current provision for increasing the rent by contacting Rent Service Scotland, 2nd Floor, Endeavour House, 1 Greenmarket, Dundee DD1 4QB.

D Bartos

SignedDate: 26 February 2016

David Bartos, Chairperson