



**PRIVATE RENTED HOUSING PANEL**

**RENT (SCOTLAND) ACT 1984**

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

<b>REFERENCE NO:</b>	<b>OBJECTION RECEIVED</b>	<b>OBJECTION</b>
PRHP/RR/15/0285	21 October 2015	Landlord

**ADDRESS OF PREMISES**

7 Parkhead Terrace, Edinburgh EH11 4RF

**TENANT**

Miss Marion Reid

**NAME AND ADDRESS OF LANDLORD**

Stewarts (Edinburgh) Holdings Ltd,  
c/o Renaissance View,  
Direlton  
North Berwick EH39 5HL

**AGENT**

Gladstones  
23 Jarnac Court  
Dalkeith EH22 1HU

**DESCRIPTION OF PREMISES**

Ground floor flat in 2 storey end-terraced villa from late 1930s in the Parkhead area of Edinburgh. Accommodation comprises kitchen, living room, two bedrooms, bathroom with bath, toilet and wash-hand basin  
The gross internal floor area is 65 square metres.

**SERVICES PROVIDED**

None

**COMMITTEE MEMBERS**

**CHAIRMAN  
SURVEYOR**

D Bartos  
R Buchan

<b>FAIR RENT</b>	<b>DATE OF DECISION</b>	<b>EFFECTIVE DATE</b>
£ 4572 p.a.	25 July 2016	25 July 2016

\*services:

D Bartos

**Chairman of Private Rented Housing Committee**

**Date 25 July 2016**



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/15/0285

Re : Property at 7 Parkhead Terrace, Edinburgh EH11 4RF (“the Property”)

The Parties:-

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

Miss Marion Reid, 7 Parkhead Terrace, Edinburgh EH11 4RF (“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 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. There are no services provided by the Landlords under the tenancy.
2. By application dated 7 August 2015 the Landlords applied to the Rent Officer for registration of a fair rent. At the time of the application the Tenant was paying rent of £ 380 per month or £ 4560 per annum. In his reference to the Committee the Rent Officer noted that the previous registered rent was £ 1970 per annum or 164.17 per month. The Committee notes, in passing, that in terms of sections 28(1) and 29(2) of the 1984 Act rent in excess of the registered rent is irrecoverable by a landlord from a tenant.

3. On 9 October 2015 the Rent Officer registered a rent of £ 4625 per annum 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 received on 19 October 2015. The Rent Officer referred the objection to the Committee.
4. The Tenant is aged 89 years and is frail. By e-mail to the Rent Officer dated 22 October 2015, a Mr Peter Avent, a friend of the Tenant indicated that the Tenant was unable to look after her affairs and had no short term memory. In these circumstances the Committee's clerk contacted the Tenant's social worker to inquire whether a legal guardianship order was required. In early May 2016 the clerk confirmed to the Committee that he had been advised by the Social Work Department that no guardianship order was required. By e-mail to the Committee's clerk dated 31 May 2016, Mrs Jacquie Clayton a physical disability and older person's advocate of Partners in Advocacy intimated that following a referral from the Social Work Department she had been allocated as an advocacy worker for the Tenant and that the Tenant agreed that she could provide support for her in connection with the reference to the Committee. On or about 3 June 2016 an inspection of the Property and a hearing of the reference at George House, George Street, Edinburgh were fixed to take place on 20 July 2016 at 10.00 a.m. and 11.30 a.m. respectively. This was intimated to the parties, the Landlords' agents and Mrs Clayton.
5. The Landlords' agents requested a postponement of the inspection and hearing on the basis that their Portfolio Manager was unable to attend due to annual leave. In the circumstances the Committee took account of a detailed written representation submitted by the Landlords' agents for use in their absence at the hearing, the inability to obtain fresh dates until September at the earliest to deal with a longstanding application, and that the Tenant was elderly and concerned about the impact of the reference. The Committee took the view that the prejudice to the Tenant from anxiety over the continuing delay taken with presence of the detailed written representations and the possibility of some other manager of the agents being able to attend if necessary, outweighed any prejudice to the Landlords in their agents' Portfolio Manager being unable to attend. In these circumstances the interests of justice merited refusal of the postponement request.
6. The Committee attended at the Property on 20 July 2016 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 Jacquie Clayton. There was no attendance by or on behalf of the Landlords. There was heavy rainfall at the time of the inspection. The Property is a flat on the ground floor of a late 1930s villa on the east side of Parkhead Terrace 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.

7. The villa comprises two flats with the Property on the ground floor and another flat on the first and attic floors. Each flat has its own front door. The villa is end-terraced in that it links to a tenement building from the same era. The villa benefits from cavity insulation. The gutters and rhones are in a fair condition.
8. The accommodation consists of two bedrooms, living room, kitchen, and bathroom with toilet. It has a gross internal floor area of 65 square metres. The front door to the Property is on the ground floor. From it an entrance vestibule leads to a corridor from which access is taken to all of the rooms except for the kitchen. On the right are the bedrooms one of which faces the front and the other the rear of the building. Ahead is the bathroom which faces the rear. On the left is the living room which faces the front. The kitchen which faces the rear is reached via the living room. It has a back door leading to the Property's own back garden.
9. The living room has a fireplace with a gas fire supplied by the Tenant. The kitchen fittings are, with the exception of the sink, the original fittings from the 1930s. The kitchen has a hot water tank.
10. The bathroom includes a bath but no shower. There are two deep storage cupboards off the corridor.
11. There is no heating in any room except for the gas fire in the living room. The original fireplaces in the bedrooms have been boarded up. The rooms had few power points and the fittings appeared dated.
12. There is double glazing in every room. The units are mostly functional but dated. In the front and rear bedrooms two of the units have condensation inside them. All decoration throughout the Property has been carried out by or on behalf of the Tenant. It is dated and in need of renovation. All carpets and floor coverings have been provided by the Tenant.
13. The Property includes its own garden at the front and also at the rear of the villa. A path leads through the front garden to the front door. A communal path leads to the rear garden which can be accessed also from the back door in the kitchen. The rear garden comprises a grass lawn with an old shed. There are poles for the drying of clothes. The two gardens have not had recent maintenance and have become overgrown.
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 for a Parkhead flat
- E-mail from Peter Avent to the Rent Officer dated 22 October 2015
- Written representations from the Landlords' agents dated 29 October 2015 enclosing print from Citylets website advertising let for Parkhead flat and pages 3 and 10 of Citylets Report for Q1 2015
- Letter from Peter Avent to the PRHP dated 30 October 2015
- E-mail from Peter Avent to the PRHP dated 30 October 2015
- Letter from Gladstones to the PRHP dated 15 June 2015 with enclosure written representations
- Written representations from the Landlords' agents received on 16 June 2016 enclosing Office for National Statistics Consumer Prices Indices annual percentage change 1989 to 2015 printout, printouts dated 8 January 2016 of advertisements from the Citylets website advertising lets for flats in 2 bedroomed flats in Stenhouse Drive, Clermiston, Sighthill Drive, Gorgie Road, Parkhead View, Carrick Knowe, Stenhouse Gardens, South Gyle, Slateford (Moat Dr. and Slateford Rd), Colinton Mains, Stenhouse Crescent, Pilton, Prestonfield, Slateford (Stevenson Dr), Gorgie (Sinclair Pl.), Dalry, Shandon, Polwarth, and Morningside, a council 2 bedroomed flat let at 24 Broomhouse Drive, and a PRHP decision under reference PRHP/RR/15/0286 dated 25 April 2016
- Citylets Report for Q3 2015
- Scottish Government Private Sector Rent statistics 2010 to 2014
- PRHP decision under reference PRHP/RR/15/0283 dated 24 December 2015

The last three items had been obtained by the Committee and copies had been intimated to the parties, the Landlords' agents and to Mrs Clayton by notice dated 8 June 2016.

### **The Hearing**

15. At the conclusion of the inspection the Committee held a hearing at 11.30 a.m. at George House, 126 George Street, Edinburgh EH2 4HH. Mrs Clayton of Partners in Advocacy appeared on behalf of the Tenant. There was no appearance on behalf of the Landlords.

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 Landlords 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 89 years of age and frail. On the same basis it must also disregard a tenant's ability to pay the rent.
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 areas 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.
25. The Landlords submitted that the market rent for the Property was £ 600 per month. This was based on two two bedroomed properties which they currently let in Parkhead Loan and a further two bedroomed property which they currently let in Calder Road as set out in the written representations of April 2016. All of the rents had been fixed within 12 months of the Rent Officer's valuation date. They were all unfurnished flats.
26. For the Tenant, Mrs Clayton submitted that she had not received the Landlords' agents' June 2016 written representations and material despite the PRHP office confirming their despatch to both her and the Tenant by letter dated 23 June 2016. The Committee adjourned the hearing to allow her to consider the material and allowed her to read the representations. She confirmed that having had this opportunity the hearing could continue.
27. Mrs Clayton took issue with the relevance of lets in all of the areas other than Parkhead, most of which she submitted were closer to the city centre and were furnished lets. She was not able to comment on the rents for fully modernised properties in the Parkhead area.
28. Using its knowledge of market rents and taking account of the written representations presented by the Landlords' agents the Committee considered that a two bedroomed unfurnished flat of the size of the Property 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 £ 630 per month.
29. The Landlords submitted that in order to achieve a market rent for modernised properties an allowance would have to be made for the costs of upgrading. They estimated this cost to be £ 19800 which they described as "generous". This cost was then to be amortised over 10 years to give an annual cost of £

1980 per annum or a monthly cost of £ 165. Ms Clayton did not take issue with this figure although she felt it was quite high. The figure of £19800 was one founded on by the Landlords in the two other decisions of the PRHP to which the Committee had regard.

30. The Committee took note of the fact that other than in relation to the windows the Landlords had provided virtually no upgrade of the Property since its construction. Unlike the properties in the other two decisions of the PRHP referred to it the Property had no central heating which would require to be installed. Taking account of the cost of new central heating which the Committee estimated at £ 3000 amortised over 15 years giving an annual cost of £ 200. This would increase the overall monthly cost to a total £ 182.
31. This increased the quantum of deduction necessary to achieve the rent for a modernised property. Making such a monthly deduction of £ 182 from £ 630 the Committee considered that leaving aside the assumption as to no market imbalance a fair rent would be £ 448 per month or £ 5376 per annum.
32. The next question is whether that assumption is reflected in that figure. 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.
33. The assumption is 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.
34. Case law has determined that in deciding whether the assumption exists 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.
35. 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 its notice dated 8 June 2016 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. Neither expressed any difficulty with the City of Edinburgh being the “locality” for the purposes of the assumption and the Committee decided that that would be the “locality” for the purposes of the assumption.
36. 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.

37. The Scottish Government report indicated that in Lothian (of which Edinburgh is only a part), on average, rents for 2 bedroomed properties increased by 17.2% between 2010 and 2014. During this time, the cumulative increase of the Consumer Prices Index measure of inflation was 11.7%. The Citylets report indicated rent increases of 28.2% over the previous 5 years, of 20.4% over the previous 3 years and 8.5% over the year up to the third quarter of 2015. These increases are significantly higher than in Scotland as a whole as shown in the Citylets report.
38. The Landlords did not submit that there was no substantially greater demand than supply. They left that issue to the Committee's judgement. Their submission on the issue of the assumption was that if the Committee found that a deduction was necessary in order to apply the assumption it should be applied not to comparable rents in Parkhead but average rents in either EH11 or Edinburgh as a whole.
39. 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 looked at the rent increase statistics mentioned above.
40. The Committee also looked at the time taken to let two-bedroomed properties and to its own knowledge and experience in the matter. The time to let, already markedly lower than Scotland as a whole had decreased over 2015 as shown in the Citylets report. Almost all letting agents were experiencing exceptional demand for such private rented accommodation. The Committee was aware of the substantial rent increases and the consequent calls for rent controls. The mere fact that many properties may be available for rent does not of itself prevent demand from substantially exceeding supply.
41. On the basis of the rent increases and the time to let, the Committee concluded that as at the valuation date – being the date of registration by the Rent Officer - not only was 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 was substantially higher than such supply. In short the Committee did not think that the figure of £ 448 per month (or £ 5376 per annum) gave effect to the assumption that the Committee were required to make.

42. The question then comes to be, what would the rent be, giving effect to the assumption ? This is a matter which is inherently imprecise and therefore for the judgment and experience of the Committee. The Committee supplied the parties with copies of their decisions in two other two-bedroom cases for the same review date. The Committee decided that the decision in PRHP/RR/15/0286 based as it was on a fuller submission from the Landlords provided a better guide as to what deduction to the rent figure should be made to give effect to the assumption. In that decision the Committee had received the benefit of more detailed written representations from the Landlords including material from the Consumer Prices Index.
43. In the present case the Consumer Price Index Statistics supplied by the Landlords together with the Private Sector Rent Statistics indicate that cumulative inflation under that index for five years to September 2015 was about 11.7 %. The Citylets report shows an increase of rents by 28.2%. Appreciating that the matter is inherently imprecise, the Committee took the view that a deduction of approximately 15% from a rent of £ 5376 per annum was required to give effect to the assumption.
44. The deduction falls to be made from the base figure that would otherwise be a fair rent – in this case £ 5376 per annum. That base figure must take account of among other circumstances the individual characteristics and particular locality of the Property. In terms of the 1984 Act that base figure reached under section 48(1) does not fall to be changed merely because a deduction has to be made to give effect to the section 48(2) assumption. This is so even if the deduction is made on the basis of a larger “locality” than that used to fix the base figure. The Committee therefore rejects the Landlords’ submission that if a deduction has to be made the base figure must be increased to reflect the “locality” for the purposes of the section 48(2) assumption.
45. 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 £ 4572 per annum or £ 381 per month in terms of section 48 of the 1984 Act.
46. 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.

D Bartos

Signed .....  
2016.....

.....Date: 25 July

David Bartos, Chairperson