



PRIVATE RENTED HOUSING PANEL

29 APR 2016

RENT (SCOTLAND) ACT 1984

Notification Of Decision By The Private Rented Housing Committee

REFERENCE NO:	OBJECTION RECEIVED	OBJECTION
PRHP/RR/15/0286	21 October 2015	Landlord

ADDRESS OF PREMISES

7 Parkhead Loan, Edinburgh EH11 4SJ

TENANT

Miss Margaret Mason

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

First floor flat in 2 storey semi-detached villa from late 1930s in the Parkhead area of Edinburgh. Accommodation comprises kitchen, living room, single bedroom, double bedroom, bathroom with bath, shower, toilet and wash-hand basin
The gross internal floor area is 58 square metres.

SERVICES PROVIDED

None

COMMITTEE MEMBERS

CHAIRMAN
SURVEYOR

D Bartos
R Buchan

FAIR RENT	DATE OF DECISION	EFFECTIVE DATE
£ 5015 p.a.	25 April 2016	25 April 2016

*services:

D. BARTOS

Chairman of Private Rented Housing Committee

Date 25 April 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/15/0286

Re : Property at 7 Parkhead Loan, Edinburgh EH11 4SJ (“the Property”)

The Parties:-

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

Miss Margaret Mason, 7 Parkhead Loan, Edinburgh EH11 4SJ (“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 August 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 £ 386.25 per month, £ 1158.75 per quarter or £ 4635 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 £ 435 per month.
3. On 9 October 2015 the Rent Officer registered a rent of £ 4625 per annum (or £ 385.42 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. The Committee attended at the Property on 10 December 2015 at 12.00 noon. The date and time of the inspection had been intimated to both parties. The Tenant was present. There was no attendance by or on behalf of the Landlords. The weather was sunny. The Property is a flat on the first floor of a late 1930s villa on the south side of Parkhead Loan 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.
5. The villa comprises four flats with the Property on the eastmost half of the first floor. Each flat has its own front door. The gutters and rhones at the rear appear rusty and require cleaning and maintenance work.
6. The accommodation consists of one double bedroom, a single bedroom, living room, kitchen, and bathroom with toilet. It has a gross internal floor area of 57 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 one of the bedrooms, the bathroom and the living room. On the left is the double bedroom which faces south and the rear of the building. On the right is the bathroom which has a window facing east. Ahead is the living room which faces north and the front of the building. A galley kitchen is reached via the living room and faces the front of the building with windows to the front and also to the east side of the building. The single bedroom is reached via the living room and faces south and the rear of the building.
7. The living room has a fireplace with a gas fire. In the kitchen the fittings are dated. The painted wallpaper is peeling. There is no door separating the kitchen from the living room.
8. The bathroom includes a bath and an electric shower. It has dated wall units and tiling. It is in need of redecoration.
9. Between the bathroom and living room there is a storage cupboard in the hallway. From the hallway a hatch leads to the loft. In the hallway the decoration and floor coverings are worn and dated.
10. A storage cupboard in the double bedroom contains a modern gas fired central heating boiler. There are radiators in all of the rooms except the kitchen and there is a radiator in the hallway. There is double glazing in each room. The units are functional but dated.

11. All decoration throughout the Property has been carried out by the Tenant. The Tenant has provided all floor coverings.
12. 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.
13. 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 2 bedrooomed Parkhead flat
 - Written representations from the Landlords' agents dated 29 October 2015 enclosing prints from Citylets website advertising lets for Parkhead flat and pages 3 and 10 of Citylets Report for Q1 2015
 - Written representations from the Landlords' agents received on 9 February 2016 enclosing Office for National Statistics Consumer Prices Indices annual percentage change printout, computer printout from City of Edinburgh Council rent payment sheet from March 2004, printouts dated 8 January 2016 of advertisements from the Citylets website advertising lets for flats in 2 bedrooomed flats in Stenhouse Drive, Clermiston, Sighthill Drive, Gorgie Road, Parkhead View, Pilton, Carrick Knowe, Stenhouse Gardens, South Gyle, Slateford, Colinton Mains, Stenhouse Crescent, Prestonfield, Slateford, Dalry, Polwarth, Morningside, and Shandon, and a council 2 bedrooomed flat let at 24 Broomhouse Drive.
 - 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 26 November 2015.

The Hearing

14. At the conclusion of the inspection the Committee held a hearing at 3.50 p.m. at George House, 126 George Street, Edinburgh EH2 4HH. Mrs Anne Tyler, Finance Manager of Gladstones appeared on behalf of the Landlords. The

Tenant did not attend nor was she represented. During the inspection the Tenant had confirmed to the Committee that she would be unable to attend the hearing. The Tenant is elderly and it was evident to the Committee that the Tenant had significant difficulties with mobility which would prevent her from attending the hearing. Accordingly with the consent of the Landlords' representative the Committee adjourned the hearing to a date to be fixed.

15. By letters dated 3 February 2016 from the Committee's clerk, the Landlords, Gladstones, the Tenant and the Tenant's neighbour Mr Thomson were informed that the hearing would be reconvened at the Property on 19 April 2016 at 1.30 p.m. The hearing duly took place on that date at the Property. Mr Thomson helpfully assisted with the arrangement of accommodation for the Committee, their clerk, Mrs Tyler for the Landlords and Mrs Tyler's colleague all of whom attended.
16. The Committee explained their task and the purpose of the hearing. Mrs Tyler made a submission for the Landlords. The Tenant acknowledged what she said. Mr Thomson was present to support the Tenant. He checked with her whether she had any comments on either Mrs Tyler's or the Committee's explanations and observations. She did not.
17. The Committee considered carefully all the above evidence and written representations together with their observations at the inspection.
18. 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.
19. 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.
20. 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.

21. 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.
22. 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.
23. 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.
24. The Committee were given no comparable registered rents and for this reason this method was not employed.
25. 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.
26. The Landlords' representative submitted that the market rent for the Property was £ 600 per month. She submitted that this was an "extremely low" baseline in relation to average rents in the immediate location. As comparables she founded on flats let by the Landlords on short assured tenancies being two on 39 and 67 Parkhead Loan with rents of £ 610 and £ 620 per month and a third on Calder Road, also in the Parkhead area of £ 600 per month.
27. She submitted that the Committee should take the lowest figure of these, namely the £ 600 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 £ 19800 to be amortised over 10 years giving an annual cost of £ 1980 or £ 165 per month. Deducting the £ 165 figure from the £ 600 figure would give £ 435 per month which she submitted was a fair rent.

28. In their second 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. Their position appeared to be that if there was to be a discount to give effect to the assumption, the discount should be applied to a figure reflecting not Parkhead rents but rents over either the EH11 postcode area or Edinburgh as a whole both of which were under the Cylets Q3 report significantly higher than £ 600 per month.
29. At the hearing, 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. She confirmed that she did not dispute the statistics in the Cylets Report for Q3 in 2015.
30. Her position was that the four year cumulative percentage change in average rent levels from 2010 to 2014 on page 1 of the Scottish Government Private Sector Rent Statistics showed about a 6% increase in rents for Lothian over and above the inflation increase in the UK Consumer Price Index. If one looked at the rent increase for Edinburgh over 5 years on page 4 of the Cylets Report and deducted the CPI inflation increase a 17.2% increase would remain. If however a discount was to be applied it would be grossly unfair to the Landlords for it to be applied to £ 600 per month figure which she put forward for the market rent for the Property. That had been put forward as a low figure. She submitted that that figure did not reflect an overinflation of rent of 20%. Average rents in Parkhead were higher. She referred to a flat at 20 Parkhead Terrace which was on the market for £ 8640 per annum (£ 720 per month) albeit it had driveway and a large hut in its own grounds.
31. On any view the Landlords submitted that the rent should not be lower than that paid for a two bedroomed Council letting such as the one being advertised in February 2016 at 24 Broomhouse Drive at a rent of £ 100.52 per week or £ 437 per month.
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 2 bedroomed flat of the layout and size of the Property (which was small for a such a 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 £ 625 per month.

33. The Committee took the view that the Landlords' submission on the quantum of deduction necessary to achieve the rent for a modernised property did not take account of the small size of the flat. The Committee took the view that to achieve the rent of £ 625 per month or £ 7500 per annum the cost of modernisation works would be £ 16000 which, amortised over 10 years would give an annual cost of £ 1600.
34. The deduction of these annual costs leads to a figure of £ 5900 per annum or £ 491.67 per month. Making such a deduction the Committee considered that leaving aside the assumption as to no market imbalance a fair rent would be £ 491.67 per month or £ 5900 per annum.
35. The next question is whether the assumption exists. 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. 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.
37. 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.
38. It was common ground that the City of Edinburgh as a whole is the "locality" for this purposes of the assumption.
39. 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.
40. 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.

41. 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 (1) that if the Committee found that a deduction was necessary in order to apply the assumption it should be less than 20%; and (2) that such a deduction should be applied not to comparable rents in Parkhead but average rents in either EH11 or Edinburgh as a whole.
42. 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.
43. 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.
44. 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 to apply the market rent with the said deduction for modernisation would give effect to the assumption that the Committee were required to make.
45. 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 a copy of a decision in another two-bedroom case in Edinburgh decided on 5 November 2015 ref: PRHP/RR/15/0224 where it had decided on a deduction of 20% to give effect to the assumption. In that case the Committee had not had the benefit of a submission from the Landlords.
46. 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 15% from a rent of £ 5900 per annum was required to give effect to the assumption.

47. The deduction falls to be made from the base figure that would otherwise be a fair rent – in this case £ 5900 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.
48. 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 £ 5015 per annum or £ 417.92 per month.
49. 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 April

David Bartos, Chairperson