



PRIVATE RENTED HOUSING PANEL

RENT (SCOTLAND) ACT 1984

Notification Of Decision By The Private Rented Housing Committee

REFERENCE NO:

**OBJECTION
RECEIVED**

OBJECTION

PRHP/RR/15/0283

21 October 2015

Landlord

ADDRESS OF PREMISES

12 Parkhead Terrace, Edinburgh EH11 4RD

TENANT

Mrs Elizabeth Elder

**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, two double 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

FAIR RENT

DATE OF DECISION

EFFECTIVE DATE

£ 4625 p.a.

24 December 2015

24 December 2015

*services:

D Bartos

Chairman of Private Rented Housing Committee

Date 24 December 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/15/0283

Re : Property at 12 Parkhead Terrace, Edinburgh EH11 4RD (“the Property”)

The Parties:-

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

Mrs Elizabeth Elder, 12 Parkhead Terrace, Edinburgh EH11 4RD (“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 on 28 April 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 £ 244.17 per month, £732.50 per quarter or £ 2930 per annum. There are no services provided by the Landlords under the tenancy. The Landlords applied to the Rent Office for registration of a fair rent.
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 Committee attended at the Property on 10 December 2015 at 11.00 a.m. The date and time of the inspection had been intimated to both parties. The Tenant was present. She was accompanied by her son and representative Ronald Elder. 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 west 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 in addition to a private driveway. There are frequent bus links to the city centre.
5. The villa comprises two flats with the Property on the first floor and another flat on the ground floor. Each flat has its own front door. The villa is semi-detached in that it links to a tenement building from the same era. The villa benefits from cavity insulation. The gutters and rhones at the rear appear rusty and require cleaning and maintenance work.
6. The accommodation consists of two double 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 a staircase leads to the corridor from which access is taken to all of the rooms except for the kitchen. On the right are a double bedroom and the bathroom both of which face the front of the building. Ahead is the living room. The kitchen is reached via the living room. The second bedroom and living room face west.
7. The living room has a fireplace with an electric fire supplied by the Tenant. The kitchen fittings are dated. They have all been installed by the Tenant or her late husband. The wallpaper is peeling. The ceiling has old tiles installed by the Tenant. These have been damaged through activity in the loft.
8. The bathroom includes a bath but no shower. In the corridor there is a hatch to a loft
9. There are two deep storage cupboards off the corridor. One of these, which adjoins the rear wall, contains a modern gas fired central heating boiler. There are radiators in all of the rooms. This central heating system was introduced by landlords in the last 10 years. There are also gas fires in the two bedrooms. The Landlord has re-wired the Property.
10. There is double glazing in every room. The units are functional but dated. All decoration throughout the Property has been carried out by the Tenant.

11. All carpets and floor coverings have been provided by the Tenant. There are glazed doors separating the corridor from the staircase leading to the front door. The staircase has a chairlift to enable disabled access for a tenant. This was installed by the Tenant.
12. The Property includes its own garden at the rear of the villa. Access to it is via a path from the front door. The garden comprises a grass lawn with an old shed. There are poles for the drying of clothes. The lawn appears well maintained.
13. The Property also includes a garden to the side of the villa, facing Parkhead Terrace. The garden, surrounded by a hedge comprises a lawn, flower beds and a driveway for the parking of a vehicle. The driveway has dislodged or broken concrete slabs and potholes and is in need of repair.
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 Parkhead flat
 - Written representations from the Tenant's representative dated 29 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
 - Decision under reference PRHP/RAC/EH11/854
 - 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 2 p.m. at George House, 126 George Street, Edinburgh EH2 4HH. Mrs Anne Tyler,

Finance Manager of Gladstones appeared on behalf of the Landlords. Mr Ron Elder appeared on behalf of the Tenant.

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 101 years of age, frail and requires disabled access provision.
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 six two bedroomed properties which they currently let in the Parkhead area as set out in the written representations. The rents to which Mrs Tyler spoke ranged from £ 600 per month to £ 685 per month. These properties had been regulated tenancies like the current Property but had been refurbished and then re-let under short assured tenancies. All of the rents had been fixed within the last 12 months. They were a mixture of furnished and unfurnished flats although in Mrs Tyler's experience this did not have a significant impact on rent. The property let by the Landlords at 20 Parkhead Terrace for £ 685 per month included a private drive for off road parking. Mrs Tyler submitted that this was considered an asset by prospective tenants and increased the rent. In addition the Landlords relied on the advertisement of a two double bedroomed unfurnished flat at Parkhead View for £ 645 per month. She was unaware of whether this flat had let.
26. For the Tenant, Mr Elder was not able to comment on market rents for fully modernised properties in the Parkhead area. He submitted that while he was not aware of when the rent had last increased the Landlords were asking for a 78% increase. In his view given the low annual inflation that was not justifiable. In his submission the increase should not exceed general inflation. There had been nothing spent on the Property by the Landlords since the last increase.
27. Using its knowledge of market rents and taking account of the submissions and evidence presented by Mrs Tyler, the Committee considered that a two double bedroomed unfurnished flat in a satisfactory state of repair with modern fixtures and fittings including double glazing and central heating and

with private parking, in the Parkhead area of Edinburgh would let for about £ 650 per month. The Committee accepted the submission that private parking would make the Property more attractive to a tenant and result in an increased rent being payable by a tenant. This accorded with the on-street parking being available for commuters seeking to use public transport on the main arterial route into the centre of Edinburgh.

28. 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 and amortised it over 10 years to give an annual cost of £ 1980 per annum or a monthly cost of £ 165. This was said to be broadly similar to the PRHP case reference RAC/EH11/854 involving a nearby two bedroomed flat. Mr Elder indicated that these figures appeared to be reasonable.
29. The Committee accepted the Landlords' submission on the quantum of deduction necessary to achieve the rent for a modernised property. Making such a deduction the Committee considered that leaving aside the assumption as to no market imbalance a fair rent would be £ 485 per month or £ 5280 per annum.
30. 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.
31. 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.
32. 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.
33. 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 Mrs Tyler submitted that the locality should be restricted to the areas covered by postcodes EH11, EH12, and EH14. Mr Elder submitted that he did not see any special advantage to Parkhead or Sighthill in comparison to other parts of Edinburgh.

34. 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. As Mr Elder hinted at, demand for a tenancy of the Property could originate from the whole City of Edinburgh. By contrast, the areas covered by the postcodes mentioned by Mrs Tyler all accord with arterial routes into Edinburgh and may have the specific local amenities associated with convenient transport into the centre. Accordingly the Committee decided that 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.
35. 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.
36. The Scottish Government report indicated that in Lothian, on average, rents for 2 bedroomed properties increased by 17.2% between 2010 and 2014. During this time, inflation has been almost 0% with fears of deflation. The Citylets report indicated similar statistics, and that, in Edinburgh, average rents for 2 bedroomed properties had risen by 8.5% in the last year. These increases are significantly higher than in Scotland as a whole.
37. 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. On questioning from the Committee as to why rents should have increased so substantially in Edinburgh as set out in the Scottish Government material and the Citylets report, if this was not down to demand exceeding supply, Mrs Tyler was unable to comment. Mrs Tyler submitted that the time taken was not indicative of demand substantially exceeding supply. Mr Elder said he did not think that there was a great demand but could not comment further.
38. The Committee also looked at the time taken to let such properties and to its own knowledge and experience of that matter. The contrast between the times taken to let of two-bedroomed properties in the city as disclosed in the Q1 and Q3 Citylets reports for 2015 was striking. It was readily apparent that over the year 2015 the times had decreased significantly with almost all letting agents experiencing exceptional demand for private rented accommodation. Such has been the apparent market imbalance and rent rises that there are many calls for

rent controls. The mere fact that there are many properties available for let does not prevent demand from substantially exceeding supply.

39. It was readily apparent to the Committee 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 did not think that to apply the market rent with the said deductions for modernisation would give effect to the assumption that the Committee are obliged to make.
40. The question is, what would the rent be, giving effect to the assumption ? This is a matter which is inherently imprecise and therefore for the experience and judgment 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% in order to give effect to the assumption.
41. For the Landlords Mrs Tyler submitted that if a deduction required to be made it should be about 5%. This was based on the excess of the percentage change in mean Lothian rents over the Consumer Prices Index percentage change from 2010 to 2014 as set out in chart 1 of the Scottish Government report. For the Tenant, Mr Elder submitted that 5% was not enough. It should be 20% as in the Edinburgh case supplied by the Committee.
42. The Committee considered the suggestion by the landlord's agent that the degree of market imbalance was 5%. Generally, any calculation of substantial excess of demand over supply is inevitably imprecise because of the difficulty of quantifying the extent of the excess of demand over supply which makes the excess "substantial". The suggestion of 5% implies a marginal degree of "substantiality". This does not accord with the Committee's knowledge and experience as to the exceptional increase in demand in 2015 as noted in paragraph 38 above. In any event the figure was based on the Government statistics for Lothian, which includes Edinburgh but is not exclusively Edinburgh. The various other statistics and reports relied upon by the committee included figures relating only to Edinburgh and these, together with the committee's own knowledge and experience of Edinburgh, tell quite a different story for Edinburgh not just from Lothian but from other areas in Scotland. Accordingly the committee felt that the methodology employed by the agent, such as it was, did not reflect the position as regards Edinburgh.
43. It is common knowledge that inflation has been at very low levels over the past three years. Against this, there has been a 20% average rise in rents in Edinburgh over the last three years with many reports of property letting in hours not just in the more popular areas. This is a strong and very obvious indicator of substantial market imbalance. By the time of the Citylets Q3 report average rents of two-bedroomed properties in Edinburgh were some

20% higher than average rents of such properties over Scotland as a whole which would have been affected by the same levels of general inflation.

- 44. Accordingly for these reasons the Committee exercising its judgment took the view that a deduction of about 20% would result in a rent giving effect to that assumption. It follows that the Committee found that the rent registered by the Rent Officer for the Property of £ 4625 per annum or £ 385.42 per month or £ 1156.25 per quarter was a fair rent in terms of section 48 of the 1984 Act.
- 45. 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

SignedDate: 24 December
2015.....

David Bartos, Chairperson