



PRIVATE RENTED HOUSING PANEL

RENT (SCOTLAND) ACT 1984

Notification Of Decision By The Private Rented Housing Committee

REFERENCE NO:	OBJECTION RECEIVED	OBJECTION
RAC/G11/616	31 December 2007	Landlord

ADDRESS OF PREMISES

2/2, 3 Benalder Street, Glasgow, G11 6PU

TENANT

Mr A J C Gordon

NAME AND ADDRESS OF LANDLORD

Buchanan Heritable Ltd.

AGENT

Hacking & Paterson
1 Newton Terrace
Glasgow
G3 7PL

DESCRIPTION OF PREMISES

Second floor flat in traditional tenement circa 1900 comprising two rooms, dining kitchen and w.c.

SERVICES PROVIDED

None

COMMITTEE MEMBERS

CHAIRMAN
PROFESSIONAL MEMBER
LAYMEMBER

Mrs A Devanny LLB NP
Mrs S Hesp LLB(Hons) BA(Hons) MRICS
Mr C Harvey MA

FAIR RENT	DATE OF DECISION	EFFECTIVE DATE
£ 3100.00 p.a.	19 March 2008	19 March 2008

A Devanny

Chairman of Privat Rented Housing Committee

19th March 2008.

Date

PRIVATE RENTED HOUSING COMMITTEE

STATEMENT OF REASONS

In connection with

Inspection held on Wednesday 19 March 2008

of the Properties

(ONE) Flat 3/1, 70 White Street, Glasgow G11 5ED
(hereinafter referred to as "the first flat")

(SECOND) Flat 0/2, 4 White Street, Glasgow G11 5RT
(hereinafter referred to as "the second flat")

(THIRD) Flat 2/2, 3 Benalder Street, Glasgow G11 6PU
(hereinafter referred to as "the third flat")

INTRODUCTION

References have been made to the Private Rented Housing Committee for the determination of a fair rent for the first, second and third flats under the Rent (Scotland) Act 1984 ("the 1984 Act").

The Landlords of the first flat are Lanero Property Co.Ltd. whose agents are Messrs.Hacking and Paterson, 1 Newton Terrace, Charing Cross, Glasgow G3 7PL. The Tenant of the flat is Mrs. Johanna Nicolson. The annual rent for the first flat was last registered on 29 March 2005 at the figure of £2740. On 29 October 2007, the Landlords applied to have the annual rent increased to £4800. The Rent Officer determined the annual rent for the first flat at the figure of £3380 with effect from 6 December 2007.

The Landlords of the second flat are Scottish Prudential Investment. Association Ltd. whose agents are Messrs. Hacking and Paterson, 1 Newton Terrace, Charing Cross, Glasgow G3 7PL. The Tenant of the flat is Mrs. I Cummings. The annual rent for the second flat was last registered on 8 December 2004 at the figure of £ 1700. On 12 November 2007, the Landlords applied to have the annual rent increased to £2400. The Rent Officer determined the annual rent for the second flat at the figure of £2050 with effect from 21 January 2008.

The Landlords of the third flat are Buchanan Heritable Ltd. whose agents are Messrs. Hacking and Paterson, 1 Newton Terrace, Charing Cross, Glasgow G3 7PL. The Tenant of the flat is Mr. Andrew J.C. Gordon. The annual rent for the third flat was last registered on 29 March 2005 at the figure of £2500. On 31 October 2007, the Landlords applied to have the annual rent increased to £4000. The Rent Officer determined the annual rent for the third flat at the figure of £3100 with effect from 6 December 2007.

The references to the Private Rented Housing Committee have been submitted in each case by the Landlords.

INSPECTION

The Committee inspected the three flats on the morning of 19 March 2008. At each inspection the Tenant was present. In addition, the son of the Tenant of the first flat attended that inspection and the wife of the Tenant of the third flat attended the inspection of that flat. No Representative of the Landlords attended the inspections.

(The First Flat) The flat is located on the third floor of a four storey traditional blond sandstone tenement which was constructed circa 1900. The tenement has a tiled roof. There is a secure entry door to the communal close. The close, stairs and landings were litter free at the time of inspection and in reasonably good decorative order and repair. The communal back court to the rear is paved and was tidy and there are communal bin stores located beyond the paved drying area in a raised area. The communal drying area to the rear is accessed via a secure door to the rear of the common close. It was noted that repairs are required to the gutters and downpipes to the rear exterior of the tenement.

The flat lies on the left-hand side of the third floor landing. A good sized square hall leads directly from the common landing and gives access to a bay windowed living room with large cupboard, a double bedroom, a living kitchen with recessed area, and bathroom. There is a large walk-in cupboard off the hall. There is no central heating and the Tenant has provided electric fires and electric radiators which provide the only space heating and she maintains these appliances. Hot water is provided by an electric immersion heater. The kitchen is basic in nature with simply a stainless steel sink unit and no other fittings. The bathroom is also basic and has dated fittings. The rooms are good sized but the flat is unimproved with the original single glazed sash windows. There was evidence that the cords in some of the windows were broken. There was evidence of some cracking to the ceilings due to old settlement. The electrical wiring needs checked and upgraded. No services or furniture are provided by the Landlords. The Tenant was unsure as to who undertook the stair cleaning and the back court maintenance but it was clear that it was not the Landlords.

Parking for the flat is on street and at the time of inspection there were limited spaces adjacent to the property. The flat is in a quiet residential area with good shopping facilities, nearby rail, underground, bus and road links and lies close to the popular West End area of the city.

(The Second Flat) The flat is located on the ground floor of a traditional blond sandstone tenement which was constructed circa 1900. The tenement has a tiled roof. There is evidence of the tenement being affected by old settlement. There is a secure entry door to the communal close. The close and stairs were in good decorative order and repair and litter free at the time of inspection. The communal drying area to the rear of the tenement is paved and the rear back court and communal bin store was tidy with a well kept grassed area and shrubs. The communal back court is accessed by a secure door to the rear of the common close. The Tenant indicated that she has use with another occupier of a storage cupboard at the rear exit door of the common close. Historically, this cupboard was the former WC which served her flat.

The flat lies on the right hand side of the ground floor at the rear of the close. A long narrow hall leads to a living kitchen, a double bedroom with a large cupboard and an internal shower room with washbasin and WC. The Landlords have provided some basic kitchen units and a stainless steel sink unit but no electrical appliances. The flat has been recently rewired and replastered and has space heating and hot water provided by a combi-boiler. The central heating system was installed under the Scottish Executive Heating Programme and is maintained by the Landlords. The kitchen and bedroom overlook the common back court and the flat has modern double-glazed windows. No services or furniture are provided by the Landlords. The close cleaning and back court maintenance is not provided by the Landlords.

Parking for the flat is on street and at the time of inspection there were spaces available adjacent to the property. The flat lies in a quiet residential street in a central location within a minutes walk of Byres Road and the West End. It is centrally situated for Glasgow University, the Western Infirmary, shopping facilities, and leisure facilities. It is close to rail, underground and bus routes.

(The Third Flat) The flat is located on the second storey of a traditional red sandstone tenement which was constructed circa 1900. The tenement has a tiled roof with a slate roofed turret. Entry to the flat is by a common external stairway which has a secure metal gate at the entrance. There was evidence of an exposed gas pipe and an open electrical junction box at the entrance to the stairway. At the top of the stairway at first floor level lies a parapet roof which provides a communal drying area and common bin store. At the time of inspection there was evidence of rubbish and cigarette butts lying on the parapet roof and on the stairway. At first floor level there is an unsecured door which leads to a common close and stair serving the flats. The close was in a poor state of repair with ill-fitting single glazed original sash windows which were in need of repair, flaking paint on the walls and windows and a worn concrete floor. The Tenant complained that there had been rain water ingress at the close windows although at the time of inspection there was little evidence of this.

The flat lies off the second floor landing. A large hallway leads to a large dining kitchen with walk in cupboards, small narrow bathroom which the Committee were advised prior to the Tenant's improvements only housed a WC, double bedroom and lounge with recessed area. The Tenant has carried out extensive improvements which were disregarded for the purposes of this inspection. The Tenant indicated that his family had rented the flat since 1926. The Landlords provide no furniture or services.

The flat has been recently rewired and space heating and hot water are provided by a combi-boiler which was installed 2 years ago under the Scottish Executive Heating Programme which is maintained by the Landlords. At the time of inspection the Committee observed that the pipework for the heating system had not been boxed in and the Tenant advised that he had requested that the Landlords undertake this but they had not so far responded to his request. The windows in the flat are the original single glazed sash windows and all the flat windows overlook a busy main road and Partick Cross.

The flat is situated in a central location near shops, transport links and leisure facilities. It is a few minutes walk from the West End, Glasgow University and Western Infirmary. Parking in close proximity to the flat is very difficult and there were no available spaces at the time of inspection. The flat is situated above a pub and there are several other licensed premises very close by. The flat overlooks an extremely busy road and the Committee were aware a high level of traffic noise during the inspection.

HEARING

There was no hearing for the first and second flats as none was requested by the Tenants or Landlords.

The Tenant of the third flat was the only party to request a hearing before the Committee and the hearing was scheduled to take place at the offices of the Private Rented Housing Panel at West Campbell Street, Glasgow following the inspections. The Landlords had indicated that they would not be attending the hearing. For convenience the hearing took place instead within the third flat at the end of the inspection of this property. At the hearing the Tenant submitted that the windows were unsafe to open and that he had difficulty cleaning the exterior of the windows and that no window cleaner was prepared to undertake this task. The Tenant complained that the noise experienced due to the proximity of the road detracted significantly from his enjoyment of the flat and that he and his wife were disturbed at night by the constant traffic noise. He mentioned that at times they could not hear their television because of this noise. He indicated that double glazed windows would significantly improve the noise position and prevent drafts. The Tenant stated that he had requested that double glazed windows be installed but that the Landlords had so far not agreed to this request. He also complained that the common close windows required necessary repairs and that the Landlords should attend to this and also arrange for cleaning and upgrading of the close. He argued that these factors should be taken into account by the Committee in their assessment of a fair rent.

DECISION

The Committee considered most carefully the written documentation before it, viz.: -

1. RRI Applications for the first, second and third flats dated 9 August 2007, 6 November 2007 and 9 August 2007.
2. Landlord's letter of appeal.
3. Notification of fair rent appeal from Rent Registration Service for the first, second and third flats dated 27 December 2007, 7 January 2008 and 27 December 2007.
4. Rent Register Pages.
5. Landlords' representations for the first, second and third flats dated 3, 28 and 3 January 2008.
6. Tenants' representations, comprising forms from Mrs. Nicolson dated 3 January 2008 and from Mr. Gordon dated 7 January 2008. There were no representations from Mrs. Cummings.

The appeal from the Landlords is based on the suggestion that there is no evidence of scarcity and that the rental market is presently in balance and, therefore, a higher rent be registered more inkeeping with current market rents.

The only Tenant to make representations was Mr. Gordon, the Tenant of the third flat, who stated in his representations that the sum sought by the Landlords for the rent for the third flat was too high given the condition of the common close, the condition of the windows in the flat and the noise which impacted on his enjoyment of the property. He argued that taking into account these factors that the Rent Officer's determination of £3100 per annum is fair and reasonable.

The Committee considered the documents referred to above and, in relation to the third flat, the submissions made by the Tenant, Mr. Gordon. The Committee was mindful of the terms of Section 48 of the Rent (Scotland) Act 1984, which states

“The Committee shall have regard to all of the 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 for use under the tenancy, and to the quantity, quality and condition of the furniture.” Paragraph (2) then provides that “For the purposes of the determination it shall be assumed that the number of persons seeking to become tenants of similar dwelling-houses in the locality... is not substantially greater than the number of such dwelling-houses in the locality which are available for letting”. This provision is sometimes known as “the scarcity deduction”. The Committee were also mindful of the observations of the Lord President in **Western Heritable Investment Co LTD v Hunter (2004)** which requires the Committee to proceed on the best available evidence and the use of the other evidence as a cross check where possible.

(The First Flat) The Committee then went on to consider the market rent for the first flat. There was evidence of a plentiful supply of rented accommodation available in the area. The Committee accepted that the best evidence available was the evidence of market rents of similar flats within the area. The Committee noted a pattern of two apartment modernised flats within the area being offered for rent at between £475 and £500 per month. The Committee considered that a deduction from this rental figure should be made for market resistance to an unfurnished and unmodernised flat with no heating facilities, with no kitchen fittings and dated bathroom fittings, and with defective windows. The Committee disregarded the two electric fires and kitchen appliances provided and maintained by the Tenant. The Committee considered whether a deduction should be made from the rent for scarcity. However, investigations from various sources including internet sites, suggest that there is a significant number of properties to let in the area at asking rents which are in line with rents being paid in other locations where it has been established that there is no scarcity deduction so the Committee believe that it is inappropriate in this instance to make any deduction for market imbalance.

The Committee, after considering all the available evidence and making the necessary deductions decided that the fair rent for the first flat was £300 per month, which equates to £3600 per annum. The Committee had evidence of a registered rent of a similar flat at 8 Fordyce Street, Glasgow situated within the locality. The rent registered on 5 December 2007 for that two apartment flat was £3500 per annum. Whilst the flat at 8 Fordyce Street has the benefit of a main door entry, the first flat at 70 White Street is a larger flat and, therefore, the two flats can be treated as comparables and this was used as a method to check the rental figure arrived at by considering market rents. Whilst return on capital values have been used in the past to calculate a fair rent, this is not the preferred means of calculating a fair rent and was disregarded by the Committee. Accordingly, the Committee unanimously determined that the fair rent for the first flat at 3/1, 70 White Street, Glasgow is £3600 per annum.

(The Second Flat) The Committee then went on to consider the market rent for the second flat. There was evidence of a plentiful supply of rented accommodation available in the area and for the reason stated with regard to the first flat the Committee considered that there should be no deduction from the rent for scarcity. There is a lack of evidence of market rents and registered rents for flats of this size in this location. The Committee had already considered the market rents of two apartment modernised flats in the locale in relation to the first flat and then made a deduction for the smaller size of this flat. Whilst return on capital values has been used in the past to calculate a fair rent, this is not the preferred means of calculating a fair rent and was disregarded by the Committee.

Given the prime location and the condition of the flat which benefits from double glazing and central heating, even though it is of limited size, the Committee unanimously determined that a fair market rent for the flat at 0/2, 4 White Street, Glasgow is £2400 per annum.

(The Third Flat) The Committee then went on to consider the market rent for the third flat. There was evidence of a plentiful supply of rented accommodation available in the area and for the reasons already outlined, the Committee considered that there should be no deduction from the rent for scarcity. Disregarding Tenant's improvements, the third flat is similar in size and condition to the first flat inspected where a fair rent of £3600 per annum had been determined taking into account current market rents and one comparable registered rent.. However, the Committee, whilst being mindful that the third flat enjoys the benefits of central heating and had recently been rewired, considered that the first flat is situated in a quiet residential area, and the third flat is situated over a pub in close proximity to other licensed premises, there is great difficulty parking in the vicinity of the third flat, and the third flat's entry, common close and drying area is not as attractive.

The Committee considered the close proximity of the third flat to a busy main road and considered that the noise generated by that busy road and the proximity to licensed premises, significantly affects the Tenant's enjoyment of the property and that these factors should be reflected in the market rent for the third flat. The Committee unanimously determined that a fair rent for the flat at 2/2, 3 Benalder Street, Glasgow is £3100 per annum. For the reasons already outlined in relation to the first and second flats, return on capital value as a means of calculating a fair rent for the third flat was disregarded by the Committee.

In reaching this decision, the Committee has had regard to all the requirements of Section 48 of the 1984 Act.

The decision takes effect from the Nineteenth day of March, Two thousand and Eight.


A Devanny

Chairperson,
19th March 2008

