



**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>
RAC/G52/673	15 January 2009	Landlord

**ADDRESS OF PREMISES**

20 Inchbrae Road, Glasgow, G52 3HA

**TENANT**

Mrs A Calderwood

**NAME AND ADDRESS OF LANDLORD**

Mr & Mrs P Nicoll

**AGENT**

Hacking & Paterson  
1 Newton Terrace  
Glasgow  
G3 7PL

**DESCRIPTION OF PREMISES**

Lower cottage flat within two storey block of four flats circa 1930 with gas central heating comprising four rooms, kitchenette and bathroom with relative garden grounds.

**SERVICES PROVIDED**

None

**COMMITTEE MEMBERS**

**CHAIRMAN**  
**PROFESSIONAL MEMBER**  
**LAYMEMBER**

Mrs I Montgomery BA(Hons) NP  
Mr R Buchan BSc FRICS  
Mr J Riach

<b>FAIR RENT</b>	<b>DATE OF DECISION</b>	<b>EFFECTIVE DATE</b>
£ 4200.00 p.a.	31 March 2009	31 March 2009

**I Montgomery**

Chairman of Private Rented Housing Committee

31st March 2009

Date



PRIVATE RENTED HOUSING COMMITTEE  
STATEMENT OF REASONS  
INSPECTION and HEARING: 31<sup>st</sup> March 2009

PROPERTY: - Lower Cottage Flat situated at 20 Inchbrae Road,  
Cardonald, Glasgow G52 3HA.

Introduction

1. The Committee comprised Mrs I.R. Montgomery (Chairman), Mr R. Buchan (Surveyor) and Mr J. Riach (Housing member). The landlords are Mr and Mrs P. Nicoll, represented by Hacking and Paterson, 1 Newton Terrace, Glasgow G3 7PL. The tenant is Mrs A. Calderwood. This reference to the Private Rented Housing Committee for the determination of a Fair Rent under the Rent (Scotland) Act 1984 (hereinafter referred to as "the 1984 Act") in respect of the property arises from dissatisfaction on the part of the landlord.
2. The previous rent for the property was £3,600 per annum. The landlord applied for a rent of £5,400 per annum. The rent determined by the Rent Officer effective from 28<sup>th</sup> November 2008 was £4,930 per annum.

Inspection

3. On 31<sup>st</sup> March 2009, the Committee, accompanied by the Clerk, Mr Robert Shea, inspected the property, which is a lower cottage flat forming part of a two-storey block of four flats. The property has the exclusive use of the front garden and a share of the rear garden ground. The property is situated in Glasgow in the well-established residential suburb of Cardonald and is conveniently located for access to shops and transport.

4. The property was built circa 1935, and is of a design common in Glasgow. The main lounge is accessed from the entrance hall, and is of good size. The lounge has a triple bay window and a walk-in cupboard in one corner. The property also has a sitting room which, on one side, gives access to a kitchenette (approximately 6'6" square) and, on the other, a small room (approximately 6'6" x 12'), which the tenant uses as an extra bedroom. This room is adequate for use as a single bedroom and has one window. The location of this room, (off the sitting room and in close proximity to the kitchenette), makes it suitable for use as a dining room if preferred. The landlord has supplied a gas fire in the sitting room. The bathroom has the benefit of natural ventilation and light from a window, and the tenant advised that the landlord last replaced the bathroom suite around 25 years ago. The bathroom would benefit from further replacement of the fittings. The main bedroom is a good sized double room with one window. The tenant has replaced the work surfaces and the sink cupboard in the kitchenette. There is still a crack in one corner of the kitchenette ceiling where there has in the past been water ingress.
5. The Committee noted that the wiring was old and not up to modern standards. The fuse box appeared to be the original box supplied when the house was built. The tenant advised the Committee that she had partially rewired the property when she and her husband moved into the property in 1963. She stated that the property has never been rewired by the landlord. That account of the history of the wiring was consistent with the condition of the wiring as seen on the day of the inspection. A central heating system was installed under the Scottish Government EAGA scheme about four years ago. The property has single glazed upvc windows throughout, supplied by the landlord approximately 20 years ago.
6. The landlord was not represented at the inspection.

#### Hearing.

7. On the day neither party wished to attend a hearing and so no hearing took place. The reference was determined on the basis of the

documentary evidence produced and the observations of the Committee at the inspection. The Committee are entitled to use their knowledge and experience when determining a fair rent and duly did so.

8. No specific line of argument was presented by or on behalf of the landlords.
9. The tenant made a written submission, in which she stated that any modernisation which had been carried out to the property had been carried out by her and her late husband. She complained of condensation collecting on the windows, which she attributed to the fact that they are not double glazed. She stated that the property was not maintained to a particularly high standard by the landlord, and argued that the proposed rent is too high.

#### Documentation.

10. In addition to the Inspection Report, the case summary sheet and the extract from the Rent Register, the Committee also considered:
  - a) Form RR1;
  - b) The notification letter from the Rent Registration Service relative to the Fair Rent reference;
  - c) The written representations made by the tenant;
  - d) Letter dated 21<sup>st</sup> November 2008 from Hacking and Paterson;
  - e) The decision notice and Statement of Reasons issued in relation to each of the three comparable properties listed in the table of decisions supplied by the clerk.

#### The Decision.

11. In terms of section 48(1) of the 1984 Act, the duty of the Committee when determining what rent would be a fair rent under a regulated tenancy, is to *"have regard to all the circumstances, (other than personal circumstances), and, in particular, to apply their knowledge and experience of current rents of other 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, to the quantity, quality and condition of the furniture".* Disrepair or defects attributable to the tenant should be disregarded, as should any improvements made by the tenant, otherwise than in pursuance of the terms of the tenancy (section 48(3)). The Committee was not made aware of any such defects in this particular case, and no furniture is provided in terms of the tenancy. Improvements by the landlord are taken into account. In reaching its determination, the Committee complied with its duty as set out above.

12. The Committee considered carefully all the evidence presented, together with the observations made by the Committee members at the inspection. In particular, the Committee considered carefully which of the three alternative methods of ascertaining a fair rent was most appropriate in this case. The three accepted methods used in Scotland are a) determining a fair rent by having regard to registered rents of comparable houses in the area, b) taking market rents and then discounting for any scarcity element and making any appropriate disregards as required by section 48(3), or c) calculating the appropriate return based on the capital value of the property, taking into account the element of scarcity. None of these methods is regarded as being the primary method, and the method chosen by the Committee will depend in each case upon the evidence available. In this case, neither party produced any evidence as to capital values, market rents or registered rents of comparable houses.

13. Mindful of the observations by the Lord President in **Western Heritable Investment Co. Ltd v Hunter (2004)**, the Committee was aware of the need to proceed on the basis of the best available evidence, using other available evidence as a check where possible. In this case, neither of the parties produced any evidence relative to market rents or registered rents passing in comparable regulated tenancies. The Committee did, however, have before it evidence of other registered rents, which had been fixed by Committees in the period from April – July 2008. The Committee also had

the benefit of its own knowledge and experience of the rents passing and being asked in the local market.

14. The Committee noted that there were a considerable number of properties of a similar size, style and amenity available for let in the general locality. Some of these properties had been available for some weeks, suggesting that, at present, supply of such properties is greater than demand. The Committee considered that the recent downturn in the economy was having an effect on the local housing market and that, in those circumstances, rents fixed nearly one year before may no longer be representative of the present levels of rent being achieved. That being so, the Committee decided that the best method to use in this case was the market rent less any discount for scarcity approach.
  
15. Using its knowledge and experience, the Committee considered that a market rent for an unfurnished four apartment property of the type and in the locality of the present property, would be a minimum of £450 per month. The Committee had knowledge of other properties of similar size, style and location where rents higher than £450 per month were being asked, but these were properties which had benefited from a higher degree of upgrading. The Committee was aware that rents sought are a less reliable indicator than rents achieved, but, based on its knowledge of the local market, was satisfied that £450 -£500 for an unfurnished flat of this size with floor coverings and white goods was a readily achievable rent, even in the present market. However, the property under consideration, being unfurnished and without white goods or carpets, would be unlikely to achieve anything above the low end of that range. The Committee considered that there would be a degree of market resistance to a property where the incoming tenant would be faced with the costs of providing floor coverings and obtaining and installing white goods. The Committee considered also that the condition of this property, which has had minimal upgrading that can be attributed to the landlord, would adversely impact upon the level of rent likely to be achieved.

16. For the purpose of calculating a fair rent, the Committee must take no account of any improvements made by the tenant. The property being valued therefore, is not the property in its condition as seen, but is the property stripped of any improvements made by the tenant. The Committee is therefore looking at a property without a modern kitchen or bathroom (the bathroom fittings are said to be 25 years old), which has not been rewired since it was built. The partial rewiring carried out by the tenant must be disregarded.
17. The Committee considered that in its present condition the wiring in this property is below acceptable standard and potentially dangerous. The Committee considered that it would not meet the repairing standard as set out in section 13 of the Housing (Scotland) Act 2006. As the property could not legally be let in a condition that falls below the repairing standard, the Committee considered that the cost of rewiring the property must be factored into the determination of the fair rent. The Committee considered also that the lack of kitchen fittings would also make the property difficult to let in its present condition, especially at a time when there is an ample supply of available properties on the market. The Committee considered that the cost of rewiring the property and upgrading the kitchen and bathroom, carrying out general repairs and then redecorating, must be taken into account when calculating the fair rent.
18. The property has a central heating system installed under the Scottish Government EAGA system. The system was installed for the benefit of the tenant, but it was not paid for by her, and she has no responsibility for its upkeep. She is not entitled to take it with her should she leave the property. Whilst the central heating system was not paid for by the landlord, nor can it be regarded as a "tenant's improvement". It cannot therefore be disregarded under section 48(3)(b) of the Rent (Scotland) Act 1984. The property must be valued as having the benefit of central heating.
19. The tenant complained of condensation on the windows, but the Committee considered that this was an inherent factor of the windows

being single glazed as opposed to double glazed. The Committee did not consider that this could be regarded as a defect, although clearly it is inconvenient for the tenant. The Committee considered the windows to be old fashioned but functional.

20. The Committee determined that a market rent for a property of this type with single glazed windows and gas central heating, with a functional kitchen and in adequate decorative order would be £5,400. This property falls short of that, for the reasons previously given. The Committee considered that the costs of rewiring the property, replacing the kitchen and bathroom fittings, carrying out general repairs and redecorating thereafter would be in the region of £12,000, and considered that these costs could reasonably be spread over 10 years. The costs were not so substantial as to require them to be spread over any longer period. The Committee accordingly considered that the sum of £1,200 should be deducted from the market rent in order to achieve a fair rent. The net figure is therefore £4,200 which equates to £350 per month.

21. The concept of scarcity is an essential feature of the fair rent scheme under the Rent (Scotland) Act 1984. It is contained within section 48(2) of that Act. The principle behind the inclusion of this section was that tenants *in a situation of scarcity of supply* (in other words, where there are more prospective tenants than available houses) should be protected from market forces. It is this factor that distinguishes a fair rent under the 1984 Act from an open market rent. Section 48(2) requires that a neutral market with no scarcity of houses be assumed. In that situation, prospective tenants can be assumed to be willing to pay only what the property is worth, with no additional premium being paid in order to secure a property that is difficult to come by. If that situation does not exist, and there *is* a shortage of houses, (thus artificially pushing up rents) then section 48(2) requires that the tenant be protected from the financial implications of that.

22. The Committee considered whether any discount should be made for scarcity in this case, but was satisfied that in the area of Glasgow as a

whole, there could not be said to be scarcity of similar properties to let at the present time. As mentioned above, there appeared to be a surplus of supply over demand in relation to the availability of properties for rent, which is the opposite of the scarcity situation. The Committee was satisfied that no deduction required to be made in relation to scarcity for this type of property at this point in time.

23. In section 49 of the Rent (Scotland) Act 1984, it is declared that the amount to be registered shall include any sums payable by the tenant for services. In this case no services are provided.

24. Having taken all relevant factors into account, the Committee determined that a Fair Rent for the property was £4,200.00 per annum. In reaching this decision, the Committee had regard to all documentary and other evidence, and all the circumstances that required to be taken into account in terms of section 48 of the Rent (Scotland) Act 1984.

25. The effective date is 31<sup>st</sup> March 2009.

Signed .. **I Montgomery** .....Chairman)  
