



PRIVATE RENTED HOUSING PANEL

RENT (SCOTLAND) ACT 1984

Notification Of Decision By The Private Rented Housing Committee

REFERENCE NO:	OBJECTION RECEIVED	OBJECTION
RAC/G12/689	21 April 2009	Landlord

ADDRESS OF PREMISES

3/1, 179 Hyndland Road Glasgow, G12 9HT

TENANT

Mr JH McBrien

NAME AND ADDRESS OF LANDLORD

Demor Investments Ltd.

AGENT

Ross & Liddell
60 St Enochs Square
Glasgow
G1 4AW

DESCRIPTION OF PREMISES

Top floor traditional tenement flat circa 1900 comprising living room three bedrooms, dining kitchen and bathroom.

Estimated gross internal floor area is 137 square metres.

SERVICES PROVIDED

None

COMMITTEE MEMBERS

CHAIRMAN
SURVEYOR
LAYMEMBER

Mrs I Montgomery BA(Hons) NP
Mrs S Hesp LLB(Hons) BA(Hons) MRICS
Mr C Harvey MA

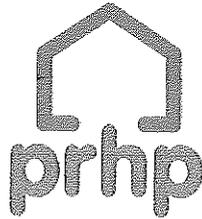
FAIR RENT	DATE OF DECISION	EFFECTIVE DATE
£ 7200.00 p.a.	24 August 2009	24 August 2009

I Montgomery

Chairman of Private Rented Housing Committee

Date

24th August 2009



PRIVATE RENTED HOUSING COMMITTEE

STATEMENT OF REASONS

Inspection: - 30th July 2009

Hearing: - 24th August 2009

Properties situated at: - 3/1 and 3/2, 179 Hyndland Road, Glasgow, G12 9HT.

INTRODUCTION

1. The Committee comprised Ms. I. R. Montgomery (Chairman), Ms. S. Hesp (Surveyor) and Mr. C. Harvey (Housing member). The landlord of both properties is Demor Investments Ltd, represented by Ross & Liddell Ltd., 60 St. Enoch Square, Glasgow G1 4AW. The tenant of 3/1, 179 Hyndland Road, Glasgow, G12 9HT is Mr John Hugh McBrien. The tenant of 3/2, 179 Hyndland Road, Glasgow, G12 9HT is Mr James Turner.
2. The two properties under consideration are the two third floor traditional tenement flats situated at 3/1 and 3/2, 179 Hyndland Road, Glasgow, G12 9HT. In both cases, this reference to the Private Rented Housing Committee for the determination of a Fair Rent under the Rent (Scotland) Act 1984 arises from dissatisfaction on the part of the landlord.
3. Flat 3/1, 179 Hyndland Road, Glasgow, G12 9HT is a three bedroom property with a total floor area of 137.34 square metres. The previous rent was £3,500.00 per annum. The landlord applied for a rent of £7,200.00 per annum. The rent determined by the Rent Officer was £6,000.00 per annum.

4. Flat 3/2, 179 Hyndland Road, Glasgow, G12 9HT is a four bedroom property with an estimated total floor area of 128.12 square metres. An exact measurement was not possible as two rooms were being utilized for storage and could not be fully accessed. The previous rent was £3,600.00 per annum. The landlord applied for a rent of £8,400.00 per annum. The rent determined by the Rent Officer was £6,250.00 per annum.

DESCRIPTION OF THE PROPERTIES

5. On the morning of 30th July 2009, the Committee inspected the two third floor flats, which are situated within a traditional four storey red sandstone tenement building. The tenement building was built around 1900, and is located in a residential area with good access to shopping and transport. The ground floor of the building is occupied by shops. The red sandstone used at the front of the building appeared to be in a good state of repair and the roof is constructed of concrete pantiles. Viewed from the front, the building appeared to be well maintained. Inspection of the rear of the property, however, revealed that some sections of the rainwater downpipes are missing. On the day of the Committee's inspection, the common close was clean and tidy and in good condition. The original tiles had been replaced with appropriate modern equivalent tiles. There is a door entry system at the front of the building which was operational at the time of the inspection.

6. The accommodation at flat 3/1, 179 Hyndland Road, Glasgow, G12 9HT extends to four rooms, a large living kitchen and a bathroom. The landlord does not provide any form of central heating. There is an immersion heater for heating water. The property has single glazed traditional sash and case windows throughout. These would benefit from some attention, in particular, the re-application of mastic where this has become loose and fallen out. The property has been re-wired within the last twenty years. The living room is of good size and has a triple bay window with a pleasant open outlook. The original coving and ceiling rose remain in place, but there are cracks in the

ceiling and down one wall. These appear to be superficial in nature and do not give rise to concern. The kitchen is spacious and has a pleasant open outlook. The kitchen units have been installed by the tenant, who advised that the kitchen as supplied by the landlord had contained a traditional range for cooking, a Belfast sink, a pulley and a coal bunker. All three bedrooms in the property are of very generous proportions. The first bedroom is used by the tenant as an office but could easily be used as a good sized double bedroom. It has an attractive outlook over neighbouring gardens. The second bedroom is also a large double bedroom. There is a superficial crack in the plaster of the ceiling. The third bedroom is a large bright room with a triple bay window and a decorative fireplace. The bathroom fixtures are supplied by the landlord, but the tenant has installed additional bathroom cupboards. The property has retained a number of traditional features, including stained glass in the bathroom door and a decorative stained glass panel. The bathroom is spacious and the tenant has adapted a shelved area to create additional storage space for clothes and shoes. The property has a large walk-in cupboard and a second smaller storage cupboard off the hallway. The front door has a traditional stained glass surround. No smoke detector is supplied by the landlord. The back garden was attractive, tidy and very well maintained at the time of inspection.

7. The accommodation at flat 3/2, 179 Hyndland Road, Glasgow, G12 9HT extends to five rooms, a large living kitchen and a bathroom. It should be noted that it is narrower than its neighbor at 3/1 and has a slighter smaller floor area despite having the benefit of an extra room. The landlord does not provide any form of central heating. There is an immersion heater for heating water. The property has single glazed traditional sash and case windows throughout. These would benefit from some attention, in particular, the re-application of mastic where this has become loose and fallen out. The property has been re-wired within the last twenty years. The living room is of good size and has a triple bay window with a pleasant open outlook. The

original coving remains in place but has been patched, and there is a crack in the ceiling above the fireplace. This appears to be superficial. The room contains the original fire surround, which the tenant has re-tiled. The kitchen is spacious and has a pleasant open outlook. The kitchen units have been installed by the tenant, who advised that the kitchen as supplied by the landlord had contained only an old sink. All four bedrooms in the property appeared to be of good size. Two of the bedrooms are being used for storage which limited access by the Committee. One of these rooms had a substantial hole in the ceiling and wallpaper was peeling from one wall. The smaller of the two remaining rooms was a good sized double bedroom. The other bedroom is a large bright room with a triple bay window and decorative coving. The landlord supplied a cast iron bath which the tenant has replaced. The tenant has also installed a shower and glass shower screen. The property has a large walk-in cupboard and a second smaller storage cupboard off the hallway. No smoke detector is supplied by the landlord. The back garden was attractive, tidy and very well maintained at the time of inspection.

8. The landlord did not attend the inspection of either property. The Committee was allowed access to flat 3/1 by Mrs McBrien, and to flat 3/2 by Mr Turner.

DOCUMENTATION

9. In addition to the Inspection Report, case summary sheet and extract from the Rent Register, the Committee also considered: -
 - a) Form RO1 in respect of each property;
 - b) Letter from Ross and Liddell dated 7th April 2009;
 - c) Letters from Rent Registration Service dated 20th April 2009;
 - d) List of two potential comparable properties with supporting information relative to those properties;
 - e) Letter from Ross and Liddell dated 28th July 2009.

HEARING

10. No hearing was requested initially by any party. On the day prior to the inspection, a letter from Ross and Liddell dated 28th July 2009 was faxed to the **prhp** offices requesting that a hearing be scheduled. This was due to the fact that the landlord's agents had inspected flat 3/2, 179 Hyndland Road, Glasgow, G12 9HT and had become aware of the existence of repairs issues. The landlord's agents were advised that the inspection of the two properties would proceed as scheduled, and the Committee would decide thereafter whether it was appropriate to adjourn to convene a hearing. Having noted the existence of repairs issues in flat 3/2, the Committee considered that it would be in the interests of justice to convene a hearing and allow the landlord the opportunity to comment on these issues. A hearing was therefore fixed for 24th August 2009 and all parties were notified of this hearing. Consideration of the case was adjourned until after that date.

11. The hearing was attended by Mr John Hugh McBrien who spoke on his own behalf. The landlord was represented by Mr Jack Fulton and Ms Caroline Clark. Mr James Turner did not attend the hearing and was not represented.

12. Ms Clark advised the Committee that there is currently a lot of property on the market which is bringing market values down. She acknowledged that landlords are accepting lower rental payments in order to let properties more quickly. She asked the Committee to consider two properties which she had knowledge of, and which she argued were suitable comparable properties to those currently under consideration. She stated that Ross and Liddell currently let a three bedroom unfurnished property in Exeter Drive for £850 per calendar month (pcm), and a four bedroom property in Otago Street for £1,200 pcm. She stated that the same property in Otago Street had achieved a rent of £1,500 pcm two years ago but the landlord had been prepared to let the property for the lower price in order to let it quickly. The property had been on the market in July 2009 for only three days. The property in Exeter Drive

had been on the market for only two and a half weeks. She advised the Committee that the landlord now considered that the rents proposed in the Form RO1 were too low. She submitted that the figures now being sought were the figures set out in her letter dated 28th July 2009. She confirmed that the landlord now proposes a figure of £8,040 for flat 3/1 and £9,800 for flat 3/2.

13. Mr Fulton addressed the Committee on the issue of repairs in flat 3/2. He submitted that the tenant had not notified the agents that repairs were necessary and that, had he done so, they would have been attended to. He explained that the landlord is a developer and the company has its own maintenance crew. He advised the Committee that the properties in Exeter Drive and Otago Street would both have been offered for let with white goods and floor coverings. He also indicated that the property in Otago Drive is a five bedroom property and not four bedroom as had been suggested.

14. Mr McBrien stated that he and his wife had accepted the figure fixed by the Rent Officer. He acknowledged that rental values in the Hyndland Road area are pushed up by its proximity to the University. He argued that the Exeter Drive and Otago Street properties referred to by the landlord's agents were not genuinely comparable to flat 3/1, which did not have the advantage of a modern kitchen, bathroom, white goods and floor coverings all supplied by the landlord. He argued that, even when repairs are done by this landlord, the tenant is left to make good the décor thereafter. He acknowledged that the landlord's agents are helpful and approachable, but stated that there is a fundamental difficulty in getting the landlord to agree to have work done. He submitted that the rent fixed by the Rent officer should be accepted and should not be increased.

THE DECISION

15. 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)). Improvements by the landlord are taken into account. In reaching its determination, the Committee complied with its duty as set out above.

16. 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.

17. 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. The Committee was not provided with any evidence of capital values in the area and was satisfied that the use of the capital value method was not appropriate in this case. Details of two

possible comparable regulated tenancies had been provided by the clerk, namely the basement flat situated at 168 Great George Street, Glasgow and the flat at 0/1, 40 Airlie Street, Glasgow, but the Committee did not consider that either of these properties was genuinely comparable to either of the two flats now under consideration. They are considerably smaller and much less desirable than the properties now under consideration. The Committee did, however, have considerable evidence of market rents passing in the area, some provided by the landlord's agents and some from their own knowledge and experience. The Committee was satisfied that the appropriate method of proceeding in this case was by taking market rents, discounting for any scarcity element and then making any appropriate disregards as required by section 48(3). We proceeded on this basis.

18. The landlord's agents provided some oral evidence at the hearing relative to properties being let in Exeter Drive and Otago Street. However, no documentary evidence relative to these properties was provided and there were some significant discrepancies in the evidence provided. There was a discrepancy in the evidence as to whether the bathrooms and kitchens in these properties had been upgraded within the last ten years or not, and it was unclear whether or not the Otago Street property had central heating. We were initially advised that this property had four bedrooms but it was later conceded that it has five. It was clear that these properties had been fitted with white goods and floor coverings, which suggested that some upgrading of these properties had occurred. Due to the inconsistency in the evidence provided, the Committee considered that this evidence could not be regarded as being entirely reliable.

19. The Committee, using its own knowledge and experience, was aware of a number of three bedroom properties in the Hyndland Road vicinity where rents of around £670 pcm were being achieved on a market rent basis. We also accepted that a number of four bedroom flats in the same area were

achieving rents in the region of £895 pcm. However, these were upgraded and often fully furnished properties, which the property now under consideration is not. Those achieving the highest prices are generally the most desirable properties, either in terms of facilities or location.

20. Drawing on its own knowledge and experience of the local rental market, the Committee determined that the market rent for a large traditional three bedroom furnished property in this area would be in the region of £670 pcm, or £8,040 per annum. We considered that the market rent for a large traditional four bedroom furnished property in this area would be in the region of £895 pcm, or £10,740 per annum. Many properties will achieve rents higher than this because of their particular location or desirability.

21. We considered the properties at 3/1 and 3/2 179 Hyndland Road, Glasgow, G12 9HT. They are large spacious properties in a highly sought after area, which has good access to shops, restaurants and transport. However, neither flat has the benefit of central heating or double glazing. The Committee is required to disregard improvements made by the tenants, and these properties do not have the benefit of modern kitchens or bathrooms supplied by the landlord. They are supplied unfurnished, and with no white goods or floor coverings. The Committee considered that there would be considerable market resistance to such properties in the private rented sector, particularly at the present time when there are plenty of properties available for prospective tenants to choose from. Prospective tenants are likely to be reluctant to incur the high costs of laying floor coverings and installing white goods. The Committee considered that these factors must be taken into account when considering a reasonable market rent figure *for the properties now under consideration*.

22. The Committee was mindful of the fact that, although flat 3/2 has a greater number of rooms, flat 3/1 is in fact slightly larger in terms of floor space. We considered whether this factor would impact upon the rental values each flat

could potentially achieve. We concluded that flat 3/2 would achieve a higher rental value because it has an additional bedroom despite this factor. Although slightly smaller than the neighboring flat it still affords very spacious accommodation. Looking at flat 3/1, we considered that its size would make it attractive to those seeking three bedroom properties, but not to those seeking a four bedroom property. We accordingly considered that flat 3/2 should be valued as a four bedroom property and flat 3/1 as a three bedroom property, despite the fact that flat 3/1 is actually slightly larger.

23. We considered the property at 3/1, 179 Hyndland Road. The Committee estimated that the cost of furnishing the property, installing central heating and double glazing, upgrading the kitchen and bathroom, purchasing and installing white goods and laying suitable floor coverings would be in the region of £20,750. The life expectancy of these improvements will vary, but we considered that, by taking a reasonable average, the total sum of these costs could reasonably be defrayed over a period of ten years. We considered that the generous room size of this property was an advantage which we should take into account when considering adjustments to the market rent which could be achieved. As set out in paragraph 20, we considered that the market rent for a typical large traditional three bedroom furnished property offered for let in this area would be in the region of £670 pcm. Having adjusted that figure to take account of all the above factors, we accordingly assessed the market rent for this property *in the condition at which it must be valued* as £600 pcm.

24. We considered the property at 3/2, 179 Hyndland Road. It has an extra bedroom which will increase the costs of furnishing, installing central heating and laying floor coverings. The Committee estimated that the cost of furnishing the property, installing central heating and double glazing, upgrading the kitchen and bathroom, purchasing and installing white goods and laying suitable floor coverings would be in the region of £23,250. Again,

the life expectancy of these improvements will vary, but we considered that, by taking a reasonable average, the total sum of these costs could reasonably be defrayed over a period of ten years. Having adjusted the likely market rent for a property of this size in this area to take account of all these factors, we accordingly assessed the market rent for the property *in the condition at which it must be valued* as £700 pcm. We considered whether any deduction should be made to this figure to take account of the outstanding repairs issues, but we concluded that it should not as both landlord and tenant agreed that the tenant had not reported these issues to the landlord's agents.

25. The Committee then proceeded to consider whether any deduction required to be made in terms of section 48(2) (the factor commonly referred to as "scarcity"). 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.

26. 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. There was evidence at the time of the inspection of a considerable number of

properties available for sale or let in the vicinity of the property now being considered. The landlord's agents also agreed that in the current economic climate the number of properties available is forcing rental prices down rather than up. The Committee was satisfied that no deduction required to be made in relation to scarcity for this type of property in this area at this point in time.

27. 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 the case of these two properties no services or furnishings are provided.

28. Having taken all relevant factors into account, the Committee determined that a Fair Rent for the property at 3/1 179 Hyndland Road, Glasgow, G12 9HT is £7,200.00 per annum and a Fair Rent for the property at 3/2 179 Hyndland Road, Glasgow, G12 9HT is £8,400.00 per annum. In so deciding, the Committee had regard to all the evidence, and to all the circumstances that must be taken into account in terms of section 48 of the Rent (Scotland) Act 1984.

29. Any increase now imposed as a result of the Committee's decisions must be in accordance with the provisions of section 33 of the 1984 Act and The Limits on Rent Increases (Scotland) Order 1989 S.I. 1989 No 2469 (s.168).

30. The effective date is 24th August 2009.

Signed **I Montgomery** Chairman)
Date *9th September 2009*