



PRIVATE RENTED HOUSING PANEL

RENT (SCOTLAND) ACT 1984

Notification Of Decision By The Private Rented Housing Committee

REFERENCE NO:	OBJECTION RECEIVED	OBJECTION
RAC/EH8/707	10 August 2009	Tenant

ADDRESS OF PREMISES

PF1, 130 Buccleuch Street, Edinburgh, EH8 9NQ

TENANT

Mr B Porterfield

NAME AND ADDRESS OF LANDLORD

Northumberland & Durham

AGENT

Redpath Bruce
103 West Regent Street
Glasgow
G2 2DQ

DESCRIPTION OF PREMISES

Ground floor flat in five storey traditional tenement built pre 1890 comprising living room with small boxroom off, two bedrooms, large kitchen and bathroom. Generally unimproved.

SERVICES PROVIDED

None

COMMITTEE MEMBERS

CHAIRMAN

SURVEYOR

HOUSING PANEL MEMBER

A McCamley BA LLB NP

D Marshall FRICS

I Kitson

FAIR RENT	DATE OF DECISION	EFFECTIVE DATE
£3,180.00 p.a.	16 October 2009	16 October 2009

A McCamley

Chairman of Private Rented Housing Committee

16/x/09

Date

**STATEMENT OF REASONS
PRIVATE RENTED HOUSING COMMITTEE**

INSPECTION : 16th OCTOBER 2009

PROPERTY : 130 Buccleuch Street, Edinburgh

Introduction

1. The Committee comprised Mrs. Anne McCamley, Chairman, Mr. D. Marshall, Surveyor and Miss I. Kitson (Housing Member).
2. The Landlord is Northumberland and Durham Property Trust Limited represented by Redpath Bruce Property Management. The Tenant is Mr. B. Porterfield. This reference for the Determination of a fair rent under the Rent (Scotland) Act 1984 is in respect of a ground floor flat at 130 Buccleuch Street, Edinburgh and arises from dissatisfaction on the part of the Tenant
3. The previous annual rent was £2950.00 per annum. The Landlord applied for a rent of £3,450.00 per annum. The rent determined by the Rent Officer was £3,250.00 per annum.

Inspection

4. The property was inspected by the Committee on the morning of the 16th of October 2009 in the presence of the Tenant. Although the Landlord was invited to the inspection and to the Hearing he did not attend.
5. The flat is situated in the University district of the City of Edinburgh at the extreme east end of The Meadows. It fronts directly on to the pavement of Buccleuch Street which is busy with both pedestrian and vehicular traffic. There are shops nearby and the flat is within walking distance of the vibrant area of Newington.

6. The reference property is on the ground floor of a traditional tenement block. There is no front garden. The rear garden cannot be accessed from the property (except by climbing out of the rear windows). There are public toilets abutting the wall of the back garden and a public path therefrom and thereto. The kitchen and front bedroom face directly onto the public pavement.
7. The property has three rooms with a kitchen and bathroom. There is a substantial box room and other storage space. The sitting room and back bedroom are generously proportioned. The front bedroom is smaller. The kitchen is large but very poorly fitted. There is an internal bathroom with a shower. The bathroom has not been re-tiled after the Landlord carried out some modernisation work three years ago.
8. Overall the property is suffering a significant degree of dampness and any damp proofing work has not resolved the rising and penetrating damp. This dampness is affecting the Tenant's enjoyment of the property and impacts on every room. Black mould is growing on every wall in every room. Fungus is apparent on some walls. The flat does not benefit from central heating, indeed the only heating is from a gas fire in the sitting room. The flat is a "cold water let" although the Tenant has put in a hot water system of a sort. The wiring is dated and would be unlikely to meet current standards. The Landlord has provided a new sink in the kitchen which remains otherwise unimproved. New single glazed windows have been installed at the front of the flat. the rear windows have not been replaced. All the windows are ill fitting and require to be draught proofed.
9. A Hearing was held at the request of the Tenant. For the convenience of the Committee and the courtesy of the Tenant the Hearing was held in the flat immediately after the inspection.

10. Mr. Porterfield asked the Committee to consider the following:-

- There is considerable dampness in the flat.
- The new front windows only open at the bottom which is very inconvenient when the windows are hard onto the pavement.
- The new bathroom was installed because old shower tiles had collapsed as a result of dampness on the walls. The bathroom has not been re-tiled since the new units were installed.
- Part of the ceiling in the small bedroom has collapsed and the Landlord has not made good the damage in any permanent way. A sheet of builder's material has been tacked over the hole.

The Chairman thanked Mr. Porterfield for his submission and for allowing the hearing to take place in his flat.

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 dwellinghouse 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. Improvements by the Landlord are taken into account. In reaching its determination, the Committee applied with its duty as set out above.

12. The Committee considered carefully all the evidence presented, together with the observations made by Committee Members at the internal and external 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 any scarcity element and making any appropriate disregard 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 properties.

Mindful of the observations by the Lord President in *Western Heritable Investment Company Limited 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, in the absence of any evidence from the parties, the Committee was obliged to rely on its own knowledge and experience of the rents passing and being asked in the local market. We did not have available to us any up to date evidence as to registered rents of comparable regulated tenancies. We proceeded to consider the case using the market rent less any discount for scarcity approach.

13. Using its knowledge and experience and having regard to other properties available for let in the area the Committee considered that a market rent for a double glazed and centrally heated unfurnished three roomed flat in the locality of the present property would be a minimum of £550.00 per month. We arrived at this figure after researching the rental market through newspaper advertisements, the internet, and having made enquiries with letting agents. However, the reference property is in a deplorable state of repair. Dampness is seeping through the walls, a bedroom ceiling is in a precarious state and the bathroom and kitchen are barely functional. There is no central heating and no double glazing. The bathroom is functional but remains untiled after a period of three years. The kitchen is damp . We noted floor coverings would require to be provided by the Landlord. Numerous smaller repairs are required to the flat. Given the extremely poor condition of the flat we doubt if the landlord would find another tenant in the current market place. We considered a total of £285.00 per month should be deducted from the open market figure to take account of these factors leaving a rental of £265.00 per month.
14. We then proceed to consider whether any further deductions required to be made in terms of Section 48(2) (the factor commonly referred to as "scarcity") of the 1984 Act but the Committee was satisfied that in the area of Edinburgh as a whole there could not be said to be scarcity of similar properties to let at the present time. The Committee was satisfied that there is an equilibrium in the market at the moment.
15. Having taken all relevant factors into account, the Committee determined that a fair rent for the property is £3,180.00 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.

16. The effective date is the 16th of October 2009.

A McCamley

Chairman,