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PRIVATE RENTED HOUSING PANEL

RENT (SCOTLAND) ACT 1984

Notification Of Decision By The Private Rented Housing Committee

REFERENCE NO:	OBJECTION RECEIVED	OBJECTION
RAC/PA16/778	26 July	Landlord

ADDRESS OF PREMISES

2/R, 5 Newton Street, Greenock, PA16 8UH

TENANT

Mr Downie

NAME AND ADDRESS OF LANDLORD	AGENT
Oak Tree H.A. 41 High Street Greenock PA15 1NR	N/A

DESCRIPTION OF PREMISES

Second floor traditional tenement flat circa 1890 with gas central heating and double glazing comprising living room with open plan kitchen, two bedrooms, and dark bathroom.

Gross floor area – 57 square metres.

SERVICES PROVIDED

Garden maintenance, communal lighting and door entry system.

COMMITTEE MEMBERS

CHAIRMAN	Mr S Walker LLB(Hons) Dip LP ACI Arb
SURVEYOR	Mr M Links FRICS
HOUSING PANEL MEMBER	Mr J Riach

FAIR RENT	DATE OF DECISION	EFFECTIVE DATE
£ 3900.00 p.a. (Incl. of services of less than 5%)	29 September 2010	29 September 2010

S Walker

Chairman of Private Rented Housing Committee

4th Oct, 2010

Date

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PRIVATE RENTED HOUSING COMMITTEE

STATEMENT OF REASONS

PROPERTIES:

46 Finnart Street, G/L, Greenock
46 Finnart Street, 1/L, Greenock
46 Finnart Street, 1/R, Greenock
48 Finnart Street, G/L, Greenock
48 Finnart Street, 2/R, Greenock
50 Finnart Street, G/L, Greenock
50 Finnart Street, 1/R, Greenock
5 Newton Street, 2/L, Greenock
5 Newton Street, 2/R, Greenock

INSPECTION:

29th September, 2010

STATEMENT OF REASONS

INTRODUCTION

1. This is a reference to the Private Rented Housing Committee for the determination of a fair rent under the Rent (Scotland) Act 1984 by the landlord, Oak Tree Housing Association Ltd ('the landlord'), in relation to the properties at;-

46 Finnart Street, G/L, Greenock ('property 1')
46 Finnart Street, 1/L, Greenock ('property 2')
46 Finnart Street, 1/R, Greenock ('property 3')
48 Finnart Street, G/L, Greenock ('property 4')
48 Finnart Street, 2/R, Greenock ('property 5')
50 Finnart Street, G/L, Greenock ('property 6')
50 Finnart Street, 1/R, Greenock ('property 7')
5 Newton Street, 2/L, Greenock ('property 8')
5 Newton Street, 2/R, Greenock ('property 9')

Property 1

2. The original rent paid by the tenant, Miss E Paul ('the tenant') in respect of property 1 was £2,600.10 per year. The landlord applied for rents of £3,364.20 per year for the property by application dated 4th March, 2010. The Rent Officer determined a rent of £3,094.20 per year. The landlord referred the Rent Officer's determination to the Private Rented Housing Committee.

Property 2

3. The original rent paid by the tenant, Mrs M McKie ('the tenant') in respect of property 2 was £2,576,00 per year. The landlord applied for rents of £3,364.20 per year for the property by application dated 27th April, 2010. The Rent Officer determined a rent of £3,014.00 per year. The landlord referred the Rent Officer's determination to the Private Rented Housing Committee.

Property 3

4. The original rent paid by the tenant, Mrs E Bain ('the tenant') in respect of property 3 was £2,300.10 per year. The landlord applied for rents of £2,911.32 per year for the property by application dated 4th March, 2010. The Rent Officer determined a rent of £2,748.96 per year. The landlord referred the Rent Officer's determination to the Private Rented Housing Committee.

Property 4

5. The original rent paid by the tenant, Mr W Gillen ('the tenant') in respect of property 4 was £2,576.00 per year. The landlord applied for rents of £3,364.20 per year for the property by application dated 27th April, 2010. The Rent Officer determined a rent of £3,014.00 per year. The landlord referred the Rent Officer's determination to the Private Rented Housing Committee.

Property 5

6. The original rent paid by the tenant, Miss M Ferguson ('the tenant') in respect of property 5 was £2,284.00 per year. The landlord applied for rents of £3,036.24 per year for the property by application dated 27th April, 2010. The Rent Officer determined a rent of £2,672.00 per year. The landlord referred the Rent Officer's determination to the Private Rented Housing Committee.

Property 6

7. The original rent paid by the tenant, Mrs J Sinclair ('the tenant') in respect of property 6 was £2,600.10 per year. The landlord applied for rents of £3,364.20 per year for the property by application dated 4th March, 2010. The Rent Officer determined a rent of £3,094.20 per year. The landlord referred the Rent Officer's determination to the Private Rented Housing Committee.

Property 7

8. The original rent paid by the tenant, Mrs B Robertson ('the tenant') in respect of property 7 was £2,284.00 per year. The landlord applied for rents of £3,036.24 per year for the property by application dated 27th April, 2010. The Rent Officer determined a rent of £2,672.00 per year. The landlord referred the Rent Officer's determination to the Private Rented Housing Committee.

Property 8

9. The original rent paid by the tenant, Mr & Mrs J Brown ('the tenants') in respect of property 8 was £2,457.48 per year. The landlord applied for rents of £3,114.36 per year for the property by application dated 4th March, 2010. The Rent Officer determined a rent of £2,970.84 per year. The landlord referred the Rent Officer's determination to the Private Rented Housing Committee.

Property 9

10. The original rent paid by the tenant, Mr T Downie ('the tenant') in respect of property 9 was £2,457.48 per year. The landlord applied for rents of £3,114.24 per year for the property by application dated 4th March, 2010. The Rent Officer determined a rent of £2,970.84 per year. The landlord referred the Rent Officer's determination to the Private Rented Housing Committee.

11. The tenants attended each inspection. None of the parties requested a Hearing.

12. The Committee comprised

Chairman	Mr. S Walker
Surveyor	Mr M Links
Housing Member	Mr J Riach

THE DOCUMENTATION

13. The Committee considered all the documents referred to it by the parties. In particular, the application and the written representations from both the tenants and landlord together. The Committee also had evidence before it of registered comparable rents.

THE INSPECTION

14. Mr Robert Shea, Clerk to Committee, introduced the Committee to all the tenants. The inspection took place on 29th September, 2010.

DESCRIPTION OF THE PROPERTY

Property 1

15. The property comprises of a ground floor traditional tenement flat circa 1890 with electric storage heating and double glazing comprising living room, two bedrooms, dining kitchen and dark bathroom with a gross floor area of 88 square metres or thereby.

Property 2

16. The property comprises of a first floor traditional tenement flat circa 1890 with electric storage heating and double glazing comprising living room, two bedrooms, dining kitchen and dark bathroom with a gross floor area of 88 square metres or thereby.

Property 3

17. The property comprises of a first floor traditional tenement flat circa 1890 with electric storage heating and double glazing comprising living room, one bedroom, dining kitchen and dark bathroom with a gross floor area of 57 square metres or thereby.

Property 4

18. The property comprises of a ground floor traditional tenement flat circa 1890 with electric storage heating and double glazing comprising living room, two bedrooms, dining kitchen and dark bathroom with a gross floor area of 88 square metres or thereby.

Property 5

19. The property comprises of a second floor traditional tenement flat circa 1890 with electric storage heating and double glazing comprising living room, one bedroom, dining kitchen and dark bathroom with a gross floor area of 57 square metres or thereby.

Property 6

20. The property comprises of a ground floor traditional tenement flat circa 1890 with electric storage heating and double glazing comprising living room, two bedrooms, dining kitchen and dark bathroom with a gross floor area of 88 square metres or thereby.

Property 7

21. The property comprises of a first floor traditional tenement flat circa 1890 with electric storage heating and double glazing comprising living room, one bedroom, dining kitchen and dark bathroom with a gross floor area of 57 square metres or thereby.

Property 8

22. The property comprises of a second floor traditional tenement flat circa 1890 with gas central heating and double glazing comprising living room with open plan kitchen, two bedrooms, and dark bathroom with a gross floor area of 57 square metres or thereby.

Property 9

23. The property comprises of a second floor traditional tenement flat circa 1890 with gas central heating and double glazing comprising living

room with open plan kitchen, two bedrooms, and dark bathroom with a gross floor area of 57 square metres or thereby.

DECISIONS AND REASONS

24. Section 48 of that Act as amended provides that:

48.— Determination of fair rent.

(1) In determining for the purposes of this Part of this Act what rent is or would be a fair rent under a regulated tenancy of a dwelling-house, it shall be the duty of the rent officer or, as the case may be, of the private rented housing committee, subject to the provisions of this section, to have regard to all 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, to the quantity, quality and condition of the furniture.

(2) 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 on the terms (other than those relating to rent) of the regulated tenancy is not substantially greater than the number of such dwelling-houses in the locality which are available for letting on such terms.

(3) There shall be disregarded—

(a) any disrepair or other defect attributable to a failure by the tenant under the regulated tenancy or any predecessor in title of his to comply with any terms thereof, and

(b) any improvement (including any improvement to the furniture provided for use under the tenancy), or the replacement of any fixture or fitting carried out, otherwise than in pursuance of the terms of the tenancy, by the tenant under the regulated tenancy or any predecessor in title of his, and

(c) if any furniture is provided for use under the regulated tenancy, any deterioration in the condition of the furniture due to any ill-treatment by the tenant, any person residing or lodging with him, or any sub-tenant of his.

(4) In the application of this section to a converted tenancy, the references in subsection (3) above to the tenant under the regulated tenancy shall include references to the tenant

under the tenancy before the conversion.

25. 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".*

26. 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 (other than some normal uneven settlement for buildings of this age), and no furniture is provided in terms of the tenancy. Improvements by the landlord should be taken into account. In reaching its determination, the Committee complied with its duty as set out *supra*.

27. The Committee considered carefully all the evidence presented, together with the observations made by the tenants and 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.

28. 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.

29. In this case, none of the parties produced evidence as to market rents of comparable properties in respect of properties. The Committee had two comparable properties at 26 Newton Street, Greenock comprising of two bedrooms where a registered rent decision fixed these rents at £4,030.00 on 25th November, 2009.

30. 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 had the benefit of its own knowledge and experience of the rents passing and being asked in the local market. In these circumstances, the Committee decided that the best method to use in this case was the market rent less any discount for scarcity method at (b) *supra*.

31. The Committee from its own experience, knowledge and information available on the internet and from local letting agents considered that comparable properties for the rental of 1 bedroom properties in the Greenock area ranged from £325.00 pcm to £375.00 pcm and 2 bedroom properties in the Greenock area ranged from £425.00 pcm to £550.00 pcm. The Committee was of the opinion that the appropriate market rent in respect of an average 1 bedroom property was an average of £340.00 pcm and an average 2 bedroom property was an average of £450.00 pcm.

32. Accordingly, the Committee determines that the appropriate market rent in respect of properties 3, 5 and 7 is £340.00 pcm (£4,080.00 per year) and in respect of properties 1, 2, 4 and 6 is £450.00 pcm (£5,400.00 per year). The Committee considers that properties 8 and 9

were smaller than an average 2 bedroom property and had a small kitchenette and so determines that an appropriate market rent in respect of these properties is £360.00 pcm (£4,320.00 per year).

33. 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.

34. The Committee considered whether any discount should be made for scarcity in this case, but was satisfied that in the area of Greenock as a whole, there could not be said to be scarcity of similar properties to let at the present time. On the contrary, there appears 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.

35. The Committee considered that a number of deductions should be made to take account of improvements any new tenant would expect. These are as follows;-

Deductions for Properties 3, 5 & 7

36. The Committee further considered that a deduction was appropriate to reflect the fact that any new tenant would require improvements to the kitchen, electric heating, carpets and white goods of approximately £480.00 per year.

Deductions for Properties 1, 2, 4 & 6

37. The Committee further considered that a deduction was appropriate to reflect the fact that any new tenant would require improvements to the kitchen, electric heating, carpets and white goods of approximately £500.00 per year.

Deductions for Properties 8 & 9

38. The Committee further considered that a deduction was appropriate to reflect the fact that any new tenant would require improvements to the kitchen, carpets and white goods of approximately £420.00 per year.

Determination

39. Accordingly, having taken all relevant factors into account, the Committee determined that a Fair Rent for Properties 3, 5 & 7 is **£3,600.00** per year, for Properties 1, 2, 4 & 6 is **£4,900.00** and for Properties 8 & 9 is **£3,900.00**. In reaching this decision, 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

Signed S Walker

Steven P Walker
Advocate & Barrister

Chairman
Private Rented Housing Committee
13th October, 2010