



PRIVATE RENTED HOUSING PANEL

RENT (SCOTLAND) ACT 1984

Notification Of Decision By The Private Rented Housing Committee

| REFERENCE NO: | OBJECTION RECEIVED | OBJECTION |
|---------------|--------------------|-----------|
| RAC/EH4/868 | 15 October 2012 | Tenant |

ADDRESS OF PREMISES

39H St Bernard's Crescent, Edinburgh, EH4 1NR,

TENANT

Miss C MacKay

| NAME AND ADDRESS OF LANDLORD | AGENT |
|--|-------|
| Link Housing Association Ltd Watling House Callendar Business Park Falkirk FK1 1XR | None |

DESCRIPTION OF PREMISES

Second floor flat in 3 storey sandstone and tile tenement C.1880 comprising 4 rooms, kitchen and bathroom.

Remarks:

SERVICES PROVIDED

Common garden in St Bernard's Crescent, maintained by St Bernard's Crescent Association

Common stair lighting

COMMITTEE MEMBERS

| | |
|----------------------|------------|
| CHAIRMAN | D Bartos |
| SURVEYOR | D Marshall |
| HOUSING PANEL MEMBER | C Anderson |

| FAIR RENT | DATE OF DECISION | EFFECTIVE DATE |
|------------------|------------------|----------------|
| £ 6 124. 68 p.a. | 15 March 2013 | 2 October 2012 |

*services: inclusive of variable services of £ 124. 68

D Bartos

Chairman of Private Rented Housing Committee

15/3/2013

Date



Statement of Reasons for Decision of the Private Rented Housing Committee

(Hereinafter referred to as "the Committee")

Under paragraph 10(1) of schedule 5 to the Rent (Scotland) Act 1984

Case Reference Number: RAC/EH4/868

Re : Property at 39H St Bernard's Crescent, Edinburgh EH4 1NR

The Parties:-

Link Housing Association Limited, Callendar Business Park, Falkirk FK1 1XR ("the Landlords")

Christeen MacKay, 39H St Bernard's Crescent, Edinburgh EH4 1NR ("the Tenant")

The Committee comprised:-

| | |
|------------------------|-------------------|
| Mr David Bartos | - Chairperson |
| Mr Donald Marshall | - Surveyor member |
| Mrs Christine Anderson | - Housing member |

Background:-

1. Christeen MacKay is the tenant of the flat at 39 St Bernard's Crescent, Edinburgh by virtue of a tenancy agreement with the Landlords dated 2 August 1999. This tenancy agreement replaced the previous tenancy agreement which began in or about January 1970. The flat was and is owned by a housing association. Accordingly the previous tenancy of the house was covered by sections 55 to 59 in Part VI of the Rent (Scotland) Act 1984 and its rent was registrable under section 56 of the 1984 Act. Those provisions of the 1984 Act were preserved for the existing tenancy by virtue of section 43 of the Housing (Scotland) Act 1988. The tenancy is unfurnished.

2. The previous registered rent for the flat was £ 229. 59 per calendar month or £ 2 755.08 per annum inclusive of service charge. The Landlords applied to the Rent Officer for registration of a rent of £ 3 054.21 per annum inclusive of any services or furniture to be registered as a fair rent. In their application the Landlords specified the fair charge for the services element to be £ 57. 94 per annum as a variable amount.
3. On 2 October 2012 the Rent Officer registered a rent of £ 2 948. 52 per annum including a variable amount for services of £ 57. 94 per annum for the property. This was intimated to the parties by notice of 2 October 2012. The Tenant objected to this by letter of appeal to the Rent Valuation Officer dated 12 October 2012. The Rent Officer referred the objections to the Committee.
4. The Committee attended outside the tenement of which the flat forms part on 8 March 2013. The Tenant was not present. By her letter dated 25 February 2013 the Tenant informed the Committee that she did not wish to have them visit the flat. She requested that the Committee not come to the flat. She wrote, "However you are free to propose an increase in rent to the owners of the property without an inspection.". On or about 28th February the Tenant telephoned the clerk and indicated that she was upset at the thought of the Committee coming to visit the flat. Following this the clerk wrote to the Tenant informing her that the Committee would not seek access on 8 March but would confine themselves to an external inspection of the tenement. The Tenant was also informed that she was at liberty to change her mind and to contact the PRHP office to that effect. It was stressed to the Tenant in the letter that the role of the Committee was not to propose a rent to the owners but to fix a fair rent, including sums payable for services which rent was not restricted by the Landlords' suggested level. The Tenant did not contact the PRHP office to indicate a change of mind. Accordingly the Committee did not seek access to the flat and confined themselves to an inspection of the tenement from the outside. The Landlords were represented by John Smith, Repairs Service Co-ordinator at the external inspection.
5. The weather was overcast with a light drizzle. No. 39 St Bernard's Crescent is part of a mid 19th century blonde sandstone tenement block on the north-west side and at the west end of St Bernard's Terrace in the Stockbridge district of Edinburgh. The tenement block comprises 3 floors and in addition a basement and attic floors. The attic floor has dormer windows to the front and rear. The other door entry to the block is No. 37, to the east of No. 39. To the west of the tenement and physically attached to it is a modern 1970s tenement of

4 floors. The 1970s block has office premises on the ground floor and flats in the upper floors. There was no apparent means of access to these flats from a door entry in the block itself. The Committee inferred that access to these was gained through the communal door entry at No. 39. The communal door entry at No. 39 provided for 11 flats although the entry system appeared to be old and in need of upgrade. No. 39H appeared therefore to be one of 11 flats taking entry from the stairwell at No. 39. This is confirmed by the Tenant's letters to the Rent Valuation Officer of 22 August 2012 (and to the PRHP on 21 October 2012) where she mentions that Link own four of the flats and seven are owned by other landlords. Externally the structural condition of the tenement appeared to be good and there was nothing to suggest that it was not wind and watertight. The tenement is situated about a quarter of a mile south of the shopping area of Stockbridge and about 1 mile north of the centre of Edinburgh. It is a popular residential area with a variety of accommodation available.

6. The flat is within the 19th century tenement. It consists of a living room, kitchen, one double bedroom and a bathroom. In their application for registration the Landlords describe the flat as being on the "third floor". The Tenant in her said letter refers to having been flooded and the Landlords in a note of Comments on the tenant's objections enclosed with their letter to the Committee's clerk dated 8 November 2012 note that the flooding originated from the tenant above the flat. The Committee infer from this that 39H is a flat situated on the second floor above the ground or door entry-level floor of the tenement.
7. The Committee were prevented from obtaining access to the flat. While the Tenant was perfectly within her rights to refuse entry, the inevitable consequence was that the Committee were unable to assess for themselves either the layout or the internal condition or state of repair of the flat or its aspect. Nor were they able to make an assessment of the size of its rooms. In her letter of 22nd August the Tenant made a number of comments on the state of the windows, flooding, and cooking smells and noise. However as the Tenant prevented the Committee from gaining access to the flat the Committee were not in a position to come to any view in relation to these comments. In correspondence the Landlords indicated that they too had been refused access and so they were unable to offer to provide evidence on the condition of the windows and the smells and noise. The Landlords contended that the flooding had taken place in 1999 to 2006.
8. The Committee took account of their external inspection and in addition the following documentary evidence : -

- Tenancy agreement for the property
- Copy form RR1 being the Landlords' application for registration of rent for the properties dated 14 August 2012
- Copy letter from the Tenant to the Rent Valuation Officer dated 22 August 2012
- Copy extract from the Rent Register for the property showing among other matters the rent registered by the Rent Officer for the property on 2 October 2012
- Copy letter from the Tenant to the Rent Valuation Officer dated 12 October 2012
- Copy letter from the Rent Officer to PRHP dated 15 October 2012
- Copy form from the Tenant to PRHP with attached letter dated 21 October 2012
- Copy letter from the Landlords to the Tenant dated 28 February 2012
- Copy notice from St Bernard's Housing Association to the Landlords received on 14 November 2011 with income and expenditure account
- Copy invoices and statements of account from Southern Electric addressed to the Landlords for the period 13 October 2010 to 18 October 2011 for stair lighting, 39 St Bernard's Crescent
- Copy letter from the Landlords to the PRHP dated 8 November 2012 with attached Comments on Objection

The Hearing

9. Both parties were given notice of the opportunity to attend a hearing at Thistle House, 92 Haymarket Terrace, Edinburgh EH12 5HE on 8 March 2013 at 11 a.m., but neither party took this opportunity.

Reasons for Decision

10. In considering the objections of the Tenant to the rent registered by the Rent Officer the Committee requires to determine for itself what rent is or would be a fair rent under a regulated tenancy of the property in question. If the Committee determine that the rent registered by the Rent Officer is a fair rent then they must confirm the rent but if they take the view that the rent so registered is not a fair rent, then they must determine the fair rent for the property in question. That is the obligation of the Committee to determine the fair rent under section 48 as applied by section 56, of the Rent (Scotland) Act 1984. It follows

that the Committee are not bound by the rent registered by the Rent Officer to which the Tenant has objected or any previous rent registered by the Rent Officer.

11. In determining the fair rent the Committee is obliged to have regard to all 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 dwellinghouse in question and to its state of repair, and if any furniture is provided under the tenancy to the quality, quantity and condition of the furniture. In determining the fair rent the Committee are obliged to assume that the number of persons seeking to become tenants of similar properties in the locality on the terms (other than those relating to rent) of the tenancy is not substantially greater than the number of dwellinghouses in the locality which are available for letting on such terms. The Committee are obliged to disregard any improvement or the replacement of any fixture or fitting carried out, otherwise than in pursuance of the tenancy by the tenant or any predecessor of his under the tenancy.
12. The Committee considered which method should be applied for determining a fair rent. The three accepted methods are :
 - (a) having regard to registered rents of comparable dwellinghouses in the area;
 - (b) taking market rents and deducting an amount in respect of improvement and the like which requires to be disregarded and an amount if the market rents did not reflect the assumption as to demand not being substantially greater than supply (the assumption as to absence of scarcity) and
 - (c) calculating the appropriate return based on the capital value of the property, taking into account the assumed absence of scarcity.
13. None of these methods is regarded as the primary method.
14. No comparable registered rents were made available to the Committee. The calculation of an appropriate return based on the capital value of the property did not appear appropriate given (1) the imprecision of such a calculation which invariably requires the use of contentious variables (in particular the decapitalisation rate) compared to the relative ease of using comparable rents and (2) the readily available evidence of open market let property in the area. Accordingly, the Committee considered that to determine a fair rent it was appropriate to compare open market rents for similar properties in the locality of the property.

15. Neither the Landlords nor the Tenant provided any evidence to the Committee of comparable lets at all. The market for one bedroom flats in the area is buoyant. At the top end of the range an unfurnished 1 bedroom flat in Hamilton Place and a similar size furnished flat at Leslie Place were being advertised at £ 640 per month. Furnished one bedroom flats in Dean Park Street were being advertised at £ 550 per month and modernised unfurnished one bedroom flats at Patriothall (off Hamilton Place) were being advertised at £ 525 and £ 535 per month. At the lower end of the range a studio flat at Henderson Row was being advertised at £ 475 per month.
16. The Committee was not addressed on whether or not the market rents for comparable properties in the locality reflected the demand for tenancies of such properties being not substantially greater than supply (the absence of scarcity). However using its knowledge and experience the Committee considered that there was no scarcity of such properties and that the assumption of an absence of scarcity was reflected in the market rents for comparable tenancies in the locality which it took as the area of New Town, Stockbridge, Comely Bank and Learmonth.
17. The denial by the Tenant of access to the flat has had an effect on the way in which the Committee reached its decision. The Committee was not able to reach any factual conclusions in relation to the complaints made by the Tenant. In effect the Committee had to take them as not proven. The lack of access meant that the Committee could not make a detailed comparison of the flat with the comparables. The Committee was not able to assess whether there should be any disregards under section 48(3) of the 1984 Act. From an external inspection the windows of the flat did not appear to be in disrepair, although the Committee noted that the Landlords have planned to have them replaced, although they too have been denied access. The door entry system for No. 39 appeared old and worn and in need of upgrade or replacement. The Committee was obliged to take a broad approach to determining a fair rent. In these circumstances the Committee exercising its expertise determined that a fair rent for the flat would be £ 6 000 per annum being £ 500 per month.
18. The fair rent to be determined by the Committee also includes any amount payable by the Tenant to the Landlords whether under the tenancy agreement or separate agreements or otherwise which are fairly attributable to the provision of services by the Landlords to the Tenant. The Committee noted that the tenancy agreement provided that the Landlords were entitled to provide services in connection with the tenancy as set out in the schedule to the tenancy agreement and that it was a condition of the tenancy that the tenant pay for the

services. The tenancy agreement provided for the sums payable to the Landlords in respect of the services as varying according to the costs to the Landlords for the services varying from time to time.

19. The Committee was not provided with the schedule but was provided with documentation relating to two services. Firstly there are common garden services being the annual subscription payable to St Bernard's Housing Association of £ 30 per flat which allows the Tenant access to the garden at St Bernard's Crescent and provides for its maintenance. Secondly there is the provision of stair lighting for the communal stair of 39 St Bernard's Crescent. The Committee was supplied with invoices and statements of account addressed to the Landlords from Southern Electric for electricity for "Stair Lighting, 39 St Bernard's Crescent". The invoices covered a period of approximately one year ending 18th October 2011. Dividing the total of the invoices gave a figure of £ 86. 88 per month being paid by the Landlords in respect of the stair lighting.
20. The difficulty for the Committee was in deciding the share to be met by No. 39H from this monthly total. The evidence from the Tenant's letter of 22 August and from the Committee's own inspection of the door entry system suggest that there are 11 flats at No. 39. The St Bernard's Association Subscription demand and the Tenant's letter indicate only 4 of these are owned by the Landlords. The Landlords in their most recent demand for rent from the Tenant sought a figure of £ 4. 84 per month in respect of services. The Committee was not provided with details of any contractual apportionment in the tenancy. Given that a division of the overall monthly figure by 4 would be substantially in excess of the sum demanded by the Landlords the Committee took the view that the fairest division of the overall figure would be to apportion one eleventh of it to No. 39H.
21. Taking the apportioned figure of 7. 89 per month in respect of the stair lighting and £ 2. 50 per month in respect of the garden access and maintenance, that gives a figure of £ 124. 68 per annum as the variable annual figure in respect of services. That is equivalent to £ 10. 39 per month as fairly attributable to services which the tenant of the property receives from the Landlords.
22. The Committee, after considering all the available evidence determined that the rent registered by the Rent Officer was not a fair rent and that a fair rent for 39H St Bernard's Crescent was £ 6 124. 68 per annum inclusive of variable services of £ 124. 68.
23. In reaching this decision the Committee had regard to all of the requirements of section 48 of the 1984 Act which it required to apply by

virtue of section 56 of that Act. The Committee is conscious that their determination is significantly higher than that registered by the Rent Officer either now or in 2009 or as requested by the Landlords. However the Committee is obliged by section 48 to reach its own view independently of the Rent Officer or the Landlords' request and furthermore was denied access by the Tenant.

- 24. As the Landlords are a housing association, section 60(2) of that Act applies and the date of registration shall be deemed to be the date on which the rent determined by the Rent Officer was registered, namely 2 October 2012.

D Bartos

Signed Date: 15 March 2013

David Bartos, Chairperson