

RENT ASSESSMENT PANEL FOR SCOTLAND

RENT (SCOTLAND) ACT 1984

NOTIFICATION OF DECISION BY THE RENT ASSESSMENT COMMITTEE

REFERENCE NO.	OBJECTION RECEIVED	OBJECTION
RAC/G42/393	31 October 2005	Landlord

ADDRESS OF PREMISES
M/D, 98 Batson Street, Glasgow, G42 7HG

TENANT
Mr & Mrs Brown

NAME AND ADDRESS OF LANDLORD/AGENT
Govanhill Housing Association, 151 Coplaw Street, Glasgow, G42 7DE

DESCRIPTION OF PREMISES
Terrace house C.1995 with central heating, comprising 4 rooms, kitchen and bathroom.

SERVICES PROVIDED
Streetscape maintenance

COMMITTEE MEMBERS

CHAIRMAN	Mrs I Montgomery BA(Hons) NP
PROFESSIONAL MEMBER	Mr G Campbell FRICS
LAY MEMBER	Mrs C Anderson

FAIR RENT	DATE OF DECISION	EFFECTIVE DATE
£3,174.65 per annum (inclusive of services less than 5%)	10 January 2006	28 October 2005

I Montgomery

Chairman of the Rent Assessment Committee

10th January 2006
Date

RENT ASSESSMENT COMMITTEE
STATEMENT OF REASONS
INSPECTION: 10TH JANUARY 2006

PROPERTY: - M/D, 98 BATSON STREET, GLASGOW G42 7HG.

INTRODUCTION

1. The Committee comprised Mrs I.R. Montgomery (Chairman), Mr G. Campbell (Surveyor) and Mrs C. Anderson. The landlord is Govanhill Housing Association, 151 Coplaw Street, Glasgow G42 7DE. The tenants are Mr and Mrs Brown. This reference to the Rent Assessment Committee for the determination of a Fair Rent under the Rent (Scotland) Act 1984 in respect of the terraced house situated at M/D, 98 Batson Street, Glasgow G42 7HG arises from dissatisfaction on the part of the landlord.
2. The previous rent was £2,725.88 per annum. The landlord applied for a rent of £3,401.32 per annum. The rent determined by the Rent Officer was £3,074.65 per annum.

DESCRIPTION OF THE PROPERTY

3. On the morning of the 10th January 2006, the Committee attended to inspect the house at M/D, 98 Batson Street, Glasgow G42 7HG but were unable to gain access as there appeared to be no-one at home. The description given is taken from the Committee's external inspection of the property and the information contained within the papers. This property is situated in a residential area with good access to shopping and travel facilities. It is a modern terraced property constructed of red brick built in about 1995. The roof is tiled. The dwelling house appeared to be in good structural condition on the date of the inspection. There is a back court to the rear of the property and a small area of garden ground to the front. The property is double-glazed throughout and has gas central heating. The accommodation extends to four rooms, a kitchen and a bathroom.
4. The landlord was not represented at the inspection.

DOCUMENTATION

5. In addition to the Inspection Report, case summary sheet and extract from the Rent Register, the Committee considered:
 - Form RRI application;
 - Letters from landlord dated 25th October 2005;
 - Letter from Rent Officer dated 28th October 2005;
 - Written representations from the landlord;
 - Copy tenancy agreement.
 - Written representations from the tenant.

6. The committee was provided by the clerk with a list of recently registered rent decisions, containing details of four properties, which were potentially comparable to the property under consideration. The Extract from the Rent register relative to each of these properties was before the Committee.

7. The same Committee were considering four other regulated tenancies on the same day, all owned by the same Housing Association. Of these properties, two are of similar construction and age to this property, namely 88 Batson Street, Glasgow and 123 Jamieson Street, Glasgow. The other two properties are tenement flats of different character and design. The Committee considered that the two tenement properties should be considered together, while the three modern terraced houses should be considered separately as another group. The Committee duly followed this approach.

HEARING

8. The landlord had requested a hearing. None of the tenants chose to attend the hearing.

9. Mr Alan McDonald and Ms Margaret Sharkey attended the hearing on behalf of the landlord. Mr McDonald explained that Ms Sharkey supported him in an operational capacity. He addressed the Committee and explained that the landlord had appealed because the Housing Association considered that the

rental figures being received for regulated tenancies were too low. He explained that the rent applied for by the landlords had been arrived at by calculating the average rentals over a number of units of similar size properties. He confirmed that the figures used to obtain this average included rental figures from both regulated and assured tenancies. He stated that the Housing Association wanted to keep rents affordable for all, but wished the rents paid by tenants to be more equitably divided. He argued that rents should be assessed on the basis of property size, and argued that it was unfair that regulated tenants should pay less rent than their neighbour across the landing for a property of equal or greater size and amenity. He submitted that Govanhill Housing Association provides a high level of accommodation and a high level of service. He advised that there is a huge demand for the properties on their books and they are unable to meet that demand. He advised the Committee that the Govanhill Housing Association own 1600 units and have over 700 people on their waiting list. He advised that, although there was an increasing supply of property for rent in the area, this was not so in relation to high standard accommodation. Mr McDonald was invited to address the Committee on the level of scarcity, if any, now prevailing in the Glasgow area but stated that he was unable to do so. He was able to advise the Committee that two new letting agencies had been set up in the Govanhill area which he suggested indicated that more rented accommodation was becoming available. He submitted that the Association had a major repair programme in place and needed to keep money coming through in order to enable them to follow that programme. He was able to provide some general information about the various properties shown on the list of recently registered rent decisions provided by the clerk.

THE DECISION

10. 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)). There were no such defects in this particular case, nor was any furniture provided. Improvements by the landlord are taken into account. In reaching its determination, the Committee complied with its duty as set out above.

11. 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.

12. 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.

13. In this case, the Committee was provided with no evidence from either the landlord or any of the tenants relative to market rents being paid in the area. Although Mr McDonald estimated that terraced houses of this type would have a capital value of at least £100,000 he produced no documentary evidence in support of this estimate. In the absence of supporting documentation, however, the Committee considered the capital value offered by Mr McDonald to be speculative. Neither the landlord nor any of the tenants offered any submission on the question of the existence or non-existence of scarcity. Mr MacDonald argued that there should be greater parity between tenants in relation to the rental paid regardless of the type of tenure they enjoyed. That approach, however, does not give regard to the requirement of section 48(2) of the 1984 Act, which provides tenants of regulated tenancies with a measure of protection against inflated rental figures caused by demand from tenants exceeding the number of properties available. By virtue of section 48(2) the landlord is entitled to the benefit of the amenity of the property he owns, but not to benefit from the consequences of a lack of available properties in the housing market at a particular time. A fair rent under a regulated tenancy will *only* be the same as an open market rent *if* it is established that no scarcity exists in the relevant area at the relevant time.
14. The Committee had the benefit of a schedule showing other registered rents for properties reasonably close to, and of similar size to, the property in question, as produced and prepared by the Clerk. No documentary evidence in relation to market rents or capital values was produced by any of the parties. The parties did not address the issue of scarcity. 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 considered that it did not have enough evidence in this case to proceed by way of either the market rental less scarcity and allowable deductions approach or the capital value approach. In the particular

circumstances of this case, the Committee was satisfied that the best evidence available was that of registered rents actually passing in respect of comparable houses in the area. Both the landlord and the tenant had had notice of the clerk's list of potentially comparable properties and neither party had challenged it.

15. The houses situated at 0/1, 96 Batson Street and 102 Batson Street, Glasgow are located very close to the property now under consideration but are smaller in size. The properties at 117 Jamieson Street and 9 Hollybrook Street are the same size as M/D 98 Batson Street. All five properties have central heating. The property at 123 Jamieson Street is in a slightly more attractive development whereas the property at 9 Hollybrook Street is very similar to M/D 98 Batson Street. The effective date of the rent registered for 9 Hollybrook Street is only one month prior to the effective date of the rent to be registered for M/D, 98 Batson Street therefore no adjustment requires to be made to take account of the passage of time. Taking account of all these factors, the Committee concluded that 9 Hollybrook Street was the most comparable property to M/D, 98 Batson Street. Taking the registered rent fixed for the property at 9 Hollybrook Street and adjusting for services produced a figure of £3,174.65 which is higher than the figure set by the Rent Officer. The Committee considered that there was no justification for setting the rent for this property at less than 9 Hollybrook Street as the properties were very similar. Accordingly the Committee considered that the figure of £3,174.65 was a fair rent for M/D, 98 Batson Street. This is lower than the rent sought by the landlord, but the Committee was mindful that the landlord's figure was reached by averaging a number of rents, including market value rents. As it has not been established that there is no scarcity in the area, the method used by the landlord does not meet the requirements of the 1984 Act.
16. In Curtis V London RAC (1999) QB 99, Auld LJ stated that "if the use of registered rent comparables is under consideration, it is necessary to assess their current validity and applicability". The Committee followed that approach here.

17. The Committee was also considering the properties at 88 Batson Street and 123 Jamieson Street, Glasgow. The property at 88 Batson Street is smaller than M/D, 98 Batson Street and has one room less. The property at 123 Jamieson Street was in a particularly attractive development and had the advantage of occupying a corner site. Using the comparable registered rent method in relation to these properties brought out fair rents of £2,972.65 and £3,349.84 respectively per annum. The Committee was satisfied that the differential between these properties and that of M/D, 98 Batson Street was appropriate given the differences in size and desirability. The three properties were otherwise similar in relation to the valuation exercise this Committee was required to carry out.
18. 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 services are provided in relation to backcourt maintenance, door entry and central area maintenance. These services amount to £34.65 which is less than 5% of the registered rent. That being so, the cost of the provision of these services does not require to be noted separately on the register.
19. Having taken all relevant factors into account, the Committee determined that a Fair Rent for the property was £3,174.65 per annum. In reaching that decision, the Committee had regard to all the circumstances required to be taken into account in terms of sections 48 and 49 of the Rent (Scotland) Act 1984.
20. As the landlord is a Housing Association, subsection 60(2) of the 1984 Act applies and the effective date is the date on which the rent determined by the Rent Officer was registered, namely 28th October 2005.

Signed. **Montgomery**(Chairman)

Date..... 26th January 2006