

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) issued under section 26 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 on an application under Schedule 5, paragraph 8 of the Rent (Scotland) Act 1984

Chamber Ref: FTS/HPC/RR/22/0968

Property: Flat G/1, 6 Burnbank Gardens, Glasgow G20 6HB (“the Property”)

The Parties:

Glasgow West Housing Association, 5 Royal Crescent, Glasgow G3 7SL (“the Landlords”)

Ms Anne Cavana, Flat G/1, 6 Burnbank Gardens, Glasgow G20 6HB (“the Tenant”)

Tribunal members:

George Clark (Legal Member/Chairperson) and Mike Links (Ordinary/surveyor Member).

1. BACKGROUND

The tenancy commenced on 28 May 1979 and is a regulated tenancy in terms of the Rent (Scotland) Act 1984. The current rent is £4,632.60 per annum. The Landlords applied for the rent to be increased to £5,866.87 per annum. The Rent Officer registered a rent of £5,360.03 per annum with effect from 19 March 2022. The Landlords appealed the determination to the First-tier Tribunal but provided no representations in support of their appeal.

2. THE INSPECTION

The Tribunal inspected the Property on the morning of 3 August 2022. The Tenant was present at the inspection. The Landlords were neither present nor represented.

The Property comprises a ground floor flat in a two storey over basement mid-terraced dwellinghouse converted into a basement flat and one flat on each floor above. It is a traditionally built grey ashlar stone building circa 140 years old. The roof could not be inspected from ground level but is assumed to be pitched and tiled or slated, and the Property has double-glazed windows. The accommodation comprises an entrance hall, living room, two double bedrooms, fitted kitchen and shower-room with toilet and wash hand basin. There is full central heating with a combi boiler also providing hot water. The internal floor area is approximately 64 square metres. There is a communal garden to the rear and access to a large communal garden across the road from the Property. There is metered on-street parking.

The Tenant provided the carpets and floor coverings throughout the Property, the cooker and the white goods. She also installed the walk-in shower, which replaced a bath provided by the Landlords. The services provided by the Landlords are stair cleaning and grass cutting.

The Property is situated very close to Great Western Road, with good local amenities and transport links to the city centre.

The Tribunal noted at the inspection that there are smoke detectors in the living room and hallway and a heat detector and carbon monoxide monitor in the kitchen, where the central heating boiler is located. The Tenant advised the Tribunal that these had been installed earlier that morning.

3. THE HEARING

The Tenant did not attend the hearing and was not represented. The Landlords were represented by Ms Nicola Carrigan..

4. THE DECISION

The Tribunal had the following documents before it:-

- (i) a copy of form RR1, the Landlords' application for registration of the rent.
- (ii) a copy of the Rent Officer's determination.

The Tribunal considered these documents and rental evidence.

The Tribunal Members were mindful of the terms of section 48(1) of The Rent (Scotland) Act 1984, which requires the Tribunal 'to have regard to all of 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, and to the quantity, quality and condition of the furniture'. Also, Section 48(2) requires them to 'assume 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 which are available to let on such terms.'

The Tribunal recognised that the three methods of assessing the rent in Scotland are (1) determining the fair rent by reference to comparable registered rents in the area. (2) determining the fair rent by reference to market rents of comparable properties allowing for appropriate deductions for scarcity and (3) determining the fair rent by reference to the anticipated annual return based on the capital value of the property. They acknowledged that none of these methods is the primary method. The task of determining a fair rent is a composite task which takes account of these three methods. The appropriate method depends on the facts and circumstances of each case. The Tribunal also gave consideration to the observations of the Lord President in *Western Heritable Investment Co Ltd v Hunter* (2004) and also the case of *Wright v Elderpark Housing Association* (2017) which requires the Tribunal to proceed on the best available evidence and use the other evidence as a cross check, where possible.

The Tribunal considered the evidence of recent registered rents in the Fair Rent Register.

The Tribunal identified 7 potentially comparable properties in the G20 postcode area with registered fair rents.

Flat 1/1, 59 Braeside Street comprises 2 rooms, kitchen and bathroom. It has no heating. A rent of £5,200 was registered effective from 22 March 2022.

Basement flat, 14 Burnbank Gardens comprises 3 rooms, kitchen and bathroom and has central heating. A rent of £5,445.95 per annum was registered effective from 19 March 2022, with services assessed at £245.52.

Flat 2/2, 43 Burnbank Terrace comprises 2 rooms, kitchen and bathroom and has central heating. A rent of £4,340.28 per annum was registered effective from 19 March 2022, with services assessed at £207.48.

Maindoor flat, 39 Burnbank Terrace comprises 3 rooms, kitchen/diner and shower room and has central heating. A rent of £5,860 per annum was determined by the Tribunal on 26 July 2022, effective 19 March 2022.

Flat 2/2 Napiershall Street comprises 2 rooms, kitchen and bathroom and has central heating. A rent of £3,930.75 per annum was registered effective from 23 January 2022, with services assessed at £184.56.

24 Prince of Wales Gardens is a semi-detached 2-storey house, comprises 3 rooms, kitchenette and bathroom and has central heating. A rent of £5,796 per annum was registered effective from 19 November 2021.

The Tribunal also considered its recent determination in relation to Flat 1/1, 14 Burnbank Gardens, which comprises 3 rooms, kitchen and bathroom and has full central heating. On 13 July 2022, the Tribunal determined a rent of £5,560.95 per annum effective 1 August 2022.

The Tribunal also considered the evidence of open market rents.

The Tribunal found no directly comparable properties currently or recently available on the open market.

Scarcity

As already noted, when the Tribunal fix a fair rent they must do so on an assumption that the number of persons seeking to become tenants of similar properties in the locality of the Property is not substantially higher than the number of similar dwelling houses which are available for lease. The Tribunal had no evidence before it that indicated there was not a reasonable balance between supply and demand in the area and decided that scarcity was not, therefore, an element which affected the rental levels.

The Tribunal considered if it was appropriate to use a return on the capital valuation of the Property.

The Parties had not provided any evidence of capital valuations of the Property. The Tribunal were mindful that the capital valuation method has been described as notoriously unreliable 'normally to be used only as a last resort' (*Western Heritable Investment Co Ltd v Husband* 1983 SC (HL) 60, 73). Given the strong evidence of comparable fair rents and market rents and the absence of evidence of capital

valuations the Tribunal determined that it was appropriate to proceed to assess the fair rent of the Property without using the capital valuation method.

The Tribunal are mindful that fixing the rent is a composite task and consequently after consideration of all these factors the Tribunal decided there was no evidence to support the appeal and decided that a fair rent for the Property is that set by the Rent Officer, namely £5,360.03 per annum, inclusive of a service charge of £331.44 . The Tribunal found the registered rent for the first floor flat at 14 Burnbank Gardens (£5,560.95, inclusive of service charge of £245.52) to be the best comparison. The present property is smaller and the kitchen is internal, with no window, and the rent reflects the fact that its layout is not as good as that of 14 Burnbank Gardens. The rent determined for 39 Burnbank Terrace was higher, but that reflects the fact that it is larger and is a maindoor property, not entered off a common close.

In reaching this decision the Tribunal have had regard to all the considerations required to be taken into account in terms of Section 48 of the Rent (Scotland) Act 1984.

This decision takes effect from 28 August 2022.

G Clark

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Chairperson

3 August 2022