



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **BIR/00FN/F77/2018/0074**

Property : **42 Helena Crescent,
Leicester LE4 2HA**

Landlord : **Mr S Lustigman**

Tenant : **Mr M Tunncliffe**

Type of Application : **Determination of a fair rent under
Rent Act 1977 Schedule 11**

Tribunal Members : **Mrs A Rawlence MRICS (Chair)
Mrs K Bentley**

Date of Decision : **29 January 2019**

STATEMENT OF REASONS

DECISION

Background

1. By application dated 11 September 2018 the Landlord applied to the Rent Officer for registration of a fair rent of £120.00 per calendar week for the property.
2. The rent payable at the time of the application was £100.00 per week.
3. The rent was previously registered on 18 December 2015 with effect from 16 January 2016 at £100.0 per week by the Rent Officer
4. On 22 October 2018 the Rent Officer registered a fair rent of £106.00 per week with effect from that date.
5. By a letter dated 2 November 2018 the Landlord objected to the rent determined by the Rent Officer and the matter was referred to First-tier Tribunal (Property Chamber).
6. Neither party requested an oral hearing to determine its objection.
7. The Landlord made written representations dated 27 November 2018.
8. The Tribunal inspected the property on 11 January 2019.
9. After consideration of the available evidence and the applicable law the Tribunal determined that a sum of £109.00 per week shall be registered as the fair rent with effect from 11 January 2019.
10. The Tribunal's decision was sent to the parties. By an e-mail dated 19 January 2019 the Landlord requested extended reasons for the determination.

The Law

The Jurisdiction of the Rent Assessment Committee

11. Paragraph 9(1) Part 1 Schedule 11 of Rent Act 1977 provides that;

“The Committee shall make such inquiry, if any, as they think fit and consider any information supplied or representation made to them in pursuance of paragraph 7 or paragraph 8 above and –

- a) if it appears to them that the rent registered or confirmed by the Rent Officer is a fair rent, they should confirm that rent;
- b) if it does not appear to them that the rent is a fair rent, they shall determine a fair rent for the dwelling house.”

Determination of a Fair Rent

12. Section 70 of the Rent Act 1977 provides that:

“(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, regard shall be had to all the circumstances (other than personal circumstances) and in particular to-

- (a) the age, character, locality and state of repair of the dwelling-house,
- (b) if any furniture is provided for use under the tenancy, the quality and condition of the furniture, and
- (c) any premium, or sum in the nature of a premium, which has been or may be lawfully required or received on the grant, renewal, continuance or assignment of the tenancy.

(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 Tenants under the regulated tenancy or any predecessor in title of his to comply with any terms thereof;
- (b) any improvement carried out, otherwise than in pursuance of the term of the tenancy, by the Tenants under the regulated tenancy or any predecessor in title of his”;

13. When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, had regard to all the circumstances including the

age, location and state of repair of the property. It also disregarded the effect of (a) any relevant Tenants' improvements and (b) the effect of any disrepair or other defect attributable to the Tenants or any predecessor in title under the regulated tenancy, on the rental value of the property.

14. In *Spath Holme Ltd v Chairman of the Greater Manchester etc. Committee* (1995) 28 HLR 107 and *Curtis v London Rent Assessment Committee* [1999] QB 92 the Court of Appeal emphasised

(a) that ordinarily a fair rent is the market rent for the property discounted for 'scarcity' (i.e. that element, if any, of the market rent, that is attributable to there being a significant shortage of similar properties in the wider locality available for letting on similar terms – other than as to rent – to that of the regulated tenancy) and

(b) that for the purposes of determining the market rent, assured tenancy (market) rents are usually appropriate comparables. (These rents may have to be adjusted where necessary to reflect any relevant differences between those comparables and the subject property).

15. In considering scarcity under section 70(2) the Tribunal recognised that:

(a) there are considerable variations in the level of scarcity in different parts of the country and that there is no general guidance or "rule of thumb" to indicate what adjustment should be made; the Tribunal therefore considered the case on its merits;

(b) terms relating to rent are to be excluded. A lack of demand at a particular rent is not necessarily evidence of no scarcity; it may be evidence that the prospective Tenants are not prepared to pay that particular rent

16. Fair rents are subject to a capping procedure under The Rents Acts (Maximum Fair Rent) Order 1999 which limits increases by a formula based on the proportional increase in the Retail Price Index since the previous registration.

Inspection

17. The property was inspected 11 January 2019 when the Tribunal were met by the Tenant and his sister Mrs. Hooton.

18. The property was constructed of part rendered brick and tile roof with timber frame single glazing. The property had gas central heating.

19. The property was a three bedroom mid terraced house. The accommodation provided Hall, Living Room, Kitchen and Pantry with Three First Floor Bedrooms and a Bathroom with full white suite.
20. At the front of the property was a garden with access to the rear by a shared passageway. There was a garden to the rear of the property that backed onto a disused railway.
21. The property was in a fair state of repair, with gas central heating installed eighteen years ago and the property re-wired at that time. The Kitchen had a sink unit and one other floor unit. The bath and sink were dated. Areas of poor ceiling plaster were noted at first floor
22. The Tenant had made the following improvements to the property:

Smoke detectors and handrail.
23. The Tenant owned the white goods, furniture, curtains and carpets.

The Landlord's Objection

24. The Landlord's representations dated 21 November 2018 stated that the increase in rent of 6% over 2 years 10 months was too low. The increase in the open market rent as a starting point was 8.33% whereas the adjustments made were 15.56%. The Landlord has taken the increase in RPI for the subject period and made adjustments to reach an uncapped fair rent of £109.47.

Comparable Evidence

25. Neither party provided comparable evidence.

Reasons for the Decision

26. In the first instance the Tribunal determined what rent the Landlord could reasonably be expected to obtain for the property in the open market if it were let today in the condition that is considered usual for such an open market letting. It did this by having regard to the Tribunal's own general knowledge of market rent levels in the area. Having done so it concluded that such a likely market rent would be £150.00 per week.
27. However, the actual property is not in the condition considered usual for a modern letting at a market rent. Therefore, it was first necessary to adjust that hypothetical rent of £150.00 per week to allow for the differences between the condition considered usual for such a letting and the condition of the actual property as observed by the Tribunal (disregarding the effect of any disrepair or other defect attributable to the Tenants or any predecessor in title). The Tribunal considered that this required a deduction of £15.00 per week in respect of the carpets, curtains and white goods which were provided by the Tenant and a

deduction of £18.50 per week to reflect the basic Kitchen, lack of double glazing, and general condition.

28. The Tribunal made a further deduction of £7.50 per week for the Tenant's greater statutory responsibility for internal decoration under the Rent Act.
29. The Tribunal found that there was no scarcity in the locality and therefore make no deduction from the market rent to reflect this element. Please see paragraphs 14 and 15 above.
30. This left a fair rent for the subject property of £109.00 per week assuming the landlord's repairing obligations were in accordance with section 11 of the Landlord and Tenant Act 1985.

The Decision

31. The fair rent confirmed by the Tribunal, for the purposes of section 70 was according £109.00 per week.
32. The section 70 fair rent determined by the Tribunal is below the level which is the maximum fair rent permitted by the Rent Acts (Maximum Fair Rent) Order 1999 and accordingly that rent limit has no effect (details have been provided to the parties with the Tribunal's decision).
33. Accordingly, the sum of £109.00 per week will be registered as the fair rent with effect from 11 January 2019.
34. If either party believes this decision is incorrect on a point of law, they may apply for permission from the First-tier Tribunal to appeal to the Upper Tribunal (Lands Chamber). Any such application must be made within 28 days of this decision (Rule 52 (2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

A J RAWLENCE
CHAIR

29 January 2019