



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

Case Reference : **CHI/24UG/F77/2018/0075**

Property : **Hammans Farm Cottage, Itchel Lane,
Crandall, Farnham, Hampshire GU10
5PR**

Landlord : **Mrs. C. Heijmer**

Tenant : **Mr. M. Howard**

Type of Application : **Rent Act 1977 (“the Act”) Determination
by a First Tier Tribunal of the fair rent
of a property following an objection to
the rent registered by the Rent Officer.**

Tribunal Members : **Mr. R.A. Wilkey FRICS
(Valuer Chairman)
Mr. M. J. F. Donaldson FRICS MCI Arb MAE
(Valuer Member)**

Date of Inspection : **Monday 4th February 2019
No hearing. Paper determination.**

Date of Decision : **Monday 4th February 2019**

DECISION AND REASONS

Background

1. On 21st September 2019 the landlord applied to the Rent Officer for registration of a fair rent of £242 per week for the property. The Application states that the landlord provides no services.
2. The last registration by the Rent Officer on 22nd November 2016 was £202.50 per week, effective from 11th December 2016. The uncapped rent was stated on the register to be £265 per calendar week.
3. On the 5th November 2018, the Rent Officer registered a fair rent of £227 per week, effective from 11th December 2018. The amount of the uncapped rent is £265 week.
4. The Tenant objected to the rent determined by the Rent Officer and the matter was referred to the First Tier Tribunal (Property Chamber) Residential Property.
5. Neither party requested a hearing at which oral representations could be made.'

Inspection

6. The Tribunal Members inspected the property on Monday, 4 February 2019 in the company of the tenant, Mr. Howard, and his wife. The landlord had been informed of the inspection but was not present or represented.
7. The property is an attached cottage which was originally built in the 16th Century but extended in Victorian times. Part of the main building incorporates a "flying freehold". It is located close to the centre of the attractive village of Crondall. The major towns of Farnham, Aldershot and Basingstoke, with appropriate amenities, are within reasonable reach. There is a garden area by the entrance to the kitchen at rear and access to a garage on site with a narrow garden area at the rear thereof. It was noted that the garage is currently used for storage and access is restricted to small vehicles. There are two outbuildings on the area which gives access to the garage.
8. The main roof is pitched and covered with tiles. The main walls are of solid construction and do not incorporate a damp proof course. The elevations are part brick, part cement rendered and painted and part tile hung. The

windows are single glazed metal and timber casement type. External paintwork is in broadly serviceable condition but deteriorating to parts. The house exhibits characteristics of age and method construction.

9. The accommodation is currently arranged as:

Attic bedroom

First floor:

Landing, study, bathroom/W.C. two bedrooms – one with shower/WC en suite

Ground Floor:

Living Room, dining room, kitchen leading to walk in larder cupboard

Cellar

10. Central heating is provided by a gas fired boiler in the dining room which feeds radiators in the main rooms. A secondary hot water supply is from an electric immersion heater fitted to a pre-insulated hot water storage tank within a cupboard on the landing.
11. The tenant has provided floor coverings, curtains and white goods. In addition, he has:
- modernised the bathroom including replacement fittings
 - modernised the kitchen including replacement cupboards and worktops
 - Converted a former cupboard in the main bedroom into an en suite shower/WC

Furthermore, the tenant has carried out various works of maintenance over the years as indicated later.

12. The Tribunal formed the overall impression that the property was being well maintained for a property of this age and method of construction. During the inspection, the tenant took the opportunity of drawing attention to various matters including:
- There are signs of dampness affecting several wall surfaces in ground floor rooms. Associated with this are such matters as cracked and damp firebacks and defective wood to the step between the dining room and

kitchen.

- The cellar is very damp and there is no natural light or ventilation.
13. The Tribunal has not been provided with a copy of any Tenancy Agreement but the Application states that the tenancy began in 1987. The freeholder states in submissions that “There is not a tenancy agreement as the house is rented out under the Agricultural Act of 1976, even though the tenant is self-employed, and it is many years since he worked for a farmer”. The Application also states that the tenant has not carried out any improvements during the present tenancy [sic]. As far as repairing and decorating liabilities are concerned, the Application to the Rent Officer is silent as to the apportionment of responsibility for repairs and decorations. It does, however, state that unspecified initial repairs have been completed. The Rent Register states that the allocation of liability for repairs is “Landlord responsible for repairs and external decorations. Tenant responsible for internal decorations. Subject to S11 Landlord and Tenant Act 1985.” The parties have not provided any further information concerning the apportionment of responsibility for repairs and decorations.

Representations

14. Neither party has made a request for a hearing. The Tribunal thus proceeded to make the determination based on the inspection and written representations, supplemented with its own knowledge and experience.
15. The tenant has written several letters to the Valuation Office Agency and one to the Tribunal office. The following points are extracted for completeness:

Letter dated 6th October 2018

- (a) The...history of rising damp and mould affecting the property, our furniture and personal belongings has not changed since the last rent review in 2016.
- (b) ...we consider that the rent being suggested by the landlord, an

increase of some 16%, from £877.50 [sic] to £242 per month is unreasonable for a damp cold house, a cellar we are unable to use and an outbuilding where the roof is collapsing and leaks.

- (c) There has been no maintenance/improvement to the property by the landlords since June 2014 apart from replacement valve for a leaking ballcock. The gas boiler is checked annually by the landlord but neither a carbon monoxide nor smoke monitor has ever been provided. We have purchased and installed both in July 2018, to avoid tripping.
- (d) We have cleaned out the gutters and applied new gravel to the driveway in June 2017 to avoid stepping into muddy patches. We have also repaired holes in the concrete yard near the back door

Letter dated 17th October 2018

- (i) We have carried out some essential repairs and improvements which are summarised:
 - Installed a shower, toilet, hand basin with ventilation unit in 2013
 - Replaced dated bathroom suite, installed tongue and groove panelling and ventilation unit - 2012
 - Repaired and painted rotten doors to outbuilding (our log store/potting shed) - 2014
 - Attempted to replace missing tiles from outbuilding roof on several occasions.
 - Attempted to reinstate the outdoor toilet. Leaking roof has affected our efforts. Rent includes use of these outbuildings, it is not unreasonable to expect them to be dry and safe to use. Landlords have been advised in previous years.
 - Rent includes a cellar, this is fed by a spring and is unusable.

- Removed slipped/broken tiles from guttering to cottage several times, cleaning them out at the same time.
 - During 2012/13 carried out complete interior redecoration of the cottage but do not consider having to remove mould growth/repairs to woodwork and plasterwork our responsibility.
 - Replaced fire grate/fire bricks. Furry mould growth a problem in fire places from rising damp.
- (ii) ...The cottage suffers from rising damp. We have invested in a dehumidifier which is used for several hours each day
- (iii) The landlords have this year, replaced broken tiles to the roof of the cottage and replaced broken render to the front of the property with hanging tiles, it is hoped this will eradicate water penetration through the roof and bedroom walls.
- (iv) Whilst we accept that the property has no DPC, and we are dealing with effects of damp and mould daily, we cannot accept that the rental being asked for is a fair one as the condition of the property is certainly not usual for a let in today's rental market.

Letter dated 19th October 2018

- (1) It is our firm opinion that the increased rental of £223 p.w [sic] being suggested by the landlord is too high for a property with rising damp
- (2) We would like to comment further as follows:
- The rising damp to the ground floor is ongoing. With damp cold internal walls/floors, mould growing on some furniture and our personal belongings causing concern and discomfort.
 - There are signs too of damp rot to two skirting boards in the dining room. We have again discovered a Palmate Newt sheltering in the

dining room close to the skirting, along with families of Woodlice.

- The two open fireplaces have evidence of rising damp with concrete fire bricks breaking down
 - The smell of damp throughout the ground floor is ever present.
- (3) The cellar referred to is a facility we have never been able to use...due to a natural spring therein. The brick outhouse roof has been deteriorating over many years, ...and is no longer a facility we can rely on for our safe, dry storage of firewood etc. Also, The Utility Room referred to is actually a walk in larder. Formerly it stored coal and had a concrete floor in 1987, when I took up residence. We fitted it out as a walk in larder with cupboard/shelving/fridge and cushion flooring, it now also houses a tumble dryer. We wouldn't describe it as a Utility Room facility, there is no sink or pipework etc.

Letter dated 27th December 2018

- (A) We should like to make our written representations to the Tribunal Panel as follows:
- The cottage is 17 Century. No DPC. Single glazed windows. Badly fitting casements and back door. Solid walls. Spring in the cellar. Rising damp throughout.
 - We have upgraded the property over 30 years for our comfort and convenience, including laying and planting a garden (formerly the farmyard), fitting new bathroom, shower room, kitchen (previously a scullery with a sink and concrete floor) plus pantry, loft insulation. Previous correspondence details these improvements and ongoing maintenance by us, none of which we are responsible for. The cottage and garden are kept to a high standard by us and we feel that we have greatly enhanced the property despite the mould on our walls, skirting, furniture legs and some personal belongings. The heating is set at 20deg but quickly disappears

through walls, windows and floors leaving us with gas bills nearing £2,000 p.a.

- A log fire is lit for evenings once in from work. We purchased a dehumidifier in 2014.
- Agricultural workers properties/rents in Crondall and surrounding villages range from £570 to £950 per month.
- I am a Hazel Coppice Craftsman, managing the local woodlands for Penn Croft and Clare Park Farms Crondall. i.e. coppicing/hedge laying/hedge and tree planting and am directly employed by them for harvest through to late autumn drilling putting in cover crops (having worked for the farms since 1987)
- The cottage is not in a condition considered usual for a modern letting with rising damp etc. and feel that £940.50 per month to be a fairer rent.

16. The landlord communicated with the Tribunal office on or about 19th December 2018 and made the following observations:

- (1) The rent requested from the tenant seems to be quite fair when compared to the market rent for a 4-bedroomed, 17th Century house in the Conservation Area, and considerably cheaper than a similar house on the open market, bearing in mind that rents in a Conservation area are higher. Indeed, it is such a unique house it would be difficult to find a comparable house for rent in the area.
- (2) Major repairs were undertaken in July 2013, with roof repairs above the garage. £2,640 and in August 2015 major roof repairs to the house and tile hung cladding was added £11,081 as well as other small repairs, insurance, boiler checks etc. Clearly these major costs amounted to well over a year's rent received.
- (3) Any house will be damp when not heated properly and where air cannot circulate. Every time I have visited there has not been any

heating on, or fire burning. Unfortunately, old cellars do tend to be damp, but with a 4 bedroomed house with sitting room, dining room and kitchen, there is not a shortage of living space to require the use of a cellar.

17. The above is a summary of the points made by the parties and the Tribunal has considered the whole of the contents of the above documents in making its decision.
18. Neither party provided any evidence of rental value.

The law

19. When determining a fair rent, the Committee, in accordance with section 79 of the Rent Act 1977, had regard to all the circumstances including the age, location and state of repair of the property. The Committee also disregarded the effect of (a) any relevant tenant's improvements and (b) any disrepair or other defect attributable to the tenant or any predecessor in title under the regulated tenancy, on the rental value of the property
20. (a) 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) 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)
21. The Rent Acts (Maximum Fair rent) Order 1999 applies to all applications for registration of a fair rent (other than a first application for registration) made to the Rent Officer on or after 1 February 1999. Its effect is to place a "cap" on the permissible amount of the increase of a fair rent between one registration and the next by reference to the amount of the increase in the retail price index between the date of the two registrations plus 7.5% in the case of a first re-registration and 5% thereafter. The Committee must first

determine a fair rent (“the uncapped rent”) and then consider whether the Order applies so as to limit the increase in the rent (“the capped rent”)

22. There are two principle exceptions. This is not the first registration so the relevant exception is contained in Art.2(7) of the 1999 Order and is as follows:

“This article does not apply in respect of a dwelling-house if because of a change in the condition of the dwelling-house or the common parts as a result of repairs or improvements (including the replacement of any fixture or fitting) carried out by the landlord or a superior landlord, the rent that is determined in response to an application for registration of a new rent under Part IV exceeds by at least 15% the previous rent registered or confirmed.”

The Tribunal has not been made aware of any relevant works carried out to the property by the Landlord since the last registration.

Valuation

23. First of all 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 on the terms and in the condition that is considered usual for such an open market letting. In the absence of any comparable evidence from either party, the Tribunal used its own knowledge of general rent levels for this type of property and determined that the starting point should be £403.85 per week. This figure reflects the limitations of the property including the restricted access to the garage. It also excludes any value attributable to the en suite shower/WC which were installed by the tenant.
24. However, this starting rent is on the basis of a letting in good, modernised condition. In this case, adjustment must be made to reflect the work carried out by the tenants and the need for work of modernisation and repair as the rental bid in present condition would differ from the rent if the property were in good, modernised condition. The Tribunal is satisfied that the tenants are responsible for internal

decorations based on (a) The fact that this is stated on the rent register and the Rent Officer may have had access to more information than the Tribunal (b) The tenant states that he has completely redecorated in the interior a few years ago. In order to reflect all the relevant considerations, the Tribunal has made the following deductions from the starting point of £403.85 per week:

Carpets and curtains provided by tenant	£ 12.70
White goods provided by tenant	£ 8.00
Kitchen refurbished by tenant	£ 9.25
Disrepair and problems associated with dampness	£ 19.25
Bathroom modernised by tenant	£ 6.95
Tenant responsible for internal decorations	£ 19.25
TOTAL DEDUCTIONS	£ 75.40 per week
Adjusted rent	£ 328.45 per week

25. We then considered the question of scarcity as referred to in paragraph 20(a) above. In the case of *Metropolitan property Holdings ltd. v Finegold (1975) 1 WLR 349*, Lord Widgery said “If the house has inherent amenities and advantages, by all means let them be reflected in the rent under subsection(1); but if the market rent would be influenced simply by the fact that in the locality there is a shortage, and in the locality rents are being forced up beyond the market figure then that element of market rent must not be included when the fair rent is being considered.” This statement highlights the distinction between increase in rents that results from the benefits of local amenities which is permitted under section 70(1) of the 1977 Act, and increases in rent that are caused by demand exceeding supply which is not permissible and regulated by section 70(2) of the 1977 Act.
26. The Tribunal is required to consider scarcity in respect of demand and supply in the context of a sizeable area so as to ensure that the benefits of local amenities are neutralised and also to give a fair appreciation of the trends of scarcity and their consequences. The Tribunal should only give a discount for scarcity if it is substantial.

27. The Tribunal has given the matter careful thought and concludes that there is no substantial scarcity element in an area within a radius of approximately 50 miles of the subject property. Accordingly, no further deduction was made for scarcity.
28. We therefore determined that the uncapped Fair Rent is £328.45 per week exclusive of council tax and water rates.
29. The Tribunal finds that by virtue of the Rent Acts (Maximum Fair Rent) Order 1999 the maximum fair rent that could have been registered in the present case is the sum of £228 per week.
30. As the adjusted rent is above the rent calculated in accordance with the Maximum Fair Rent Order, we determine that the lower sum of £ 228 per week is registered as the fair rent with effect from Monday, 4th February 2019
31. For information only, details of the rent calculated in accordance with the Maximum Fair Rent Order details are shown on the rear of the Decision

Accordingly, the sum of £ 228 per week will be registered as the fair rent with effect from Monday 4th February 2019, being the date of the Tribunal's decision.

Chairman: R. A. Wilkey

Dated: Monday 4th February 2019

Appeals

32. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
33. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
34. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend the time limit, or not to allow the application for permission to appeal to proceed.
35. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.
36. If the First-tier Tribunal refuses permission to appeal, in accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007, and Rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the Applicant/Respondent may make a further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission.