



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

**Case Reference** : **BIR/00CN/F77/2019/0007**

**Property** : **8 William Street, Birmingham, B15 1LH**

**Applicant** : **Trident Housing Association**

**Respondent** : **Mr Wayne A. Barnett**

**Type of Application** : **Appeal against the Rent Officer's Decision of Fair Rent under the s.70 Rent Act 1977**

**Tribunal Members** : **Mr I.D. Humphries B.Sc.(Est.Man.) FRICS  
Mr J. Arain**

**Date and Venue of Hearing** : **None. Paper Determination.**

**Date of Decision** : **11 March 2019**

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**DECISION**

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1 The Fair Rent is determined at £96.00 (Ninety Six Pounds) per week from 11 March 2019.

## REASONS

### Introduction

2 Mr Barnett holds a protected tenancy of 8 William Street, Birmingham, B15 1LH. The rent had previously been registered by the Rent Officer at £91.00 per week on 7 December 2016 to take effect on the same day. On 1 November 2018 the landlord applied for an increase to £95.55 per week and on 21 December 2018 the Rent Officer registered a new rent of £96.00 per week to take effect on 31 January 2019.

3 The tenant appealed against the Decision by letter to the Valuation Office Agency dated 9 January 2019 and the matter was referred to the First-tier Tribunal for Determination. The Tribunal inspected the property and reached its decision on 11 March 2019 and the Decision papers were sent to the parties with a copy of the Maximum Fair Rent calculation. On 27 March 2019 the Tribunal received a letter from the tenant requesting reasons for the Decision which are the subject of this document.

### The Law

4 Mr Barnett is a protected tenant as acknowledged by the landlord. We have not been provided with a copy of the tenancy agreement but understand the property had been let unfurnished with the landlord responsible for repairs to the structure and exterior with the tenant responsible for internal decoration in accordance with s.11 of the Landlord & Tenant Act 1985.

5 Accordingly, the rent falls to be determined in accordance with s.70 of the Rent Act 1977.

6 S.70(1) states that in determining a fair rent, regard has to be had to all the circumstances of the tenancy (other than personal circumstances) including the age, character, locality and state of repair of the house, whether the property is let furnished and whether a premium had been paid or would be required to renew, continue or assign the tenancy.

7 s.70(2) adds a further qualification that it is assumed that the number of parties seeking to become tenants of similar houses in the locality on the terms of the tenancy (other than the rent) is not substantially greater than the number of houses available to let on such terms. This is usually referred to as 'scarcity' and the Court of Appeal held in *Spath Holme Ltd. v Chairman of the Greater Manchester Rent Assessment Committee* (1995) 28 HLR 107 and *Curtis v London Rent Assessment Committee* (1999) QB 92 that under normal circumstances the fair rent would be the market rent discounted for scarcity. The Court also held that assured tenancy rents could be considered comparable to market rents.

8 s.70(3) requires the valuation to disregard any disrepair due to a tenant's failure to comply with the terms of the tenancy and any improvements carried out by either the tenants or their predecessor in title.

### Facts Found

9 The Tribunal inspected the property on 11 March 2019. It is a first floor self-contained flat in a three storey block built in the 1980s. It is within 10 minutes walk of Birmingham city centre and within easy reach of local shopping and other facilities at Five Ways.

- 10 The accommodation is accessed via a communal entrance hall with locked outside door and intercom system with stairs to the first floor landing. The flat comprises a living room, kitchen, double bedroom and bathroom with double glazing and gas-fired central heating. Outside, there is a communal parking area with a security barrier to the road.
- 11 There were no tenant improvements to disregard.

## **Submissions**

- 12 Neither party requested a Hearing but the tenant made written submissions.
- 13 Mr Barnett wrote to the Tribunal by letter received 9 January 2019 advising that he was unfortunately unable to pay an increase as he was receiving universal credit and already in arrears. He said the service charge was being increased from £7.58 / week in the Rent Officer's Decision of December 2016, to £8.25 / week in December 2018 which was unreasonable and unjust, partly because the car park barrier had been out of action for a year before being repaired and partly because when residents reported any problems, the landlord was slow to act.

## **Decision**

- 14 To assess the Fair Rent, the Tribunal need to assess the rental value of the flat in good condition as a starting point, assuming it had been well maintained and modernised with central heating, reasonable kitchen units and a bathroom suite in fair condition, fully equipped with carpets and curtains and ready to let in the open market.
- 15 The service charge element covers items such as maintenance of communal areas, repairs to the car park barrier, general building repairs and refuse collection but it has no direct relevance to the Fair Rent, it is purely an accounting exercise for the landlord because the Tribunal has to assess the rent on the basis of an inclusive rent a potential tenant might pay for the flat with this level of services included. It makes no difference whether the service charge element is high or low, it is a 'noted amount' in the Rent Register and the only question for the Tribunal to consider is the market rent a tenant might pay, assuming the services are included.
- 16 The Tribunal found the accommodation to be in good condition (disregarding any effects of the tenant's occupation as required by the Rent Act 1977). Neither party put forward any comparable rents but based on the Tribunal's own general knowledge and experience, the Tribunal assessed the market rent of the property in good condition at £140.00 per week, assuming the services were included.
- 17 However, it had not been let in that condition. The Tribunal deducted £15.00 per week for the lack of carpets or curtains and £5.00 for the lack of white goods provided by the landlord to leave £120 per week.
- 18 The Tribunal considered the question of scarcity in s.70(2) of the Rent Act 1977 and deducted 20% from the rent to reflect this, leaving a net rent of £96.00 per week.
- 19 The rent was not limited by The Rent Acts (Maximum Fair Rent) Order 1999 as the rent determined was less than the maximum permitted by the Order.
- 20 There were no services to take into account.

21 Accordingly, the Tribunal determined the Fair Rent at £96.00 (Ninety Six Pounds) per week with effect from 11 March 2019.

I.D. Humphries B.Sc.(Est.Man.) FRICS  
Chairman

## **Appeal**

If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property) on a point of law only. Any such application must be received within 28 days after these reasons have been sent to the parties under Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.