



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

Case Reference : **BIR/37UD/F77/2019/0011**

Property : **37 Devonshire Drive, Stapleford,
Nottingham NG9 8GW**

Applicant : **J F Bladon**

Representative : **Kirkella Estates Ltd**

Respondent : **Mrs J Woodward**

Representative : **None**

Type of Application : **Appeal against a rent officer's
registration of a fair rent for the
Property**

Tribunal Members : **Judge C Goodall
Mr C Gell FRICS**

Date of inspection : **12 March 2019**

**Date of Written
Reasons** : **4 April 2019**

WRITTEN REASONS

Background

1. Mrs Woodward is the tenant of 37 Devonshire Avenue, Stapleford, Nottinghamshire NG9 8GW (the Property). The landlord is understood to be Mr J F Bladon (the Landlord) and his agent is Kirkella Estates Ltd (the Agent).
2. The rent of the Property is registered under the Rent Act 1977 (the Act). The previous registered rent, prior to the application which is the subject of this decision, was registered on 21 May 2018 in the sum of £96.00 per week.
3. On 20 November 2018 the Landlord applied to the rent officer for registration of a new rent of £115.00 per week. In that application form, the Agent said that the Landlord had carried out major works or improvements in August to October 2018 on the following works:

| | |
|--------------------------------|---------------|
| Wiring test | 600.00 |
| Bathroom fan | 120.00 |
| Full gas central heating | 2,950.00 |
| Roof works | 935.00 |
| Gutter works and floor repairs | <u>810.00</u> |
| Total | 5,415.00 |

4. On 4 January 2019, in response to this request, the rent officer registered a new rent of £102.50 per week. Whilst it was not expressly stated on the register, it is apparent that the rent office considered that any new rent he registered was subject to “capping” under the Rent Acts (Maximum Fair Rent) Order 1999, which restricts rent increases to inflation according to a formula set out in those regulations. This appears to be the case, for the rent officer stated in the register that the “uncapped rent” would have been £106 per week.
5. It is also apparent that the rent officer agreed to register a new rent in response to the Landlord request in November 2018 despite the previous rent only having been registered the preceding May. This is worthy of comment because there is normally a prohibition on a rent increase more frequently than every two years. The rent officer may disapply this normal rule if he is satisfied that there has been a change in the condition of the dwelling-house (including any improvements) such that the existing registered rent is no longer a fair rent (see section 67(3) of the Rent Act 1977). The Tribunal has no jurisdiction to review the rent officer’s decision to register a new rent within the 2 year period. It is fairly clear though that the rent officer agreed to the early rent review because of the works carried out between August and October 2018.
6. By a letter dated 10 January 2019 the Agent objected to the new registered rent. The objection was referred to the First-tier Tribunal. The Valuation Office Agency also sent the Tribunal the rent officer’s worksheet, and a list of 22 properties which appeared to be comparable houses with registered rents. The list gave a net rent figure, an entry date (presumably the date of

entry into the rent register) a road name and the first half of the postcode (all entries were in NG9), whether they were houses (all were) and the number of rooms and bedrooms.

7. On 12 March 2019 the Tribunal inspected the Property and then, as the parties had indicated that they did not wish for there to be a hearing, the Tribunal met to consider the representations of the parties and to determine the appropriate rent in accordance with the statutory processes under the Act.

Inspection

8. The Property is the left-hand property (looking from the road) of a pair of semi-detached two storey houses in Devonshire Drive. It is of traditional brick and tiled roof construction with bay window, and was probably built in around 1920. The roof is in a fair condition with no evidence of any recent major roof repairs. The soffits and fascias are in need of repainting and maintenance in the fairly near future, particularly those above the bay window.
9. There is only a small front garden and no off-road car parking space or garage. The main door opens into a small hallway/staircase off which is a front lounge. This leads directly into a rear kitchen, which then has a separate bathroom to the right. There is a rear door leading to a mixed brick/wooden-framed external porch area which is an integrated enclosed lean-to structure where a dryer is situated. The Tribunal understands this was present at the commencement of the tenancy, but it has been enlarged since by the tenant's former husband. There is a small garden with two sheds.
10. There appeared to be some evidence of damp in the front wall and the staircase wall of the lounge to above skirting level.
11. The kitchen and bathroom are reasonably modern, apparently having been upgraded around 10 years ago. We were informed by the tenant that the kitchen and bathroom units had been purchased by her, with installation having been paid for by the landlord.
12. The Property has recently installed full gas fired central heating throughout. There is a disused gas fire in the hearth in the lounge. There is upvc double-glazing throughout the Property.
13. Upstairs is a front double bedroom running the width of the house, with a portion sectioned off for the stairwell. A new gas central heating boiler has been installed in this bedroom, but it has no separation or screening between it and the rest of the room. At the rear are two further bedrooms, one of which is too small to be used as a double bedroom, and the other is being used as a single bedroom, but possibly with scope for it to be used as a small double bedroom.

14. The property is situated on a road of semi-detached houses of a similar age and nature.
15. The property is in a fair condition, with a need for some external maintenance and repair being apparent.

The Landlord's representations

16. The Agent submitted written representations on 11 February 2019.
17. The Agent did not put forward any open market comparables. It did say that the Tribunal should have regard to the registered rents of two properties which had registered fair rents, these being 347 Queens Road, Beeston, and 1 George Avenue, Stapleford. The first, at Queens Road, was said not to have central heating nor upvc glazing, and to be registered at £101 per week from March 2018. The second was said to have partial central heating and to be registered at £106 per week from July 2018. Both were said to be inferior properties to the Property. The inference of this submission was that the rent for the Property should be higher than was registered in the light of registered properties with inferior specifications being registered at the rents these were.
18. The Agent also provided the Tribunal with evidence of expenditure on repairs and improvements in about 2006 of c£8,994.00. This was on works to take up the ground floor and fix new joists and wooden flooring, some damp protection work, re-plastering, four new internal doors, installation of new bathroom and kitchen units, and some electrical work. It was accepted by the Agent that the Tenant had purchased the bathroom and kitchen units themselves.

The Tenant's representations

19. The Tenant made written representations by letter through her son by letter dated 8 February 2019. The main point of relevance to these reasons was that he accepted that the central heating system had recently been installed but challenged whether all the works carried out had been improvements.

Law

20. The Tribunal determines the fair rent for the Property in accordance with s70 of the Act. It must have regard to all the circumstances including the age, location, and state of repair of the Property. It will disregard any tenant's improvements, and the effect of any disrepair or other defect attributable to the tenant or any predecessor in title on the rental value of the Property.
21. 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 tenancy of the subject property);
- b. that for the purposes of determining the market rent, assured tenancy (i.e. 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.

The decision

22. The Tribunal considered the evidence from its own inspection, and the representations of the Landlord carefully, in the light of its legal responsibilities as set out above and in the Act, and the Tribunal's own expert knowledge.
23. The first question for the Tribunal was to determine the open market letting value of the Property. Neither party put forward any open market comparables to assist in determining the market rent. The two properties suggested by the Appellant were registered rents, and therefore gave no assistance in determining an open market rent. The list of properties from the VOA were also of registered rents, and so not of assistance.
24. From the VOA worksheet, it was apparent that the rent officer had determined the open market rent at £135 per week.
25. From its own internet researches, the Tribunal considered a 3 bedroom property in Warren Avenue, on the market at £575 per month (£132.70 per week), and a 3 bedroom property in Sisley Avenue for which £155 per week was being asked. This was a more modern property with a larger lounge, and upstairs bathroom. The Property itself has a downstairs bathroom, and an unenclosed boiler in the front bedroom, both of which would impact negatively on lettable. The Tribunal considers that the market evidence it looked at supports the rent officer's open market rental level of £135 per week.
26. The Property is however not in the condition that would be required if it were to be let on the open market today. Gutters and rainwater goods show signs of disrepair and the brickwork is in need of repointing. There is evidence of damp in the lounge. The open market value therefore has to be discounted to reflect the age, character, and state of repair of the Property, as described. In the view of the Tribunal, a fair and reasonable sum to deduct would be £7.00 per week.
27. It is then necessary to disregard the value of the tenant's improvements at the Property (as per s70(3)(b) of the Act). The Tribunal took into account the alterations to the rear lean-to structure, and the provision of the kitchen and bathroom units, which the Tribunal was informed cost in the

region of £3,000.00. The Tribunal considered that these improvements required an allowance off the market rent in the sum of £5.00 per week. A further allowance is needed to reflect the tenant's provision of carpets, curtains and white goods throughout the Property which the Tribunal allows at £10 per week.

28. An adjustment is required to reflect, if it be the case, that there are more tenants seeking similar properties to the Property in the local area than the number of properties available to let (see section 70(2) of the Act). The Tribunal considered that there was substantial scarcity in the locality and therefore decided that a further deduction from the market rent to reflect this element would be made of £8.00 per week, representing scarcity of about 7%.
29. The fair rent for the Property was therefore determined as being the market rent of £135.00 per week, reduced by £7.00 per week to reflect the state of the property, and further reduced by £15.00 per week to reflect the value of the tenant's improvements and their provision of carpets curtains and white goods, and a further reduction of £8.00 per week to reflect scarcity. This produces a fair rent of £105.00 per week.

Maximum Fair Rent Order

30. Any rent determined by the Tribunal cannot exceed the rent determined in accordance with the Rent Acts (Maximum Fair Rent) Order 1999, if it applies. The Tribunal calculated the maximum rent to which the new rent could be increased under the Order at £102.00 per week. The reason this amount is lower than the rent set by the rent officer is that the calculation is carried out in relation to the timing of the appeal, not the registration of the rent, and the inflation index which is required to be used in the Order fell from 285.6 to 283 between December 2018 and January 2019.
31. However, there is an exception to the application of the Order. It does not apply if "because of a change in the condition of the dwelling-house ... as a result of repairs or improvements (including the replacement of any fixture or fitting) carried out by the landlord ... the rent that is determined in response to an application for registration of a new rent ... exceeds by at least 15% the previous rent registered or confirmed" (para 2(7) of the Order).
32. The Tribunal therefore had to determine whether the expenditure between August and October 2018, referred to above, had resulted in the registrable rent exceeding the previous rent by at least 15%. The parties will note that expenditure on repairs counts just as much as expenditure on improvements in considering this question. All the expenditure, totalling £5,415, has to be taken into account.
33. Our starting rent was £96.00 per week. A 15% increase would require a new registered rent to be just under £113.00. As per this decision, the rent we would have fixed, had it not been subject to capping, would have been

£105.00 per week. The 15% threshold is therefore not met, and capping therefore applies.

Determination

34. A fair rent for the property would be £105.00 per week. However, under the Rent Acts (Maximum Fair Rent) Order 1999, the maximum sum that the rent can be increased to under the Order is £102.00 per week, and that is the rent ordered by the Tribunal with effect from 12 March 2019.

Appeal

35. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
Chair
First-tier Tribunal (Property Chamber)