



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

Case Reference : **CHI/29UL/F77/2019/0008**

Property : **Nithsdale, Sandling Road, Saltwood,
Hythe, Kent CT21 4QJ**

Landlord : **Mrs P J Brissenden**
Representative : **Mr T Owen**

Tenant : **Mr B Hughes**
Representative : **None**

Type of Application : **Rent Act 1977 – Section 70
Appeal of Registered Rent**

Tribunal Members : **R T Athow FRICS MIRPM (Chairman)**
P A Gammon MBE BA (Lay member)

Date of Inspection : **8th April 2019**

Date of Decision : **8th April 2019**

DECISION

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Background

- 1) On 14th November 2018 the landlord made an application to register the rent of the property at £140.00 per week.
- 2) The rent payable at the time of the application was £132.00 per week.
- 3) The rent was previously registered on 11th January 2017 with effect from 23rd January 2017 at £ 132.00 per week following a determination by the Rent Officer.
- 4) On 9th January 2019 the rent officer registered a fair rent of £148.50 per week exclusive of rates with effect from 23rd January 2019. This took note of the capping regulations in force. If capping had not applied the rent would have been registered at £178.00 per week.
- 5) On 24th January 2019 the tenant objected, and the matter was referred to the First Tier Tribunal (Property Chamber).
- 6) The tenancy has been in place for 38 years.

Inspection

- 7) The Tribunal inspected the property on 8th April 2019 in the presence of the tenant and it appeared to be in poor condition for its age and character. No representative from the landlord attended the inspection.
- 8) It is a semi-detached house situated in the centre of Saltwood village, close to local shops and schools. Hythe town centre is about 1 mile away, accessed by a regular bus service. The main line railway station of Sandling is about 1/2 mile away. The M20 motorway is about 1 1/2 miles away.
- 9) The accommodation comprises hall, open plan living/dining room (originally 2 separate rooms), and very small kitchen on the ground floor. On the first floor are two double bedrooms and a single bedroom as well as a bathroom/WC. There is a small covered yard immediately to the rear of the property. There are gardens front and rear, but no space to park a car.
- 10) There is an Ideal wall mounted gas fired boiler in the kitchen which supplies partial central heating and domestic hot water. This was installed under the Warm Front grant scheme and supplies domestic hot water and radiators to all rooms except the kitchen and bedroom 3. The tenant paid for the installation of one of these radiators when central heating was installed. Windows are Upvc double glazed units and appear to be about 25 years old.
- 11) All mains services are connected.
- 12) During the inspection the Tribunal noted;
 - a) The following tenant's improvements had been made to the property –

- Installed all the kitchen fittings except the sink unit,
 - Installed an electric fire in the living area
 - Installed a door to the kitchen
 - Erected a lean to at the rear of the house
- b) The tenant has provided all of the white goods in the kitchen as well as carpets and curtains.
 - c) The building is considerably out of date with its fixtures and fittings
 - d) The gutters have not been cleaned for several years and grass is growing from them, causing water to cascade over the tops of the guttering. This is causing dampness to some parts of the building.
 - e) The roof has several tiles that have slipped or fallen off, and is need of an overhaul.
 - f) External decorations do not appear to have been carried out for many years.
 - g) Ceilings appear to be asbestos panels.

Evidence

- 13) No written representations were received from either the landlord or the tenant.
- 14) Neither party requested a hearing at which oral representations could be made.

The law

- 15) When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, must have regard to all the circumstances including the age, location and state of repair of the property. It must also disregard the effect of (a) any relevant tenant's improvements and (b) the effect of 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. That section also required the Tribunal not to take into account the personal financial and other circumstances of the tenant.
- 16) 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).
- 17) 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 that section 70 means that:
 - a) Ordinarily a fair rent is the market rent for the subject property discounted for 'scarcity' 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 these comparables and the subject property).
- 18) The Rent Act (Maximum Fair Rent) Order 1999 limits the increase from the previous registered rent. It is worked out by a formula based on the change in Retail Prices Index since the last registration plus a fixed percentage increase set by law. If the Rent Officer or the Tribunal decides the property is worth more than the maximum fair rent, the maximum fair rent becomes the registered rent. If the valuation is lower than the maximum fair rent, that valuation becomes the registered rent.
- 19) There are two occasions when the maximum fair rent will not apply: -
If there is no existing registered rent, and
If the landlord has improved or repaired the property and the Rent Officer and/or the Tribunal considers the improvement or repair has made the rent at least 15% more than the existing registered rent.

VALUATION

The Market Rent

- 20) The Tribunal firstly 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 exclusive of water rates and council tax.
- 21) The letting market has grown substantially in recent years and there is now ample evidence of open market rents for Assured Shorthold Tenancies. In the competitive market that now exists, such properties need to be in first class structural and decorative order and be equipped with all amenities such as full modern central heating, double glazing and other energy-saving facilities along with white goods, carpets and curtains to ensure the property attains its full rental income potential. Where such items and facilities are missing the rent is found to be correspondingly lower.
- 22) The Rent Officer has provided a brief redacted list of comparables upon which he relied in computing his market rent. The list does not give full postcode addresses and so we were unable to see if any were in the immediate locality. The Rent Officer's computations started with an open market valuation of £252.69 per week from which he made adjustments of £75.00 to give a Fair Rent of £177.69, rounded to £178.00. He computed the capping and, as the Fair Rent was above this, it came into effect and the rent was registered at the capped level of £148.50.
- 23) Neither party provided any evidence of open market lettings, and the Tribunal therefore relied on its own knowledge and experience of general rent levels for this type of property in this area.

- 24)The Tribunal has considered the matter of Warm Front Scheme improvements which were noted on the Rent Register as “Partial Central Heating via the Warm Front Scheme (or similar)”.
- 25)The scheme is tenant led insomuch as the Scheme was only available for properties where the tenant is over 60 years of age and could only be undertaken upon the instigation of the tenant and the approval of the landlord. The improvements undertaken are 100% funded by the Scheme. A maximum number of radiators are fitted within this scheme. If further radiators are required it is normal for the tenant to pay for these to be installed. The tenant decided to have one additional radiator installed.
- 26)Legally the installation is not a tenant’s improvement, so cannot be regarded as a s70 improvement capable of deduction under the normal calculations made when registering rent. However, once installed it become part of the property and the landlord is required to maintain it.
- 27)The lack of radiators in all rooms will be a detraction for most potential tenants as today’s tenants require the house to be fully heated. Consequently, where radiators are lacking in one or more rooms the rental value will be reduced.
- 28) We concluded that an appropriate open market rent for the property let on a modern open market letting of an Assured Shorthold Tenancy where the landlord supplies white goods, carpets and curtains and the tenant has no liability to carry out repairs or decorations would be £210.00 per week.
- 29) However, the Tribunal noted at its inspection the actual property is not in the condition considered usual for a modern letting at a market rent, and it was necessary to adjust that hypothetical rent of £210.00 per week to allow for the differences between the condition considered usual for such a letting and the condition of the actual property.
- 30) The Tribunal takes into account several items to arrive at the rent that it decides is the market rent.
- (a) Tenants’ Improvements
 - (b) Decorating Liabilities
 - (c) White Goods
 - (d) Carpets and Curtains
 - (e) Partial Central Heating
 - (f) Disrepair
- 31) The Tribunal considered these factors separately, then considered whether the overall reduction was justified. We are satisfied that it is and decided to make a deduction of 30% for these factors which determines an adjusted rent of £147.00 per week.

Scarcity

- 32) The Tribunal did not consider there was any substantial scarcity element for this type of property in this area and accordingly no further deduction was made for scarcity.

The Decision

- 33) We therefore determined the uncapped Fair Rent is £147.00 per week exclusive of council tax and water rates.
- 34) As this amount is below the rent calculated in accordance with the Rent Acts (Maximum Fair Rent) Order 1999, details of which are shown on the rear of the Decision notice, we determine the sum of £147.00 per week is registered as the Fair Rent with effect from 8th April 2019.

R T Athow FRICS MIRPM
Chairman

Dated 8th April 2019

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber), which may be on a point of law only, 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.
2. 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.
3. 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 time or not, to allow the application for permission to appeal to proceed.
4. 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.