



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

Case Reference : **CHI/00HB/F77/2019/0004**

Property : **Garden Flat,
23 Apsley Road,
Bristol,
BS8 2SN**

Applicant : **Mr S N A Rizvi and S B Rizvi
(Landlord)**

Representative : **Cliftons**

Respondent : **Mr M W & Mrs V Cuthbert**

Representative : **None**

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

Tribunal Members : **Mr I R Perry FRICS
Mr M J Ayres FRICS**

**Date and venue of
Inspection** : **Tuesday 12th March 2019**

Date of Decision : **Tuesday 12th March 2019**

REASONS FOR DECISION

Summary of Decision

On 12th March 2019 the Tribunal determined a fair rent of £772.00 per month with effect from 12th March 2019.

Background

1. On 12th October 2018 the Landlord's Agent applied to the Rent Officer for registration of a fair rent of £1100 per calendar month for the above property.
2. The rent was last registered on the 24th January 2017 at £691.50 per calendar month following a determination by a First Tier Tribunal.
3. The rent was registered by the Rent Officer on the 17th December 2018 at a figure of £750 per calendar month with effect from the 24th January 2019. This figure was based on an open market rent of £1075 per month and deductions of £325 per month.
4. By a letter dated 9th January 2019 the Landlord's Agent objected to the rent determined by the Rent Officer and the matter was referred to the First Tier Tribunal Property Chamber (Residential Property).
5. The Chairman of the Tribunal had attended the property as part of previous Tribunals on at least 3 previous occasions over the years. In 2017 Mr Cuthbert was working in the garden and aware that the Tribunal were at the gate but he did not acknowledge its presence or allow access. A decision was made based on previous decisions.
6. In 2014 prior to the inspection the Respondent contacted The Tribunal and indicated that he did not wish members of the Tribunal or the Landlord nor his Agent to have access to the inside of the property. He indicated that he was prepared for the Tribunal to make its decision by reference to the correspondence and an external inspection. Accordingly a decision was made on the basis of previous decisions.
7. The Tribunal had also visited the property on the 3rd November 2014 when Mr Cuthbert did not answer his door and the Tribunal proceeded to make an inspection of the outside of the property and made a decision based on the Rent Officers file notes.

Inspection

8. The Tribunal attended the property on the 12th March 2019 as notified to Mr and Mrs Cuthbert but there was no reply at the door.
9. Based on its previous experience the Tribunal decided to make a decision based on the written representations and previous Tribunal decisions.

10. The property is a basement flat within a 4 storey period conversion. The accommodation as described by the Rent Officer includes a hall, living room, 2 bedrooms, bathroom and kitchen. There is a gas boiler with a single radiator in the living room.
11. Notes from the Rent Officer's survey dated 8th June 2012 state that the sound insulation is poor and that there is plaster damage in the hall. The Tenant had contacted the Rent Officer who noted, on 26th October 2016, that the Tenant states he has refurbished the kitchen units otherwise the internal condition remains as last seen.
12. The property is situated in a popular residential area on the northern side of Bristol where many of the original dwellings have been divided to provide flats.
13. Outside the Tenant has shared use of gardens to front and rear and a garage, but has appropriated the gardens for his sole use.

Evidence and representations

14. Written representations had been received from the Landlord's Agent and the Tenant which had been copied to both parties.
15. In a previous decision the Tribunal had been provided with a copy of the original tenancy agreement dated 21st November 1997. Clauses 2(3) and 2(4) require the Tenant to "Keep the interior of the said premises and the doors and window fittings, and Landlord's fixtures in good repair and condition", and "To deliver up the said premises at the end of the Tenancy together with all Landlord's fixtures in such good and tenantable order repair and condition as aforesaid damage by fire and tempest excepted".
16. The Tribunal had regard to the observations and comments by the parties, the decision made by the Rent Officer and also relied on its own knowledge and experience of local rental values in determining rent.

The Law

17. 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 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.
18. 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).
19. The Tribunal also has to have regard to the Rent Acts (Maximum Fair Rent) Order 1999 where applicable. Most objections and determinations of registered rents are now subject to the Order, which limits the amount of rent that can be charged by linking increases to the Retail Price Index. It is the duty of the Property Tribunal to arrive at a fair rent under section 70 of the Act but in addition to calculate the maximum fair rent which can be registered according to the rules of the Order. If that maximum rent is below the fair rent calculated as above, then that (maximum) sum must be registered as the fair rent for the subject property.

Valuation

20. 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 evidence supplied by the parties and the Tribunal's own general knowledge of market rent levels in the area of Bristol. Having done so it concluded that such a likely market rent would be £1250 per calendar month.
21. However, the property was not let in a condition considered usual for a modern letting at a market rent. Therefore it was first necessary to adjust that hypothetical rent of £1250 per calendar month particularly to reflect the fact that the carpets, curtains and white goods were all provided by the Tenant which would not be the case for an open market Assured Shorthold Tenancy.
22. In addition the Tenant's repair liability is considered to be more onerous than would be the case under an open market Assured Shorthold Tenancy. In the absence of any evidence the Tribunal relied upon its own expertise and experience to allow a sum of £50 per month to cover the ongoing costs of decoration and repair for the doors and windows.
23. In addition the Tribunal considered that further deductions should be made to reflect the absence of central heating and the unmodernised kitchen and bathroom. Accordingly a total deduction of £430 should be made as follows:

Lack of central heating	£200
Tenant's provision of carpets, curtains, white goods	£50
Unmodernised kitchen and bathroom	£130
Tenant's internal repair liability as per paragraphs 2 (3) and 2 (4) of the lease agreement	£50
TOTAL	£430

24. The Tribunal did not consider that there was any substantial scarcity element in the area of Bristol.

Decision

25. Having made the adjustments indicated above the fair rent initially determined by the Tribunal for the purpose of section 70 of the Rent Act 1977 was accordingly £820 per calendar month.
26. The Section 70 Fair Rent determined by the Committee is above the maximum fair rent permitted by the Rent Acts (Maximum Fair Rent) Order 1999 details of which are shown on the rear of the Decision Notice and accordingly we determine that the lower sum of £772.00 per month is registered as the fair rent with effect from 12th March 2019.

Accordingly the sum of £772.00 per month will be registered as the fair rent with effect from the 12th March 2019 being the date of the Tribunal's decision.

Chairman: I R Perry FRICS

Dated: 12 March 2019

Appeals

27. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making a written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
28. 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.
29. 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.

30. 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.

31. 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 take 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 the permission.