



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

**Case Reference** : **CAM/00MC/F77/2019/0006**  
**Property** : **1 Brybur Close, Reading RG2 8HN**  
**Applicant (Tenant)** : **Mrs Denise Oram**  
**Respondent (Landlord):** **Mr Avtar Singh Mahal**  
**Type of Application** : **Determination of a fair rent under  
Section 70 of the Rent Act 1977**  
**Tribunal Members** : **Judge JR Morris  
Mrs M Wilcox BSc MRICS**  
**Date of Decision** : **25<sup>th</sup> April 2019**

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**DECISION**

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**DECISION**

1. The Fair Rent for the Property payable from 25<sup>th</sup> April 2019 is determined to be £170.00 per week which is below the capped rent under the Rent Acts (Maximum Fair Rent) Order 1999 of £199.50 per week.

**REASONS**

**THE PROPERTY**

2. The Property is a two-storey semi-detached house of brick under a tile roof constructed circa 1950s.

**Accommodation**

The Property comprises a hall from which rise stairs to the first floor, a sitting room and a kitchen dining room on the ground floor and three bedrooms and a bathroom with separate w.c. on the first floor. There is a garden with hard standing in the front and a large garden to the side and rear.

### Services

The Property has mains gas, electricity, water and drainage. Space and water heating are by a gas central heating system.

### Furnishing

The Property is let unfurnished.

### Location

The Property is situated in a residential area on the outskirts of Reading city centre.

## **THE TENANCY**

3. The Tenancy is a statutory regulated weekly tenancy which commenced in April 1978. Being a tenancy for 7 years or less, section 11 of the Landlord and Tenant Act 1985 applies in respect of Landlord's repairing obligations. The Tenant is responsible for internal decoration.

## **THE REFERRAL**

4. The current rent is £151.50 per week registered on 7<sup>th</sup> September 2010 and effective from that date. The Landlord by a notice in the prescribed form received by the Valuation Office Agency on 20<sup>th</sup> December 2018 proposed a new rent of £175.00 per week. On 6<sup>th</sup> February 2019 the Rent Officer registered a rent of £170.00 per week effective from that date. The registered rent was not a capped rent under the Rent Acts (Maximum Fair Rent) Order 1999 as the capped rent was higher than that set by the Rent Officer. On 15<sup>th</sup> February 2019 the Tenant referred the Rent Officer's assessment to the Tribunal. The referral was by way of a hearing.

## **THE INSPECTION**

5. The Tribunal inspected the Property in the presence of the Tenant and her daughter Miss Candy Oram and the Landlord Mr Mahal.
6. Externally the Property is in fair to poor condition. The walls and roof appear sound. The windows are upvc double glazed units but the casement sashes are ill fitting and draughty which the Tenant or a previous landlord has sought to remedy by the use of tape and mastic. Several, including those in the sitting room cannot be closed securely. On some windows it may be possible to remedy by adjustment but on others it is understood parts of the mechanism have failed. There were some signs that some of the double-glazed units had failed causing misting and affecting their insulation efficiency.
7. The front and back doors are timber and swell in wet weather making opening and closing difficult. They also need repainting. The soffits, fascia and guttering are upvc but the guttering at the rear of the house has become detached at one of the joints and rainwater appears to have cascaded for some time by the marking on the wall. The front garden boundary wall needs some attention as the bricks at the top are displaced.

8. There is no garage but the Landlord has recently laid tarmac hardstanding. There are a few weeds coming through which the Tenant needs to have sprayed. The garden from front to back is on a steep slope. The rear garden nearest the house has a relatively gentle slope but the lower portion of the garden is very steep and difficult to cultivate and maintain.
9. Internally as let, the kitchen would be very basic and dated with just a sink and unit. The Tenant has had units installed although even these are now relatively dated. The white goods are the Tenant's. The bathroom is also dated and basic and there is no wash hand basin in the w.c. which would be expected now. The bedroom ceilings are cracked where they meet the walls but this does not appear to be due to any significant movement and can probably be remedied by decoration.
10. The electrical installation is dated in that it has a consumer box with wired fuses as opposed to miniature circuit breakers protected by a residual circuit device. This can cause difficulties in modern living due to the number of electrical devices used.
11. The central heating system was installed by the Tenant and she said that she had had the boiler replaced.

## **THE LAW**

12. The law applicable to this application is contained in the Rent Act 1977.

## **REPRESENTATIONS**

### ***Written Representations***

13. The Tenant made written representations in letters dated 10<sup>th</sup> January, 15<sup>th</sup> February and 12<sup>th</sup> March 2019 and these are summarised as follows:
  - a) The central heating system had been installed by the Tenant and she had replaced the boiler;
  - b) The windows were ill-fitting and draughty and the ground floor windows could not be secured. The draughts made the house cold, created condensation which led to mould growth. She said that some of the seals had failed on the double glazing compromising their insulation qualities.
  - c) Both the front and back doors were timber and in poor condition. They became swollen in wet weather and difficult to open. They also needed re-painting.
  - d) The electrics are very dated and the light bulbs and fuses 'blow' regularly and the fuses have to be wired.
  - e) The guttering is poorly fitted. At the rear it has come apart and the rain water runs down the wall.
  - f) The kitchen was just a sink unit when the tenancy began and the Tenant has fitted a new kitchen.
  - g) There had also been problems with the drains.

14. The Tenant said that taking these matters into account she considered the Rent Officer's assessment too high.
15. She also added that she had mobility difficulties and that the back door was too narrow. She also relied upon a bed which electrically raised and lowered her. If the electricity failed the bed did not work and she was not able to get out of bed.
16. It was noted that the Tenant believed she had an Assured Tenancy.
17. The Landlord made written representations dated 15<sup>th</sup> March 2019 stating that he was aware that repairs were needed to the Property but that he had not been able to arrange a time with the tenant to gain access to identify what need to be done, have estimates made and arrange for the work to be carried out. He said that he had written to the tenant several times and provided copies dated 15<sup>th</sup> May 2018; 11<sup>th</sup> December 2018 regarding the gas safety check; 30<sup>th</sup> January 2019 and 8<sup>th</sup> March 2019. He had also telephoned and sent texts. However, although he appreciated that she was not well and had been in hospital and had nurses and carers visiting nevertheless he was not able to carry out the necessary work.

### ***Tribunal's Explanation of the Law at the Hearing***

18. The Hearing was attended by Miss Candy Oram as her Mother's representative and by Mr Mahal, the Landlord.
19. The Tribunal explained that Mrs Oram did not have an Assured tenancy but a Regulated tenancy. The Tribunal explained the essential differences between the rental provisions of the two main types of periodic tenancy.
20. The first type, which is the one in this case, is referred to in the Rent Act 1977 as a Regulated tenancy. If a tenancy comes within these provisions, application for registration of the rent may be made by the landlord (as in this case), or the tenant or jointly to the Rent Officer to assess an increase in rent. If either the landlord or the tenant object to the increase then a reference may be made to a tribunal. However, the registration process must be undertaken before the matter can come before the tribunal. A registered rent cannot be increased for two years with the exception that under section 67(3) Rent Act 1977 a landlord may make an application for a new rent to be registered if the condition of the property has changed.
21. The second type is an Assured tenancy for which the provisions relating to the definition of the tenancy, security of tenure and rent control are set out in the Housing Act 1988. In contrast to the Regulated tenancy the landlord may serve Notice to increase the rent directly on the tenant and can do so every year. If the tenant objects to the increase the tenant may apply to the tribunal.
22. In respect of both the Regulated and Assured tenancies a market rent is assessed and to this extent they are similar. However, with regard to Regulated tenancies, if the rent for the particular type of house in that location is 'inflated' because demand for them is significantly greater than supply, a

percentage deduction may be made to take account of the effect of this scarcity. In addition, the registered rent for these tenancies is, after first registration, capped by a formula under the Rent Acts (Maximum Fair Rent) Order 1999, which means that, very broadly, the rent cannot increase much more than the rate of inflation.

23. The Tribunal explained that it assessed a market rent for a property by reference to rental values generally and to the rental values for comparable properties in the locality in particular. It does not take into account the present rent and the period of time which that rent has been charged nor does it take into account the percentage increase which the proposed rent represents to the existing rent.
24. The market rent is assessed as at the date of the inspection and cannot take into account any repairs the landlord intends to do or that the tenant had been waiting a long time for the repairs to be carried out or if just before the inspection they are undertaken.
25. Having assessed a market rent based on comparable properties the Tribunal then makes any adjustments to the market rent of the comparable property to take account of the specific condition of the property for which it is determining a rent. The Tribunal must take account of the age, character, locality, state of repair of the property and all the circumstances. However, it cannot take into account personal circumstances of either a landlord or a tenant.

### ***Parties Oral Representations at the Hearing***

26. The parties accepted the Tribunal's account of what it had seen at the inspection set out above.
27. Mr Mahal said that he understood that Mrs Oram was in poor health but he was keen to carry out repairs. He added that he had been prepared to carry out modifications to the Property and Mrs Oram, Reading Council and he had discussed putting an extension on the house with a grant, which would have a w.c. and shower room, as Mrs Oram was no longer able to go upstairs. He and Mrs Oram had completed and submitted all the forms and waited a year for a decision only to find the Council was not able to fund it. He said that he was prepared to replace the window in the dining area, which was now Mrs Oram's bedroom, with French/patio doors to give her better access to and from the house. However, he needed to get access to obtain estimates etc.
28. Miss Oram agreed that Reading Council were involved in efforts to make reasonable modifications to the house to make it more comfortable for her. However, it was very frustrating because funding was not always available and schemes for support seem to change from one year to the next. She said it would be very helpful to have French/patio doors installed because when her mother fell, they had to call the emergency services and needed the additional access.

29. The Tribunal appreciated the importance of these matters to the parties but they amounted to personal circumstances which the Tribunal cannot take into account when assessing the rent.

### **RENT ASSESSMENT**

30. The Tribunal assessed the rent for the Property as at the day of the inspection pursuant to section 70(1) Rent Act 1977 (having regard in particular to the age, character, locality, state of repair of the property and all the circumstances other than personal circumstances). The Tribunal took account of the relevant cases and legislation including *Spath Holme Ltd v Greater Manchester Rent Assessment Committee* (1996) 28 HLR 107, *Curtis v The London Rent Assessment Committee* [1997] 4 All ER 842 and *BTE Ltd v Merseyside and Cheshire Rent Assessment Committee* 24<sup>th</sup> May 1991.
31. The Tribunal is required under the legislation and case law to assess a market rent for the Property taking into account the matters referred to above and considering whether or not a deduction for scarcity should be made, which varies depending on the market within a locality from time to time.
32. The Tribunal determines the rent based on the condition of the Property as at the day of the inspection. The Tribunal determined that a market rent for the Property in good condition, with modern kitchen and bathroom double glazing, central heating and floor coverings and white goods was £255.00 per week.
33. The Tribunal considered that a deduction of £85.00 per week should be made for the lack of central heating had it not been installed by the Tenant; what would be a dated and basic kitchen and bathroom but for the Tenant's improvements; the lack of floor coverings and white goods. The deduction also takes account of the poor condition of the windows, the need for redecoration of the doors and the repair of the guttering.
34. It should be noted that this figure cannot be a simple arithmetical calculation and is not based specifically upon capital cost but is the Tribunal's estimate of the amount by which the rent would have to be reduced to attract a tenant to this Property.

### **SCARCITY**

35. Assessing a scarcity percentage cannot be a precise arithmetical calculation because there is no way of knowing either the exact number of people looking for properties similar to the subject property in the private sector or the exact number of such properties available. It can only be a judgement based on the years of experience of members of the Tribunal together with a consideration of the properties advertised as being to let as at the time of the assessment.
36. That experience and consideration leads the Tribunal to the view that there is no substantial scarcity of "... similar dwelling houses in the locality...", in this case Berkshire as at the day of the inspection, that are available for letting, and so no deduction is made to reflect this.

## TRIBUNAL'S CALCULATIONS

37.	Market Rent:	£255.00 per week
	Less global deduction	<u>£85.00</u>
		£170.00

As the uncapped Fair Rent of £170.00 per week assessed by the Tribunal is the same as that assessed by the Rent Officer, the Tribunal therefore confirms the Rent Officer's assessment.

38. The provisions of the Rent Acts (Maximum Fair Rent) Order 1999 require that the registered rent is either the capped Fair Rent or the Fair Rent decided by the Tribunal whichever is the lower. The capped Fair Rent is calculated in accordance with a statutory formula using the existing rent as a base. The capped rent in this case is £199.50 per week which is more than the Fair Rent assessed by the Rent Officer and confirmed by the Tribunal of £170.00 per week. Therefore, the uncapped rent of £170.00 per week is to be registered.

**FAIR RENT = £170.00 per week**

### Judge JR Morris

**Caution:** The Tribunal inspected the subject property for the purposes of reaching this decision. The inspection was not a structural survey and any comments about the condition of the property in this statement must not be relied upon as a guide to the structural or other condition of the property.

### APPENDIX - RIGHTS OF APPEAL

1. If a party wishes to appeal the decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

