



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

**Case Reference** : **BIR/00GF/F77/2019/0006**

**Property** : **2 Whitelodge Cottages, High Ercall,  
Telford, TF6 6AT**

**Landlord** : **M S Walker**

**Tenant** : **Mr John Taylor**

**Type of Application** : **Determination of a fair rent under  
section 70 of the Rent Act 1977**

**Tribunal Members** : **Judge M K Gandham  
Mr N Wint FRICS**

**Date of Decision** : **4<sup>th</sup> March 2019**

**Issue Date** : **21 May 2019**

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**STATEMENT OF REASONS**

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## **Background**

1. Mr. Taylor is the tenant of the property known as 2 Whitelodge Cottages, High Ercall, Telford, Shropshire TF6 6AT ('the Property'). The Landlord is M. S. Walker.
2. By an application, received by the Valuation Office on 8<sup>th</sup> October 2018, the Landlord applied to the Rent Officer for registration of a fair rent for the Property of £200.00 per calendar month (p/cm). The rent had not previously been registered.
3. On 21<sup>st</sup> December 2018, the Rent Officer registered a fair rent of £345.00 p/cm, with effect from that date.
4. By a letter, received by the Valuation Office on 21<sup>st</sup> December 2018, the Tenant objected to the rent determined by the Rent Officer and the matter was referred to the First-tier Tribunal - Property Chamber on 14<sup>th</sup> January 2019.
5. The Tribunal received written representations from the Tenant, by way of a letter sent on his behalf, on 4<sup>th</sup> February 2019.
6. Neither party requested an oral hearing and the Tribunal inspected the Property on 4<sup>th</sup> March 2019.
7. After consideration of the available evidence and the applicable law, the Tribunal determined that a sum of £98.28 p/cm was to be registered as the fair rent, with effect from 4<sup>th</sup> March 2019.
8. The Landlord requested extended reasons for the determination, by way of a letter to the Tribunal, received on 10<sup>th</sup> April 2019.
9. These written reasons should be read in conjunction with the Decision of the Tribunal dated 4<sup>th</sup> March 2019.

## **The Law**

10. The relevant provisions in respect of jurisdiction of the Tribunal and determination of a fair rent are found in Paragraph 9(1) Part 1 Schedule 11 to the Rent Act 1977, as amended by paragraph 34 of the Transfer of Tribunal Functions Order 2013, and section 70 of the Rent Act 1977.

### ***Rent Act 1977***

#### ***Paragraph 9(1) Part 1 Schedule 11 (as amended)***

*“Outcome of determination of fair rent by appropriate tribunal*

*9. – (1) The appropriate tribunal shall –*

- (a) if it appears to them that the rent registered or confirmed by the rent officer is a fair rent, confirm that rent;
- (b) if it does not appear to them that that rent is a fair rent, determine a fair rent for the dwelling house.”

**Section 70 Determination of fair rent**

“(1) In determining, for the purposes of this Part of this Act, what rent is or would be a fair rent under a regulated tenancy of a dwelling-house, regard shall be had to all the circumstances (other than personal circumstances) and in particular to-

- (a) the age, character, locality and state of repair of the dwelling-house, ...
- (b) if any furniture is provided for use under the tenancy, the quantity, quality and condition of the furniture, and
- (c) any premium, or sum in the nature of a premium, which has been or may be lawfully required or received on the grant, renewal, continuance or assignment of the tenancy.

(2) For the purposes of the determination it shall be assumed that the number of persons seeking to become tenants of similar dwelling-houses in the locality on the terms (other than those relating to rent) of the regulated tenancy is not substantially greater than the number of such dwelling-houses in the locality which are available for letting on such terms.

(3) There shall be disregarded-

- (a) any disrepair or other defect attributable to a failure by the tenant under the regulated tenancy or any predecessor in title of his to comply with any terms thereof;
- (b) any improvement carried out, otherwise than in pursuance of the terms of the tenancy, by the tenant under the regulated tenancy or any predecessor in title of his;
- (c), (d)...

(e) if any furniture is provided for use under the regulated tenancy, any improvement to the furniture by the tenant under the regulated tenancy or any predecessor in title of his or, as the case may be, any deterioration in the condition of the furniture due to any ill-treatment by the tenant, any person residing or lodging with him, or any sub-tenant of his.”

11. When determining a fair rent the Tribunal, in accordance with the Rent Act, 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.

12. 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).
13. In considering scarcity under section 70 (2) the Tribunal recognised that:
  - (a) there are considerable variations in the level of scarcity in different parts of the country and that there is no general guidance or "rule of thumb" to indicate what adjustment should be made; the Tribunal therefore considers the case on its merits;
  - (b) terms relating to rent are to be excluded. A lack of demand at a particular rent is not necessarily evidence of no scarcity; it may be evidence that the prospective tenants are not prepared to pay that particular rent.
14. Fair rents are subject to a capping procedure under the Rent Acts (Maximum Fair Rent) Order 1999 which limits increases by a formula based on the proportional increase in the Retail Price Index since the previous registration.

### **The Inspection**

15. The Tribunal inspected the Property on the morning of 4<sup>th</sup> March 2019. The Tribunal was met by both parties and was shown around the Property by the Tenant.
16. The Property comprises a rural one-bedroom house, located off the B5063 between High Ercall and Shawbury, with a large garden. The house forms part of a building, built Pre. 1800, of brick construction with a pitched tiled roof. The building appears to have formerly been a single detached house, which has since been divided in to two, two storey semi-detached houses - the Property being the smaller of the two.
17. The house does not have the benefit of mains drainage, double glazing, running hot water or any form of central heating.
18. The accommodation comprises, on the ground floor, a lounge and small kitchen and, on the first floor, a small landing, bedroom and shower room.

19. Outside the house, there is a small front garden, with space to park, and a very large garden extending to the side. The Tenant has utilised the side garden for cultivating flowers and has erected various outhouses. The garden plot is very large and could equally be considered an advantage or a disadvantage to potential tenants.
20. The Tribunal found the house to be in a very poor state of repair and condition. In particular, part of the bedroom ceiling had collapsed, exposing the lath and plasterwork, a connecting doorway had been filled in with blockwork, the timber window frames had rotted, the bathroom required plastering, internal doors were missing, the kitchen was very basic with limited space for any units and the exterior of the house was in general need of repair, redecoration and repointing. Overall the Tribunal found the repair and condition of the house to be well-below an acceptable standard.
21. The Tenant had supplied the carpets, curtains, cooker and fridge. The Tenant had also installed the secondary glazing, the log-burning fire in the lounge, the units in the kitchen and was carrying out plastering work in the shower room and fixing the floorboards.
22. The Landlord had, within the past few years, installed a basic shower, toilet and wash basin in the shower room.

### **Submissions**

23. The letter received on 4<sup>th</sup> February 2019, on behalf of the Tenant, referred to the poor condition of the Property, in particular - the lack of hot water and central heating, the partial collapse of the bedroom ceiling, the rotting window frames, the repair required to the gable end wall and the fact that there was only one external door to the house. As such, it was submitted that the fair rent should be no more than £200.00 p/cm.
24. No submissions were received on behalf of the Landlord.

### **Reasons for the Decision**

25. 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 levels in Shropshire. Having done so, it concluded that such a likely market rent would be £375.00 p/cm, considering the rural location of the Property.
26. However, the actual property is not in the condition considered usual for a modern letting at a market rent. Therefore, it was first necessary to adjust the hypothetical rent of £375.00 p/cm to allow for the differences between the condition considered usual for such a letting and the condition of the Property, as observed by the Tribunal, (disregarding the effect of any disrepair or other defect attributable to the Tenant or any

predecessor in title). The Tribunal considered that this required a deduction of £267.00 p/cm in respect of the items of disrepair; the lack of running hot water; the lack of any central heating; the lack of any double-glazing; the lack of a modern kitchen; the log-burning fire, floor coverings, carpets, curtains, cooker and fridge (which were all provided by the Tenant) and the internal decorating liability.

- 27. The Tribunal considered the question of scarcity in s.70(2) of the Rent Act 1977 and found that the number of potential tenants looking for accommodation of this type in the area would have been greater than the number of units available to let. The Tribunal found that the excess demand represented around 9% of rental value or £9.72 p/cm and deducted this from the market rent to arrive at the statutory basis for a fair rent.
- 28. This left a fair rent for the Property of £98.28 p/cm.

**Decision**

- 29. The fair rent determined by the Tribunal, for the purposes of section 70, was accordingly £98.28 p/cm.
- 30. There was no service charge and the rent was not registered as variable.
- 31. The provisions relating to capping are not applicable to this matter as this is a determination relating to the first registration of the rent.
- 32. Accordingly, the sum of £98.28 p/cm will be registered as the fair rent with effect from 4<sup>th</sup> March 2019, being the date of the Tribunal’s decision.

**Appeal**

- 33. If any party is dissatisfied with this decision, they may apply to the Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber) **on a point of law only**. Such an application must be made within 28 days of this decision being sent to the parties in accordance with Rule 52(2) of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, and must state the grounds on which that party intends to rely in the appeal.

M. K. GANDHAM  
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Judge M. K. Gandham