



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

Case Reference : **CHI/19UH/F77/2019/0029**

Property : **1 New House Cottages, Wyke Farm,
Sherburne, Dorset DT9 6SL**

Applicant : **Ilchester Estates**

Representative : **Mr O Adderley MRICS, Estate
Surveyor**

Respondent : **Mr G Fry (Tenant)**

Date of Objection : **Referred to First-tier Tribunal by
Valuation Office Agency on 23rd May
2019**

Type of Application : **Section 70 Rent Act 1977 (the Act)**

Tribunal : **Mr R T Brown FRICS
Mr M F J Donaldson FRICS MCI Arb MAE**

**Date of inspection and
Consideration** : **1st July 2019**

REASONS FOR DECISION

Background

1. The Tribunal gave formal notice of its decision by a Notice dated 1st July 2019 that the rent would be **£82.50 per week** with effect from the same date.
2. On the 5th March 2019 the Landlord of the above property applied to the Rent Officer for registration of a fair rent of £114.23 per week (£495.00 per month). The rent having been previously determined by the Rent Officer at £39.00 per week on 9th December 1993 and effective from the 10th December 1993.
3. On the 3rd May 2019 the Rent Officer registered a fair rent of £81.50 per week effective from 3rd May 2019.
4. The Landlord, on the 15th May 2019, 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 tenancy appears to be a statutory protected periodic tenancy. The tenancy (not being for a fixed periodic tenancy of 7 years or more) is subject to Section 11 of the Landlord and Tenant Act 1985 (the landlord's statutory repairing obligations).

Inspection

6. The Tribunal inspected the premises on the 1st July 2019 in the presence of the Tenant Mr Fry. The Landlord was neither present nor represented.
7. The property comprises an immediate post war semi-detached house constructed in brick with a tile roof and upvc windows. It formed part of a farm in a remote rural location, the nearest town being Sherborne where local amenities are available.
8. The accommodation comprises: Ground Floor: Entrance Hallway, Lounge, Dining Room and Kitchen (range of worktops and cupboards with a sink unit), Rear porch with store and w/c off. First Floor: Landing, 2 double and 1 single bedrooms, Bathroom (with bath, w/c and wash basin). Outside: Gardens to front, side and rear. There is parking at the front of the property.
9. Mains electricity is connected to the property. Water is via a bore hole and drainage is to a bio-digester unit (not inspected) installed in 2019. There is no heating apart from the solid fuel burner in the Living room. Water is heated via an immersion heater located in Bedroom 1.
10. The Tenant has maintained the property in good decorative order and has fitted all floor coverings.
11. The Tribunal noted during its inspection:

a) The tenant had carried out significant works during the tenancy including:

- 1) Living Room and Dining Room relaying the floor
- 2) Living room re-plastering walls installing a solid fuel stove
- 3) Bathroom: electric shower, bath, xpelair fan and down flow heater
- 4) Replaced internal window cills throughout the property
- 5) Kitchen: Installed fitted units (to replace original belfast sink) Created arch to Dining Room and Utility.
- 6) Rear Porch: Opened up fuel store to create a second utility area
- 7) Laid patio at rear of property
- 8) Cultivated garden and erected 2 sheds

b) There was evidence of movement in the gable wall and poor pointing.

The Hearing

12. The Tenant made no formal submissions to the Tribunal.
13. The Landlord requested a hearing and Mr Adderley attended.
14. During the preliminary part of the Hearing the Tribunal ascertained that Mr Adderley's concern lay not in the Rent Officer's calculation of the Uncapped Fair Rent with which he said he agreed at £136.00 per week but in the calculation of the capping limit.
15. He referred to his letter to the Rent Officer dated the 15th May 2019 which he had resubmitted in accordance with the Tribunal's directions dated 30th May 2019.
16. He proposed 2 alternative methods of calculating the capping.
17. The first was to compound the Retail Prices Index figure (published by the Office for National Statistics) on the basis that the rent would be registered every two years. This produced a figure of £133.06 per week.
18. The second was to apply the most recent RPI figure to the December 1993 figure and adding 5.00% which produced a figure of £119.00 per week.
19. Both figures he said were higher than the Rent Officer's figure of £81.50 per week.
20. The Chairman asked Mr Adderley if he was challenging the adopted methodology of the Rent Officer (and of the Tribunal) which, the Chairman said, had been in use since the making of The Rent Acts (Maximum Fair Rent) Order 1999 on 1st February 1999. Mr Adderley's response was that he was not.
21. The Tribunal then explained to Mr Adderley how the Rent Officer and the Tribunal calculated the Maximum Fair Rent.

22. Mr Adderley at this point accepted the Tribunal's approach and the Chairman closed the hearing.

The Law

23. When determining a fair rent the Tribunal, in accordance with section 70 of the Rent Act 1977, had regard to all the circumstances including the age, location and state of repair of the property. It 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.
24. In *Spath Holme Ltd v Chairman of the Greater Manchester etc Committee (1995) 28 HLR 107* and *Curtis v London Rent Assessment Panel [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).
25. The Rent Acts (Maximum Fair Rent) Order 1999 restricts the amount by which the rent may be increased to a maximum 5.00% plus RPI since the last registration unless the last registration was before 1st February 1999 in which case the figure is 7.50%.
26. The only exception to this restriction is provided under paragraph 7 of the Order where a landlord carries out repairs or improvements which increase the rent by 15% or more of the previous registered rent.

Tribunal's deliberations

27. The Tribunal considered the matter with the benefit of its inspection and the submissions of the parties.
28. Given Mr Adderley's acceptance of both the Rent Officer's calculation of the Uncapped Fair Rent and the methodology for calculating the capping the Tribunal did not address the calculation of the Uncapped Fair Rent but did address the capping. The Tribunal's calculation is shown on the reverse of the Decision Notice to which this set of reasons is attached.

Relevant Law

29. The Rent Act 1977.
30. Rent Acts (Maximum Fair Rent) Order 1999. In particular paragraph 7 which states:

This article does not apply in respect of a dwelling-house if because of a change in the condition of the dwelling-house or the common parts as a result of repairs or improvements (including the replacement of any fixture or fitting) carried out by the landlord or a superior landlord, the rent that is determined in response to an application for registration of a new rent under Part IV exceeds by at least 15% the previous rent registered or confirmed.

Rent Acts (Maximum Fair Rent) Order 1999

31. The rent to be registered is limited by the Fair Rent Acts (Maximum Fair Rent) Order 1999 accordingly the sum of **£82.50 per week** will be registered as the fair rent on and with effect from 1st July 2019 being the date of the Tribunal's decision.

Robert T Brown
Chairman

RIGHTS OF APPEAL

1. A person wishing to appeal this decision (on a point of law only) to the Upper Tribunal (Lands Chamber) 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