



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

Case Reference : **CHI/00HN/F77/2019/0028**

Property : **120 Castlemain Avenue,
Bournemouth, BH6 5EP**

Applicant : **Bradford Property Trust (BPT)
Limited (Landlord)**

Representative : **Grainger PLC (R Tucker)**

Respondent : **Mr F J Orchard (Tenant)**

Date of Objection : **Referred to First-tier Tribunal by
Valuation Office Agency on 21st 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 **£182.50 per week** with effect from the same date.
2. On the 20th January 2019 the Landlord of the above property applied to the Rent Officer for registration of a fair rent of £203.55 per week. The rent having been previously determined by the Rent Officer at £177.00 per week on 12th May 2017 and effective from the same date.
3. On the 10th April 2019 the Rent Officer registered a fair rent of £182.69 per week effective from 12th May 2019.
4. The Landlord, on the 8th 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 and Mrs Orchard. The Landlord was neither present nor represented.
7. The property comprises an inter-war detached house constructed in brick with a tile roof and upvc windows and doors. It forms part of an established suburban area on the northern side of Bournemouth. Local amenities are readily 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 and rear. There is on-site parking at the front of the property.
9. Mains gas, electricity, water and drainage are connected to the property. There is full gas fired central heating (including hot water) via a Worcester Bosch combi boiler in the bathroom. The electric wiring was last inspected on 6th June 2019 and is due for re-inspection in 2024.
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 external pointing was poor in places.
 - b) There was evidence of movement in the structure of the building
12. No hearing was requested by either party.
13. The Tenant made no formal submissions to the Tribunal.
14. The Landlord's agent in its objection says the rent requested was £203.50 per week. The Landlord's representative refers in its submission to 3 x three bedroomed detached properties apparently available in the market at rents of £265.00 and £288.00 per week. No explanation or analysis is given as to how these comparables are relevant to the subject property although the lower figure is adopted as the starting point. From that figure the sum of £60.00 is deducted to reflect (in the subject property) lack of: open plan kitchen/diner, larger 3rd bedroom, modernised bathroom, floor coverings, white goods and appliances. The resulting figure is £205.00 per week.

The Law

15. 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.
16. 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).
17. 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.
18. 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

19. The Tribunal considered the matter with the benefit of its inspection and the submission of the Landlord. The Tenant made no submission.
20. After considering the rental evidence submitted by the Landlord's agent the Tribunal determined what rent the landlord could reasonably be expected to obtain for the subject property in the open market if it were let today in the condition and subject to the terms of such a tenancy 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 Bournemouth and the wider area of Dorset. Having done so, it concluded that such a likely market rent for a similar property in fair condition with central heating, modern bathroom and kitchen facilities would be **£265.00 per week**.
21. However, the subject property is not in the condition considered usual for a modern letting at a market rent. It is therefore necessary to adjust that hypothetical rent of **£265.00 per week** to allow for the differences between the condition considered usual (including responsibility of tenants to maintain decorations as opposed to decorate) for such a letting and the condition of the actual property as observed by the Tribunal (disregarding the effect of any disrepair or other defect attributable to this tenant or any predecessor in title), and the improvements carried out by the Tenant.
22. If this property were to be let on the open market it would of course come on the market in its present condition and as recorded by the Tribunal and not in the condition normally seen in such market lettings. The Tribunal considers that to reflect these matters a deduction should be made to the hypothetical rent.
23. The Tribunal considers that a deduction should also be made to reflect the tenants improvement, lack of floor coverings, curtains and white goods.
24. The Tribunal considers that to reflect these matters the following deductions should be made:
 - a) Tenant's decorating liability £12.50
 - b) Tenant's improvements (tarmac to driveway, side and rear of the property, re-plastering walls in Bedroom 1 and walls and ceiling in Bedroom 2) £10.00.
 - c) Landlord's adjustments (detailed above but excluding parking) £50.00
 - d) General disrepair (including pointing and movement in the structure) £10.00
25. A total deduction of **£82.50 per week** to the hypothetical rent.
26. This leaves a fair rent of **£182.50 per week**.

Scarcity

27. The matters taken into account by the Tribunal when assessing scarcity were:-
- a) The Tribunal interpreted the 'locality' for scarcity purposes as being the whole area of Bournemouth and the wider area of Dorset i.e. a sufficiently large area to eliminate the effect of any localised amenity which would, in itself, tend to increase or decrease rent.
 - b) Local Authority and Housing Association waiting lists.
 - c) House prices which could be an indicator of increased availability of housing and a reduction in scarcity.
 - d) Submissions of the parties.
 - e) The members of the Tribunal have between them many years of experience of the residential letting market and that experience leads them to the view that there is no substantial shortage of similar houses available to let in the locality defined above.
28. 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 a particular type of house in the private sector or the exact number of such properties available. It can only be a judgment based on the years of experience of members of the Tribunal. However, the Tribunal did not consider that there was a substantial scarcity element and accordingly made no further deduction for scarcity.
29. This leaves a fair rent for the subject property of **£182.50 per week**

Relevant Law

30. The Rent Act 1977.
31. 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

32. The rent to be registered is not limited by the Fair Rent Acts (Maximum Fair Rent) Order 1999 because it is below the maximum fair rent (see calculation on reverse of decision sheet) of **£197.50 per week and accordingly the sum of £182.50 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