



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

Case Reference : **CHI/18UC/F77/2019/0024**

Property : **10 Monterey Gardens Exeter Devon EX4
5EN.**

Applicant : **Dorrington Queensway Ltd. Landlord.
Represented by Allsop Letting and
Management Ltd.**

Respondent : **Miss O Horsell. Tenant.**

Date of Objection : **25 April 2019. Referred to First-tier Tribunal
by Valuation Office Agency 7/05/2019**

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

Tribunal : **Mr W H Gater FRICS ACI Arb (Chairman)
Mr M C Woodrow MRICS**

Date of inspection : **9th July 2019**

REASONS FOR DECISION

Background

1. On 7th February 2019 the Landlord made an application to register the rent of the property at £10224 per annum including £1704.82 per annum for services.
2. On 4th April 2019 the Rent Officer registered the rent at £735.00 per calendar month exclusive of rates and including £101.52 per calendar month for services, with effect from 1st May 2019. The last rent registered was £710 per calendar month effective from 1st May 2017 including £25.83 per calendar month for services.

3. On 25 April 2019 the Valuation Office Agency received an objection from the Landlord and the matter was referred to the First Tier Tribunal, Property Chamber on 7 May 2019.
4. Neither party requested a hearing. The Landlords representatives did not attend but submitted written representations.

Inspection

5. On 9th July 2019 the Tribunal inspected the property accompanied by the Tenant. The Landlord was neither present nor represented.
6. The property comprises a two-storey terraced house, built about 45 years ago.
7. It is situated on a development of similar houses and flats, Rosebarn Park, in the Pennsylvania area of Exeter.
8. The property is constructed with cavity brick/block walls under a flat roof.
9. The accommodation comprises Ground Floor: Entrance Lobby, Lounge/Dining Room, Kitchen. First Floor Landing, Two Bedrooms, Bathroom. Separate WC.
10. Externally there is a small lawned front garden. At the rear is an enclosed garden, laid mainly to gravel. There are also communal garden areas, mainly laid to lawn with some mature trees.
11. There is a garage accessed from the rear garden. Shared unallocated parking is provided on the estate.
12. Double glazed windows are fitted throughout and there is gas fired central heating with radiators.
13. It was noted that the tenant has improved the property by adding glazed doors to the hall and kitchen, creating a small patio and gravelling the rear garden, and adding an oven housing and cooker hood in the kitchen. Any effect on rental value due to the improvements had been disregarded in the assessment of rent in accordance with the Act.
14. The service charge includes provision for a caretaker, and maintenance of all the communal areas including mowing of all front gardens on the estate.

Tenancy

15. The tenancy commenced on 1st March 2000 and the Tribunal notes that the tenancy was exchanged with another under the same Landlord. It therefore appears to be a statutory protected periodic tenancy. The Landlord is responsible for repairs and external decoration, the Tenant is responsible for internal decorations, subject to the limitations set down in Section 11 of the Landlord and Tenant Act 1985.

16. The property was let unfurnished. The Tenant advises that carpets, curtains and white goods were not included on letting.

Evidence

17. The Tribunal received written representations from the Landlord and has noted the Summary of Consultation with the Tenant dated 29 March 2019, provided by the Rent Officer.

18. In that consultation with the Rent Officer the Tenant stated that:

- a) The tenancy includes a garage.
- b) There was no estate manger for six months last year.
- c) There is an area of water penetration into the living room from a down pipe. The flat roof above is due to be renewed at some stage as it has cracked.
- d) There is no shower in the bathroom.
- e) A recent winter let in Lebanon Close was advertised at less than the registered rent.
- f) Market rent properties on the estate have been modernised.

19. The Landlord made the following representations:

- a) Scarcity: There should be no deduction for scarcity as the current demand for rented property in the area does not outstrip supply. At present there are more than 40 comparable properties available within a five mile radius so scarcity of supply is not inflating prices.
- b) Condition: They were not aware of any failure by the landlord to comply with contractual and statutory obligations. Any failure by the tenant to report disrepair should not result in a deduction from rent.
- c) Location: The property is situated in a private residential estate close to the centre of the popular town of Exeter. The property has excellent views of a green area with a large, protected Monterey tree in clear view. The property has excellent access to public transport links, with two train stations within one mile.
- d) The application for Fair Rent was accompanied by a supporting statement and evidence of service charge expenditure which has been considered by the Tribunal.
- e) Three comparables of properties managed by Allsop were provided: -
6 Monterey EX4 5EN. A two bedroomed house with kitchen, bathroom. Annual rent on AST £11232
St Davids Hill. A two bedroomed house with kitchen, bathroom. Let on AST at £12000.
Exeter. A two bedroomed house with kitchen, bathroom. Let on AST at £10,800.
A printout from the Rightmove website was attached, indicating 44 two bedroomed houses for rent within a five mile radius including a two bedroomed cottage available in Clyst St George at £8100.
- f) The Landlords representatives concluded that the Fair Rent was a minimum of £10980.24 per annum.
This was calculated as follows: -
Market Rent: £11344
Carpets /White Goods: -£226.88
Updated Kitchen/Bathroom -£226.88

Fair Rent

£10890.24

- g) The Maximum Fair Rent calculation was shown as based on RPI growth between registrations, (285-271.1) of 5.13% plus 5% enhancement= +10.13%. This gave a Maximum Fair Rent of £9383.07 rounded to £9383 per annum.

The Law

20. When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, must have regard to all the circumstances including the age, location and state of repair of the property. It must also disregard 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.
21. 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.)

The Tribunal's Deliberations

22. The Tribunal considered the representations and information provided by the Landlord and Tenant.
23. 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 on the terms and in the condition that is considered usual for such an open market letting. This rent must exclude the value of tenant's improvements noted above.
24. It did this by considering the evidence provided by the parties and by having regard to the Tribunal's own general knowledge of market rent levels in the Exeter area.
25. It found that the starting point should be in the region of £850 per Calendar month, and therefore adopted the Rent Officers starting rent at the same sum.
26. There are differences between the usual terms and condition for a letting at that rent and the circumstances of this letting. These need to be reflected in

adjustments from the market rent which might be achieved with the property in usual condition.

27. Reductions were accordingly made from the market rent to reflect the lack of white goods, carpets and curtains and the dated kitchen and bathroom. The mode of construction incorporating a low insulation flat roof has been considered earlier in the assessment of market rent in relation to the nature of the property.
28. Further the decorating liability under the subject tenancy is more onerous than in a typical market letting.
29. The Tribunal considers that to reflect these matters a deduction of £116.00 per month should be made to the starting point market rent. This deduction is made up as follows: -

30. Deduct £/month

i) Lack of white goods	20
ii) Lack of carpets and curtains	32
iii) Dated kitchen/ bathroom	22
iv) Tenants decorating liability	<u>42</u>
Subtotal	116
Net rent £850-116 =	£734.00

Fair rent say £735 per month.

Scarcity

31. The Tribunal then considered the question of scarcity.
32. Increases in rent that are caused by demand exceeding supply are regulated by section 70(2) of the 1977 Act and must be excluded in the assessment of a Fair Rent.
33. The Tribunal is required to consider scarcity in respect of demand and supply in the context of a sizeable area so as to ensure that the benefits of local amenities are neutralised and also to give a fair appreciation of the trends of scarcity and their consequences. The Tribunal should only give a discount for scarcity if it is substantial.
34. The matters taken into account by the Tribunal when assessing scarcity were as follows.
35. The Tribunal interpreted the 'locality' for scarcity purposes as being the whole area of Exeter i.e. a sufficiently large area to eliminate the effect of any localised amenity which would, in itself, tend to increase or decrease rent.
36. Local Authority and Housing Association waiting lists.
37. House prices which could be an indicator of increased availability of housing and a reduction in scarcity.

38. Submissions of the parties.

39. 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 currently no shortage of similar houses available to let in the locality defined above.

40. Accordingly, the Tribunal made no deduction for scarcity.

Maximum Fair Rent

41. This is the rent calculated in accordance with the Maximum Fair Rent Order details of which are shown on the rear of the Decision Notice.

42. The Rent Acts (Maximum Fair Rent) Order 1999 restricts the amount by which the rent may be increased to a maximum 5% plus RPI since the last registration.

43. 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.

44. 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 that can be registered of £798 per calendar month prescribed by the Order (details are provided on the back of the decision form).

45. The Tribunal accordingly determines that the lower sum of £735 per calendar month including £101.52 per calendar month for services is registered as the fair rent with effect from 19 July 2019 being the date of the Tribunal's decision.



Chairman: W H Gater FRICS ACI Arb

Date: 19 July 2019

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

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