



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

Case Reference : **CHI/00HE/F77/2019/0032**

Property : **18 Stratton Terrace, Falmouth,
Cornwall TR11 2SY**

Applicant : **Timro Investments Ltd and
Farnpoint Ltd (Landlord)**

Respondent : **Mr and Mrs A Hill (Tenant)**

Date of Objection : **Referred to First-tier Tribunal by
Valuation Office Agency on 14th June
2019**

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

Tribunal : **Mr R T Brown FRICS
Mr M Woodrow MRICS**

**Date of inspection and
Consideration** : **14th August 2019**

REASONS FOR DECISION

Background

1. The Tribunal gave formal notice of its decision by a Notice dated 14th August 2019 that the rent would be **£600.00 per lunar month** with effect from the same date.
2. On the 22nd June 2018 the Landlord of the above property applied to the Rent Officer for registration of a fair rent of £600.00 per lunar month. The rent having been previously been determined by the Rent Officer at £535.50 per lunar month 25th January 2016 and effective from the 25th February 2016.
3. On the 16th August 2018 the Rent Officer registered a fair rent of £609.50 per lunar month effective from the same date.
4. The Tenant, on the 10th September 2018, objected to the rent determined by the Rent Officer and the matter was to be referred to the First-tier Tribunal (Property Chamber) (Residential Property). However due to an administrative oversight in the Rent Officer Service the matter was not referred to the First Tier Tribunal until the 14th June 2019. The late transfer of the application to the First Tier Tribunal was allowed under the provisions of the Rent Act 1977 Schedule 11 paragraph 6(1)(b)
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 14th August 2019 in the presence of the Tenant Mr and Mrs Hill. The Landlord was neither present nor represented.
7. The property (now Number 18) is Grade II listed and comprises the servants quarters attached to the rear of a substantial "captain's house" (now divided into 2 semi-detached houses Numbers 16 and 17) overlooking the Penryn river. Access is via a short flight of steps (shared) from the highway and a narrow path to the side of Number 17.
8. The property is of solid masonry construction under a pitched and slated roof with timber single glazed windows.
9. The accommodation comprises: Ground Floor: Glazed entrance into Kitchen (range of worktops and cupboards with a sink unit), Dining Room, inner hall with stairs to first floor and Lounge with glazed door to garden. First Floor: Landing, 3 double bedrooms, Bathroom (with shower over bath, and wash basin) and separate w/c. Outside: Enclosed courtyard garden with additional elevated terrace above at eaves height accessed via a flight of stone steps. There is no garage or on-site parking.

10. Mains gas, electricity, water and drainage are connected to the property. There is no central heating and hot water is provided by an electric immersion heater in Bedroom 3.
11. The Tenant has maintained the property in good decorative order and carried out the following works:
 - a) Fitted the kitchen units and sink.
 - b) Fitted all floor coverings.
 - c) Installed open fire place and surround in Dining Room.
 - d) Living Flame gas fire and surround in Living Room.
 - e) Re-routed gas supply so that it runs along the side access instead of through No 17.
 - f) Provided secondary glazing to all windows.
 - g) Insulated lining to inner face some of walls.
 - h) Partial alterations to the wiring circuit
12. The Tribunal noted during its inspection:
 - a) The external finishing is in need of attention as were gutters and downpipes.
 - b) The single glazed windows and doors were in poor repair including the toilet window which had recently fallen out and the Tenant had replaced it with a fixed panel of Perspex.
 - c) The wiring is dangerous being old, having no circuit breakers and no indication that it had been inspected by a qualified electrician in accordance with current legislation.
 - d) There are no hard wired smoke detectors or carbon monoxide alarms required in accordance with current legislation.
 - e) The Tenants say there is no sound insulation between the inner hall and the rear ground floor of Number 17.
 - f) The lack of natural light to the ground floor with the only window downstairs being in the Dining Room. Natural light to the Kitchen and Living Room being provided by the glazed external doors only.
 - g) The lack of natural ventilation resulting from the limited number of opening windows and the fact it was not possible to open the Living Room door to the garden.
 - h) No off street parking.
 - i) The limited nature of the side access.
13. A hearing was not requested by either party.
14. Neither the Tenant nor the Landlord made formal submissions to the Tribunal in accordance with the Directions dated 18th June 2019.

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 but without the benefit of submissions from the parties.
20. After considering the rental evidence included within the Rent Officer's papers, 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 and the Tribunal's own general knowledge of market rent levels in Falmouth and the wider area of West Cornwall. 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 **£785.00 per lunar month**.
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 **£785.00 lunar month** 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 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 £40.00
 - b) No central heating £45.00
 - c) Single glazing £25.00
 - d) Lack of facilities (including restricted natural light and ventilation, lack of off street parking and restricted side access) £20.00
 - e) General disrepair (as described above) £30.00.
 - f) Tenant's improvements listed above £25.00
25. A total deduction of **£185.00 per lunar month** to the hypothetical rent.
26. This leaves a fair rent of **£600.00 per lunar month**.

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 Falmouth and the wider area of West Cornwall 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 **£600.00 per lunar month**.

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 **£626.00 per lunar month and accordingly the sum of £600.00 per lunar month** will be registered as the fair rent on and with effect from 14th August 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