



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

Case Reference : BIR/00GG/F77/2019/0022

Property : 1 Bungalow, Upton Lane, Shifnal, Shropshire TF11 9HF

Landlord : Northumberland & Durham Property Trust Ltd

Representative : Grainger plc

Tenant : Mr D G Offland

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

Tribunal Members : Judge D R Salter (Chairman)
Mr R P Cammidge FRICS

Date of Decision : 3 September 2019

Statement of Reasons

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Background

- 1 The Tribunal gave formal notice of its decision by a Notice dated 3 September 2019 of **£505.00 per calendar month** with effect from the same date.
- 2 On 25 April 2019, the Landlord of the above property applied to the Rent Officer for registration of a fair rent of £576.00 per calendar month, the rent having previously been registered on 14 June 2017 at £480.00 per calendar month.
- 3 On 14 June 2019, the Rent Officer registered a fair rent of £500.00 per calendar month, with effect from 14 July 2019.
- 4 The Landlord 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 would appear 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 which sets out the landlord's statutory repairing obligations; the tenant is responsible for internal decorations.
- 6 The Landlord has sought extended reasons for the Tribunal's decision.

Inspection

- 7 The Tribunal inspected the property on 3 September 2019 in the presence of the Tenant, Mr Offland.
- 8 The property comprises a detached bungalow (circa 1960s) with the following accommodation: hall, kitchen, two reception rooms; bathroom and separate wc; two double bedrooms and a single bedroom and a utility area. It is situated in a rural location which is approximately one mile from Shifnal. It has areas dedicated to lawns with borders to the front and side of the property and a garden to the rear. There is a garage and car parking space with two brick outbuildings abutting the subject property which comprise a wc and a building formerly used as a coal house.
- 9 The Tenant had re-tiled floor in the kitchen and installed a wood burner in the lounge. He had also constructed sheds and greenhouses in the garden.
- 10 The Landlord had installed upvc double glazing to doors and windows and full oil fired central heating. Heating is provided by seven radiators.
- 11 The subject property has mains water and electricity and is served by a septic tank which is shared with the neighbouring bungalow. There is no mains gas.
- 12 Generally, the property was noted to be in a fair condition taking into account its age and nature. Externally, the wooden fascia boards and the wood cladding to the garage were in very poor condition with peeling paint and exposed wood (some of which appeared to be rotten), and the garage door required painting. In addition, there was a need for typical ongoing maintenance to the gutters, downpipes, roof of the bungalow and to the roof over the utility area. Internally, the property is well maintained although the bathroom and kitchen needed updating. The Tenant has supplied the carpeting/floor covering, curtains and white goods.

Hearing

- 13 Initially, Mr Offland requested a Hearing, but at the inspection he informed the Tribunal members that he did not wish to proceed with a Hearing. Accordingly, the Tribunal considered the matter on the papers which had been submitted to the Tribunal prior to 3 September 2019.

Relevant Law

- 14 Provisions in respect of the jurisdiction of the Tribunal and determination of a fair rent are found in Schedule 11, Part 1, paragraph 9(1) 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

Schedule 11, Part 1, paragraph 9 (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 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.”

15 When determining a fair rent the Tribunal, in accordance with the Rent Act 1977 , 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 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 Committee* [1999] QB 92 the Court of Appeal emphasized:

(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 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 differences between those comparables and the subject property).

17 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.

18 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 last registration.

19 The only exception to this restriction on a fair rent 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.

Submissions

Landlord

20 The Landlord’s representative submitted written representations which described the subject property and drew the Tribunal’s attention to the following two properties advertised to let in the Shifnal and Telford area area and regarded as comparable:

Dawley, Telford

A three-bedroom detached bungalow advertised to let at £770.00 per calendar month; and

Coppice Close, Telford

A three-bedroom detached bungalow advertised to let at £800.00 per calendar month.

In light of this information which taken from particulars obtained from rightmove, it was considered that the requested fair rent of £576.00 per calendar month (in relation to which no allowance had been made for scarcity) was an accurate assessment of the rental value for the subject property taking account of its age, condition and type of tenancy.

Tenant

- 21 In an undated letter which was received by the Tribunal on 5 August 2019, Mr Offland indicated that he did not believe that the two properties to which the Landlord's representatives had referred in their representations were comparable to the subject property and when the subject property is compared to those properties it is 'failing'. Mr Offland also pointed out that repairs had not been carried out to the subject property by the Landlord and that there was no back-up from the Landlord apart from emergencies. He considered that he paid a reasonable rent. Subsequently, he adduced photographs of the subject property in evidence.

Reasons for Decision

- 22 Initially, 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 that is considered usual for such an open market letting. It did this by having regard to the evidence submitted by the parties. In this respect, the Tribunal was assisted in its deliberations by the 'comparable' evidence of the properties available to let provided by the Landlord through its representative (see, paragraph 20), but the Tribunal found that, notwithstanding the apparently similar age and structure of these bungalows, limited reliance could be placed on these 'comparables' because of the fact that each of these properties is located in an urban setting, namely Telford, and each offered features which distinguished them from the subject property. Consequently, the Tribunal, taking into account these 'comparables' to this limited extent and using its own knowledge of market rental levels in the Shropshire and Herefordshire area, concluded that such a likely market rent, if a monthly rent is adopted, would be £675.00 per calendar month.
- 23 However, the subject property is not in the condition considered commensurate with a modern letting at a market rent. Therefore, it was first necessary to adjust the above hypothetical rent of £675.00 per calendar month to allow for the differences between the condition considered usual for such a letting and the condition of the subject 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 £115.25 per calendar month in respect of the general condition (including the very poor condition of the fascia boards and wood cladding referred to in paragraph 12). The Tribunal also allowed for the very basic kitchen fittings and the very dated bathroom facilities. Further, the Tribunal took into account that the tenant provided the white goods, floor coverings and curtains, and was responsible for internal decoration.
- 24 Thereafter, the Tribunal considered the question of scarcity in section 70(2) of the Rent Act 1977. In this respect, the Tribunal acknowledged that a scarcity percentage or figure 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. This can only be a judgment based on the experience of members of the Tribunal which, itself, is an expert tribunal. In this instance, the Tribunal did consider that there was a substantial scarcity element and, accordingly, a further deduction of £55.00 per calendar month was made for scarcity within the meaning of section 70(2) of the Rent Act 1977.

- 25 This leaves a fair rent for the subject property of **£504.75 per calendar month, say £505.00 per calendar month.**

Rent Acts (Maximum Fair Rent Order) 1999

- 26 The rent to be registered **is not** limited by the Rent Acts (Maximum Fair Rent Order) 1999 because it is **below** the maximum fair rent that can be registered of **£534.50 per calendar month** prescribed by the Order (see, the details provided on the back of the decision form).
- 27 Accordingly, the sum of **£505.00 per calendar month** will be registered as the fair rent from 3 September 2019 being the date of the Tribunal's decision.

Judge DR Salter

Date: 18 October 2019

Appeal Provisions

A person wishing to appeal this decision to the Upper Tribunal (Property Chamber) on a point of law must seek permission to do so by making a written application to the First-tier Tribunal at the Regional office which has been dealing with the case which application must:

- a. be received by the said office within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
- b. 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.

If the application is not received within the 28-day time limit, it must include a request for an extension of time and the reason for it 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.