



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

**Case Reference** : BIR/00CW/F77/2019/0023

**Property** : 77 Fairview Road, Wednesfield, Wolverhampton WV11 1BT

**Landlord** : Northumberland & Durham Property Trust Ltd

**Representative** : Grainger plc

**Tenant** : Mrs M Baker

**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

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**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 **£105.00 per week** 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 £118.20 per week, the rent having previously been registered on 11 July 2017 at £98.50 per week.
- 3 On 14 June 2019, the Rent Officer registered a fair rent of £104.00 per week, with effect from 11 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, Mrs Baker.
- 8 The property comprises a semi-detached house (circa early to mid-twentieth century) with the following accommodation: hall, two reception rooms, kitchen on the ground floor; bathroom/wc, two double bedrooms and a single bedroom on the first floor. There is a front garden and a rear garden which overlooks a school. In addition, a garage and outbuilding, which were constructed by the Tenant's husband with materials provided by the Landlord's predecessor in title, adjoining the property.
- 9 There is gas central heating. Heating is provided by five radiators and gas fires in the front room (installed by the Tenant) and in the dining room (installed by the Landlord).
- 10 The Landlord had installed upvc double glazing.
- 11 Generally, the property was in a fair condition taking into account its age and nature. Externally, some redecoration works are required together with typical ongoing maintenance to the chimney stack, roof and leaking gutters. The rendering was discoloured and 'patched-up' in places. Internally, the property is well maintained although fittings are dated including the old style fireplaces and bathroom, w/c and kitchen fittings. The Tenant has supplied the carpeting, curtains and white goods.

## Hearing

- 12 A Hearing was not requested by either party and, accordingly, the Tribunal considered the matter on the papers which had been submitted to the Tribunal prior to 3 September 2019.

## Relevant Law

- 13 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.”

- 14 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.

- 15 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).

- 16 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.

- 17 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.

- 18 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**

- 19 The Landlord's representative submitted written representations which described the subject property and drew the Tribunal's attention to the following property advertised to let in the area and regarded as comparable:

*Cadman Crescent, Wolverhampton*

A three-bedroom semi-detached house advertised to let at £150.00 per week.

In light of this information, it was considered that the requested fair rent of £118.20 per week (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**

- 20 No written submissions were received from the Tenant.

## Reasons for Decision

- 21 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, notably the property cited by the Landlord as a comparable, and the Tribunal's own general knowledge of market rental levels in the West Midlands. Having done so, it concluded that such a likely market rent, if a weekly rent is adopted, would be £150.00 per week.
- 22 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 £150.00 per week 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 £45.00 per week in respect of the general condition (including the need for some typical external maintenance). The Tribunal also allowed for the partial central heating to the property, the very basic kitchen fittings and the very dated bathroom facilities. Further, the Tribunal took into account that the tenant had provided white goods, floor coverings and curtains, and was responsible for internal decoration.
- 23 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. In this instance, the Tribunal found that whilst it was conceivable that the number of potential tenants looking for accommodation of this type in this area would have been greater than the number of units available to let, it did not consider that there was a substantial scarcity element and, accordingly, made no deduction for scarcity within the meaning of section 70(2) of the Rent Act 1977.
- 24 This leaves a fair rent for the subject property of **£105.00 per week**.

## Rent Acts (Maximum Fair Rent Order) 1999

- 25 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 **£109.50 per week** prescribed by the Order (see, the details provided on the back of the decision form).
- 26 Accordingly, the sum of **£105.00 per week** 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.