



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

**Case Reference** : **CHI/18UE/F77/2019/0039**

**Property** : **Woodgate Cottage Milltown Muddiford  
Barnstaple EX31 4HG.**

**Landlords** : **Mr Mark & Mrs Carol Kiff.**

**Tenant** : **Mr Chris Wallis.**

**Date of Objection** : **24 May 2019. Referred to First-tier Tribunal  
by Valuation Office Agency 23 July 2019**

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

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

**Date of inspection** : **25<sup>th</sup> September 2019**

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**REASONS FOR DECISION**

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**Background**

1. On 3<sup>rd</sup> May 2019 the Landlord made an application to register the rent of the property at £525 per calendar month. There are no services included in the tenancy.
2. On 5<sup>th</sup> July 2019 the Rent Officer registered the rent at £510.00 per calendar month exclusive of rates, with effect from 4<sup>th</sup> August 2019. The last rent registered was £485 per calendar month effective from 4<sup>th</sup> August 2017.

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3. On 24<sup>th</sup> May 2019 the Valuation Office Agency received an objection from the Tenant and the matter was referred to the First Tier Tribunal, Property Chamber on 23 July 2019.
4. Directions were issued by the Tribunal on 6th August 2019.

### **Inspection**

5. On 25th September 2019 the Tribunal inspected the property accompanied by Mr and Mrs Kiff and Mr and Mrs Wallis.
6. The property comprises a period two-storey detached cottage, believed to be built over 150 years ago, with a two-storey extension at the rear built in circa 1961.
7. It is situated in a rural hamlet about four miles from Barnstaple. It is approached over a steep largely unmade track shared with other users.
8. The house stands on an elevated, part retained site, and backs on to commercial woodland.
9. It is constructed of solid cob and masonry, rendered externally, under a pitched asbestos slate roof. The rear extension is of cavity brick/block construction. Windows and doors are modern PVCu double glazed. Modern rainwater goods and fascia / soffits were added in recent years.
10. The accommodation comprises Ground Floor: Small Entrance Lobby, Small Living Room. Dining Room with Rayburn solid fuel range, Kitchen with walk in store cupboard off. First Floor: Landing, Three Bedrooms, Bathroom. Separate WC.
11. Externally there is an integral outside WC with old high level suite and a store cupboard adjacent.
12. There is an elevated, retained garden with parking space adjacent. There is a further extensive area of lawned garden on the other side of the shared access track. This has an old stone and corrugated iron shed.
13. Outbuildings comprise a timber and corrugated garage, greenhouse and shed. The parties confirmed that these were added by the tenants.
14. Mains electricity, water and drainage are understood to be connected. There is no central heating. Hot water is provided by the solid fuel Rayburn and an electric immersion to the cylinder in the bathroom.
15. The parties indicated that there had been various improvements by the tenant. These are described in more detail below. Any effect on rental value due to the improvements had been disregarded in the assessment of rent in accordance with the Act.
16. The condition of the property is at best fair. Items noted by the Tribunal included, amongst others, evidence of internal dampness including around a chimney breast; dated and worn sanitary fittings and the poor condition of the external

rendering including areas which are cracked and broken plus areas at the rear which have become detached.

## **Tenancy**

17. The tenancy commenced in 1981 and the Tribunal notes that there is no tenancy agreement. 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 (the Landlords statutory repairing obligations).
18. That section specifies an implied covenant by the lessor (Landlord) to: -
  - (a) to keep in repair the structure and exterior of the dwelling-house (including drains, gutters and external pipes),*
  - (b) to keep in repair and proper working order the installations in the dwelling-house for the supply of water, gas and electricity and for sanitation (including basins, sinks, baths and sanitary conveniences, but not other fixtures, fittings and appliances for making use of the supply of water, gas or electricity), and*
  - (c) to keep in repair and proper working order the installations in the dwelling-house for space heating and heating water.*
19. The property was let unfurnished. The parties advise that carpets, curtains and white goods were not included on letting.

## **The Hearing**

20. On opening the hearing, the Tribunal referred to its directions regarding the exchange of evidence. Neither party complied with this and apart from anecdotal evidence from the Landlord, no rental comparable evidence was produced at the hearing.
21. The Tribunal noted contributions from the parties at the hearing and had regard to the information provided in the rent registration application and tenant's objection.
22. The Tenant said that the tenancy started in 1981, without a written agreement at a low rent of £100 per calendar month which increased later to £125 per calendar month.
23. He said that on commencement there was "nothing there". There was no kitchen other than an old sink. Ceilings and skirtings have had to be replaced. He had replaced bricks in the Rayburn. The garden was "a scrubland".
24. He repaired a retaining wall and repaired the lane adjacent to the cottage with concrete. He had also recently contributed £200 with other frontagers towards repairing the approach.

25. He had cemented the shoulders around an external chimney breast in an attempt to eradicate internal dampness.
26. He considered that there should be no increase in the existing registered rent of £485 per calendar month.
27. The Landlords pointed out that they inherited the property in 2011 and were advised then to seek a registration of rent. They now apply for a reregistration every two years.
28. They consider that if the tenants do not notify them of disrepair, they cannot carry out works.
29. About five or six years ago they added double glazing and replacement fascias.
30. Last year their builder had attended to the chimney disrepair but apparently this had not been successful.
31. As regards rents in the area, they were aware that 6 Milltown Hill in the village was let at £550 per calendar month. This was not a registered rent. There was no double glazing or white goods. The tenant had installed the kitchen and bathroom and there was no heating only a Rayburn range.
32. They also recalled that a family member had let a nearby house at £750 per calendar month but they were not aware of any details of accommodation or facilities.
33. The Tribunal obtained confirmation from both parties that the Rent Officer's description of Tenant's Improvements /repairs was accurate.
34. The Rent Officer's survey sheet states the following Tenants improvements/repairs
  - a. New kitchen and appliances
  - b. Replaced hot water tank and immersion heater with a factory lagged tank
  - c. Replaced and artexed ceilings, plastered walls
  - d. Widened roof hatch, (added) loft insulation
  - e. Bathroom tiling
  - f. New bricks and riddler to Rayburn
  - g. Installed smoke alarms
  - h. Skirting boards replaced
  - i. Improved access and garden
  - j. Built garage, Greenhouse.
  - k. Part payment towards access lane being concreted. (Joint between all residents.

## **The Law**

35. 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.

36. 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**

37. The Tribunal considered all the representations and information provided by the Landlord and Tenant.

38. 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.

39. 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 North Devon area.

40. It found that the starting point should be in the region of £785 per Calendar month, and therefore adopted the Rent Officers starting rent at the same sum.

41. 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.

42. Reductions were accordingly made from the market rent to reflect the circumstances of this letting as listed below.

43. Further the decorating liability under the subject tenancy is more onerous than in a typical market letting.

44. The tribunal reflected the condition of the property had the Tenant not undertaken repairs and improvements.

45. The Tribunal considers that to reflect these matters a deduction of £275.00 per month should be made to the starting point market rent. This deduction is made up as follows: -

46. Deduct £/month

i) Lack of white goods	20
ii) Lack of carpets and curtains	30
iii) Lack of kitchen.	40
iv) Dated bathroom	20
v) Tenants decorating liability	40
vi) Lack of central heating	50
vii) Disrepair and tenants' improvements	75
Subtotal	275
Net rent £785-275=	£510.00

Fair rent say £510 per month.

**Scarcity**

47. The Tribunal then considered the question of scarcity.

48. 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.

49. The Tribunal is required to consider scarcity in respect of demand and supply in the context of a sizeable area 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.

50. The matters taken into account by the Tribunal when assessing scarcity were as follows: -

51. The Tribunal interpreted the 'locality' for scarcity purposes as being the whole area of North Devon i.e. a sufficiently large area to eliminate the effect of any localised amenity which would tend to increase or decrease rent.

52. Local Authority and Housing Association waiting lists.

53. House prices which could be an indicator of increased availability of housing and a reduction in scarcity.

54. Submissions of the parties.

55. 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.

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

## **Maximum Fair Rent**

57. 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.
58. 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.
59. 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.
60. 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 £539.50 per calendar month prescribed by the Order (details are provided on the back of the decision form).
61. The Tribunal accordingly determines that the lower sum of £510 per calendar month as the fair rent with effect from 8<sup>th</sup> October 2019 being the date of the Tribunal's decision.



Chairman: W H Gater FRICS MCI Arb

Date: 8<sup>th</sup> October 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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