



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

**Case Reference** : **BIR/00CN/F77/2019/0028**

**Property** : **3 North Pathway, Birmingham, B17 9EJ**

**Landlord** : **Bradford Property Trust**

**Representative** : **Grainger Plc**

**Tenant** : **Mr D Brown**

**Type of Application** : **An Application under Section 70 of the Rent Act 1977 against the fair rent assessed for the Property by the Rent Officer.**

**Tribunal Members** : **V Ward BSc Hons FRICS  
R P Cammidge – Dip LA (Hons) FRICS**

**Date of Decision** : **20 November 2019**

**Date of Statement of Reasons** : **2 December 2019**

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**STATEMENT OF REASONS**

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## **BACKGROUND**

1. On 1 July 2019, the Rent Officer registered a rental of £113.00 in respect of the Property, effective from 13 August 2019. The rent prior to this registration was £107.00 per week.
2. By a letter dated 5 August 2019, the Landlord objected to the rent determined by the Rent Officer and the matter was referred to the Tribunal.
3. The fair rent determined subsequently by the Tribunal for the purposes of Section 70 was £119.50 per week with effect from 20 November 2019.

## **INSPECTION**

4. The Tribunal carried out an inspection of the Property on 20 November 2019. Present at the inspection were the Tenant and his wife, and Mr Ryan Tucker, Property Manager for Grainger plc.
5. The property was found to be a mid –terraced house of traditional brick construction with a pitched roof and situated in a popular and well considered residential area. It comprises of one of the smaller style of house types on the estate.
6. The accommodation comprised the following:

Ground Floor	hall, lounge, kitchen;
First Floor	two bedrooms, bathroom;
Externally	shared integral rear entrance, gardens front and rear.
7. The Property benefits from gas fired central heating (installed by the Tenant) and UPVC double glazing to the rear. The Property does not benefit from any off-street parking.
8. The Property was generally in a reasonable condition at the time of inspection.
9. In addition to the central heating, the Tenant had also fitted the kitchen and installed a shower over the bath.

## **HEARING**

10. A hearing was held later that same day at the Tribunal Hearing Rooms, 13th Floor, Centre City Tower, Hill St Birmingham B5 4UU. Those present at the inspection were also present at the hearing.

11. The representations from the Tenant (and his wife) both in writing at the hearing confirmed that he had been in occupation of the Property for 42 years and further that they considered the increase proposed by the Rent Office of £6.00 per week was reasonable. They also stated that the UPVC double glazing had only been recently installed.
12. The representations from Mr Tucker on behalf of the Landlord, provided details of the letting of a comparable property within reasonable proximity of the subject Property, where the rent achieved had been £219.00 per week. After allowing for the age of the Property, its condition and tenancy type, Grainger requested that a rent of £128.40 per week be determined.

## **THE LAW**

13. 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 other defect attributable to the Tenant or any predecessor in title under the Regulated Tenancy, on the rental value of the property.
14. In *Spath Holme Limited v Chairman of the Greater Manchester, etc. Committee* [1995] 28HLR107 and *Curtis v London Rent Assessment Committee* [1999] QB92 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 were usually appropriate comparables. (These rents may have to be adjusted where necessary to reflect any relevant differences between those comparables and the subject property).

## **VALUATION**

15. In the first instance, the Tribunal determined what rent the Applicant could reasonably expect to obtain for the Property in the open market if it were let today in the condition that is considered usual for such open market lettings. It did this from its own general knowledge of market rent levels in the Harborne area and by considering the evidence provided within the representations. Having done so, it concluded that such a likely market rent would be £220.00 per week.
16. To allow for the Tenant's improvements of the kitchen and shower, installation of central heating and an allowance for decorating liability, it was necessary to make an additional deduction of £26.00 per week.

17. A further deduction of £12.00 per week was made to allow for the Tenant's fittings (floor coverings, curtains and white goods).
18. The Tribunal then considered the question of scarcity. This was done by considering whether the number of persons genuinely seeking to become tenants of similar properties in the wider area of Birmingham on the same terms other than rent is substantially greater than the availability of such dwellings as required by section 70(2) of the Rent Act 1977.
19. The Tribunal finds that many landlords dispute that scarcity exists because they are of the opinion that the market is 'in balance'. Although tenants do not in all cases have difficulty in finding accommodation, this ignores the fact that it is the price of such accommodation which creates a balance in the market. Section 70(2) specifically excludes the price of accommodation from consideration in determining whether there are more persons genuinely seeking to become tenants of similar properties than there are properties available. Although the rental market for Assured Shorthold properties may be in balance, many potential tenants may be excluded from it for various reasons such as age, poor credit history or because they are on housing benefit.
20. The Tribunal found that there was scarcity and, accordingly, made a further deduction of £19.00 per week.
21. The Tribunal determined that the fair rent for the Property was therefore £163.00 per week.
22. However, the maximum fair rent permitted by the Rent Acts (Maximum Fair Rent) Order 1999 is £119.50 per week. This, therefore, limits the rental level determined by the Tribunal. Details of the maximum fair rent calculation are provided with this decision.

## **DECISION**

23. The fair rent determined by the Tribunal for the purposes of Section 70 was, therefore, £119.50 per week with effect from 20 November 2019.
24. In reaching its determination, the Tribunal had regard to the evidence and submissions of the parties, the relevant law and their own knowledge and experience as an expert Tribunal but not any special or secret knowledge.

## **APPEAL**

25. If either party is dissatisfied with this decision they may apply for permission to appeal to the Upper Tribunal (Lands Chamber) on a point of law only. Prior to making such an appeal, an application must be made, in writing, to this Tribunal for permission to appeal. Any such application must be made within 28 days of the issue of this decision which is given below (regulation 52 (2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rule 2013) stating the grounds upon which it is intended to rely in the appeal.

V Ward