



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

Case Reference : **CHI/29UP/F77/2019/0063**

Property : **35 Pembury Grove, Tonbridge, Kent
TN9 2BH**

Landlord : **Bradford Property Trust Ltd**
Representative : **Grainger plc**

Tenant : **Mrs S J Langridge**
Representative : **None**

Type of Application : **Rent Act 1977 – Section 70
Appeal of Registered Rent**

Tribunal Members : **R T Athow FRICS MIRPM (Chairman)**
P A Gammon MBE BA (Lay member)

Date of Inspection : **8th January 2020**

Date of Decision : **8th January 2020**

DECISION

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Background

- 1) On 23rd August 2019 the landlord made an application to register the rent of the property at £189.00 per week.
- 2) The rent was previously registered on 18th September 2017 with effect from 17th November 2017 at £ 164.00 per week following a determination by the Rent Officer.
- 3) On 1st October 2019 the rent officer registered a fair rent of £173.00 per week exclusive of rates with effect from 17th November 2019.
- 4) On 15th October 2019 the landlord objected, and the matter was referred to the First Tier Tribunal (Property Chamber).

Inspection

- 5) The Tribunal inspected the property on 8th January 2020 in the presence of the tenant and it appeared to be in poor condition for its age and character. No representative from the landlord attended the inspection.
- 6) It is a semi-detached house in a narrow cul-de-sac about half a mile from the centre of the town, with local shops and train station within a few minutes' walk.
- 7) The property appears to have solid walls which have been rendered & colourwashed externally. There is a slate roof. The windows and external doors are uPVC double glazed throughout.
- 8) The accommodation comprises entrance lobby, 2 rooms and kitchen on the ground floor, and 2 bedrooms and a bathroom on the first floor. The bathroom is accessed through the 2nd bedroom. All mains services are connected. There is gas fired central heating.
- 9) During the inspection the Tribunal noted the external decorations have not been renewed for many years. Consequently, the render and paint finish are failing in many areas. Internally there are several signs of penetrating damp, mostly in areas corresponding to the defective areas externally.
- 10) The tenant has provided all the white goods in the kitchen as well as carpets and curtains.
- 11) The following tenant's improvements have been made to the property –
 - Several years ago the old butlers sink in the kitchen was replaced by a comprehensive set of base and wall units and a stainless steel sink.

Evidence

- 12) No written representations were received from either party.
- 13) Neither party requested a hearing at which oral representations could be made.
- 14) The Tribunal understands there is no written tenancy agreement.

The law

- 15) 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. That section also required the Tribunal not to take into account the personal financial and other circumstances of the tenant.
- 16) 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).
- 17) In *Spath Holme Ltd v Chairman of the Greater Manchesger etc. Committee* (1995) 28 HLR 107 and *Curtis v London Rent Assessment Committee* (1999) QB 92 the Court of Appeal emphasised that section 70 means that:
 - a) Ordinarily a fair rent is the market rent for the subject property discounted for 'scarcity' and
 - b) 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 these comparables and the subject property).
- 18) The Rent Act (Maximum Fair Rent) Order 1999 limits the increase from the previous registered rent. It is worked out by a formula based on the change in Retail Prices Index since the last registration plus a fixed percentage increase set by law. If the Tribunal decides the property is worth more than the maximum fair rent, the maximum fair rent becomes the registered rent. If the valuation is lower than the maximum fair rent, that valuation becomes the registered rent.
- 19) There are two occasions when the maximum fair rent will not apply:-
 - If there is no existing registered rent, and
 - If the landlord has improved or repaired the property and the Rent Officer and/or the Tribunal considers the improvement or repair has made the rent at least 15% more than the existing registered rent.

VALUATION

The Market Rent

- 20) The Tribunal firstly determined what rent the landlord could reasonably be expected to obtain for the property in the open market if it were let today in the condition that is considered usual for such an open market letting exclusive of water rates and council tax.
- 21) The Rent Officer has provided a brief redacted list of comparables upon which he relied in computing his market rent. The list does not give full postcode addresses (only TN9) and so the Tribunal was unable to see if any were in the immediate locality. Consequently, these were not considered by the Tribunal to be suitable comparables.
- 22) Neither party provided any evidence of open market lettings, and the Tribunal therefore relied on its members' own knowledge and experience of general rent levels for this type of property in this area.
- 23) It concluded that hypothetically an appropriate open market rent for the property let on a modern open market letting of an Assured Shorthold Tenancy where the landlord supplies white goods, carpets and curtains and the tenant has no liability to carry out repairs or decorations would be £230.00 per week.
- 24) However, the Tribunal noted at its inspection the actual property is not in the condition considered usual for a modern letting at a market rent, and it was necessary to adjust that hypothetical rent to allow for the differences between the condition considered usual for such a letting and the condition of the actual property.
- 25) The Tribunal took into account several items to arrive at the rent that it decides is the market rent.
- (a) Tenants' Improvements
 - (b) Tenant's Repairing and Decorating Liabilities
 - (c) Tenant supplying the White Goods, Carpets and Curtains
 - (d) Disrepair
- 26) Firstly, these factors were considered separately, and then considered whether the overall reduction was justified.
- 27) The Tribunal decided to make a deduction of 25% for these combined factors and determined to adjust the rent to £173.00 per week.

Scarcity

- 28) The Tribunal did not consider that there was any substantial scarcity element for this type of property in this area and accordingly no further deduction was made for scarcity.

The Decision

29) We therefore determined that the uncapped Fair Rent is £173.00 per week exclusive of council tax and water rates.

The Capped Rent

30) It is necessary for the Tribunal to compute the “capped rent” applying the Maximum Fair Rent Order. Annexed to the Decision Notice is the calculation which computes the figure of £182.00 per week. As the capped rent is higher than the Fair Rent determined in the foregoing paragraph, it is the fair rent that is payable.

31) The Tribunal determines a Fair Rent of £173.00 is to be registered with effect from 8th January 2020.

R T Athow FRICS MIRPM
Chairman

Dated 8th January 2020

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber), which may be on a point of law only, 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.