



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

**Case Reference** : **CHI/40UD/F77/2019/0062**

**Property** : **43a South  
Cheriton, Templecombe, Somerset, BA8 0BG**

**Landlords** : **Northumberland & Durham Property  
Trust Ltd.**

**Tenant** : **Mr D J & Mrs C A Piercey.**

**Date of Objection** : **8 October 2019. Referred to First-tier  
Tribunal by Valuation Office Agency 28  
October 2019**

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

**Tribunal** : **Mr W H Gater FRICS MCI Arb (Chairman)  
Mr M J F Donaldson FRICS MCI Arb MAE**

**Date of inspection** : **19<sup>th</sup> December 2019**

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**REASONS FOR DECISION**

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**Background**

1. On 11th July 2019 the Landlord made an application to register the rent of the property at £134.40 per week. There are no services included in the tenancy.
2. On 6th September 2019 the Rent Officer registered the rent at £113.46 per week exclusive of rates, with effect from 15<sup>th</sup> September 2019. The last rent registered was £112 per week effective from 15th September 2017.

3. On 8<sup>th</sup> October 2019 the Valuation Office Agency received an objection from Grainger Plc, acting for the Landlord, and the matter was referred to the First Tier Tribunal, Property Chamber on 28<sup>th</sup> October 2019.
4. Directions were issued by the Tribunal on 29 October 2019.

### **Inspection**

5. On 19<sup>th</sup> December 2019 the Tribunal inspected the property accompanied by Mr and Mrs Piercey.
6. The property comprises a semi-detached house built in the 19<sup>th</sup> century on an embanked site in the hamlet of Templecombe about 5 miles south of Wincanton.
7. This is a semi-rural location and local facilities are limited.
8. The house is constructed with stone walls under a pitched, tiled and part slated roof.
9. The accommodation comprises, in summary, on the Ground Floor: Reception room. Kitchen. First Floor: Three Bedrooms, Bathroom/ WC.
10. Outside there is a small enclosed front garden and a side parking area with shared access. There is an integral store.
11. There is no central heating. The Tenant has installed the solid fuel Rayburn and a log burner.
12. Improvements by the Tenant 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.
13. The house is in fair order only. Internal dampness was noted and externally there are defective roof tiles/slates.

### **Tenancy**

14. The tenancy commenced in 1972. 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).
15. The property was let unfurnished. The Tenants advise that carpets, curtains and white goods were not included on letting.

## **Submissions by the parties.**

16. The tribunal examined the written submissions of the parties which are summarised below.
17. For the Landlord, Grainger plc made written submissions on condition and case law, (see below). They drew attention to the recent addition of secondary double glazing, enclosing an invoice for this of £3799.
18. They referred to comparable property in Ridgeway, North Cadbury and Rodber Close, Wincanton and concluded that the market rental value of the property is £173.00 per week. The requested rent of £134.40 per week was therefore a reduction of £38.60 per week, reflecting lack of a landlord modernised kitchen, ensuite, full double glazing, additional parking, central heating, floor coverings and white goods. It was also adjusted for scarcity which must be disregarded under the Act.
19. Written submissions from the Tenant indicated that the proposed increase was a big “jump”, leaving little of the tenant’s pension after council tax and water rates.
20. The tribunal noted on inspection that in addition to the Rayburn and log burner , the tenants provided the wash basin, heated towel rail and electric shower in the bathroom. The Landlord provided the panelled bath.

## **The Law**

21. 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.
22. The three cases cited by the submissions for the Landlord give guidance on how a fair rent should be determined. The Tribunal has given due regard to those cases.
23. In particular, 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**

24. The Tribunal considered all the representations and information provided by the Landlord and Tenant.
25. 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.
26. 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 Somerset area.
27. It found that the starting point should be in the region of £800 per Calendar month, or £184.61 per week. It therefore adopted the Rent Officers starting rent at £183.46 per week.
28. 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.
29. Reductions were accordingly made from the market rent to reflect the circumstances of this letting as listed below.
30. Further the decorating liability under the subject tenancy is more onerous than in a typical market letting.
31. Whilst the Landlord has added secondary double glazing there are still matters of disrepair and disabilities which adversely affect rental value.
32. In the Tribunal's experience a prospective tenant would not go through a detailed exercise of deductions but would make an overall assessment of the level of allowance that would entice them to overlook the difference in circumstances and amenities as offered by the subject property when compared to the letting of a property as described in paragraph 25 above.
33. The Tribunal considers that to reflect these matters a deduction of £70 per week should be made to the starting point market rent. This deduction reflects the following : -
  - Unmodernised kitchen and bathroom
  - No white goods, carpets or curtains
  - Lack of central heating.
  - Secondary double glazing only and poor insulation.
  - Disrepair and dampness

Limited parking.

Tenants decorating liability.

Therefore £183.46 per week less £70 per week. Fair rent =£113.46 per week.

### **Scarcity**

34. The Tribunal then considered the question of scarcity.
35. 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.
36. 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.
37. The matters taken into account by the Tribunal when assessing scarcity were as follows: -
38. The Tribunal interpreted the 'locality' for scarcity purposes as being the whole area of Somerset i.e. a sufficiently large area to eliminate the effect of any localised amenity which would tend to increase or decrease rent.
39. Local Authority and Housing Association waiting lists.
40. House prices which could be an indicator of increased availability of housing and a reduction in scarcity.
41. Submissions of the parties.
42. 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.
43. Accordingly, the Tribunal made no deduction for scarcity.

### **Maximum Fair Rent**

44. 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.
45. 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.

46. 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. The tribunal determines that the recent Landlords improvements have not increased the rental value above this threshold.
47. 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 £124.00 week prescribed by the Order (details are provided on the back of the decision form).
48. The Tribunal accordingly determines that the lower sum of £113.46 per week as the fair rent with effect from 19<sup>th</sup> December 2019 being the date of the Tribunal's decision.



Chairman: W H Gater FRICS MCI Arb

Date: 19<sup>th</sup> December 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