



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

Case Reference	:	BIR/47UF/F77/2019/0047
Property	:	3 Underhill Cottages, Charlton, Nr.Pershore, Worcestershire, WR10 3LA
Applicant	:	Northumberland & Durham Property Trust Ltd.
Representative	:	Grainger plc
Respondent	:	Mr D. Barnfield
Type of Application	:	Appeal against the Rent Officer's Decision of Fair Rent under s.70 of the Rent Act 1977
Tribunal Members	:	Mr I.D. Humphries B.Sc.(Est.Man.) FRICS Mr J. Arain
Date and Venue of Hearing	:	Not Applicable, paper determination
Date of Decision	:	20 th January 2020
Date of Reasons	:	17 th February 2020

DECISION

- 1 The Fair Rent is determined at £425.00 (Four Hundred and Twenty Five Pounds) per calendar month from 20th January 2020.

REASONS

Introduction

- 2 Mr Barnfield holds a protected tenancy of 3 Underhill Cottages, Charlton, Nr.Pershore, Worcestershire, WR10 3LA. The fair rent had previously been registered by the First-tier Tribunal at £425.00 per month on 7th November 2017. On 9th August 2019 the landlord applied for a rent increase to £510.00 per calendar month and on 8th October 2019 the Rent Officer registered a new rent of £440.00 per month to take effect from 7th November 2019.
- 3 The landlord appealed against the Decision by letter received by the Valuation Office Agency on 6th November 2019 and the matter was referred to the First-tier Tribunal for Determination. The Tribunal inspected the property and reached its decision on 20th January 2020 determining a Fair Rent of £425.00 from that date and the Decision papers were sent to the parties.
- 4 The Landlord's agents requested Reasons by letter received 28th January 2020 which are the subject of this document.

The Law

- 5 Mr Barnfield is a protected tenant as acknowledged by the landlord. The Tribunal had not been provided with a copy of the tenancy agreement but understood from the application for fair rent completed by the landlord that the property had been let unfurnished, with the landlord responsible for repairs to the structure and exterior and the tenant responsible for internal repair and decoration in accordance with s.11 of the Landlord & Tenant Act 1985.
- 6 Accordingly, the rent was to be determined under s.70 of the Rent Act 1977.
- 7 S.70(1) states that in determining a fair rent, regard has to be had to all the circumstances of the tenancy (other than personal circumstances) including the age, character, locality and state of repair of the house, whether the property is let furnished and whether a premium had been paid or would be required to renew, continue or assign the tenancy.
- 8 s.70(2) adds a further qualification that it is assumed that the number of parties seeking to become tenants of similar houses in the locality on the terms of the tenancy (other than the rent) is not substantially greater than the number of houses available to let on such terms. This is usually referred to as 'scarcity' and the Court of Appeal held in *Spath Holme Ltd. v Chairman of the Greater Manchester Rent Assessment Committee* (1995) 28 HLR 107 and *Curtis v London Rent Assessment Committee* (1999) QB 92 that under normal circumstances the fair rent is the market rent discounted for scarcity. The Court also held that assured tenancy rents could be considered comparable to market rents.
- 9 s.70(3) requires the valuation to disregard any disrepair due to a tenant's failure to comply with the terms of the tenancy and any improvements carried out by the tenant or their predecessor in title.

Facts Found

- 10 The Tribunal inspected the property on 20th January 2020 and found it to be in basic unmodernised condition. It is a semi-detached house in a rural area on the fringe of Charlton, a village mid-way between Pershore and Evesham. It is subject to an agricultural tie.
- 11 The house is two storey brick and tile construction with an entrance lobby, two reception rooms, kitchen and toilet on the ground floor with a landing, three bedrooms, shower room and separate w.c. on the first floor. There are gardens to the front and rear and space to park a car on the adjoining roadway. The house has double glazing but no central heating. There is no mains gas supply.
- 12 The tenant has improved the property by fitting the kitchen units and flooring, new internal doors and architrave, which are improvements to be disregarded for the purposes of the current valuation.

Submissions

- 13 Neither party requested a Hearing.
- 14 The landlord's agent sent written submissions that described the house and referred to two properties they considered comparable; a 1960s 3 bedroom semi-detached house in Pershore (full address not supplied), with gas-fired central heating, a fully fitted kitchen, front and rear gardens and attached garage advertised at £750 per month and a 1960s 3 bedroom semi-detached house in Chestnut Close, Drakes Broughton (house no. not supplied) advertised at £795 per month, again with gas-fired central heating and modern fitted breakfast kitchen. One of the bedrooms had an en-suite shower.

Using these properties as points of reference, they submitted that the market rental value of the subject house would be at least £750 per month if it had the same facilities as the comparables. However, to allow for the difference in amenities, they deducted £100 for five facilities found in the comparables but unavailable in the subject property:

1	modernised bathroom	£20
2	floor coverings	£20
3	white goods	£20
4	mains gas supply	£20
4	garage	£20

i.e. a deduction of £100 per month.

They then deducted £15 pcm for tenant's improvements and £125 pcm for the agricultural tie to leave a net figure of £510.00 per calendar month.

- 15 No representations were received from the tenant.

Decision

- 16 To assess the Fair Rent the Tribunal need to assess the rental value of the house in good condition as a starting point, assuming it had been well maintained and modernised with central heating, reasonable kitchen units and a bathroom suite in fair condition, fully

equipped with carpets and curtains and ready to let in the open market. The Tribunal did not consider the properties referred to by the landlord comparable since they were both modernised, offered better facilities in more popular locations. The Tribunal therefore applied its own general knowledge and experience (but no specific or secret knowledge) to assess the rental value and found the full rental value in good condition, fully modernised to have been £700.00 per month.

- 17 However, the property had not been let in that condition. It was subject to an agricultural tie which restricted the potential letting market for which the Tribunal deducted 25% (£175.00 per month), there was no central heating for which the Tribunal deducted £50.00 per month, no carpets or curtains included in the tenancy for which the Tribunal deducted £25.00 and no white goods for which the Tribunal deducted £10.00. The deductions for lack of amenity were £85.00.
- 18 The Tribunal deducted £15.00 per month to reflect the value of the tenant's improvements.
- 19 In summary, £700.00 less £175.00 for the agricultural tie, £85.00 for lack of amenity and £15.00 for tenant improvements left £425.00 per month.
- 20 The Tribunal considered the question of scarcity in s.70(2) of the Rent Act 1977 and found that the number of potential tenants looking for accommodation of this type in the area may not have exceeded the number of units available to let due to the agricultural tie. Had it been free of tie, the Tribunal may have deducted 10% for scarcity but to do so in this instance where allowance has already been made for the tie would have amounted to double counting. Accordingly it made no further discount.
- 21 The Rent Acts (Maximum Fair Rent) Order 1999 was of no effect as £425.00 was less than the maximum that could have been registered under the Order, as in the calculation sheet sent with the Decision Notice.
- 22 There was no service charge and the rent was not registered as variable.
- 23 Accordingly, the Tribunal determined the Fair Rent at £425.00 per month with effect from the date of decision on 20th January 2020.

I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman

Appeal

If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property) on a point of law only. Any such application must be received within 28 days after these reasons have been sent to the parties under Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.