



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

Case Reference : **LON/00BF/F77/2019/0205**

Property : **25a West Street Carshalton
Surrey SM5 2PT**

Applicant : **Mr John Caplan (Tenant)**

Representative : **Mr G A Caplan**

Respondent : **H. Estates Ltd. (Landlord)**

Representative : **SPS Ltd. (Managing Agent)**

Type of Application : **S.70 Rent Act 1977 – Determination
of a new fair rent**

Tribunal Members : **Mr N Martindale FRICS
Mr J Francis**

**Date and venue of
Meeting** : **21 February 2020
10 Alfred Place, London WC1E 7LR**

Date of Decision : **21 February 2020**

REASONS FOR DECISION

Background

- 1 By a letter and application form dated 19 August 2019, the landlord applied to the Rent Officer for registration of a fair rent of £200 per week (pw) for the Property. The rent payable at the time of the application was £76 pw with effect from 10 August 2012.
- 2 On 16 October 2019, the Rent Officer registered a fair rent of £176 pw, with effect from 16 October 2019. By a letter dated 8 November 2019 and received on 11 November 2019 by the VOA Rent Officer the tenant

objected. The matter was referred to the First Tier Tribunal Property Chamber for a fresh determination of the rent.

Inspection

- 3 The Tribunal inspected the property on 21 February 2020. It is a maisonette. It is located above an empty commercial premises, formerly a shop. The building in a short terrace of similar mixed commercial and residential uses and appears to be on 3 levels.
- 4 The maisonette entrance is from the rear of the building, on the ground floor, from a communal rear yard. The Property has pedestrian access only. There is no car parking off road and on road parking is restricted. Accommodation is on the upper two levels. The building appears to date from the 1920's. It is in what was, but is no longer, a local retail parade.
- 5 The Property is of traditional brick construction. The main roof pitches appeared to be slated. There was an intercom and door catch release from the flats. There are no external areas let with the Property.
- 6 The Property, has an internal self-contained staircase to reach the upper levels. Accommodation comprises: First floor - one room and kitchen; second floor – two rooms and bathroom/WC.
- 7 Although the property is in an overall good state of repair and decoration, we had been informed by the tenant and saw minor damage to part of the ceiling adjacent to a chimney breast, in the second floor front room. It appeared to arise from a defect to the chimney and/ or main roof above.
- 8 There was double glazed plastic framed windows throughout. There was a modern gas fired full central heating and hot water system, supplied by the landlord's 'combination' boiler. The internal fittings to kitchen were modern but, to the bathroom and WC were basic and simply functional. The tenant did not report any improvements which he had carried out. There were no white goods and curtains. Carpets were provided by the landlord to most areas.

Evidence

- 9 Directions, dated 4 December 2019, for the progression of the case were issued. The tenant requested and attended a hearing at 10 Alfred Place, on 21 February 2020. The landlord declined to attend a hearing and the inspection, but made written representations. They referred to a brief history of the tenant's occupation of the Property and his move from nearby flat facilitated by the previous landlord of the Property. Details of a comparable flat to let in Carshalton and of the registration of the rent for a terraced house in West Street, were provided by the landlord.

- 10 The tenant set out a few more details in writing and orally at the hearing. It appeared that the tenant had been offered a range of options as an incentive for him to leave a similar property which had existed on the opposite side of West St. but which has since been redeveloped. He had occupied that flat under the protection of the Rent Act 1977. The landlord of that former property and of this Property had been the same at the time of his move. That landlord had since sold the Property on. The new owner was the tenant's current landlord.
- 11 Whilst the Tribunal received a note of some of the offers made to the tenant at the time of his move, the final arrangement that had been entered into by the parties, was not clear. The tenant had been offered and had apparently taken professional legal advice at the time of his move some two years or so ago. On review and based on the information available it appeared to the Tribunal that the tenant had at that time agreed terms to move to the Property and that whilst his entitlement to a regulated tenancy and rent control in principle had been secured, no rent had been registered at the Property at the time of his move.
- 12 Neither the then landlord, nor the tenant, nor the tenant's legal advisor had, it seemed, made application to the VOA Rent Officer to register the initial rent of £76 per week (pw) or indeed some other number. The significance is that a registration then, would have secured the starting level to which the statutory Market Fair Rent Cap would have been applied, now. If in place this would have had a marked effect on limiting the level to which a subsequent rent registration could have risen. The MFR will ordinarily apply to increases here, in the future, but does not apply in cases of a first rent registration.
- 13 The VOA Rent Officer in referring the appeal to the Tribunal confirmed that the 2019 registration had been the first rent registration at the Property. In this event the Market Fair Rent does not apply to the current determination. The £76 pw rent is therefore not the starting point from which the cap takes effect.

Law

- 14 When determining a fair rent the Committee, 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.
- 15 In *Spath Holme Ltd v Chairman of the Greater Manchester etc. Committee* (1995) 28 HLR 107 and *Curtis v London Rent Assessment Committee* [1999] QB 92 the Court of Appeal emphasized

- (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).

Decision

- 16 Where the condition of a property is so much poorer than that of comparable properties, so that the rents of those comparables are towards twice that proposed rent for the subject property, it calls into question whether or not those transactions are truly comparable. Would prospective tenants of modernized properties in good order consider taking a tenancy of an unmodernised house in poor repair and with only basic facilities or are they in entirely separate lettings markets? The problem for the Tribunal is that the only evidence of value levels available to us is of modernised properties. We therefore have to use this but make appropriate discounts for the differences, rather than ignore it and determine a rent entirely based on our own knowledge and experience, whenever we can.
- 17 On the evidence of the comparable lettings and our own general knowledge of market rent levels in Carshalton, we accept that the subject property modernized and in good order would let on normal Assured Shorthold Tenancy (AST) terms, for £220 pw. This then, is the appropriate starting point from which to determine the rent of the Property as it falls to be valued.
- 18 A normal open market letting would include curtains and “white goods”, but they are absent here. To reflect this and the following, we make allowances for the fact that the Property has only a basic bathroom and WC. These deductions total £22. From a starting market rent of £220 pw we therefore make total deductions of £22 leaving the adjusted market rent at £198 pw.
- 19 The Tribunal also has to consider the element of scarcity and whether demand exceeded supply. The Tribunal found that there was a substantial scarcity in the locality of Greater London and therefore makes a further deduction of 20% from the adjusted market rent to reflect this element. This leaves £158.40 pw.
- 20 The Tribunal is required to calculate the Maximum Fair Rent Cap. This is determined by a formula under statutory regulation, which whilst allowing for an element of inflation may serve to prevent excessive increases. The VOA Rent Officer in referring the appeal to the Tribunal

confirmed that the 2019 registration had however, been the first rent registration at the Property. In this event the Market Fair Rent Cap does not apply therefore. The £76 pw rent not being the existing registered rent, is not the starting point from which an increase is limited.

- 21 The new fair rent to be registered here is therefore £158.40. It takes effect from the date of this decision.

Chairman N Martindale FRICS

Dated 5 March 2020