



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

Case Reference : **CAM/00MC/F77/2020/0001**

Property : **24 Luton Road, Dunstable, Bedfordshire LU5
4JN**

Applicant (Tenant) : **Mr K Lawrence**

Respondent (Landlord): **Hazeldene Estates Limited**

Type of Application : **Determination of a fair rent under section
70 of the Rent Act 1977**

Tribunal Members : **Judge JR Morris
Mrs M Wilcox BSc MRICS**

Date of Decision : **2nd March 2020**

DECISION

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DECISION

1. The Fair Rent for the Property is determined to be £60.00 per week which is the capped rent under the Rent Acts (Maximum Fair Rent) Order 1999 to take effect from 2nd March 2020.

REASONS

THE PROPERTY

2. The Property is a late Victorian two-storey terraced house of brick under a slate roof. At the front there is a bay window on the ground floor and the first floor is pebble dashed. There is a shared access to the rear garden between the neighbouring house and the Property.

Accommodation

The Property comprises a hall from which rise stairs to the first floor, two living rooms, which interconnect via an archway, and kitchen on the ground floor. There are three bedrooms and a bathroom with w.c. on the first floor. There is a parking area to the front with space for two vehicles and a long garden to the rear.

Services

Space and water heating are by a gas central heating system installed by the tenant. The Subject Property has mains gas, electricity, water and drainage.

Furnishing

The Property is let unfurnished.

Location

The Property is situated on a main road near Dunstable High Street. There is a retail park about two hundred metres away.

THE TENANCY

3. The tenancy is regulated under the Rent Act 1977 and commenced on 17th November 1987. As a Tenancy, not being for a fixed period of 7 years or more, s11 of the Landlord and Tenant Act 1985 applies in respect of the Landlord's liability for repairs.

THE APPEAL

4. A rent of £54.00 per week, which was capped under the Rent Acts (Maximum Fair Rent) Order 1999, was registered on 16th October 2017 and effective from that date. The uncapped rent was £152.00 per week. The Landlord by a notice in the prescribed form received by the Rent Officer on 23rd September 2019 proposed a new rent of £257.40 per calendar month (which equates to £60.00 per week). On 4th November 2019 the Rent Officer registered a rent effective from that date of £60.00 per week, which was the capped rent under the Rent Acts (Maximum Fair Rent) Order 1999, the uncapped rent being £152.00 per week. On 25th November 2019 the Tenant appealed to the Tribunal. The appeal was by way of written representations and an oral hearing at the Property.

THE INSPECTION

5. The Tribunal inspected the Property in the presence of the Tenant. The Property is situated on a busy road.
6. Externally the Property is in fair condition. The Tenant has replaced the guttering at the front. There are timber single glazed sash windows throughout except in the kitchen where there are three timber casement windows installed by the Tenant. The windows at the front have secondary glazing installed prior to the tenant's occupancy – probably due to the noise from the road. When the Tenant took possession of the property the gulley between the main roof and the roof over the over the two-storey structure at the rear had been leaking and this had damaged the internal rooms in that area. The Tenant had paid to have the repair to the valley carried out as well as the making good to the internal rooms which he said were derelict due to the water ingress. The repair work involved the removal of the plaster on two of the walls in the second bedroom and the rear living room and these walls have been drylined and skimmed. The ceilings were also damaged and these have been over boarded and skimmed. Similar plastering work has been required in other rooms where it has perished.
7. Internally the kitchen and bathroom would be dated and basic but for the Tenant's improvements. In particular the Tenant extended the kitchen into the w.c. and coal

store and has fitted a modern kitchen with integrated white goods, tiled floor and re-plastered walls and ceiling. The Tenant has also fitted a shower over the bath and installed a new w.c. and wash-hand basin in the bathroom as well as cladding and tiling the walls as appropriate. The Tenant has laid new floors and fitted new internal and external doors. The Tenant has fitted wardrobes in the main bedroom. Carpets, curtains and white goods are the Tenant's.

8. As let the Property had open fires and a gas multi point water heater, which is still in situ but is now unserviceable. As noted above, in lieu of these, the Tenant has installed a gas central heating system which provides space and water heating. He has also subsidiary heating in the living room fireplaces. In addition, the Tenant has paid for the Property to be re-wired with a new consumer unit replacing the outdated installation.
9. In the garden the Tenant said he had dug out and re-laid the concrete around the house at the rear and cut back two large conifer trees. He added that part of the fence had fallen down but that it was the responsibility of the neighbour.
10. The Tribunal found the house to be in very good decorative order.

THE LAW

11. The Law relating to these reasons is contained in section 70 Rent Act 1977.

REPRESENTATIONS

12. The Tenant made written representations which were confirmed at the hearing identifying the works that he had carried out and which were noted at the inspection. In summary these are:
 - Repair of the roof gulley;
 - Making good the damaged plaster work of the ceilings and walls following the repair to the gulley;
 - Replacement of the internal and external doors;
 - Extending the kitchen into the coal store and w.c. and installing new modern units and appliances;
 - Fitting a shower with tiling and a new wash hand basin and w.c. in the bathroom;
 - Laying new flooring;
 - Installing a central heating system;
 - Rewiring;
 - Fitting wardrobes;
 - Concreting the back yard and cutting back the trees in the garden; and
 - Miscellaneous other repair work.
13. The Tenant said that the reason for his appeal was that he questioned whether the rent assessed by the Rent Officer took into account all the work that he had undertaken on the house. He said that when the house was let to him by Mr Mark Carter, the then Landlord, in 1987, it was in a state of dereliction.
14. He said he had spent about £70,000 on the Property.

15. In an oral statement the Tenant said that his neighbour's house, which was identical in type and size, was in its original state as let and that until recently the neighbour had been paying the same rent as himself. The Tenant did not feel it was fair that they both paid the same rent when he had spent a lot in refurbishing the Property while his neighbour in respect of his house, had not.
16. He also felt rather aggrieved that his neighbour having spent nothing on his house could afford to purchase it, whereas the Tenant had spent his money on maintaining and improving the house and therefore was not able to afford to purchase it. He said that the current value of his house was over £200,000.
17. At the hearing the Tribunal explained how the rent was assessed and provided a response to the issues raised by the Tenant of:
 - 1) has the Tenant's work been taken into account in the rent assessment and
 - 2) how is it that the neighbour now appears to be in a better position than the Tenant.
18. With regard to the first issue as to whether the Tenant's work had been taken into account in the assessment, the Tribunal, like the Rent Officer, will assess a rent based on comparable properties in the area. These are likely to be in good condition with double glazing, central heating, modern kitchen and bathroom etc. i.e. fully modernised. The Tribunal will then make adjustments to assess a rent for the Property in the condition it was as let taking into account any maintenance and improvements carried out by the Landlord, past or present, and disregarding any maintenance and improvements carried out by the Tenant.
19. As let, the Property appeared to have been in a rather sorry state. It appears that the then Landlord was not willing to carry out repairs and so the Tenant did. The Tribunal disregards the Tenant's repairs and considers what the rent would be if the Property were let on the market today in its original state. Apart from the leaking gully which at any time would have needed attention, the Tribunal is of the opinion that, notwithstanding its poor condition, there are tenants who for a reduced rent would be prepared to occupy such a house. Indeed, the neighbour does seem to have been prepared to rent a similar property in its original condition without carrying out any improvements.
20. The effect of this is that the Tenant has the benefit of living in a house, which, due to his efforts and money, is in an improved condition but at a rent which is assessed on the basis that the house is still in its original condition.
21. The neighbour also has the benefit of a rent which is assessed on the basis that the house in its original condition but this is because the house is actually still in its original condition.
22. By way of illustration, the Tribunal pointed out that the Rent Officer assessed a rent for the Property in good condition with central heating, modern kitchen and bathroom etc. as being £230.00 per week. A deduction was then made of about £60.00 per week to take account of the Tenant's works giving a rent of £170.00 per week. This deduction is less obvious due to the capping provisions which means that since 1999 the rent has only increased in line with the Retail Price Index giving a rent of £60.00 per week. Nevertheless, the cap does reflect the Tenant's work. When the cap was introduced in 1999 the uncapped rent for the Property, as at that date, would have reflected a deduction from the rent of a comparable property, in good

condition with central heating, modern kitchen and bathroom etc., to take account of the work carried out by the Tenant. The Tribunal can be fairly sure of this as the current capped rent is significantly less than the market rent for a fully modernised comparable property.

23. The Tribunal therefore finds that both the uncapped and capped rents reflect the work carried out by the Tenant.
24. The second issue is that the Tenant was of the opinion that his neighbour now appears to be in a better position than the Tenant because he lived in the house as it was and, so it seems, saved his money to buy it.
25. This is a matter of choice and not a something that the Tribunal can take into account when assessing the rent. The Tenant, presumably taking into account his security of tenure under the Rent Act 1977, chose to invest in maintaining and improving the Property notwithstanding that the Landlord at the time was not prepared to carry out such works. This resulted in a relatively modern home at a rent that was based on its original condition. If the Landlord had carried out those same works the rent would have increased.
26. Although it appears the neighbour lived in relatively poor conditions, apparently saving his money, and so was able to purchase the house he had rented, nevertheless the decision to sell the house at all is entirely a matter for the Landlord and there is no obligation upon a landlord to sell a house to a sitting tenant. In addition, any capital gain can only be realised on the sale of the house. In comparison the Tenant has been able and can continue to live in the Property at a rent that reflects the work he has put into it.
27. The Landlord made no representations and did not attend the hearing.

ASSESSMENT OF A FAIR RENT

28. The Tribunal assessed the rent for the Property as at the day of the inspection pursuant to section 70(1) Rent Act 1977 (having regard in particular to the age, character, locality, state of repair of the property and all the circumstances other than personal circumstances). The Tribunal took account of the relevant cases and legislation including *Spath Holme Ltd v Greater Manchester Rent Assessment Committee* (1996) 28 HLR 107, *Curtis v The London Rent Assessment Committee* [1997] 4 All ER 842 and *BTE Ltd v Merseyside and Cheshire Rent Assessment Committee* 24th May 1991.
29. Neither party provided rental values for comparable properties. Therefore, the Tribunal used the knowledge and experience of its members and determined that a market rent for the Property, taking into account its location, in good condition with central heating, modern extended kitchen and bathroom, and let with floor coverings and white goods on an Assured Shorthold Tenancy would be £230.00 per week.
30. The Tribunal made a deduction of a global figure of £80.00 per week
31. Firstly, the global deduction takes account of the lack of central heating, carpets, curtains and white goods, as let, and the dated kitchen and bathroom but for the

Tenant's improvements. This includes the works carried out by the Tenant as referred to above of:

- Extending the kitchen into the coal store and w.c. and installing new modern units and appliances;
- Fitting a shower and tiling and a new wash hand basin and w.c. in the bathroom;
- Laying new flooring; and
- Installing a central heating system.

32. In making the deduction in respect of the kitchen extension the Tribunal appreciated that some tenants might have preferred to have the downstairs w.c.

33. Secondly, the global deduction also takes into account the maintenance works referred to above of:

- Repair of the roof gully;
- Making good the damaged plaster work of the ceilings and walls following the repair to the gully;
- Replacement of the internal and external doors;
- Rewiring;
- Concreting the back yard; and
- Miscellaneous other repair work.

34. With regard to cutting back the trees the Tribunal considered that garden maintenance is the responsibility of the Tenant.

SCARCITY

35. Assessing a scarcity percentage cannot be a precise arithmetical calculation because there is no way of knowing either the exact number of people looking for properties similar to the subject property in the private sector or the exact number of such properties available. It can only be a judgement based on the years of experience of members of the Tribunal together with a consideration of the properties advertised as being to let as at the time of the assessment.

36. That experience and consideration leads the Tribunal to the view that at the time of the determination demand for "... similar dwelling houses in the locality..." that are available for letting was not *significantly* greater than supply. "Locality" in this case being Bedfordshire. Therefore, no deduction was made to take account of scarcity.

TRIBUNAL'S CALCULATIONS

37.	Open Market Rent:	£230.00 per week
	Less global deduction	<u>£ 80.00</u>
	Fair Rent	£150.00

38. As the Tribunal's determination is within £5.00 of the Rent Officer's assessment the Tribunal confirms the uncapped Rent Officer's Fair Rent of £152.00 per week.

39. The provisions of the Rent Acts (Maximum Fair Rent) Order 1999 require that the registered rent is either the capped Fair Rent or the Fair Rent decided by the Tribunal whichever is the lower. The capped rent is £60.00 per week, which is lower

than the rent assessed by the Tribunal. Therefore, the capped rent is to be registered.

FAIR RENT = £60.00 per week to take effect from 2nd March 2020.

Judge JR Morris

Caution: The Tribunal inspected the subject property for the purposes of reaching this decision. The inspection was not a structural survey and any comments about the condition of the property in this statement must not be relied upon as a guide to the structural or other condition of the property.

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.