



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

**Case Reference** : **CAM/26UF/F77/2020/0007**

**Property** : **2 Tile Kiln Cottages, Friends Green, Weston,  
Hitchin, Hertfordshire SG4 7BS**

**Tenant** : **Miss Lucy Hemmings**

**Landlord** : **Weston Park Farms**

**Date of Objection** : **20th January 2020**

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

**Tribunal** : **Tribunal Judge Dutton  
Miss M Krisko BSc (Est Man) FRICS**

**Date of Consideration** : **17<sup>th</sup> April 2020**

S  
E  
C

---

**DECISION**

**The sum of £567.00 per month will be registered as the fair rent with  
effect from 17<sup>th</sup> April 2020.**

© CROWN COPYRIGHT 2018

## **FULL REASONS**

### **1. Background**

In an application dated 6<sup>th</sup> November 2019 the tenant Miss Hemmings applied to the Rent Officer for a re-registration of the fair rent to £545.00 per calendar month for 2 Tile Kiln Cottages, Friends Green, Weston, Hitchin, Hertfordshire SG4 7BS (the Property). The rent previously registered on 24<sup>th</sup> October 2016 was £524 per calendar month. The parties had previously agreed in August 2019 a monthly rent of £545, a figure, it seems, being put forward by the landlord. It would also seem from the Application to Register that the sum being paid by the tenant was only £505 per month. However, for reasons which are not wholly clear, the tenant applied to the VOA for this 'agreed' rent of £545 per month to be registered.

On 23<sup>rd</sup> December 2019 the Rent Officer registered a fair rent of £601.00 per calendar month with effect from that date. The uncapped rent was £780 per calendar month.

By a letter dated 20<sup>th</sup> January 2020 the tenant objected to the rent determined by the Rent Officer and the objection was referred to the Tribunal. The matter initially came before us for determination in the week commencing 30<sup>th</sup> March 2020. As a result of the Covid/19 pandemic it was decided by the tribunal that an inspection would not take place and indeed nor is it strictly necessary for the purposes of a determining the fair rent for the Property. Neither party requested a hearing.

### **2. The Property**

The property comprises a two bedroomed semi-detached house as described in our colleagues summary of reasons for a decision made in August 2013. In a letter from the Miss Hemmings and Mr Woodward, her partner dated 4<sup>th</sup> March 2020 they confirm that nothing has changed since that time. They do set out some repair works they have undertaken and an upgrading to the existing kitchen. The Rent Register confirms the accommodation and lack of landlord's central heating

### **3. Evidence**

Neither party requested a hearing. Therefore, this matter was considered on the basis of the papers provided by the parties.

#### **Tenant's Representations:**

Miss Hemmings had sent in a redacted submission to the Rent Officer in support of her request to appeal the decision. This was dated 20<sup>th</sup> January 2020. Generally it is unhelpful to submit redacted correspondence, the more so as it originated from Miss Hemmings. We will proceed on the basis of the comments available to us and which

we have noted. In addition, we took into account all that had been said in the letter sent to the tribunal on 4<sup>th</sup> March 2020.

Landlord's Representations:

The Landlord, through Mr Paul Cherry had written to the Tribunal on 10<sup>th</sup> March 2020. Again, we carefully noted the contents. He gave a short history of Miss Hemmings' occupation and confirmed that a rent had been agreed before review by the Rent Officer. Responding to issues of condition raised by the tenant he said that Miss Hemmings had indicated a wish not to have workmen at the Property and that they would live with the damp problem. We noted what was said about other repair work and the attempts he had made to resolve the grievances.

We have taken both representations into account when reaching our decision.

#### **4. The law**

A summary of the law in respect of this case is attached to this decision.

#### **5. Determination and Valuation**

In the first instance we 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. We considered the market in and around Hitchin from our own general knowledge, rather than any specific knowledge of market rent levels in the area. We did note the comparables, which it would seem were relied upon by the Rent Officer, although the information was scant. We do not have any submissions by the parties on open market rent levels, the landlord content with the determination made by the Rent Officer and the tenant seeking the rent which appeared to have been agreed in August 2019.

We concluded that an open market rent for two bedroomed semi-detached property in this locality would be in the region of £850 to £950 per month. This level of rent assumes a property in a refurbished condition, with central heating, carpets and curtains as well as white goods. We consider that a starting open market rent would be £900 per month.

We need to consider any deduction to reflect the improvements undertaken by the Tenant as set out in our colleagues previous decision, the repairing obligations which would not be found in an open market assured shorthold letting and the lack of white goods which we consider would usually be found in such an open market let. We consider that an allowance of 30% is appropriate reducing the open market rent to £630 per month.

Next we need to consider the issue of scarcity. We were not provided with any specific evidence on this issue. However, the issue of scarcity is considered on the basis of the number of properties available to let and also considering the demand for such properties and over a really large area. Therefore using our general, rather than any specific knowledge and experience, we consider that in the wide geographical

area, being north of London to include Buckinghamshire, Hertfordshire and Bedfordshire, there is an imbalance between supply and demand and this impacts upon rental values. Accordingly, we make a deduction of 10% for scarcity. The full valuation is shown below.

	£/month
Market Rent	900.00
Less	
Tenant's improvements, repairing obligations and lack of white goods	<u>270.00</u>
	630.00
Scarcity @10%	<u>63.00</u>
Fair rent	£567.00

## **6. Decision**

**Accordingly, the sum of £567.00 per month will be registered as the fair rent with effect from 17<sup>th</sup> April 2020 being the date of the Tribunal's decision.**

Tribunal Judge Dutton

Date: 17<sup>th</sup> April 2020

---



## **First-tier Tribunal Property Chamber (Residential Property)**

### **The Law Relating to the Assessment of Fair Rents**

#### **INTRODUCTION**

1. This is a brief summary of the law applied by the Tribunal (formerly called a Rent Assessment Committee) when reaching its decision. It is an integral part of the decision.

2. The definition of **Fair Rent** is contained in the Rent Act 1977 i.e.:-

**70(1)** In determining ..... a fair rent under a regulated tenancy of a dwelling house, regard shall be had to all the circumstances (other than personal circumstances) and in particular to:-

- a) the age, character, locality and state of repair of the dwellinghouse
- b) if any furniture is provided for use under the tenancy, the quantity, quality and condition of the furniture, and
- c) any premium, or sum in the nature of a premium.....

**70(2)** For the purposes of the determination it shall be assumed that the number of persons seeking to become tenants of similar dwellinghouses in the locality on the terms (other than those relating to rent) of the regulated tenancy is not substantially greater than the number of such dwellinghouses in the locality which are available for letting on such terms

**70(3)** There shall be disregarded:-

- a) any disrepair or other defect attributable to a failure by the tenant under the regulated tenancy or any predecessor in title of his.....
- b) any improvement carried out, otherwise than in pursuance of the terms of the tenancy, by the tenant under the regulated tenancy or any predecessor in title of his
- e) **if any furniture is provided for use under the regulated tenancy, any improvement to the furniture by the tenant under the regulated tenancy or any predecessor in title of his or, as the case may be, any**

**deterioration in the condition of the furniture due to any ill-treatment by the tenant, any person residing or lodging with him or any sub-tenant of his**

3. *The Tribunal also has to take into account the Human Rights Act 1998. However, when interpreting the Rent Act 1977 (primary legislation) the Tribunal will have to follow the wording of the Act if it cannot be read or given effect in a way which is compatible with rights contained in the European Convention on Human Rights. Any party dissatisfied will then have to refer the matter to the High Court for the making of a Declaration of Incompatibility.*
4. All other rights granted by the Convention such as the right to a fair and public hearing by an independent tribunal and the right to respect for a person's private and family life are to be observed by the Tribunal
5. There have been a number of cases decided over the years most of which have been either unreported or reported only in professional journals. However in 1997 a Court of Appeal decision was reported as *Curtis v London RAC (No. 2) [1997]4 AER 842* where the Court reviewed the various authorities and provided guidance to Tribunals to assist them in reaching decisions.
6. The Court confirmed that a Tribunal must first find an open market rent for the property taking into account evidence before it from the parties and the Rent Officer. It will not consider other registered rents unless there are very exceptional circumstances which will be set out in the decision if appropriate.
7. A Tribunal can use such factors as comparable rents being paid for similar properties in the locality, capital values and return on expenditure as well as the experience and expertise of its members.
8. Having established an open market rent the Tribunal then has to consider the deductions and allowances referred to above
9. In all cases the Tribunal will try its best to give the parties details of its calculations. The *Curtis* case (above) made it clear that a Tribunal's decision must be supported by some workings out, but precise arithmetical calculations are not possible in all cases. There are many properties where the deductions and allowances are of such proportions that a Tribunal must simply take a view as to how much a rent would have to be reduced in order to obtain a tenant. This may not be the same as the sum total of the Statutory deductions/allowances.
10. If the Tribunal considers that the demand for similar properties in the locality is substantially greater than the supply then a deduction has to be made in accordance with Section 70(2) Rent Act 1977. This is the so-called "scarcity factor". The Tribunal is obliged to look at scarcity in terms of people wanting regulated tenancies. However the reality is that no new regulated tenancies are created nowadays and scarcity is therefore considered using the types of tenancy currently in use.
11. The word "locality" in Section 70(2) has a different meaning to that in Section 70(1). In the case of *Metropolitan Property Holdings Limited v Finegold [1975] 1 WLR 349* it was decided that the "locality" for this purpose should be a really large area. A Tribunal must define the extent of that "locality" when reaching its decision.

12. In determining scarcity, Tribunals can look at local authority and housing association waiting lists but only to the extent that people on such lists are likely to be genuine seekers of the type of private rented accommodation in question if the rent were to exclude the scarcity element.
13. The Tribunal must apply the Rent Acts (Maximum Fair Rent) Order 1999 – known as the “capping” provision – unless there is an exemption.

#### **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.