



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

**Case Reference** : BIR/00CT/F77/2020/0002

**Property** : 38 Thurlston Avenue, Solihull, West Midlands, B92 7NY

**Applicant** : BPT (Bradford Property Trust) Ltd.

**Representative** : Grainger plc

**Respondent** : Mr B.E. Wright

**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** : 18<sup>th</sup> March 2020

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**DECISION**

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- 1 The Fair Rent is determined at £640.50 (Six Hundred and Forty Pounds Fifty Pence) per calendar month from 18<sup>th</sup> March 2020.

## REASONS

### Introduction

- 2 Mr Wright holds a protected tenancy of 38 Thurlston Avenue, Solihull, West Midlands, B92 7NY. The fair rent had previously been registered by the First-tier Tribunal at £580.00 per month on 7<sup>th</sup> November 2017. On 23<sup>rd</sup> September 2019 the landlord applied for an increase to £754.00 per calendar month and on 11<sup>th</sup> November 2019 the Rent Officer registered a new rent of £615.00 per month to take effect on 10<sup>th</sup> December 2019.
- 3 The landlord appealed the Decision by letter received by the Valuation Office Agency on 19<sup>th</sup> December 2019 which was after expiry of the 28 day period allowed for submitting an appeal, but asked for the date to be extended as the member of the landlord's staff dealing with the application had been away. This was granted by the Tribunal and the matter was referred for determination. The Tribunal inspected the exterior of the property on 18<sup>th</sup> March 2020 but was unable to inspect the interior due to coronavirus restrictions. The Tribunal reached its Decision the same day and sent the papers to the parties.
- 4 The Tenant, Mr Wright, requested Reasons by letter received by the Tribunal on 9<sup>th</sup> April 2020 which are the subject of this document.

### The Law

- 5 Mr Wright 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 relied on information provided by the parties and Rent Officer to describe the interior accommodation. It is a three bedroom semi-detached house in a well established residential area of Solihull within easy reach of local facilities. It is of brick and tile construction with a two storey bay to the front and tile hanging between the ground and first floor bays. There is a small projecting gable over the front corner bedroom. The house has a recessed porch, lean-to single garage to the side, paved drive and a lawned front garden.
- 11 According to the information provided, it has double glazing and central heating.
- 12 The Rent Officer notes indicate that the tenant had improved the property by laying slabs to the drive, laying a patio, erecting fencing, fitting double glazing about 20 years ago, repairing the garage roof, refitting the bathroom 40 years ago and fitting wardrobes. He also fitted kitchen units many years ago but they have since been replaced by the landlord last year.

## Submissions

- 13 Neither party requested a Hearing.
- 14 The landlord's agent sent written submissions that described the house and referred to a property considered comparable, a 1930s 3 bedroom semi-detached house in Barn Lane, Solihull advertised to let at £900.00 pcm unfurnished.

Using this as a basis, they submitted the market rental value of the subject house to be at least £754 pcm if it had the same facilities. However, to allow for differences in amenity, they deducted £115 from the value of the subject house for the items below that were features of the comparable:

1	modernised bathroom	£25
2	floor coverings	£35
3	white goods	£20
4	a cloakroom	£10
5	tenant decorating liability	£25

- 15 Mr Wright sent a letter which was received by the Valuation Officer on 11<sup>th</sup> October 2019 in which he drew attention to improvements he had made during the period of his tenancy and in a second letter sent to the Tribunal received on 9<sup>th</sup> April, he agreed with the Rent Officer's assessment.

## 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 took account of the comparable referred to by the landlord but also applied its own general knowledge and experience (but no specific or secret knowledge) and found that the full rental value in good condition, fully modernised would have been £875.00 pcm.

- 17 However, the property had not been let in that condition. The Tribunal deducted £25 for the lack of a modernised bathroom, £35 for the lack of floor coverings provided by the landlord, £20 for the lack of white goods and £25 for the tenant's decorating liability. The deductions for lack of amenity therefore totalled £105.00.
- 18 The Tribunal did not consider the tenant's improvements had a material effect on the rental value at the valuation date, especially as some had been carried out many years previously.
- 19 To summarise, £875.00 pcm less £105.00 pcm for lack of amenity left £770.00 pcm.
- 20 The Tribunal then 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 exceeded the number of units available to let. It therefore deducted a further 10% for 'scarcity' to leave a net rent of £693.00 pcm.
- 21 The Rent Acts (Maximum Fair Rent) Order 1999 capped the increase at £640.50 as shown in the calculations 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 £640.50 pcm with effect from the decision date 18<sup>th</sup> March 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.