



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

Case Reference : **CHI/43UE/F77/2020/0010**

Property : **3 Kingsland Cottages Guildford Road
Abinger Hammer Dorking RH5 6SH**

Landlord : **J P M H Evelyns 1997 Trust**

Tenant : **Mr J Pullen**

Date of Objection : **31 January 2020. Referred to First-tier
Tribunal by Valuation Office Agency 14
February 2020**

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

Tribunal : **Mr W H Gater FRICS MCI Arb
Regional Surveyor**

Date of decision : **13 May 2020**

REASONS FOR DECISION

Background

1. On 22 November 2019 the Landlord made an application to register the rent of the property at £990 per calendar month. There are no services included in the tenancy.
2. On 8 January 2020 the Rent Officer registered the rent at £950 per calendar month exclusive of rates, with effect from that date. The last rent registered was £193 per week (£836.33/ month) effective from 6 December 2014.

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3. On 31 January 2020 the Valuation Office Agency received an objection from the Tenant Mr J Pullen and the matter was referred to the First Tier Tribunal, Property Chamber on 14th February 2020.
4. Directions were issued by the Tribunal on 17 February 2020.
5. No submissions were received as directed by the parties although the Tribunal has noted correspondence from the Landlord and Tenant below.
6. On 17 March 2020 the Tribunal office informed the parties that in view of the Governments advice with respect to the Covid 19 outbreak an inspection would not take place. The parties were given the opportunity to provide supporting photographs of the property and if desired make representations to have the case stayed until an inspection was possible.

Tenancy

7. The tenancy commenced in 1987. No tenancy agreement has been provided. It therefore appears to be a statutory protected periodic tenancy. The Landlord is responsible for repairs and external decoration, the Tenant is responsible for internal decorations, subject to the limitations set down in Section 11 of the Landlord and Tenant Act 1985 (the Landlords statutory repairing obligations).
8. The Rent Officer records that the property was let unfurnished and that carpets, curtains and white goods were not included on letting.

Information

9. The matter is dealt with as a paper determination without hearing. In the current circumstances it has not been possible to inspect the property and the Tribunal relies on information from the Rent Officer, the Landlord and Tenant in correspondence, publicly available housing data online and its own expert knowledge.
10. From this information the Tribunal notes that this is a terraced house built between 1800-1918.
11. On the ground floor it has one room believed to be a living room, a kitchen and a bathroom /wc. On the first floor it has three bedrooms.
12. The rent register states that there is a car space outside and that there is no central heating.
13. In a letter received by the Rent Officer on 31 January 2020 the Tenant indicated that over the 30 years he had lived there the property had been improved at no cost to the Landlord by installing a new kitchen, bathroom with shower and off road parking. In addition, a lining had been added to the living room chimney. A patio and wood burner had been added.
14. The Landlord had replaced a defective water heater and shared 50% of the cost of a new bathroom flat roof.

15. In an email response to the Tenant on 10 March 2020, the Landlord's representative challenged the alleged percentage rise in rent under his client's ownership citing concessions made by the previous Landlord. He conceded that only limited repairs had been carried out between 2016-2019 but clarified the fact that the Landlord had paid 100% of the cost of the flat roof replacement being half the cost to the two neighbouring houses.

The Law

16. When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, must have regard to all the circumstances including the age, location and state of repair of the property. It must also disregard 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.

17. The three cases cited by the submissions for the Landlord give guidance on how a fair rent should be determined. The Tribunal has given due regard to those cases.

18. In particular, in *Spath Holme Ltd v Chairman of the Greater Manchester etc Committee* (1995) 28 HLR 107 and *Curtis v London Rent Assessment Panel* [1999] QB 92 the Court of Appeal emphasised:

- 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.)

The Tribunal's Deliberations

19. The Tribunal considered all the information provided by the Landlord and Tenant.

20. The Tribunal considers the rental value afresh and is not influenced by percentage increases in rent from that charged in the past.

21. In the first instance the Tribunal determined what rent the Landlord could reasonably be expected to obtain for the property in the open market if it were let today on the terms and in the condition that is considered usual for such an open market letting. This rent must exclude the value of Tenant's improvements noted above.

22. No rental evidence was provided by the parties and the Tribunal proceeded as best as it could having regard to the Tribunal's own general knowledge of market rent levels in Surrey area.

23. It found that the starting point should be in the region of £1425 per Calendar month.

24. There are differences between the usual terms and condition for a letting at that rent and the circumstances of this letting. These need to be reflected in adjustments from the market rent which might be achieved with the property in usual condition.
25. Reductions were accordingly made from the market rent to reflect the circumstances of this letting as listed below.
26. Further the decorating liability under the subject tenancy is more onerous than in a typical market letting.
27. In the Tribunal's experience a prospective Tenant would not go through a detailed exercise of deductions but would make an overall assessment of the level of allowance that would entice them to overlook the difference in circumstances and amenities as offered by the subject property when compared to the letting of a property as described above.
28. The Tribunal considers that to reflect these matters a deduction of £475 per month should be made to the starting point market rent. This deduction reflects the following: -
 - Unmodernised kitchen and bathroom.
 - No white goods, carpets or curtains.
 - Lack of central heating.
 - General condition and lack of modernisation.
 - Tenants decorating liability.

Therefore £1425 less £475 per month. Fair rent =£950 per month.

Scarcity

29. The Tribunal then considered the question of scarcity.
30. Increases in rent that are caused by demand exceeding supply are regulated by section 70(2) of the 1977 Act and must be excluded in the assessment of a Fair Rent.
31. The Tribunal is required to consider scarcity in respect of demand and supply in the context of a sizeable area to ensure that the benefits of local amenities are neutralised and also to give a fair appreciation of the trends of scarcity and their consequences. The Tribunal should only give a discount for scarcity if it is substantial.
32. The matters taken into account by the Tribunal when assessing scarcity were as follows: -
33. The Tribunal interpreted the 'locality' for scarcity purposes as being the whole area of Surrey, i.e. a sufficiently large area to eliminate the effect of any localised amenity which would tend to increase or decrease rent.
34. Local Authority and Housing Association waiting lists.
35. House prices which could be an indicator of increased availability of housing and a reduction in scarcity.

36. Submissions of the parties.

37. The parties have provided no evidence in respect of scarcity in the area. In the Tribunal's experience there is currently no shortage of similar houses available to let in the locality defined above.

38. Accordingly, the Tribunal made no deduction for scarcity.

Maximum Fair Rent

39. This is the rent calculated in accordance with the Maximum Fair Rent Order details of which are shown on the rear of the Decision Notice.

40. The Rent Acts (Maximum Fair Rent) Order 1999 restricts the amount by which the rent may be increased to a maximum 5% plus RPI since the last registration.

41. The only exception to this restriction is provided under paragraph 7 of the Order where a Landlord carries out repairs or improvements which increase the rent by 15% or more of the previous registered rent. The Tribunal determines that the recent Landlords improvements have not increased the rental value above this threshold.

42. The rent to be registered is not limited by the Fair Rent Acts (Maximum Fair Rent) Order 1999 because it is below the maximum fair rent that can be registered of £991.50 prescribed by the Order (details are provided on the back of the decision form).

43. The Tribunal accordingly determines that the lower sum of £950 per month as the fair rent with effect from 13 May 2020 being the date of the Tribunal's decision.



W H Gater FRICS MCI Arb
Regional Surveyor

13 May 2020

RIGHTS OF APPEAL

1. A person wishing to appeal this decision (on a point of law only) to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking

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