



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

Case Reference : **BIR/00CN/F77/2020/0011**

**HMCTS (paper, video : P: PAPERREMOTE
audio)**

Property : **6 East Pathway, Birmingham, B17 9DN**

Landlord : **BPT (Residential Investments) Limited**

Representative : **Grainger plc**

Tenant : **Mr R Holder**

Type of Application : **An application under section 70 of the Rent Act against the Fair Rent assessed for the Property by the Rent Officer**

Tribunal Members : **V Ward BSc Hons FRICS
N Wint BSc (Hons) FRICS ACI Arb**

Date of Decision : **21 July 2020**

DECISION

BACKGROUND

1. On 7 November 2019, the Landlord applied to the Rent Officer for registration of a fair rent of £196.20 per week in respect of 6 East Pathway, Birmingham B17 9DN (the “Property”).
2. The rent payable at the time of the application was £120.00 per week which was registered by the Rent Officer on 12 December 2017, effective from 21 January 2018.
3. The Rent Officer registered a rental of £132.00 per week on 8 January 2020, effective from 21 January 2020.
4. By a letter dated 17 February 2020, the Applicant objected to the rent determined by the Rent Officer and the matter was referred to the Tribunal.
5. The Tribunal’s determination of this matter was delayed due to the Covid-19 Public Health Emergency and the matter was originally stayed.
6. However, following a review of the matter by a Procedural Judge, the Tribunal advised the parties that it would determine the Fair Rent for the property based on the written submissions of the parties and the Tribunal did not intend to hold an oral hearing (unless one was requested by the parties) or carry out an internal inspection. This was following Public Health England’s advice to avoid unnecessary travel and social interaction for the time being. The parties were advised that they could make additional written submissions to mitigate for the lack of an inspection
7. Neither party requested a hearing. Both parties made written submissions.

The Property

8. The Tribunal carried out an external roadside inspection of the Property. From that inspection and the information provided to the Tribunal, the Property comprises the following:

The Property is an end terraced house with the following accommodation:

GF; hall, two rooms, kitchen, store.

FF; landing, three bedrooms; bathroom.

The Property benefits from gas fired central heating and double glazing.

Externally, there are gardens, and a garage.

The Property is within walking distance of the centre of Harborne which is a pleasant suburb of Birmingham. The City Centre is approximately 4 miles to the north east.

Submissions of the Tenant.

9. The Tenant stated that the Landlord did not carry out general maintenance and problems such as damp, pointing and loose tiles were not dealt with unless notified. In respect of the new windows, the Tenant commented that that the kitchen, side bedroom window and elements of the veranda all had to be replaced as they were rotten and had been in poor condition for 15 years.

Submissions of the Landlord.

10. Submissions for the Landlord were provided by Ryan Tucker, Property Manager for Grainger plc.

The submissions confirmed that since the last increase, the Landlord had refurbished the bathroom and installed timber double glazing.

The Landlord provided details of a comparable three bedroom property on The Circle, Harborne which had been let at £519.00 per week. Making deductions of £300.00 per week from the comparable compared to the subject Property and also making a further deduction of £10.00 per week for the Tenant's improvements and decorating liability led to an adjusted value of £209.00 per week for the comparable. The Landlord requested that the Tribunal register a rental of £196.20 in respect of the subject Property.

THE LAW

11. In accordance with the terms of section 14 of the Housing Act 1988 the Tribunal must determine the rent at which it considers that the subject property might reasonably be expected to let on the open market by a willing landlord under an assured tenancy.
12. In so doing the Tribunal, as required by section 14(1), must ignore the effect on the rental value of the property of any relevant tenant's improvements as defined in section 14(2) of the Act.

VALUATION

13. In the first instance, the Tribunal determined what rent the Applicant could reasonably expect to obtain for the property in the open market if it were let today in the condition that is considered usual for such open market lettings. It did this from its own general knowledge of market rent levels in the area of south west Birmingham and by considering the evidence provided within the representations. Having done so, it concluded that such a likely market rent would be £400.00 per week.

14. The Tribunal considered the Tenant's improvements/obligations and made the following further adjustments:

Gas fired central heating	£12.00
Floor coverings	£8.50
White goods	£5.00
Kitchen	£4.00
Garage & driveway	£10.00
Decorating liability	<u>£20.00</u>

Total £59.50 per week

15. The Tribunal then considered the question of scarcity. This was done by considering whether the number of persons genuinely seeking to become tenants of similar properties in the wider area of Birmingham on the same terms other than rent is substantially greater than the availability of such dwellings as required by section 70(2) of the Rent Act 1977.

16. The Tribunal finds that many landlords dispute that scarcity exists because they are of the opinion that the market is 'in balance'. Although tenants do not in all cases have difficulty in finding accommodation this ignores the fact that it is the price of such accommodation which creates a balance in the market. Section 70(2) specifically excludes the price of accommodation from consideration in determining whether there are more persons genuinely seeking to become tenants of similar properties than there are properties available. Although the rental market for Assured Shorthold properties may be in balance many potential tenants may be excluded from it for various reasons such as age, poor credit history or because they are on housing benefit.

17. The Tribunal found that there was scarcity and, accordingly, made a deduction of 10% amounting to £34.05 per week (and £32.55 per week on the basis of before and after improvements).

18. This leaves a fair rent for the subject property of £306.45 per week summarised as follows:

Rental per week	£400.00
Adjustments:	
Tenants Improvements/Decorating liability	<u>£59.50</u>
Rental after Adjustments	£340.50
<u>Less</u> Scarcity (10%)	<u>£34.05</u>
Fair Rental	£306.45

19. The Tribunal then considered the matter of whether the works carried out by the Landlord took the rental out of the capping provisions of the Rent Acts (Maximum Fair Rent) Order 1999. Initially, the Tribunal calculated the new fair rent with the benefit of the double glazing and bathroom refurbishment which is as shown above.

20. The Tribunal then calculated the new fair rent of the Property prior to the improvements.

21. The calculation above was thus repeated with the adjustments for improvements/decorating liability and the scarcity percentage unchanged:

New Fair Rent without the benefit of the repairs/improvements

Rental per week	£400.00
Deductions:	
Double glazing	£9.00
Bathroom	<u>£6.00</u>
	£15.00
Adjustments:	
Tenants Improvements/Decorating liability	<u>£59.50</u>
Rental after Deductions/Adjustments	£325.50
<u>Less</u> Scarcity (10%)	<u>£32.55</u>
Fair Rental	£292.95

22. The Tribunal then had to calculate if the difference between the rental with and without the improvements was greater than 15% of the previously registered rental:

Fair Rent with Improvements		£306.45
Fair Rent without Improvements		£292.95
Difference		£13.50
Previous Registered Rent		£120.00
Percentage	£13.50/£120.00	11.25%

23. As the percentage given above is less than 15%, the capping rules under the Rent Acts (Maximum Fair Rent) Order 1999 apply. Accordingly, the Tribunal then calculated the maximum fair rent; a copy of the calculation is attached.
24. The maximum fair rent permitted by the Rent Acts (Maximum Fair Rent) Order 1999 is £132.50 per week.
25. The uncapped fair rent with the benefit of the improvements was £306.45 per week. However, the maximum fair rent permitted by the Rent Acts (Maximum Fair Rent) Order 1999 is £132.50 per week. The fair rent for the Property is therefore limited to this amount.

DECISION

26. The fair rent determined by the Tribunal for the purposes of Section 70 is, therefore £132.50 per week with effect from 21 July 2020.
27. In reaching its determination, the Tribunal had regard to the evidence and submissions of the parties, the relevant law and their own knowledge and experience as an expert Tribunal but not any special or secret knowledge.

APPEAL

28. If either party is dissatisfied with this decision, they may apply for permission to appeal to the Upper Tribunal (Lands Chamber) **on any point of law arising from this Decision**. Prior to making such an appeal, an application must be made, in writing, to this Tribunal for permission to appeal. Any such application must be made within 28 days of the issue of this decision (regulation 52 (2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rule 2013) stating the grounds upon which it is intended to rely in the appeal.

V WARD BSc (Hons) FRICS