



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

**Case Reference** : **CHI/23UC/F77/2020/0014**

**Property** : **5 Culkerton  
Tetbury  
Gloucestershire  
GL8 8SS**

**Landlord** : **Richard Ernest Clark and Katherine  
Clark**

**Representative** : **Moore Allen & Innocent**

**Tenant** : **Elizabeth Duffy**

**Representative** : **Kevin Duffy**

**Type of Application** : **Rent Act 1977 (“the Act”) Determination  
by the First-Tier Tribunal of the fair rent  
of a property following an objection to the  
rent registered by the Rent Officer.**

**Tribunal Members** : **Mr I R Perry FRICS**

**Date and Venue of:  
Inspection** : **None. Determined on papers.**

**Date of Decision** : **27<sup>th</sup> July 2020**

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**REASONS FOR DECISION**

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## **Summary of Decision**

On 27<sup>th</sup> July 2020 the Tribunal determined a fair rent of £130 per week with effect from 27<sup>th</sup> July 2020.

## **Background**

1. On 24<sup>th</sup> February 2020 the Tenant applied to the Rent Officer for registration of a fair rent of £130 per week for the above property. This equates to £563.33 per calendar month. The rent for the property had not been previously registered.
2. The application stated that the present rent passing was £550 per month equating to £126.92 per week.
3. The Rent Officer initially held a Jurisdiction Hearing at the property on the 16<sup>th</sup> March 2020 to establish the length of Mrs Duffys' tenancy. The Rent Officer established that Mrs Duffy first became a tenant of number 2 Culkerton in October 1975, which was owned by the same landlord, and moved to number 5 Culkerton in June 1991.
4. The Rent Officer decided that Mrs Duffy had a protected tenancy and completed a survey sheet dated 16<sup>th</sup> March 2020.
5. The rent was registered by the Rent Officer on the 17<sup>th</sup> March 2020 at a figure of £147 per week with effect from the 17<sup>th</sup> March 2020. This equates to £637 per calendar month.
6. By an email dated 10<sup>th</sup> April 2020 the Landlord objected to the rent determined by the Rent Officer and the matter was referred to the First Tier Tribunal Property Chamber (Residential Property) formerly a Rent Assessment Committee.

## **Evidence and representations**

7. Both parties had made written representations to the Tribunal which had been copied to both parties.
8. Mrs Duffy had originally moved into the property in 1991 which is stated by the Rent Officer as providing a Hall, Living Room, three Bedrooms, a Bathroom with WC, and a large Garden. There are two Greenhouses and two Sheds owned by the Tenant. The house is situated "in a small area of a handful of properties" near Tetbury with a bus service passing 3-4 times a day.
9. The Rent Officers inspection notes also refer to works carried out by the Tenant over the years including the modernising of Bathroom and Kitchen; provision of a woodburner, bath and WC; fitted wardrobes to two

Bedrooms; installation of electrical heaters upstairs; insulation in the loft; provision of some timber double-glazed windows and some fencing.

10. The Tenants representations referred to works including the removal of an internal wall; built in cupboards to Lounge; replace two windows; refit Kitchen; refit Bathroom; provide fireplace and woodburner; and works to the garden. The Tenant also stated that they provided all carpets, curtains, and white goods.
11. There is no central heating, but some double glazing provided by the Landlord and some by the Tenant.
12. The Tenant also provided photographs showing dampness in the property and rotten doorframes.
13. The Landlords agent provided a photograph of a new panel fence to the rear garden provided by the Landlord.
14. The Landlord states that the property was originally let at a reduced rent to allow for the Tenant “making alterations to repair/renew the items that were already provided, rather than additional installations” and that when the tenancy started in 1991 “there was already a kitchen in good condition as well as a fitted bathroom, carpets, heating, etc.”
15. The Landlord provided some new double-glazed windows and door in 2017 and states that the Kitchen was refitted by the Tenant in 1999 and that a gas fire was provided by the Tenant as an additional installation to a Rayburn.
16. Neither party or their representative produced evidence of other open market rentals in the area although the Landlord contends that similar properties in the general area let for more than £1000 per month.
17. The Tenant referred to a recent registration of rent for the Old Post Office in the village which, she states, has a lower Council Tax band than the subject property
18. The Tribunal had regard to the observations and comments by the parties and relied on its own knowledge and experience of local rental values in determining the rent. In particular it noted that open market rent for The Old Post Office had been assessed at £200 per week equating to £866.66 per month. This had been adjusted to reflect condition and tenants’ improvements and had also been a first registration of rent on the property.

## **The Law**

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

20. In *Spath Holme Ltd v Chairman of the Greater Manchester etc. Committee* (1995) 28 HLR 107 and *Curtis v London Rent Assessment Committee* [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).

21. The Tribunal also has to have regard to the Rent Acts (Maximum Fair Rent) Order 1999 where applicable. Most objections and determinations of registered rents are now subject to the Order, which limits the amount of rent that can be charged by linking increases to the Retail Price Index. It is the duty of the Property Tribunal to arrive at a fair rent under section 70 of the Act but in addition to calculate the maximum fair rent which can be registered according to the rules of the Order. If that maximum rent is below the fair rent calculated as above, then that (maximum) sum must be registered as the fair rent for the subject property.

## **Valuation**

22. 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 in the condition that is considered usual for such an open market letting. It did this by having regard to the evidence supplied by the parties and the Tribunal's own general knowledge of market rent levels in the area of North Gloucestershire. Having done so it concluded that such a likely market rent would be £850 per calendar month.

23. However, the property was not let in a condition considered usual for a modern letting at a market rent. Therefore it was first necessary to adjust that hypothetical rent of £850 per calendar month particularly to reflect Tenants' improvements and the fact that the white goods were all provided by the Tenants which would not be the case for an open market assured shorthold tenancy.

24. Further reductions are appropriate to reflect the lack of central heating and that the Tenant provided the gas fire downstairs and the heaters upstairs. Effectively the only heating provided by the Landlord is the Rayburn.

25. The Tribunal was faced with conflicting written evidence about the refitting of the Kitchen and Bathroom fittings and the provision of carpets and curtains. However if the fittings, carpets and curtains were still those that existed in 1991 at the beginning of the tenancy they would be regarded as dated now and deductions to reflect this were therefore appropriate.
26. The Tribunal therefore considered that these factors required a total deduction of £290 per month made up as follows:

Lack of central heating	£100
Dampness and damp staining to decor	£50
Provision of carpets, curtains and white goods	£30
Refitted or dated Kitchen	£30
Refitted or dated bathroom	£30
Upgrading of some windows to double glazing	£20
Built in wardrobes and cupboards	£20
Provision of woodburner and fire surround	£10
TOTAL	<u>£290</u>

27. The Tribunal did not consider that there was any substantial scarcity element in the area of North Gloucestershire.

### **Decision**

28. Having made the adjustments indicated above the fair rent initially determined by the Tribunal for the purpose of section 70 of the Rent Act 1977 was accordingly £560 per calendar month, equating to £129.23 per week rounded to £130 per week.
29. The fair rent to be registered is not limited on this occasion by the Rent Acts (Maximum Fair Rent) Order 1999 because this is a first registration of rent for the property.

**Accordingly the sum of £130 per week will be registered as the fair rent with effect from the 27<sup>th</sup> July 2020 being the date of the Tribunal's decision.**

**Chairman:** .....I R Perry FRICS

**Dated: 27<sup>th</sup> July 2020**

### **Appeals**

30. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making a written application to

the First-tier Tribunal at the Regional office which has been dealing with the case.

31. 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.
32. 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 the time limit, or not to allow the application for permission to appeal to proceed.
33. 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.

If the First-tier Tribunal refuses permission to appeal in accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007, and Rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the Applicant/Respondent may take a further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for the permission.