



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

Case Reference : **CAM/00KF/F77/2019/0003**

Property : **82b, Salisbury Avenue, Westcliff-on-Sea SSo 7BB**

Applicant/Tenant : **Mr K Pollard**

Representative : **None**

Respondent/Landlord : **Mr & Mrs G B Halibard**

Representative : **Hair & Son**

Type of Application : **Section 70 Rent Act 1977 – to determine a fair rent**

Tribunal Members : **Judge John Hewitt
Ms Marina Krisko BSc (EstMan) FRICS
Mr John Francis QPM**

Date of Decision : **29 April 2019**

Date of Reasons : **1 May 2019**

REASONS for DECISION

1. The issue before the tribunal and its decision

- 1.1 The issue before the tribunal is the fair rent to be registered following an objection made by the tenant to the registration by the Rent Officer on 30 January 2019 of a fair rent of £149.50 per week payable with effect from 22 March 2019.
- 1.2 The decision of the tribunal is that the fair rent to be registered is £137.00 per week payable with effect from 29 April 2019 being the date of the tribunal's decision.

2. Background

- 2.1 On 9 March 2017 the Rent Officer registered a rent of £135.00 per week effective from 22 March 2019 following a determination by the Rent Officer.
- 2.2 On 24 December 2018 the Valuation Office Agency for the Rent Officer received an application from the landlord for the registration of a fair rent of £156.00 per week for the property.
- 2.3 On 30 January 2019 the Rent Officer registered a rent of £149.50 per effective from 22 March 2019 following a determination by the Rent Officer.
- 2.4 By a letter dated 11 February 2019 the tenant objected to the rent determined by the Rent Officer and the matter was referred to the tribunal.

3. Inspection

- 3.1 The tribunal inspected the property on 29 April 2019 and found it to be in fair condition for type and age.

The property, originally constructed in the early part of the 20th century as a mid-terraced brick built house beneath a pitched tiled roof, has subsequently been adapted to create two self-contained flats.

The property has a small front yard; and a rear garden of which the tenant has exclusive use. There is limited street parking in the area.

The property is part double-glazed. There was evidence of some dampness (possibly rising damp) to the chimney area in the small rear reception room.

- 3.2 The tribunal noted the tenant had kept the premises in very good decorative order internally and had carried out a number of tenant's improvements since he moved in in 1981, to include:
- Re-plastering of internal walls;
 - Replacement of floor joists to the front living room;
 - Installation of some electric fires;

- Carpets, curtains and light fittings throughout;
- Replacement of the rear door and window frame; and
- Security fittings to the front street door.

3.3 The landlord does not appear to have carried out routine maintenance on a regular basis. At the rear of the property window frames and sills have plainly not been repaired and painted for a very long time. Some of the wooden frames are now rotting.

The ground level concreted area to the rear of the property and along the side of the kitchen and small rear living room has failed and broken up. It is now in urgent need of attention for safety reasons.

4. Evidence

4.1 The only written representations before the tribunal are those set out in the tenant's letter dated 11 February 2019.

4.2 Neither party requested a hearing at which oral representations could be made.

5. The law

5.1 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 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.

5.2 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:

5.2.1 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

5.2.2 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).

6. Reasons for the decision

6.1 In coming to its decision the tribunal had regard to the written representations supplied to it by the tenant and the matters which came to our attention during our inspection of the property.

- 6.3 In the absence of any evidence of the current rental values of nearby properties that might be regarded as suitable comparables, the members of the tribunal drew on their own general knowledge of market rent levels in the area of Westcliff-on-Sea.

We concluded that an appropriate open market rent for the subject property in good condition, double glazed, centrally heated and with modern fittings and white goods, curtains and carpets and in line with current market expectations would be £190.00 per week.

- 6.4 However, the subject property is not in the condition considered appropriate for a modern letting at a full market rent. Therefore it was first necessary to adjust that hypothetical rent of £190.00 per week to allow for the substantial differences between the condition considered usual for such a letting and the actual condition of the subject property as observed by the tribunal but disregarding:

6.4.1 the effect of any disrepair or other defect attributable to the tenant or any predecessor in title of the tenant, and

6.4.2 any relevant improvements carried out by the tenant.

- 6.5 In coming to our decision we have made adjustments to reflect the above matters. There is no simple or precise arithmetical approach which can be adopted to reflect each of the nuances we have to take into account. We can but take a broad and global view. Drawing on our accumulated expertise in these matters we concluded that an appropriate adjustment to make was in the region of 20% from the starting full open market rent for the property. In arriving at this adjustment we have not based it specifically upon capital cost. It is our estimate of the amount by which the rent would have to be reduced to attract a tenant to the property in its present condition.

This leaves an adjusted market rent for the subject property of £152.00 per week.

- 6.6 We found that there was substantial scarcity in the locality of south-east Essex and therefore made a deduction of about 10 % from the adjusted market rent to reflect this element. Accordingly we determined that the uncapped fair rent was £137.00 per week.

- 6.7 The section 70 fair rent determined by the tribunal is below/at the same level as the maximum fair rent permitted by the Rent Acts (Maximum Fair Rent) Order 1999 and accordingly that rent limit has no effect.

Details are provided on the back of the decision form.

- 6.8 For these reasons the fair rent to be registered is £137.00 per week.

Judge John Hewitt

1 May 2019

ANNEX - RIGHTS OF APPEAL

1. By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify parties about any rights of appeal they may have.
2. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to this tribunal - the First-tier Tribunal at the regional office which has been dealing with the case.
3. The application for permission to appeal must arrive at the regional office within 28 days after the date on which the tribunal sends out to the person making the application the written reasons for the decision.
4. 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.
5. 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.
6. If the tribunal refuses permission to appeal, a further application for permission may be made directly to the Upper Tribunal (Lands Chamber)