



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

**Case Reference** : **CAM/22UG/F77/2019/0023**

**Property** : **4 Aubrey Cottages, Church Street,  
Boxted, Colchester CO4 5SU**

**Applicant/Landlord** : **Grainger Plc**

**Representative** : **Mr P Nelson  
Head of Portfolio Management  
(North)**

**Respondent/Tenant** : **Mr Raymond Mason**

**Representative** : **None**

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

**Tribunal Members** : **Judge John Hewitt  
Mr Stephen E Moll FRICS**

**Date of Decision** : **18 September 2019**

**Date of Reasons for  
Decision** : **19 September 2019**

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**REASONS for DECISION**

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## **1. Decision**

- 1.1 The decision of the tribunal is that the fair rent to be registered is £131.00 per week effective from 18 September 2019, being the date of the tribunal's decision.

## **Background**

- 2.1 On 14 June 2017 the Rent Officer registered a rent for the property of £117.50 per week effective from 11 July 2017 following a determination by the Rent Officer.
- 2.2 On 29 April 2019 the landlord delivered to the Rent Officer an application for the registration of a fair rent for the property of £152.75 per week. The landlord ticked the 'Yes' box in section 15 of the application form and stated that oil-fired central heating had been installed in the property. Attached to the application form was an invoice issued by P.G. Bones Ltd addressed to Northumberland & Durham Property TR c/o Grainger Trust Plc. It is dated 31 July 2018 and is in the sum of £9,130.50 incl of VAT. The service provided is stated to be: *"Re 4 Aubrey Cottage Colchester. Supply and fit new oil central heating as quoted"*
- 2.3 On 11 June 2019 the Rent Officer registered a rent of £130.50 per week effective from 11 July 2019 following a determination by the Rent Officer.
- 2.4 By a letter dated 3 July 2019 the landlord objected to the rent determined by the Rent Officer and the matter was referred to the tribunal.

## **3. Inspection**

- 3.1 The members of the tribunal inspected the property on 18 September 2019. The tenant and Mrs Mason were present together with Mr L Clubb, a representative of the landlord.

The property, which is at the end of a terrace of four houses, is an unmodernised pre-1800 house. The terrace is in a pleasant and tranquil setting opposite a period church in the small village of Boxted.

We found that broadly the property was in a fair to average condition for age and type.

The ground floor comprises one room at the rear of which is a small kitchen area off which there is a bathroom and a separate wc.

A narrow and steep stairway leads to the first floor which comprises three rooms.

The property has the benefit of a small rear garden.

- 3.2 The tribunal noted that the tenant had kept the premises in reasonably good decorative order and, over the years, had carried out a number of

tenant's improvements including fully fitting out the kitchen with base units, work tops, a sink unit and wall units, laying tiles to both the kitchen and the bathroom, supplying all the curtains, carpets, floor coverings and white goods and the installation of an outside water tap. Some of those improvements were now a little dated.

- 3.3 The property is mostly single glazed in a variety of types of window, including wooden casement windows, two metal Crittall type windows and uPVC double-glazed units in the bathroom and in the wc. Some windows, along with front and rear doors, were ill-fitting and evidently the cause of draughts, so that some draught-proofing is required. Some window frames and ledges have signs of rot which has been painted over in the past.
- 3.4 It appeared that limited basic maintenance has been carried out over the years with some works outstanding or not fully completed. Some low level damp was noted by the front door, there is cracking and loss of key to some ceiling and wall plasterwork and chimneystack rendering repairs are required.
- 3.5 The tenant confirmed that oil-fired central heating had been installed last year. Both the oil tank and the boiler have been located in the rear garden, there being no convenient space within the property to accommodate the boiler.

#### **4. Evidence**

- 4.1 The tribunal received written representations from the landlord under cover of an email dated 1 August 2019. These were copied to the tenant. The tenant has not submitted any representations in response, nor has he provided any details of rentals of comparable properties in the immediate locality.
- 4.2 The gist of the landlord's written representations were that the property, whilst unmodernised, was well maintained and without disrepair.

The landlord also contended that the installation of oil-fired central heating since the last registration in 2017 was an improvement carried out by a landlord such that by article 2(7) of the Rent Acts (Maximum Fair Rent) Order 1999, that order shall not apply to cap the fair rent to be set.

Article 2 (7) of that Order is in these terms:

*(7) This article does not apply in respect of a dwelling-house if because of a change in the condition of the dwelling-house or the common parts as a result of repairs or improvements (including the replacement of any fixture or fitting) carried out by the landlord or a superior landlord, the rent that is determined in response to an application for registration of a new rent under Part IV exceeds by at least 15% the previous rent registered or confirmed.*

4.3 The Rent Officer had determined that the cap did apply and thus a capped rent of £130.50 per week was duly registered. The Rent Register records that an uncapped rent would have been £154.00 per week.

4.4 The landlord submitted that the open market rent for the property was £230 per week before adjustments were made to reflect the absence of specific facilities such as double-glazing. To support that contention the landlord attached to its representations brief details of four properties on the Rightmove website which were on offer letting as set out below:

Crossfields, Stoke-by-Nayland      £795 pcm – 2-bedroom terraced bungalow;

Crown Street, Dedham                £1,000 pcm – 3-bedroom semi-detached house;

River Bank Walk, Colchester        £1,000 pcm – 3-bedroom terraced house; and

Freeman Close, Colchester          £1,200 pcm – 4-bedroom town house

4.5 The landlord also asserted: “... *we believe there is no evidence of scarcity affecting rental values in the area.*” But, no evidence to support that belief was presented by the landlord.

4.6 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 members of the tribunal had regard to the written representations supplied by the landlord and what it observed during the course of their inspection of the property.

6.2 None of the comparables supplied by the landlord were particularly helpful. The brief details provided showed that they were not pre-1800 unmodernised cottage type accommodation. Two of the properties were in Colchester itself where the market is quite different from that in rural Essex/Suffolk to the north of the city.

6.3 In the absence of detailed comparables supplied by either of the parties, the members drew on their own general knowledge of market rent levels in rural areas to the north Colchester.

6.4 The Rent Officer had concluded that an appropriate open market rent for the subject property modernised, in good condition, double glazed, centrally heated and with modern fittings, white goods and curtains and carpets all in line with current market expectations was £225.00 per week. In its representations the landlord contended for £230.00 per week. Drawing on our accumulated experience and expertise we find such an open market to be in the region of £225.00 per week.

6.5 However, as recognised by the landlord, 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 £225.00 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:

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

6.5.2 any relevant improvements carried out by the tenant which impact on rental value

6.6 In coming to our decision we made adjustments to reflect those matters and made deductions of £65.00 per week.

This leaves an adjusted market rent for the subject property of £160.00 per week.

- 6.7 It is convenient to record here that if the oil-fired central heating had not been installed, our deductions would have been £82.50 per week with the result that the adjusted market rent would have been £142.50.
- 6.8 With regard to scarcity, we have to take account of any overall imbalance of demand over supply which impacts on rental values of similar accommodation across a really substantial area.
- 6.9 We can but take a broad, overall general view of a substantial area. We find that within East Anglia there is substantial scarcity within the meaning of the Act. Like the Rent Officer, we make an adjustment of about 10% from the adjusted market rent to reflect this element.

Accordingly, we determined that the uncapped fair rent was £160.00 - £16.00 = £144.00 per week.

- 6.10 We then gave careful consideration to the Rent Acts (Maximum Fair Rent) Order 1999, and in particular article 2(7). Guidance on the approach tribunals should take on this was given by the Upper Tribunal (Lands Chamber) in *Ljepojevic v University of Cambridge* [2017] UKUT 0213 (LC).

In essence

1. Did the work or expenditure bring about a change in the condition of the property? If so,
2. Has the change caused the fair rent to increase? If so,
3. By how much did the change cause the rent to be increased as at the valuation date (that is to say, the date of the tribunal's decision; and
4. Is the increase more than 15%.

The Deputy President also held that it is for the landlord to show that the cap does not apply.

- 6.11 We are satisfied that the installation of oil-fired central heating has brought about a change in the condition of the subject property - because it is an improvement to the amenity of the property and renders it more comfortable, convenient and enjoyable.
- 6.12 The landlord asserted that the previous fair rent was £117.50, the rent officer determined that the new uncapped rent was £154.00. The uncapped rent of £154 was 31% more than the previous registered rent and thus the 15% threshold had been passed. We reject that approach of the application of article 2(7).

Following the guidance of the Upper Tribunal, the exercise is to determine the amount of the increase in rent attributable to the works or improvements in question and then determine if that amount is more or less than 15% of the previous registered rent. Other reasons for an increase in rent, such as market conditions are not to be taken into account.

6.13 The tribunal's application of article 2(7) to the subject case is as follows:

Previous registered fair rent = £117.50 (A)

15% of A = £ 17.63 (B)

A + B = £135.13 (C)

New uncapped fair rent = £144.00 (D)

(D) is thus higher than (C)

The uncapped fair rent if the works are excluded would have been £128.25 (E).

Amount of the new uncapped fair rent attributable to the works D - E = £15.75 (F)

Where F is equal to or more than B there is exemption from capping.

Where F is less than B, there is no exemption from capping.

In the present case F=£15.75 and B= £17.63. F is less than B so there is no exemption from capping.

6.14 Where there is no exemption from capping the maximum fair rent that can be registered in the present case is the sum of £131.00 per week.

(Details of the calculation are provided on the back of the Decision form).

6.15 For these reasons we determined that the fair rent to be registered is £131.00 per week effective from 18 September 2019.

Judge John Hewitt

19 September 2019

#### **ANNEX - RIGHTS OF APPEAL**

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. 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.
4. 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.