



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

Case Reference : CAM/00MD/F77/2020/0014

Property : Lawnfield, Westmorland Rd, Maidenhead, SL6 4HB

Tenant : Mr J Murolo

Landlord : P L Townsend Dec'd Trust

Type of Application : Determination of rent under Rent Act 1977

Tribunal Members : **Judith Lancaster** **Chairman**
Marina Krisko FRICS **Valuer Member**

Date of Decision : 20 November 2020

STATEMENT OF REASONS

DECISION

The Tribunal determined a Fair Rent of £8,325.00 per quarter

BACKGROUND:

1. On 20th May 2020 the Rent Officer registered a rent of £8,600.00 per quarter for the Property, and by letter dated 1 June 2020 the Tenant appealed to the First-tier Property Tribunal.

2. Due to Covid 19 restrictions, the Tribunal did not inspect the Property, but made their determination on the basis of the information provided by the parties and the Rent Officer, information gained from internet mapping applications, and their knowledge of the local area, and made a determination of £8,550.00 per quarter on 5 October 2020. No hearing was requested, so the Tribunal made its determination on the basis of written representations.

3. However, the Tribunal was subsequently informed that the rent registered by the Rent Officer in 2014, the last time that a rent had been registered previously, £8,400 per quarter, had been appealed to a Tribunal, who had determined a rent of £8,100 per quarter. The entry from the Rent Register provided to the Tribunal had related only to the original decision by the Rent officer, and the Tribunal had not been told of the decision by the 2014 Tribunal, or received a copy of the Statement of Reasons provided by the 2014 Tribunal. The 2014 Statement of Reasons contained a more detailed description of the lay-out, facilities and condition of the Property than had been available to the Tribunal before making their decision on 5 October 2020, as the 2014 Tribunal had been able to inspect the Property.

3. The Tribunal therefore decided that, pursuant to Rule 51 of The Tribunal Procedure (First-tier) (Property Chamber), the Tribunal would set aside the decision of 5 October 2020, because a document relating to the proceedings had not been sent to, or not received by, the Tribunal at an appropriate time, and the Tribunal considered it was in the interests of justice to set aside that decision, given that the information in the documents not seen by the Tribunal could have affected their decision.

4. The Tribunal then wrote to the parties on 28 October 2020, notifying them that the decision of 5 October would be set aside, and asking them to inform the Tribunal whether the lay-out, condition, and facilities of the Property had materially changed since described in the 2014 Statement of Reasons.

5. The Tenant did not, at that point, make any comment about any material changes since 2014, although the Tenant had previously stated that work had been done on the roof and outbuildings since 2014, and the outbuildings were now in a good state of repair and the roof hadn't shown signs of leakage for 5 years. The Landlord stated that their understanding was that the lay-out, facilities and condition of the Property had not changed.

6. The Tribunal therefore relied on the description of the lay-out, condition and facilities described in the 2014 Statement of Reasons, whilst noting that works had been done to outbuildings and the roof since 2014.

THE PREMISES:

6. The Property is a detached 1900's house on the corner of the A4 and Westmorland Road, with vehicular access from both, fenced off from the road, and screened from the road by thick trees. It is built of brick and tile, with ornate chimneys, and a tiled porch over the front door, part painted white. Aerial views show a large, well-kept garden, and the Property is said to have a garage and outbuildings.

7. The accommodation on the ground floor consists of a very large reception room divided by a structural wall with archways, a large dining room, a conservatory, a scullery, a kitchen and large utility room, rear reception room and a cloakroom. On the first floor there is a study providing access to a spare bedroom, a master bedroom, dressing room, two further bedrooms, and 2 bathrooms, and a separate WC.

8. Outside there are 2 stables, a garage, and further outbuildings. There are large, landscaped gardens surrounding the Property with a gravel driveway.

9. The Property has a gas-fired central heating, installed by the Tenant, who has replaced a large proportion of the plumbing system, provided loft insulation, and renovated the kitchen, installing fitted units – the kitchen provided by the Landlord incorporated a basic sink unit and a basic range of kitchen units in the scullery and a butler's sink in the utility. The cloakroom and 2 bathrooms contain the original fittings – but the Tenant has renovated the 2 bathrooms, including the installation of a free-standing shower in one of the bathrooms, together with tiling and shelving, and also substantially renovated the conservatory, and re-designed and landscaped the gardens. The windows are single-glazed.

10. The 2014 Statement of Reasons states that the Property had been well-maintained, but that some of the outbuildings are in a poor state of repair.

THE TENANCY

11. A copy of an agreement dated 13 November 2003, 'the Tenancy Agreement', was provided to the Tribunal. (This agreement is called a 'lease' and the Landlord is referred to as the 'lessor' and the Tenant as the 'lessee'. In this Statement of Reasons, the Tribunal will use the more usual terminology). The Tenant's repairing obligations under clause 2(c) include regular painting both the inside and the outside of the Property, and 'well and substantially to repair, cleanse and maintain amend and keep the Demised premises and all addition made thereto and all fixtures therein and the walls fences drains and appurtenances thereof'. The Tenancy Agreement also requires the Tenant to pay the cost of insuring the Property against

fire storm and tempest, 2 years loss of rent, and such other risks as the landlord may determine.

REPRESENTATIONS OF THE PARTIES:

The Tenant's Case

13. The main points of the Tenant's case may be summarised as follows;

- a) There are discrepancies in the description of the Property submitted by the Landlord – the Property only has 2 reception rooms and does not have a proper kitchen, but a small scullery, with a sink and a work-top, and a breakfast room, where the stove and ovens are, which is unacceptable in the 21st century
- b) None of the bedrooms are en-suite, which any property with more than 3 bedrooms would now be expected to have, and the second bathroom has no WC
- c) There are 2 separate toilets, but one has no sink in it
- d) Work has recently been carried out to the outbuildings, which are now in a perfect state of repair, and the roof of the Property, which has not shown signs of leakage for the past 5 years
- e) The Property is on the corner of 2 roads, one of which is a major artery into Maidenhead, resulting in a high level of noise and pollution
- f) The Landlord has never paid any money for improvements/alterations to the Property, and over the last 45 years the Tenant has spent in excess of £650,000 looking after the Property
- g) The Tenant installed the central heating, and a complete floor and roof insulation was added to the Property's loft
- h) The suggested rent increase, 6.17%, seems completely out of context, given that inflation has averaged 2.55% from 1989 to 2020. The current rent was set in 2014, and was already in excess of inflation at that time. The general trend seems to be for a decrease in rental levels
- i) A large number of properties on the market in Berkshire or Buckinghamshire of similar standards to the Property, some even much larger than the Property, are being offered for monthly rents between £1,500 and £2,000. The current monthly rent for the Property is £2,700. Most of the properties also offer facilities not provided by the Property, a fully fitted modern kitchen, 2 or more en-suite bathrooms, garden maintenance, and a rural/peaceful setting, with very large gardens, often bordering on rivers
- j) The Tenant agrees with the Landlord that it is very difficult to find truly comparable properties – there are a number of 6-bedroom properties available in the area, with rents comparable to the Property, but they have modern facilities, such as fully-equipped modern kitchens, and en-suite bathrooms. Most do not include insurance and repairs as a responsibility of the tenant. The Tenant pays in excess of £500 pa for insurance, £1,200 pq for garden maintenance, and £600pq for general maintenance.
- k) The Landlord has never carried out any repairs or improvements
- l) The issue of scarcity is important in determining a Fair Rent. Looking at Estate Agent's details there are a number of available 6-bedroom properties in the area, at rents comparable to the Property, but they offer much better, more modern, facilities, and the tenants are not required to take on repairing responsibilities

The Landlord's Case

14. The main points of the Landlord's case may be summarised as follows;

- a) In a letter dated 18 February 2020 the Landlord stated there is scarcity, because, whilst there are many properties for rent in the area, there is nothing comparable with a quality 5-bedroom detached property in 1 acre of land and close to many amenities. However, in an email dated 30 October 2020 the Landlord drew the Tribunal's attention to the conclusion of the 2014 Tribunal that there was no scarcity, and

- stated that previous Rent Officer evaluations had never made a deduction for scarcity
- b) The Property is in an excellent central location with the town centre, mainline station, M4 and A4 all within easy reach. The area has quality detached housing close to well-regarded schooling. It is on a popular road, it has hedges providing privacy, and a very generous plot for the area.
 - c) The Property is generally in a good state of repair, although the Rent Officer did mention in 2014 that the roof was in need of replacement, with damp ingress, and the some of the outbuildings were in a poor state of repair. These dilapidations should have been repaired by the Tenant under the terms of the Tenancy Agreement.
 - d) Rents have increased dramatically since 2014
 - c) There are no similar sized properties with one-acre plots of land in the vicinity
 - d) The 2014 Statement of Reasons concluded that there was no scarcity for substantial family houses with 6 bedrooms on a full repairing and insurance basis, because, although there were not many comparable properties available, demand for similar properties available on similar terms was not high. Previous Rent Officer evaluations have never deducted for scarcity.

THE LAW

15. Attached to this Statement of Reasons is a resumé of the law as applied by the Tribunal. It forms an integral part of the Reasons of the Tribunal.

THE DECISION

16. The Tribunal noted the representations made by the parties, including in relation to the location, lay-out, facilities and condition. They also noted that, apart from repairs to the outbuildings and the roof, neither party had informed the Tribunal there were any material changes to the Property since 2014, or that there were any issues with the current condition of the Property, when given the specific opportunity to do so. The Tribunal therefore relied on the description of the lay-out, condition and facilities of the Property as described in the 2014 Statement of Reasons, whilst noting that works had been done to the outbuildings and roof. In particular, the Tribunal noted that the Property has only 4/5 bedrooms, rather than 6, which was the Tribunal's understanding when it made its original determination on 5 October 2020.

17 The Tribunal also noted that this is a full repairing and insuring Tenancy Agreement, which means that the Tenant's financial obligations are significantly greater than a tenant's in the majority of tenancies where the Fair Rent provisions apply, specifically;

- a) The Tenant's repairing obligations are set out under 'Tenancy' above. Under section 11 of the Landlord and Tenant Act 1985, which governs the repairing obligations of the parties in the majority of tenancies where the Fair Rent provisions apply, a landlord must keep in repair and proper working order the structure and exterior of the dwelling, and the installations for the supply of water, gas, electricity and sanitation, and space and water heating
- b) The Tenant pays for the cost of insuring the Property, as set out under 'Tenancy' above, whereas this would be the responsibility of the landlord in the majority of Fair Rent tenancies.

18. The assessment of a Fair Rent starts with an assessment of the open market rent, ie the rent the Tribunal assess would be paid for the Property, in good condition and with modern facilities, as at the date of the determination. The general level of inflation for items other than comparable dwellings is not something the Tribunal should rely on. The Tribunal noted that no evidence of comparable properties let on similar terms was made available to the Tribunal, and, in relation to those properties which were referred for the Tribunal's consideration by the parties, inadequate information was provided as to lay-out, condition,

facilities, and rent achieved, rather than asked for, to allow them to be used as comparable properties.

19. As no sufficiently detailed evidence as to comparable rents had been provided by the parties, the Tribunal relied on the members' knowledge and experience of open market rents for comparable properties in the area. It is the Tribunal's view that the open market rent for a similar property, with 4/5 bedrooms, in good condition, with modern facilities, carpets, curtains and some white goods, and where the usual repairing and insuring obligations applied, would be £14,500.00 per quarter.

20. The Property has to be valued on the basis of the facilities currently provided, as set out above, including relatively basic kitchen and bathroom facilities, and making an appropriate deduction for any improvements carried out by the Tenant, in particular the installation of central heating, loft insulation, fitted kitchen units, and installation of a free-standing shower. The Property also has to be valued without carpets, curtains or white goods, which would usually be provided in open market lettings. A further deduction needs to be made in this case to take into account the significantly increased obligations on the Tenant because of the repairing and insurance provisions in the Tenancy Agreement. The Tribunal has therefore decided to make the deduction set out in the summary below to reflect these matters. It should be noted that this cannot be a simple arithmetical calculation but is the Tribunal's estimate of the amount by which the open market rent would have to be reduced to attract a tenant, taking into account the facilities provided by the landlord, and the terms of the Tenancy Agreement.

21. With regard to scarcity, the decision reached by the 2014 Tribunal, and by the Rent Officer, are not relevant to this Tribunal's determination, as this Tribunal is required to consider the case afresh, as at the date of determination, without reference to previous determinations.

22. The members of the Tribunal have many years of experience of the residential letting market between them and that experience leads them to the view that there is substantial scarcity of similar properties in the locality available for letting on similar terms and a deduction would be made to reflect this. It is unusual to let a property of this type on full repairing and insuring terms, and while this places additional responsibilities on a tenant, it would lead to the rent being lower than it would otherwise be. This would be attractive to some prospective tenants, and so it is the Tribunal's view that demand exceeds supply. The Tribunal interpreted the "locality" for scarcity purposes as being the commuter belt west and north west of London, a sufficiently large area to eliminate the effect of any localised amenity which would, in itself, tend to increase or decrease rent.

SUMMARY

Open market rent for similar property in good condition with modern facilities	£14,500.00 pq
Less:-	
Global deduction for condition and lack of modern facilities, carpets etc, Tenant's improvements, and terms of tenancy	£ 5,250.00pq
Deduction for scarcity	<u>£ 925.00pq</u>
	£ 8,325.00pq

23. The provisions of the Rent Acts (Maximum Fair Rent) Order 1999 must then be considered. The Tribunal calculated the Maximum Fair Rent which can be charged under this Order to be £9,677.00pq. As this is greater than the rent calculated by the Tribunal, the Tribunal's determination applies.

24. The Tribunal therefore determined a Maximum Fair Rent of £8,325.00 per quarter.

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Judge Judith Lancaster

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.

