



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

Case Reference : **CHI/45UF/F77/2020/0022**

Property : **2 Cliff House
Dacre Villas
Upper Beeding
Steyning
West Sussex BN44 3TS**

Type of Application : **Determination of a fair rent:
Rent Act 1977**

Date of Decision : **01 December 2020**

Tenant : **Mr John Richards**

Landlord : **Dudman Holdings Ltd**

Tribunal Member : **Mr B H R Simms FRICS (Chairman)**

REASONS FOR THE DECISION

Background

1. On 15 April 2020 the Landlord, made an application to register the rent of the property at £895.00 per calendar month in place of the existing rent of £595.00 per calendar month.
2. On 17 August 2020 the Rent Officer registered the rent capped at £676.50 per calendar month with effect from the same date, the uncapped rent was £690.00 per calendar month.
3. The Landlord objected to the rent registered by letter dated 10 September 2020 and on 28 September 2020 the Rent Officer referred the case to the First Tier Tribunal (Property Chamber).
4. Directions for the conduct of the case were issued dated 09 October 2020. Because of the Covid 19 pandemic restrictions the Tribunal intended to determine the rent on the papers only without an inspection or an oral hearing. There was an opportunity for the parties to object to this procedure, but no objection was received in the allotted time.
5. In response to Directions the Landlord made written representations including a copy of the Tenancy Agreement and other relevant documents. The Tenant was represented by his daughter but did not make any formal statement.
6. Following receipt of the original responses to the Directions the Tribunal briefly considered the papers and determined that it could not proceed without further information. The parties were Directed to provide further information and photographs. The Landlord responded and provided further information. The Tenant left the matter in the hands of the Tribunal.
7. The Rent Service provided the Tribunal with copies of the original application, the rent register entries, a summary of the Rent Officer's calculations and relevant correspondence. All documents were circulated to the parties.

Inspection

8. As advised to the parties the Tribunal did not inspect the property. The Tribunal proceeded to determine the matter based on the written evidence submitted.
9. The property is described in the application for registration as a self-contained first floor flat formed by conversion. The accommodation comprises a living room, kitchen, two bedrooms, bathroom with W.C., gardens and parking.

Tenancy Agreement

10. The Landlord provided a copy of a Tenancy Agreement dated 06 August 1984 between the then Landlord, Blue Circle Cement, and Mr Richards. It was a monthly tenancy to continue until determined in accordance with the agreement. Mr Richards continues as a statutory tenant under the terms of this agreement subject to any statutory restrictions.

11. The Tenant is required to keep the interior in a clean condition. The Landlord's obligation is to keep the premises in good repair. Section 11 Landlord & Tenant Act 1985 ("the 85 Act") will apply.

Representations

12. In response to the rent service Mr Richards sent a handwritten letter received by the VOA on 15 July 2020. The letter is difficult to read and unfortunately the transcription requested has not been supplied. Doing the best we can, the letter appears to make several points about Mr Richards' satisfactory occupation of the property over the last 36 years but this changed following the purchase by Dudman. He mentions that the Landlord has opened a new concrete plant next door to his flat and he complains of a lot of dust and noise from this operation. Mr Richards says his flat has no fire escape and has poor soundproofing. He also mentions a cold bathroom, leaking and rotten windows and missing roof tiles. In response the Landlord wrote to the Rent Officer rebutting the suggestion that there is a dust problem. The Landlord made no comments about the condition of the windows or roof.
13. Using the directions reply pro-forma the Landlord confirms that there is central heating and double glazing, but floor coverings, curtains and white goods are supplied by the Tenant. There is a bus route along the main road.
14. The Landlord made a statement by letter dated 19 October sent to the Tenant as required suggesting that there has been a lack of upkeep by the tenant. The letter continues in a similar manner throughout and complains of refusals by Mr Richards to allow access.
15. The Landlord does however refer to 'comparison rents' and at appendix 8 it has printed from the internet some information from the Zoopla site. A 2 bedroom bungalow in Steyning is listed at £1,200 per month; a 2 bedroom flat in Worthing – rental unclear; a 2 bedroom flat in Shoreham at £1,050 per month; a 2 bedroom semi-detached house in Findon Valley at £1,150 per month; a 2 bedroom flat in Lancing at £1,000 per month and a further 2 bedroom flat in Shoreham at £975 per month. The Landlord suggests that as all these comparables have rents exceeding the increase applied for, then if the property had been kept in a clean, reasonable and presentable condition by the Tenant, it would be entitled to a 'fairer rent'.
16. The additional representations show that the property is very close to the cement works but occupies an elevated position. Access is via a roadway leading directly from the A283 and then via a gated driveway to the property. Photographs show some replacement windows and pleasant views. They also show the building has brick or rendered elevations under a pitched, concrete tiled roof. Although the photographs are not very detailed, the property appears to be in satisfactory order externally.

The law

17. When determining a fair rent the Tribunal, in accordance with the Rent Act 1977 (“the Act”), section 70, must have regard to all the circumstances including the age, location and state of repair of the property.
18. It must also disregard the personal circumstances of the Landlord or of the Tenant and the effect on the rental value of the property of:
 - (a) any relevant tenant's improvements and
 - (b) any disrepair or other defect attributable to the tenant or any predecessor in title under the regulated tenancy.
19. 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).
20. For the purpose of determining the market rent, assured tenancy rents (market rents) are usually appropriate comparables. (These rents have to be adjusted where necessary to reflect any relevant differences between those comparables and the subject property).
21. The Rent Acts (Maximum Fair Rents) Order 1999¹ (“MFR”) introduced statutory maximum (capping) limits to fair rents calculated using a formula based upon the previously registered rent, a standard addition and an inflation factor.

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 on the terms and in the condition that is considered usual for such an open market letting.
23. Most of the Landlord’s representations were taken up with complaints regarding Mr Richards’ alleged refusal to allow access and his alleged internal disrepair and damage. The Tribunal is unable to have regard to whether Mr Richards has or has not allowed reasonable access to the premises. The suggestion that Mr Richards has caused damage to *the premises or windows, sanitary arrangements, fittings or fixtures*, referred to in the Tenancy Agreement (clause 2. (3)) “... *by the wilful or negligent act or omission of the Tenant ...*”, is entirely unsupported by any evidence. In fact, the Landlord complains that it has been unable to gain access to the premises to inspect them.
24. As established by statute any alleged neglect of the interior by the Tenant is not to be reflected in a lower rental valuation by the Tribunal (the Act S.70 (3)(a)).

¹ The Rent Acts (Maximum Fair Rent) Order 1999 SI 1999 No. 6

25. The property is in a semi-rural and heavily wooded location, but it adjoins a substantial, dilapidated cement manufacturing works and an operating concrete plant, from which there is bound to be some disturbance. The A283 is a busy main road with no footpath and although currently there is a bus service the property is some distance from the nearest shops or other amenities in Shoreham (3 miles) or Steyning (2.5 miles).
26. The 'comparison rents' supplied by the Landlord assisted the Tribunal a little, but needed substantial adjustment to relate them to the subject premises because of their different property types and localities. The flats in Lancing and Shoreham averaging just over £1,000.00 per month were more modern and in a more convenient location.
27. The Rent Officer estimated the market rent at £865.00 per calendar month but deducted £175.00 for deficiencies, he had only 2 comparable rents at £875.00 and £865.00 per month.
28. Having regard to and adjusting the Landlords' comparables, having regard to the Rent Officer's comparables, and using our own knowledge of general rent levels for this type of property in the locality, we determined that the starting point should be £850.00 per calendar month. This rental is on the assumption that the Tenant is responsible only for keeping the interior in clean and tenantable repair in accordance with the 85 Act.
29. However, to allow for the isolated location and the adjacent industrial properties a further deduction is made of £75.00. As determined earlier there is no deduction made for the alleged Tenant's neglect. The Landlord has not provided floor coverings, curtains or white goods and a further adjustment of £110.00 is made to allow for the absence of these.
30. There is no evidence that a further adjustment is required to allow for scarcity.
31. The adjustments are our opinion of the lower rental bid that would be made by a hypothetical tenant when comparing this particular property to the hypothetical comparable property on which our starting rent is based.
32. We therefore determined that the uncapped Fair Rent is £665.00 (£850 - £185) per calendar month.
33. The uncapped rent of £665.00 is below the maximum fair rent of £680.00 per calendar month calculated in accordance with MFR, details of which are shown on the rear of the Decision Notice, we therefore determine that the sum of **£665.00 per calendar month** is registered as the fair rent with effect from the date of the decision **01 December 2020**.

Chairman: B H R Simms

Date: 01 December 2020

PERMISSION TO APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) on a point of law must seek permission to do so by making written application to the First-tier Tribunal at rpsouthern@justice.gov.uk.
2. 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.
3. 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 time or not to allow the application for permission to appeal to proceed.
4. 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.