



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

Case Reference : **CHI/29UC/F77/2020/0024**

Property : **GFF 26 Beacon Road, Herne Bay, Kent
CT6 6DH**

Landlord : **Fairdale Property Trading Ltd**
Representative : **Baron Management**

Tenants : **Mr & Mrs. D Pulleng**
Representative : **None**

Type of Application : **Rent Act 1977 – Section 70
Appeal of Registered Rent**

Tribunal Members : **R T Athow FRICS MIRPM (Chairman)**
Mr N I Robinson FRICS
Miss C D Barton BSc MRICS

Date of Inspection : **Not inspected**

Date of Decision : **9th December 2020**

DECISION

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Background

- 1) On 3 July 1920 the Landlord made an application to register the rent of the property at £145.00 per week.
- 2) The rent payable at the time of the application was £119.50 per week.
- 3) The rent was previously registered on the 27th of July 2018 at £119.50 with effect from the 15th of September 2018.
- 4) On the 22nd of September 2020 the Rent Officer registered a Fair Rent of £120.00 per week exclusive of rates with effect from that date.
- 5) On the 1st of October 2020 the Landlord objected, and the matter was referred to the First-Tier Tribunal (Property Chamber).
- 6) On 27th October 2020 the Tribunal made Directions informing the parties that in view of the Government's advice with respect to the Covid 19 outbreak an inspection would not take place. The parties were given the opportunity to provide supporting photographs of the property and if desired make representations to have the case stayed until an inspection was possible.
- 7) The Directions required the Landlord to send a statement to the Tenants and to the Tribunal supporting the application for an increase in rent. The Tenants were also required to send a statement to the Landlord and to the Tribunal in support of their objection.
- 8) Neither party requested a Hearing.
- 9) The Tribunal met on 9th December 2020 to consider the application.
- 10) The matter is dealt with as a paper determination without hearing. In the current circumstances it has not been possible to inspect the property and the Tribunal relies on submissions from the Landlord and Tenants in correspondence, publicly available housing data online and its own expert knowledge.

Evidence

- 11) The Tribunal received written representations from the Tenants and the Landlord and these were copied to the parties. The Rent Office supplied some records and copies of correspondence they had had with the parties.
- 12) It is a self-contained ground floor flat in a converted house in the centre of Herne Bay. Local shops are within a few minutes' walk.
- 13) The accommodation comprises hall, living room, 2 bedrooms, bathroom/WC, and kitchen. There is a garden at the rear of the property. There are electric storage heaters. All main services are connected.

- 14) The Landlord stated that they had installed a new electric storage heater in the second bedroom in the earlier part of 2020 and the cost together with the fitting of a new consumer unit and additional wiring that was required was £1,530.00.
- 15) The Tenants stated that the Landlords have not carried out any external decoration or maintenance to the property since they moved in in 1975. Consequently, the property is now in poor decorative state externally, the only maintenance that the Tenants can recall having been undertaken by the Landlord was the replacement of the screws in the bathroom door and the installation of the new storage heater in the second bedroom earlier this year. The external window cill is very rotten and several of the sash cords are broken. The Tenants have painted the exterior windows and front door during their tenancy and are in the process of decorating the outside porch and exterior of the front door. The bathroom is the original one and is very small being only 78 inches by 66 inches. The Tenants have replaced the bath panel.
- 16) Neither party gave any comparable evidence of rents for flats of this type set in this locality.
- 17) The Tenants are satisfied that the rent of £120.00 per week is correct as registered by The Rent Office.

The law

- 18) 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 must also disregard the effect of (a) any relevant Tenants's improvements and (b) the effect of any disrepair or other defect attributable to the Tenants or any predecessor in title under the regulated tenancy, on the rental value of the property. That section also required the Tribunal not to take into account the personal financial and other circumstances of the Tenants.
- 19) 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 that section 70 means that:
 - a) Ordinarily a Fair Rent is the market rent for the subject property discounted for 'scarcity' and
 - b) 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 these comparables and the subject property).
- 20) The Rent Act (Maximum Fair Rent) Order 1999 limits the increase from the previous registered rent. It is worked out by a formula based on the change in Retail Prices Index since the last registration plus a fixed percentage increase set by law. If the Rent Officer or the Tribunal decides the

property is worth more than the maximum fair rent, the maximum fair rent becomes the registered rent. If the valuation is lower than the maximum fair rent that valuation becomes the registered rent.

- 21) There are two occasions when the maximum fair rent will not apply: -
If there is no existing registered rent, and
If the Landlord has improved or repaired the property and the Rent Officer and/or the Tribunal considers the improvement or repair has made the rent at least 15% more than the existing registered rent.

VALUATION

The Market Rent

- 22) The Tribunal firstly 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 exclusive of water rates and council tax.
- 23) The letting market has grown substantially in recent years and there is now ample evidence of open market rents for Assured Shorthold Tenancies. In the competitive market that now exists, such properties need to be in first class structural and decorative order and be equipped with all amenities such as full modern central heating, double glazing and other energy-saving facilities along with white goods, carpets and curtains to ensure the property attains its full rental income potential. Where such items and facilities are missing the rent is found to be correspondingly lower.
- 24) The Rent Officer has provided a brief redacted list of comparables upon which he relied in computing his market rent. The list does not give full postcode addresses and so we were unable to see if any were in the immediate locality. There were 20 different comparables on the list ranging between £109.62 and £196.15 per week. The Rent officer's computations started with an open market valuation of £170.00 per week from which he made adjustments of £50.00 to give a Fair Rent of £120.00. He computed the capping and, as the Fair Rent was below this capping it did not apply.
- 25) Neither party provided any evidence of open market lettings, and the Tribunal therefore relied on its own knowledge and experience of general rent levels for this type of property in this area.
- 26) The Tribunal's conclusion was that an appropriate open market rent for the property let on a modern open market letting of an Assured Shorthold Tenancy where the Landlord supplies white goods, carpets and curtains and the Tenants has no liability to carry out repairs or decorations would be £170.00 per week, in line with the Rent Officer's finding.
- 27) However, the Tribunal noted from the representations made, together with the notes from the Rent Officer, that the actual property is not in the condition considered usual for a modern letting at a market rent, and it was necessary to adjust that hypothetical rent of £170.00 per week to allow for

the differences between the condition considered usual for such a letting and the condition of the actual property.

- 28) One item that is important in this particular case is the rating recorded by the Energy Performance Certificate dated 28th January 2020 being 32/F. This is such a low rating that the property could not be re-let under the current MEES Regulations.
- 29) The Tribunal takes into account several items to arrive at the rent that it decides is the market rent. These are broken down in the decision to show the proportional effect of each of these items on the adjusted rental value. Whilst there is no laid down formula for arriving at the sums to be allocated towards these items the Tribunal has used its own knowledge and experience in arriving at these figures.
- (a) Tenants' Improvements –
 - (b) Repairing and Decorating Liabilities
 - (c) White Goods
 - (d) Carpets and Curtains
 - (e) Low EPC rating
 - (f) Disrepair
- 30) The Tribunal considered these factors separately and then considered whether the overall reduction was justified. We are satisfied that it is.
- 31) We decided to make a deduction of 30% for these factors which gives a rent of £119.00 per week, which the Tribunal decided should be rounded to £120.00 per week.

Scarcity

- 32) The Tribunal did not consider that there was any substantial scarcity element for this type of property in this area and accordingly no further deduction was made for scarcity.

THE DECISION

- 33) We therefore determined that the uncapped Fair Rent is £120.00 per week exclusive of council tax and water rates
- 34) As this amount is below the rent calculated in accordance with the Rent Acts (Maximum Fair Rent) Order 1999 details of which are shown on the rear of the Decision notice, we determine that the lower sum of £120.00 per week is registered as the Fair Rent with effect from 9th December 2020.

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber), which may be on a point of law only, must seek permission to do so

by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

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.