



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

HMCTS Code : **P:PAPERREMOTE**

Case Reference : **BIR/17UH/F77/2020/0024**

Property : **97 Castleton Road, Hope
S33 6SB**

Landlord : **BPT (Bradford Property Trust) Ltd**

Representative : **Grainger plc**

Tenant : **Mrs J Wilkie**

Type of Application : **Determination of a fair rent under
Rent Act 1977 Schedule 11**

Tribunal Members : **Mrs A Rawlence MRICS (Chair)
Mrs K Bentley**

Date of Decision : **10 December 2020**

Date of Reasons : **20 January 2021**

STATEMENT OF REASONS

Covid-19 pandemic: description of hearing:

This has been a remote hearing on the papers. The form of remote hearing was P:PAPERREMOTE. Both parties did not object to the Tribunal making their decision on the papers sent in and without a hearing or an inspection.

DECISION

Background

1. By application dated 2 July 2020 the Landlord applied to the Rent Officer for registration of a fair rent of £557.75 per calendar month for the property.
2. The rent payable at the time of the application was £485.00 per calendar month.
3. The rent was previously registered on 24 September 2018 with effect from that date at £485.00 per calendar month following a determination by the Rent Assessment Committee (now the First-tier Tribunal (Property Chamber)).
4. On 23 September 2020, the Rent Officer registered a fair rent of £525.50 per calendar month with effect from 24 September 2020.
5. By a letter dated 28 September 2020 the Tenant objected to the rent determined by the Rent Officer and the matter was referred to First-tier Tribunal (Property Chamber).
6. Neither party requested an oral hearing to determine its objection.
7. The Tenant made written representations dated 21 October 2020, including photographs sent by e-mail on that date.
8. The Landlord made written representations dated 27 October 2020.
9. After consideration of the available evidence and the applicable law the Tribunal determined that a sum of £527.00 per calendar month shall be registered as the fair rent with effect from 10 December 2020.
10. The Tribunal's decision was sent to the parties. By e-mail dated 13 January 2021 the Landlord requested extended reasons for the determination.

The Law

The Jurisdiction of the Rent Assessment Committee

11. Paragraph 9(1) Part 1 Schedule 11 of Rent Act 1977 provides that;

“The Committee shall make such inquiry, if any, as they think fit and consider any information supplied or representation made to them in pursuance of paragraph 7 or paragraph 8 above and –

- a) if it appears to them that the rent registered or confirmed by the Rent Officer is a fair rent, they should confirm that rent;
- b) if it does not appear to them that the rent is a fair rent, they shall determine a fair rent for the dwelling house.”

Determination of a Fair Rent

12. Section 70 of the Rent Act 1977 provides that:

“(1) In determining, for the purposes of this Part of this Act, what rent is or would be a fair rent under a regulated tenancy of a dwelling-house, regard shall be had to all the circumstances (other than personal circumstances) and in particular to-

- (a) the age, character, locality and state of repair of the dwelling-house,
- (b) if any furniture is provided for use under the tenancy, the quality and condition of the furniture, and
- (c) any premium, or sum in the nature of a premium, which has been or may be lawfully required or received on the grant, renewal, continuance or assignment of the tenancy.

(2) For the purposes of the determination it shall be assumed that the number of persons seeking to become Tenants of similar dwelling-houses in the locality on the terms (other than those relating to rent) of the regulated tenancy is not substantially greater than the number of such dwelling-houses in the locality which are available for letting on such terms.

(3) There shall be disregarded –

- (a) any disrepair or other defect attributable to a failure by the Tenants under the regulated tenancy or any predecessor in title of his to comply with any terms thereof;
- (b) any improvement carried out, otherwise than in pursuance of the term of the tenancy, by the Tenants under the regulated tenancy or any predecessor in title of his”;

13. When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, had 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 Tenants' 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.

14. 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

(a) 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

(b) 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).

15. In considering scarcity under section 70(2) the Tribunal recognised that:

(a) there are considerable variations in the level of scarcity in different parts of the country and that there is no general guidance or "rule of thumb" to indicate what adjustment should be made; the Tribunal therefore considered the case on its merits;

(b) terms relating to rent are to be excluded. A lack of demand at a particular rent is not necessarily evidence of no scarcity; it may be evidence that the prospective Tenants are not prepared to pay that particular rent

16. Fair rents are subject to a capping procedure under The Rents Acts (Maximum Fair Rent) Order 1999 which limits increases by a formula based on the proportional increase in the Retail Price Index since the previous registration.

The Property

17. The property was constructed of cement block under a concrete pantile roof with UPVC double glazing. The property had gas central heating.

18. The property was a three bedroom semi-detached house. The accommodation provided Hall, Living Room, Lounge, Kitchen, Ground Floor Bathroom and Three First Floor Bedrooms. At the rear of the property was a lean-to Store and old Wash Area.

19. At the front of the property was a garden with vehicular access. There was a large garden to the rear of the property
20. The property had been inspected by the Tribunal in September 2018 when it was noted that the house was in a fair state of repair, with re-wiring and new Kitchen installed in early 2012, which included the Landlord's cooker. The Tenant has stated in her representations that there was damp and mould in the entrance hall, bathroom and second sitting room.
21. The Tribunal noted the following improvements to the property during the inspection in September 2018. No indication had been given by either party, except to confirm the Tenant's garage, that these had changed:

Floor covering in the Kitchen, cupboard and extra tiling in the Bathroom, heater in the Hall, concrete block Garage, Greenhouse, outside tap and Driveway
22. The Tenant owned the white goods (except for the oven), furniture, curtains and carpets.

The Tenant's Objection

23. The Tenant stated that there had only been general maintenance of the property since the previous rent review in 2018. As stated in paragraph 23, the Tenant had indicated areas of damp and mould in the Property.

The Landlord's Representations

24. The Landlord's representations dated 27 October 2020 stated that the property was located in the heart of the Peak district offering local amenities and attractions. They believed that the requested rent of £557.75 provided an accurate assessment of the rental value of the property. They also expected an element of scarcity to apply in this case.

Comparable Evidence

25. The Landlord produced evidence of rent for three comparable properties:
 - Simmondley Village, Glossop 3 bedroom semi-detached house with first floor bathroom, fitted kitchen and off-road parking. Asking rent £825 per calendar month. Still on the market.
 - Hollincross Lane, Glossop an unfurnished 3 bedroom semi-detached house described as stunning Victorian stone property. The house has fully fitted kitchen with extensive white goods and

first floor bathroom. With an asking rent £825 per calendar month in June 2020, the property was let in 48 hours.

- Sovereign Way, Chapel-en-Le-Frith. A modern 3 bedroom semi-detached house with ensuite shower to main bedroom, fully fitted kitchen, patio doors and off-road parking for 2 cars. The asking rent was £850 per calendar month and the property is now let.

Reasons for the Decision

26. 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 in the condition that is considered usual for such an open market letting. It did this by having regard to the evidence supplied by the Landlord and the Tribunal's own general knowledge of market rent levels in the area. Having done so it concluded that such a likely market rent would be £825.00 per calendar month.
27. However, the actual property is not in the condition considered usual for a modern letting at a market rent. Therefore, it was first necessary to adjust that hypothetical rent of £825.00 per calendar month to allow for the differences between the condition considered usual for such a letting and the condition of the actual property as observed by the Tribunal (disregarding the effect of any disrepair or other defect attributable to the Tenants or any predecessor in title). The Tribunal considered that this required a deduction of £62.50 per calendar month in respect of the carpets, curtains and white goods which were provided by the Tenant and a deduction of £60.00 to reflect the basic ground floor Bathroom and the property's proximity to a public house that has been converted into a party holiday home, the railway and the car park access to the college.
28. The Tenant had carried out improvements to the property as listed above and an additional deduction of £20.00 per calendar month was made for these.
29. The Tribunal made a further deduction of £41.25 per calendar month for the Tenant's greater statutory responsibility for internal decoration under the Rent Act.
30. The Tribunal found that there was substantial scarcity in the locality and therefore deducted a further sum of £83.00 per calendar month from the market rent to reflect this element. Please see paragraphs 14 and 15 above.

31. This left a fair rent for the subject property of £558.25 per calendar month assuming the landlord's repairing obligations were in accordance with section 11 of the Landlord and Tenant Act 1985.

The Decision

32. The fair rent initially determined by the Tribunal, for the purposes of section 70 was according £558.25 per calendar month.
33. However, the section 70 fair rent determined by the Tribunal is above the level which is the maximum fair rent permitted by the Rent Acts (Maximum Fair Rent) Order 1999 and accordingly that maximum rent of £527.00 per calendar month takes effect. (Details have been provided to the parties with the Tribunal's decision.)
34. Accordingly, the sum of £527.00 per calendar month will be registered as the fair rent with effect from 10 December 2020.
35. If either party believes this decision is incorrect on a point of law, they may apply for permission from the First-tier Tribunal to appeal to the Upper Tribunal (Lands Chamber). Any such application must be made within 28 days of this decision (Rule 52 (2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

A J RAWLENCE
CHAIR

20 January 2021