



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

Case Reference : **CHI/29UK/F77/2020/0027**

Property : **9 Garden Cottages, Powder Mill Lane,
Leigh, Tonbridge, Kent TN11 8QB**

Landlord : **Spurdown Limited**
Representative : **None**

Tenant : **Mr J Holden**
Representative : **None**

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

Tribunal Members : **R T Athow FRICS MIRPM (Chairman)
C Davies FRICS ACI Arb
S Hodges FRICS**

Date of Decision : **6th January 2021**

DECISION

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BACKGROUND

- 1) On 28 February 2020 the Landlord made an application to register the rent of the property at £165.00 per week.
- 2) The rent payable at the time of the application was £147.00 per week.
- 3) This was the first application for registration of a Fair Rent on the property.
- 4) On 8 October 2020 the Rent Officer registered a Fair Rent of £260.00 per week exclusive of rates with effect from that date.
- 5) On 23 October 2020 the Tenant objected, and the matter was referred to the First-Tier Tribunal (Property Chamber).
- 6) On 27 November 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 Tenant and to the Tribunal supporting the application for an increase in rent. The Tenant was also required to send a statement to the Landlord and to the Tribunal in support of his objection.
- 8) Neither party requested a Hearing.
- 9) The Tribunal met on 6 January 2021 to consider the application.
- 10) The matter has been 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 Tenant 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) The Tenant originally occupied 2 Garden Cottages from 1958, but when works were required to that property he transferred to the subject property in June 2018.
- 13) The Tribunal has not been provided with a tenancy agreement.

14) It is a semi-detached house set in a private cul-de-sac with a central communal green. There is a pub, local shop and bus service. Mainline trains are about 2 miles away, as is Tonbridge town.

15) The accommodation comprises 3 bedrooms, 2 receptions, kitchen, bathroom cloakroom, central heating, double glazing, garage, and garden. All main services are assumed to be connected. The property had carpets and some white goods at the commencement of the tenancy.

16) The Energy Performance Certificate dated 26 January 2018 gives the property an energy rating of 69/C.

Tenant's Representations

17) The Tenant made representations regarding the state of the property will in particular with regard to water ingress between the house and the newer extension. This has caused damage to the internal paint work and still needs to be rectified. Garden slabs are unstable and cracked.

18) The Tenant explained that the house was smaller than the one previously occupied and in particular the 2 main bedrooms were very small with very little space around the bed. The main bedroom is so small that it is not possible to include a wardrobe in the room. The third bedroom is basically a box bedroom and is only suitable for a small child. The living area is similarly compact.

19) With regard to comparable rents, the Tenant had spoken with another private Landlord in the village who lets out similar terrace cottages and is informed that the maximum rent that they would charge for a refurbished property of similar size would be about £995 per calendar month.

20) The Tenant noted the rents for other properties within Garden Cottages but explained that most of these were larger units and correspondingly at higher rents.

Landlord's Representations.

21) The Landlord provided copies of the sale particulars and plans of various houses on the estate which showed the extent of the properties, including number 9 and 14, to show their differences. The sales particulars included detailed layout plans. Although these were not to scale it gave the Tribunal some information on the layout and comparative size of accommodation.

22) The Landlord included a letter dated 10 December 2020 sent to the Tenant explaining that the Rent Officer had to set an open market rent on the property taking into account various issues. The Landlord has spoken with three other letting agents in the area who concluded the rental value is in the region of £1,800 to £2,350 per month, the higher level rent would be for properties with well-proportioned rooms. In this letter Mr Parker from Spurdawn Limited stated that they had no intention of charging the figure (*registered by the Rent Officer*) whilst the Tenant was paying the rent without any financial support.

23) In the letter the Landlord mentioned that there was a charge to house owners of £200 per annum for the cost of maintaining the common area, cutting the grass, and maintaining the roads and hedges. This was not passed on to the Tenant.

THE LAW

24) 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 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. That section also required the Tribunal not to take into account the personal financial and other circumstances of the Tenant.

25) 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).

26) 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.

27) 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

28) 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.

29) The personal circumstances of the Landlord and Tenant are not relevant to this issue.

30) 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.

31) 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 54 different comparables on the list ranging between £178.85 and £450.00 per week. Three of those were in the TN11 postcode district. The Rent officer's computations started with an open market valuation of £323.00 per week from which he made adjustments of £63.00 to give a Fair Rent of £260.00.

32) The Tribunal was assisted to a minor degree by the comparables submitted by the Landlord and Tenant. However, as there was no evidence of actual lettings having taken place the Tribunal had to rely on its own knowledge and experience of general rent levels for this type of property in this area.

33) 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 £323.00 per week, in line with the Rent Officer's finding.

34) 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 £323.00 per week to allow for the differences between the condition considered usual for such a letting and the condition of the actual property.

35) 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) Repairing and Decorating Liabilities
- (b) Disrepair

36) The Landlord's charges to other property owners in the road is not an item to be considered by the Tribunal as the responsibility for these rest with the property owners and not the tenants.

37) The Tribunal considered these factors separately and then considered whether the overall reduction was justified. We are satisfied that it is.

38) We decided to make a deduction of 20% for these factors which gives a rent of £258.40 per week, which the Tribunal decided should be rounded to £260.00 per week.

Scarcity

39) 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

40) We therefore determined that the Fair Rent is £260.00 per week exclusive of council tax and water rates.

41) As this is the first registration of rent for the property the Maximum Fair Rent Order does not apply.

R T Athow FRICS MIRPM
Chairman

Dated 6 January 2021

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.