



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

**Case Reference** : **CHI/ 43UF/F77/2020/0032**

**Property** : **10 Chaffinch Way, Horley, Surrey,  
RH6 8HJ**

**Landlord** : **London & Quadrant Group**

**Representative** : **None**

**Tenant** : **Rev K Willis**

**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 ACIArb  
N Robinson FRICS**

**Date of Inspection** : **21st January 2021**

**Date of Decision** : **21st January 2021**

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**DECISION**

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## **BACKGROUND**

- 1) On 19<sup>th</sup> August 2020 the Landlord made an application to register the rent of the property at £206.80 per week.
- 2) The landlord stated in the application that the rent payable at the time of the application was £140.73 per week.
- 3) The rent was previously registered on the 19th of October 2015 at £188.00 per week with effect from 15th of September 2018. The Rent Register notes the uncapped rent to be £202.00 per week.
- 4) On the 26<sup>th</sup> October 2020 the Rent Officer registered a Fair Rent of £222.00 per week exclusive of rates with effect from that date. The Rent Register notes the uncapped rent to be £245.00 per week.
- 5) On the 5<sup>th</sup> November 2020 the Tenant objected, and the matter was referred to the First-Tier Tribunal (Property Chamber).
- 6) On 11<sup>th</sup> December 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 her objection.
- 8) Neither party requested a Hearing.
- 9) The Tribunal met on 21<sup>st</sup> January 2021 to consider the application.
- 10) The matter was dealt with as a paper determination without hearing. In the current circumstances it has not been possible to inspect the property and the Tribunal relied on submissions from the Landlord and Tenant in correspondence, publicly available housing data online and its own expert knowledge.

## **EVIDENCE**

- 11) The Tribunal received written representations from the Tenant, and these were copied to the parties. No representations were received from the Landlord. The Rent Office supplied some records and copies of correspondence they had had with the parties.
- 12) The Rent Register and the Landlord's application to the Rent Office both state the tenancy began before 15<sup>th</sup> January 1985. The Tenant supplied a 2 page document headed "Tenancy Agreement" dated 23<sup>rd</sup> November 1995. It states

the tenancy started on 27<sup>th</sup> November 1995. It also states, "The Tenant has security of tenure under this agreement."

13) From the information supplied, it is an end-terrace two storey house in a residential area of Horley and the accommodation comprises 4 bedrooms, bathroom/WC, living room, kitchen, ground floor WC. There is a garden to the front and rear of the property. There is gas fired central heating.

### **Tenant's Submissions**

14) The Tenant stated that she has always maintained the property at her own expense. She has added a conservatory, carried out internal decorating, plastering and tiling. She has fitted a new kitchen and fencing, and carried out gutter maintenance.

15) The Tenant states there has been no updating of the property by the Landlord and the double glazing is old and of a poor standard with broken catches which means the windows are ill fitting and cause drafts. This is further exacerbated by there being inadequate insulation which results in the house being cold. The Landlord has replaced the boiler after asbestos was found.

16) The fascia requires replacing.

17) Although there is some off-street car parking, it is frequently difficult to find any spaces available.

18) The house has been adapted for her adult son.

19) There is a new housing development nearby and the rents being obtained for properties there are about the same level as the rent sought. Because this property does not have the modern insulation and heating qualities, nor the modern kitchen and bathroom, the rent should take into account these deficiencies.

20) The rent increase from £143.59 per week to £220 is excessive and places a substantial financial burden upon her.

### **Landlord's Submissions**

21) The Landlord has not made any representations to the Tribunal.

22) Neither party gave any comparable evidence of rents for properties of this type set in this locality.

### **THE LAW**

23) 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 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.

24) 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).

25) 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.

26) 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**

27) 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.

28) 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.

29) 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.

30) 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 Tenant has no liability to carry out repairs or decorations, would be £300.00 per week, in line with the Rent Officer's finding.

31) 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 £300.00 per week to allow for the differences between the condition considered usual for such a letting and the condition of the actual property.

32) The Tribunal noted that the rating recorded by the Energy Performance Certificate dated 4<sup>th</sup> December 2012 was 66/D.

33) The Tribunal lists below several items that impact upon the rental value and requires an appropriate adjustment to be made

- (a) Tenant's Improvements –
- (b) Repairing and Decorating Liabilities
- (c) White Goods
- (d) Carpets and Curtains
- (e) Low EPC rating
- (f) Disrepair/old double glazing

34) There is no laid down formula for assessing each individual item's impact on the rental value. The Tribunal has used its own knowledge and experience in assessing the overall impact these times would have when taken into account by a hypothetical tenant who would then require an appropriate reduction in rent to take these into account.

35) The Tribunal considered these factors and decided that a deduction of 20% should be made for these factors which gives a rent of £240.00 per week.

36) The Tribunal noted the Tenant's concern about the extent of the rent increase. The landlord is entitled to apply for a re-registration of rent every two years but had not done so since 2015. Had this occurred, the interim rent increases would have been smaller at each review. Furthermore the "capping" system keeps the rent payable substantially lower than would otherwise have been the case. The Tribunal notes that in the initial application for registration of rent form the Landlord only appears to be charging a rent of £140.73 per week, the registered rent at the time of his application was £188.00 per week with effect from 19<sup>th</sup> October 2015.

## **Scarcity**

37) 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**

38) We therefore determined that the uncapped Fair Rent is £240.00 per week exclusive of council tax and water rates.

39) As this amount is above 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 £222.50 per week is registered as the Fair Rent with effect from 21<sup>st</sup> January 2021.

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## **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.