



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

Case Reference : **CHI/00HF/F77/2021/0013**

Property : **11 Launceston Close, Old Town, St.
Mary's, Isles of Scilly TR21 0NJ**

Landlord : **Duchy of Cornwall**
Representative : **Luke Humphries, Deputy Estate
Steward**

Tenant : **J G Morley**
Representative : **None**

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

Tribunal Members : **R T Athow FRICS MIRPM (Chairman)**
B Bourne MRICS MCI Arb
S Hodges FRICS

Date of Decision : **3rd March 2021**

DECISION

© CROWN COPYRIGHT 2021

Background

1. On 9th November 2020 the Landlord made an application to register the rent of the property at £8,845.00 per annum.
2. The rent payable at the time of the application was £2,136.50 per quarter.
3. The rent was previously registered on the 7th June 2016 at £2,136.50 per quarter with effect from 17th July 2016.
4. On the 8th December 2020 the Rent Officer registered a Fair Rent of £2,497.00 per quarter, exclusive of rates with effect from that date.
5. On the 16th December 2020 the Tenant objected, and the matter was referred to the First-Tier Tribunal (Property Chamber).
6. On 28th January 2021 the Tribunal made Directions informing the parties that in view of the Governments 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 3rd February 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 a large volume of written representations from the Tenant and these were copied to the Landlord. No representations were received from the Landlord. The Rent Office supplied some records and copies of correspondence between themselves and the parties.
12. The Rent Register shows the start date of the tenancy as 1974, but the Landlord's application form states 25th June 1991. The Tribunal has not seen a tenancy agreement.

13. The property is a semi-detached house in the Old Town part of the Island, close to the Five Islands Academy and the airport. The main town is about ½ mile away.
14. The accommodation comprises hall, lounge/dining room, kitchen, 3 bedrooms, bathroom/WC, separate WC, utility area. There is a garden. The Tenant stated there is no central heating; there is a small multi-fuel burner which he supplied and fitted, and electric heaters which replaced the previous central heating system.
15. The Tenant stated the garage is held under a different agreement.
16. Neither party gave any comparable evidence of rents for properties of this type set in this locality.
17. The Tenant stated the cost of living on the Island is approximately 25% higher than the mainland and the average wage is lower, and these factors should be taken into account.

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 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.
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 Rent Officer has provided a redacted list of comparables upon which he relied in computing his market rent. The list does not give full postcode addresses but there were none in the island's TR21 postcode. The Rent Officer's rent computations started with an open market valuation of £2,775.00 per quarter from which he made general adjustments of £150.00 and a further £125 for scarcity to give a Fair Rent of £2,500.00. He computed the capping restrictions to give a Maximum Fair Rent of £2,497.00 per quarter.
24. 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. The Tribunal also took note of Registered Rents for other properties on the Island.
25. The Tribunal's conclusion was that an appropriate open market rent for the property let on a modern open market letting on 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 £2,775.00 per quarter.

Scarcity

26. The matters taken into account by the Tribunal when assessing scarcity were:-
 - a) The Tribunal interpreted the 'locality' for scarcity purposes as being the whole area of Isles of Scilly and West Cornwall i.e. a sufficiently large area to eliminate the effect of any localised amenity which would, in itself, tend to increase or decrease rent.
 - b) Local Authority and Housing Association waiting lists.
 - c) House prices which could be an indicator of increased availability of housing and a reduction in scarcity.
 - d) Submissions of the parties.
 - e) The members of the Tribunal have between them many years of experience of the residential letting market and that experience leads them to the view that there is a substantial shortage of similar properties available to let in the locality defined above.

27. Assessing scarcity cannot be a precise arithmetical calculation because there is no way of knowing either the exact number of people looking for a particular type of house in the private sector or the exact number of such properties available. It can only be a judgment based on the years of experience of members of the Tribunal. However, the Tribunal did consider that there was a substantial scarcity element and accordingly made a deduction for scarcity of 10% of the gross rent, which equates to a further reduction of £277.50 per quarter.
28. This reduces the Rental Value to £2,497.50 per quarter.

Adjustments

29. 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 £2,497.50 per quarter to allow for the differences between the condition considered usual for such a letting and the condition of the actual property.
30. One item that is important in this particular case is the rating recorded by the Energy Performance Certificate dated 5th January 2014 being 54/E. It notes “Poor” for wall insulation, lack of main heating and hot water controls.
31. 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. No central heating
 - c. No white goods
 - d. No carpets and curtains
 - e. EPC rating
32. The Tribunal considered these factors separately and then considered whether the overall reduction was justified. We are satisfied that it is.
33. We decided to make a deduction of 15% for these factors which gives a rent of £2,123.00 per quarter rounded up.

THE DECISION

34. We therefore determined that the uncapped Fair Rent is £2,123.00 per quarter exclusive of council tax and water rates

35. 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 sum of £2,123.00 per quarter is registered as the Fair Rent with effect from 3rd March 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.