



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

Case Reference : BIR/00CN/F77/2020/0033

HMCTS : A:BTMMREMOTE

Property : Ground Floor Flat, 204 Gravelly Hill, Birmingham, West Midlands B23 7PE

Landlord : Mr A Khan

Tenant : Ms J Davies

Type of Application : Determination of a fair rent under section 70 of the Rent Act 1977

Tribunal Members : Judge David R. Salter (Chairman)
Mr Robert Bryant- Pearson FRICS

Date of Decision : 26 February 2021

Date of Statement of Reasons : 8 April 2021

Statement of Reasons

Background

- 1 The Tribunal gave formal notice of its decision by a Notice dated 26 February 2021 of **£358.50 per calendar month** with effect from the same date.
- 2 On 21 March 2020, the Landlord of the Property applied to the Rent Officer for registration of a fair rent of £600.00 per calendar month, the rent having been previously registered on 13 April 2018 at £324.00 per calendar month.
- 3 On 13 October 2020, the Rent Officer registered a fair rent of £356.00 per calendar month, with effect from that date.
- 4 In a letter dated 2 November 2020, the Landlord objected to the rent determined by the Rent Officer and the matter was referred to the First-tier Tribunal (Property Chamber) (Residential Property).
- 5 Directions were issued by the Regional Surveyor on 24 November 2020. In those Directions, the parties were informed that in accordance with Public Health England's advice to avoid unnecessary travel and social interaction for the time being, the Tribunal would not hold an oral hearing, unless so requested by either or both parties, nor would it inspect the Property. Neither party requested a hearing.
- 6 Thereafter, the Directions made provision for the filing with the Tribunal of the parties' respective written submissions and, in particular, for the completion of a reply form giving details of the Property and including any further comments the parties wished the Tribunal to take into account in making its determination. In due course, the Landlord and the Tenant filed their written submissions (together with supporting documents and, in the case of the Tenant, photographs) with the Tribunal. However, these submissions included representations that were concerned with the protracted and acrimonious relationship between the Landlord and Tenant rather than the determination of a fair rent.
- 7 The tenancy is a statutory (protected) periodic tenancy. The tenancy (not being for a fixed tenancy of 7 years or more) is subject to section 11 of the Landlord and Tenant Act 1985 which sets out the landlord's statutory repairing obligations; the tenant is responsible for internal decorations.
- 8 Following the issue of the Tribunal's decision which was based on the written and visual evidence submitted by the parties that was germane to the determination of a fair rent, the Landlord sought extended reasons for the Tribunal's decision.

The Property

- 9 From the evidence presented by the parties, the Tribunal gleaned the following.
- 10 The Property is a ground floor flat within what was a traditional semi-detached house. The adjoining semi-detached house (No. 206 Gravelly Hill) is in the same ownership and, thus, the external common parts have largely been merged. No. 204 and No. 206 front onto Gravelly Hill which is the main road between Birmingham and Sutton Coldfield.
- 11 The accommodation comprises, internally, a hall, lounge, kitchen, two bedrooms and a bathroom, and, externally, a parking area and rear gardens.
- 12 The Property benefits from gas fired central heating.

- 13 The Landlord had installed a new boiler and upvc double glazing in the bathroom.
- 14 The general condition of the Property is poor with, notably, recent photographs presented in evidence by the Tenant showing an unprepossessing exterior in need of maintenance and restoration and signs of water ingress within the Property. Further, as far as can be seen from the photographic evidence, the sanitary ware and kitchen units are old and poorly presented.

Relevant Law

- 15 Provisions in respect of the jurisdiction of the Tribunal and the determination of a fair rent are found in Schedule 11, Part 1, paragraph 9(1) to the Rent Act 1977, as amended by paragraph 34 of the Transfer of Tribunal Functions Order 2013, and section 70 of the Rent Act 1977.

Rent Act 1977

Schedule 11, Part 1, paragraph 9 (as amended)

“Outcome of determination of fair rent by appropriate tribunal

9. – (1) The appropriate tribunal shall –

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

Section 70: Determination of fair rent (as amended)

“(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 quantity, 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 tenant 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 terms of the tenancy, by the tenant under the regulated tenancy or any predecessor in title of his;
- (c), (d)...[repealed]

(e) if any furniture is provided for use under the regulated tenancy, any improvement to the furniture by the tenant under the regulated tenancy or any predecessor of his or, as the case may be, any deterioration in the condition of the furniture due to any ill-treatment by the tenant, any person residing or lodging with him, or any sub-tenant of his.”

16 Consequently, when determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, has regard to all the circumstances including the age, location and state of repair of the Property. It also disregards the effect of (a) any relevant Tenant’s improvements and (b) the effect of any disrepair or defect attributable to the Tenant or any predecessor in title under the regulated tenancy, on the rental value of the Property.

17 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 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 differences between those comparables and the subject property).

18 In considering scarcity under section 70(2), the Tribunal recognises 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, considers the case on its merits;

(b) terms relating to rents are to be excluded. A lack of demand at a particular rent is not necessarily evidence of scarcity; it may be evidence that the prospective tenants are not prepared to pay that particular rent.

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

20 The only exception to this restriction on a fair rent is provided under paragraph 7 of the Order where a landlord carries out repairs or improvements which increase the rent by 15% or more of the previous registered rent.

Submissions

Landlord

21 The Landlord objected to the fair rent that had been registered by the Rent Officer which he described as too low in that it was less than half the market rent. He indicated that his experience derived from letting and managing properties suggested that the market rent for the property in ‘tip-top condition’ would be between £700 and £750 per calendar month, but that in its present condition the market rent is ‘around £675.00 per calendar month’.

- 22 In the absence of any directly comparable evidence to support his objection to the Rent Officer's determination of a fair rent and his own assessment of a market rent for the Property, the Landlord relied upon the following properties available through local agents which he described as 'similar 4 roomed accommodation without car parking':

Mere Road, Erdington

A two-bedroom terraced house advertised to let at £675.00 per calendar month;

Talbot Close, New Oscott

A two-bedroom terraced house advertised to let at £695.00 per calendar month; and

South Road, Erdington

A two-bedroom terraced house advertised to let at £675.00 per calendar month.

- 23 The Landlord added that he felt the rent registered by the Rent Officer had been influenced, in part, by what, in his opinion, was the poor internal decoration of the Property. Further, he expressed the view that this amounted to a breach of the Tenant's obligations in this regard.
- 24 The Landlord also informed the Tribunal that since the last registration of a fair rent in 2018 he had installed a new boiler, renewed the window in the bathroom and improved the access to the Property.

Tenant

- 25 The Tenant submitted that there should be no increase in the rent for the Property. The Landlord had not undertaken any repairs other than those that he had been compelled to carry out on environmental health grounds. The latter included the installation of the new boiler and the replacement of the bathroom window. The Tenant explained that the need for a new boiler had been occasioned by the 'failure of the combi boiler due to unattended leaking bathroom roof for many years [that] affected block wiring' and that the bathroom window needed to be replaced because it was in danger of falling out.

The Tenant added that, over the years, there had been water penetration through the ceilings in the kitchen, the smaller of the two bedrooms (boxroom), bathroom and hall with consequent damage to those ceilings as shown in some of the photographs adduced in evidence, and, presently, there could be water ingress following heavy rainfall. She had taken to doing some repairs herself.

- 26 The Tenant denied that the Landlord had improved the access to the Property. The widening of the frontage to the Property which had been undertaken simply diminished the security that the Tenant had enjoyed previously.
- 27 The Tenant also refuted the Landlord's suggestion that the Property was in poor decorative order. She stated that the Property was well decorated and this had been corroborated by independent third parties.

Reasons for Decision

- 28 Initially, 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 pertinent evidence submitted by the parties. In this respect, the Tribunal noted, in particular, the particulars relating to the three two-bedroom terraced houses presented by the Landlord (see above, paragraph 22), but it concluded that the distinctly different

nature of the accommodation offered by those properties distinguished them from the Property to such an extent that no significant weight could be attached to them as evidence. Further, the Tribunal observed that the Landlord did not adduce any further tangible evidence to support his assertion that a market rent for the Property in 'tip-top condition' would be between £700.00 and £750.00 per calendar month. Consequently, this assertion was, similarly, accorded little weight by the Tribunal. In the absence of any other material evidence in this regard, the Tribunal acting in its capacity as an expert tribunal and using its own general knowledge of market rental levels in the West Midlands, concluded that such a likely market rent, if a monthly rent is adopted, would be £550.00 per calendar month.

- 29 However, the Property is not in the condition considered usual for a modern letting at a market rent. Therefore, it was first necessary to adjust the above hypothetical rent of £550.00 per calendar month to allow for the differences between the condition considered usual for such a letting and the condition of the Property, as perceived by the Tribunal (disregarding the effect of any disrepair or other defect attributable to the Tenant or any predecessor in title).

The Tribunal considered that this required a deduction of £80.00 per calendar month in respect of the general condition of the subject property. In addition, the Tribunal determined that there should be a further deduction of £62.50 per calendar month to reflect the fact that the Tenant provided the floor coverings, curtains and white goods, and is responsible for the internal decorating.

- 30 Thereafter, the Tribunal considered the question of scarcity in section 70(2) of the Rent Act 1977. This was undertaken by considering whether the number of persons genuinely seeking to become tenants of similar properties in the wider area of the West Midlands on the same terms other than rent is substantially greater than the availability of such dwellings as required by section 70(2) of the Rent Act 1977.

In this respect, the Tribunal acknowledged that a scarcity percentage or figure 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. This can only be a judgment based on the experience of the members of the Tribunal. In this instance, the Tribunal did consider that there was a substantial scarcity element and, accordingly, a further deduction of £40.75 per calendar month was made for scarcity within the meaning of section 70(2).

- 31 This leaves a fair rent for the subject property of **£366.75 per calendar month, say £367.00 per calendar month.**

Rent Acts (Maximum Fair Rent) Order 1999

- 32 The rent to be registered is limited by the Rent Acts (Maximum Fair Rent Order) 1999 because it is **above** the maximum fair rent that can be registered of **£358.50 per calendar month** prescribed by the Order. Details of the maximum fair rent calculation have been provided with the previously released decision.

- 33 Accordingly, the sum of **£358.50 per calendar month** will be registered as the fair rent with effect from 26 February 2021 being the date of the Tribunal's decision.

Judge D.R. Salter

Date: 8 April 2021

Appeal to the Upper Tribunal

34 A person wishing to appeal this decision to the Upper Tribunal (Property Chamber) on a point of law must seek permission to do so by making a written application to the First-tier Tribunal at the Regional Office which has been dealing with the case which application must:

a. be received by the said office within 28 days after the Tribunal sends to the person making the application written reasons for the decision;

b. 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.

If the application is not received within the 28-day time limit, it must include a request for an extension of time and the reason for it 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.