



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

Case Reference : **CHI/00HD/F77/2021/0017**

Property : **The Rookery, Brewery Hill, Upton
Cheyney, Bristol BS30 6LY**

Landlord : **Bradford Property Trust Limited**
Representative : **Grainger plc**

Tenant : **Mrs M M Smith**
Representative : **None**

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

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

Date of Inspection : **22 March 2021**

Date of Decision : **22 March 2021**

DECISION

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Background

- 1) On 11th November 2020 the Landlord made an application to register the rent of the property at £172.50 per week.
- 2) The rent payable at the time of the application was £150.00 per week.
- 3) The rent was previously registered on the 17th December 2018 at £150.00 with effect from 20th January 2019.
- 4) On 14th December 2020 the Rent Officer registered a Fair Rent of £156.54 per week exclusive of rates with effect from 20th January 2021.
- 5) On the 19th January 2021 the Landlord objected, and the matter was referred to the First-Tier Tribunal (Property Chamber).
- 6) On 16th February 2021 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 Tenants 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 22nd March 2021 to consider the application.
- 10) The matter is 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 Tenant in correspondence, publicly available housing data online and its own expert knowledge.

Evidence

- 11) The Tribunal received written representations from 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. No representation was received from the Tenant.
- 12) It is a semi-detached house in a semi-rural area midway between Bristol and Bath.
- 13) The accommodation comprises living room, kitchen, bathroom, store, and 3 bedrooms. There is oil fired central heating and single glazing. There is a car parking space and a garden. The Energy performance Certificate rating is 32/F which is below the legal limit for letting a residential property.

Landlord's Submissions

14) The Landlord stated that they had installed a new oil-fired boiler and central heating with the aid of a Warm Front Grant.

15) The Landlord replaced the rear door in 2021 and consider the property to be in fair condition.

16) Two examples of comparable evidence of 3 bedroomed houses sourced from Rightmove was submitted. One was in Milford Avenue, Bristol whilst the other was in Church Road, Wick and both were offered to let at £1,150 per month, which equates to £265.00 per week. Adjustments for these properties being in a better condition than the subject property, together with an allowance for Tenant's improvements equated to £75 per week, but they had only sought to increase the rent to £172.50 per week, some £17.50 less.

17) It was felt that there was an inadequate supply of property within the area and therefore there was an element of scarcity that should be applied. No suggested figure was given.

18) The Landlord requested that the Tribunal took into account the Court of Appeal decisions of *Spath Holmes v Greater Manchester and Lancashire Rent Assessment Committee*, *Curtis v Chairman of the London Rent Assessment Committee*, and *Northumberland and Durham Property Trust Ltd v London Rent Assessment Committee*.

The law

19) 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.

20) 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).

21) 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.

22) 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

23) 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.

24) 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.

25) The Rent Officer has provided a redacted list of comparables in various BS postcode areas 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 over 60 different comparables on the list ranging between £196.15 and £680.77 per week. The Rent officer's computations started with an open market valuation of £236.54 per week from which he made adjustments of 1/3rd to £80.00 to give a Fair Rent of £156.54. He computed the capping and, as the Fair Rent was below this capping it did not apply.

26) The Tribunal was not greatly assisted by the comparables submitted by the Landlord as one was situated in Bristol, and not a semi-rural setting. The other is situated on the main A420 Bristol to Chippenham road with 2 living rooms and gas fired central heating.

27) The Tribunal therefore relied on its own extensive knowledge and experience of general rent levels for this type of property in this area.

28) 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 £230.00 per week.

29) 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. It was necessary to adjust that hypothetical rent of £230.00 per week 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 14th January 2020 being 32/F. This is such a low rating that the property could not be re-let under the current MEES Regulations.

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

- (a) Tenant's repairing and decorating liabilities.
- (b) Tenant supplying white goods.
- (c) Tenant supplying carpets and curtains.
- (d) Low EPC rating.
- (e) Out of date kitchen and bathroom.

32) 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 items would have when taken into account by a hypothetical Tenant who would then require an appropriate reduction in rent to take these into account.

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

34) We decided to make a deduction of 35% for these factors which gives a rent of £149.50 per week.

Scarcity

35) 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

36) We therefore determined that the uncapped Fair Rent is £149.50 per week exclusive of council tax and water rates.

37) 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 £149.50 per week is registered as the Fair Rent with effect from 22nd 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.