



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

Case Reference : **BIR/00CN/F77/2021/0013**

**HMCTS (paper, video : P: PAPERREMOTE
audio)**

Property : **8 William Street, Birmingham, B15 1LH**

Landlord : **Trident Housing Association**

Tenant : **Mr W A Barnett**

Type of Application : **An application under section 70 of the Rent Act against the Fair Rent assessed for the Property by the Rent Officer**

Tribunal Member : **V Ward BSc Hons FRICS
Mrs K Bentley**

Date of Decision : **8 April 2021**

**Date of Statement
Of Reasons** : **22 April 2021**

STATEMENT OF REASONS

BACKGROUND

1. On 1 February 2021, the Rent Officer registered a rental of £100.00 per week including £5.01 per week in respect of the Property, effective from 20 January 2021. The rent prior to this registration was £96.00 per week including £8.25 per week which was set by a Tribunal on 11 March 2019.
2. **It should be noted that the rent including service charge that the Tenant was actually being charged by the Landlord prior to the registration was £86.00 per week. The Landlord sought to increase this to £90.69 per week including £8.11 service charges with effect from 5 April 2021.**
3. By a letter dated 15 February 2021, the Tenant objected to the rent of £100.00 per week including service charges of £5.01 per week determined by the Rent Officer and the matter was referred to the Tribunal.
4. The fair rent determined by the Tribunal for the purposes of Section 70 was £100.00 per week including service charges of £8.11 per week with effect from 8 April 2021.
5. On 16 April 2021, the Tenant requested that the Tribunal provide reasons for its decision.

THE PROPERTY

6. Due to the Covid-19 Public Health Emergency, the Tribunal were unable to carry out an inspection of the Property.
7. From the information provided by the parties and web based sources available to the Tribunal, the Property appears to be a first floor flat in a relatively modern development situated on the fringe of Birmingham City Centre.
8. The accommodation comprises the following:

Living room, kitchen, bedroom and bathroom
9. The Property benefits from central heating, double glazing and off-street permit controlled parking.

Submissions of the Parties

10. Neither party requested an oral hearing.

11. The Tenant provided a statement and photographs which indicated that the car park was generally in poor condition and more specifically damage to the barrier to the same. Mr Barnett said that there was little maintenance of the car park with the tarmac surface damaging his car tyres. There were also indications of rat infestation to the car park. An element of the service charge was for management fees which Mr Barnett disputed the need for.
12. The Tribunal was provided with a copy of the Annual Service Charge Estimate for the Property for the period 1 April 2021 to 31 March 2022. This charge covers a variety of items principally relating to the maintenance of the communal areas of the development in which the Property is situated, including amounts for car park, barrier maintenance, management and pest control.
13. The Landlord made no submissions.

THE LAW

14. When determining a fair rent, the Tribunal, in accordance with the Rent Act 1977, Section 70, had regard to all the circumstances including the age, location and state of repair of the property. It also disregarded 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.
15. In *Spath Holme Limited v Chairman of the Greater Manchester, etc. Committee* [1995] 28HLR107 and *Curtis v London Rent Assessment Committee* [1999] QB92 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 similar 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 were usually appropriate comparables. (These rents may have to be adjusted where necessary to reflect any relevant differences between those comparables and the subject property).

VALUATION

16. In the first instance, the Tribunal determined what rent the Landlord could reasonably expect to obtain for the Property in the open market if it were let today in the condition that is considered usual for such open market lettings. It did this from its own general knowledge of market rent levels in the central Birmingham area and by considering the evidence provided within the representations. Having done so, it concluded that such a likely market rent would be approximately £155.00 per week including any service charges. However, as the

Property is not in the same condition as properties in the general market, the Tribunal made a deduction of £17.00 per week to reflect this.

17. The Tribunal, noting the comments by the Tenant in relation to the poor condition of the car park, the lack of maintenance and rodent problems, made a further deduction of £10.00 per week.
18. A further deduction of £16.90 per week was made to allow for the Tenant's fittings (floor coverings, curtains and white goods) and decorating liability.
19. The Tribunal then considered the question of scarcity. This was done 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.
20. The Tribunal finds that many landlords dispute that scarcity exists because they are of the opinion that the market is 'in balance'. Although tenants do not in all cases have difficulty in finding accommodation, this ignores the fact that it is the price of such accommodation which creates a balance in the market. Section 70(2) specifically excludes the price of accommodation from consideration in determining whether there are more persons genuinely seeking to become tenants of similar properties than there are properties available. Although the rental market for Assured Shorthold properties may be in balance, many potential tenants may be excluded from it for various reasons such as age, poor credit history or because they are on housing benefit.
21. The Tribunal found that there was scarcity and, accordingly, made a further deduction of £11.10 per week.
22. The Tribunal determined that the fair rent for the Property was therefore £100.00 per week including service charges of £8.11 per week which confirms the amount registered by the Rent Officer.
23. The maximum fair rent permitted by the Rent Acts (Maximum Fair Rent) Order 1999 is £103.61 per week including service charges of £8.11 per week. The level of rent determined by the Tribunal is therefore not limited by the Order. Details of the maximum fair rent calculation were provided with the decision.

DECISION

24. The fair rent determined by the Tribunal for the purposes of Section 70 was, therefore, £100.00 per week including service charges of £8.11 per week with effect from 8 April 2021.

25. In reaching its determination, the Tribunal had regard to the evidence and submissions of the parties, the relevant law and their own knowledge and experience as an expert Tribunal but not any special or secret knowledge.

APPEAL

26. If either party is dissatisfied with this decision, they may apply for permission to appeal to the Upper Tribunal (Lands Chamber) **on any point of law arising from this Decision**. Prior to making such an appeal, an application must be made, in writing, to this Tribunal for permission to appeal. Any such application must be made within 28 days of the issue of this decision (regulation 52 (2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rule 2013) stating the grounds upon which it is intended to rely in the appeal.