



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

Case Reference : **BIR/00CT/F77/2021/0010**

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

Property : **96 Elmdon Park Road, Solihull, B92 9HB**

Landlord : **Northumberland and Durham Property
Trust Limited**

Representative : **Grainger plc**

Tenant : **Mrs K Rose**

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** : **21 April 2021**

STATEMENT OF REASONS

BACKGROUND

1. On 7 January 2021, the Rent Officer registered a rental of £620.00 per calendar month in respect of the Property, effective from 20 January 2021. The rent prior to this registration was £595.00 per calendar month.
2. By a letter dated 8 February 2021, the Landlord objected to the rent determined by the Rent Officer and the matter was referred to the Tribunal.
3. The fair rent determined by the Tribunal for the purposes of Section 70 was £646.50 with effect from 8 April 2021.
4. On 15 April 2021, the Landlord requested that the Tribunal provide reasons for its decision.

THE PROPERTY

5. Due to the Covid-19 Public Health Emergency, the Tribunal were unable to carry out an inspection of the Property.
6. From the information provided by the parties, the Property is a semi-detached house situated in the town of Solihull. Solihull is an affluent town which forms part of the greater Birmingham conurbation on its eastern flank.
7. The accommodation comprises the following:

Ground Floor	kitchen, living room
First Floor	three bedrooms, bathroom;
Externally	garage, gardens front and rear.
8. The Property benefits from central heating and double glazing.

Submissions of the Parties

9. Neither party requested an oral hearing.
10. The Tenant did not make any representations.
11. The Landlord sought a rental of £684.25 per calendar month. The representations from Mr Ryan Tucker Portfolio Manager of Grainger Plc on behalf of the Landlord, provided details of the letting of a comparable property located on Park Close, Solihull at £995 per calendar month from the Rightmove property portal.

12. Acknowledging that the Property was not in a condition commensurate with modern standards, Grainger analysed the comparable rental by making deductions as follows:

Modernised kitchen	£50 per calendar month
Modernised bathroom	£25 per calendar month
Conservatory	£20 per calendar month
Landlord supplied appliances	£15 per calendar month
Landlord decorations	£35 per calendar month
Landlord floor coverings/curtains	£15 per calendar month

Making an additional deduction of £45 per calendar month for Tenant's improvements, this gave a rental of £790 per calendar month which was £105.75 per calendar month more than the rent sought.

THE LAW

13. 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.
14. 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

15. 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 Solihull area and by considering the evidence provided within the representations. Having done so, it concluded that such a likely market rent would be £995.00 per calendar month. However, as the Property is not in the same condition as properties in the general

market, the Tribunal made a deduction of £95.00 per calendar month to reflect this.

16. To allow for the Tenant's decorating liability, it was necessary to make an additional deduction of £45.00 per calendar month.
17. A further deduction of £60.00 per calendar month was made to allow for the Tenant's fittings (floor coverings, curtains and white goods).
18. 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.
19. 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.
20. The Tribunal found that there was scarcity and, accordingly, made a further deduction of £79.50 per calendar month.
21. The Tribunal determined that the fair rent for the Property was therefore £715.50 per calendar month.
22. However, the maximum fair rent permitted by the Rent Acts (Maximum Fair Rent) Order 1999 is £646.50 per calendar month. The level of rent determined by the Tribunal is therefore limited by the Order. Details of the maximum fair rent calculation were provided with the decision.

DECISION

23. The fair rent determined by the Tribunal for the purposes of Section 70 was, therefore, £646.50 with effect from 8 April 2021.
24. 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

25. 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.