



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

**Case Reference** : **BIR/00CT/F77/2021/0001**

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

**Property** : **11 Elmdon Park Road Solihull B92 9HE**

**Landlord** : **Northumberland & Durham Property Trust**

**Representative** : **Grainger plc**

**Tenant** : **Mrs B D Cook**

**Type of Application** : **Determination of a fair rent under section  
70 of the Rent Act 1977 – Extended Reasons**

**Tribunal Members** : **N Wint BSc (Hons) FRICS ACI Arb  
J Arain**

**Date of Decision** : **26 February 2021**

**Date of Statement  
of Reasons** : **11 May 2021**

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**DECISION**

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## **BACKGROUND**

1. This Decision arises as a consequence of an application made by the Landlord for extended reasons arising from the Tribunal's decision dated 26 February 2021 that the fair rent payable by the Tenant in accordance with Schedule 11 of the Rent Act 1977 shall be £605 per calendar month.
2. By way of background the Landlord applied to the Rent Officer for registration of a fair rent of £644 per calendar month in respect of 11 Elmdon Park Road Solihull B92 9HE (the "Property").
3. The rent payable at the time of the application was £560 per calendar month which was registered by the Rent Officer on 25 October 2018, effective from 6 December 2018.
4. The Rent Officer registered a rental of £585 per calendar month on 4 November 2020, also effective from 6 December 2020.
5. On 7 December 2020, the Applicant objected to the rent determined by the Rent Officer and the matter was referred to the Tribunal.
6. The Tribunal issued its Directions dated 6 January 2021. It advised that the matter would be determined based on written submissions made by the parties and that the Tribunal would not hold a hearing or carry out an inspection of the property due to the Public Health emergency in respect of Covid-19 (Public Health England's advice being to avoid unnecessary travel and social interaction).
7. The Tribunal received written submissions from Mr Ryan Tucker Portfolio Manager of Northumberland & Durham Property Trust Ltd only.

### **The Property**

8. The Property is located approximately 3 km north of Solihull town centre with Sheldon immediately to the north.
9. The accommodation comprises a 2-storey semi-detached house of brick and pitched roof construction. On the ground floor is a living room and kitchen and on the first floor three bedrooms and a bathroom. Externally there is a garden to the front and rear and space for parking a vehicle.
10. The Property has gas fired central heating and double-glazed windows. The Landlord confirmed that they replaced the boiler but the original installation of the central heating system was carried out by the Tenant. The Landlord also

advise that the kitchen units and bathroom suite were installed by the Tenant but neither have been updated since. In addition, the carpets and curtains as well as the white goods belong to the Tenant.

### **Submissions of the Tenant**

11. The Tenant's only comments were submitted in the Reply Form which briefly confirmed the extent of the accommodation and features of the Property and in particular that the central heating was provided by the Tenant. This contradicted the details in the Landlords Reply Form which stated that the central heating was provided by the Landlord.
12. The Tribunal issued further Directions dated 3 March 2021 seeking clarification on the central heating issue. Mrs Cook responded to confirm that her son fitted the system and Mr Tucker advised that the system is maintained by the Landlord and replaced the boiler by the original installation of the system was in fact carried out by the Tenant.

### **Submissions of the Landlord**

13. Submissions for the Landlord were provided by Ryan Tucker, Property Manager for Northumberland & Durham Property Trust Ltd.
14. The submissions confirmed that the current rent is £560 per calendar month set with effect from 6 December 2018.
15. No improvements have been undertaken to the Property since the last increase and in the opinion of the Landlord the Property is in fair condition given its type and age but accepts that it is not up to modern standards.
16. Having regard to the age, condition of the property the Landlord is of the opinion that the rent should be increased to £644 per calendar month.
17. In support of this the Landlord provided details of the following evidence:

#### **Mayswood Road Solihull**

A 2-storey fully refurbished semi-detached house comprising on the ground floor a through lounge/ dining room, kitchen and utility/wc and on the first floor, three bedrooms, bathroom and separate toilet. The property also benefits from gas fired central heating and double-glazed windows.

The property was offered at £995pcm and has been let.

### **Park Close Solihull**

A 2-storey fully refurbished semi-detached house comprising on the ground floor a through lounge/ dining room, kitchen, utility, conservatory, toilet, porch and garage and on the first floor 3-double bedrooms and bathroom.

The property was offered at £995pcm and has been let.

18. To reflect the differences between the subject Property and the evidence the Landlord made the following adjustments:

Modernised Kitchen	£50pcm
Modernised Bathroom	£25pcm
Integrated Kitchen Appliances	£15pcm
Utility	£25pcm
Downstairs Toilet	£15pcm
Landlord Decorations	£35pcm
Landlord Floor Coverings	£15pcm

19. In total the above deductions amount to £180 per calendar month. In addition, the Landlord made a further adjustment of £45 per calendar month for the Tenant improvements
20. The Landlord also considered that no adjustment is necessary for scarcity.

### **THE LAW**

21. The relevant provisions in respect of jurisdiction of the Tribunal and determination of a fair rent are found in Paragraph 9(1) Part 1 Schedule 11 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.

22. ***Rent Act 1977***

23. ***Paragraph 9(1) Part 1 Schedule 11 (as amended)***

*“Outcome of determination of fair rent by appropriate tribunal*

*9. – (1) The appropriate tribunal shall –*

*if it appears to them that the rent registered or confirmed by the rent officer is a fair rent, confirm that rent;*

*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**

*“(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-*

*the age, character, locality and state of repair of the dwelling-house...*

*if any furniture is provided for use under the tenancy, the quantity, quality and condition of the furniture, and*

*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)...*

*(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 in title 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.”*

24. When determining a fair rent the Tribunal, in accordance with the Rent Act, 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.

25. 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 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 are usually appropriate comparables. (These rents may have to be adjusted where necessary to reflect any relevant differences between those comparables and the subject property).*
26. In considering scarcity under section 70 (2) the Tribunal recognised 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 rent are to be excluded. A lack of demand at a particular rent is not necessarily evidence of no scarcity; it may be evidence that the prospective tenants are not prepared to pay that particular rent.
27. 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 previous registration.

## **VALUATION**

28. In the first instance, the Tribunal determined what rent the Applicant 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 local area and by considering the evidence provided within the representations.
29. The Tribunal considered the best comparable to be Park Close Solihull as it is very similar in appearance and location to the subject Property. However, the Tribunal considered various adjustments were necessary to reflect the differences in the accommodation. In particular the Tribunal made adjustments for the utility, downstairs toilet, refitted kitchen, conservatory, rear garage, porch

and wardrobes totalling £190pcm arriving at an adjusted market rent of £805pcm.

30. The Tribunal then made adjustments for the Tenant's improvements/obligations including floor coverings & curtains, kitchen white goods, central heating system and redecoration liability totalling £127.75pcm.
31. 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 Birmingham 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.
32. 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. The Tribunal found that there was scarcity and, accordingly, made a deduction of 10% amounting to £71.75pcm.
33. This leaves a fair rent for the subject property of £605pcm.
34. The Tribunal then considered whether the capping provisions of the Rent Acts (Maximum Fair Rent) Order 1999 apply and based on this calculated that the maximum fair rent permitted is £609.50 per calendar month. Accordingly, the rent limit did not apply.

## **DECISION**

35. The fair rent determined by the Tribunal for the purposes of Section 70 is, therefore £605 per calendar month week with effect from 26 February 2021, being the date of the Tribunal's decision.
36. In reaching its determination, the Tribunal has only 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**

37. 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.

Nicholas Wint BSc (Hons) ACI Arb FRICS