



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

Case Reference : **BIR/44UF/F77/2021/0023**

Property : **11 Barton Crescent Leamington Spa CV31 1SJ**

Landlord : **Orbit Heart of England**

Tenant : **Ms E Fisher**

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 Members : **V Ward BSc Hons FRICS
D Satchwell FRICS**

Date of Decision : **4 November 2021**

STATEMENT OF REASONS

1. The fair rent determined by the Tribunal for the purposes of Section 70 was £118.00 per week, including services of £6.53 per week, with effect from 4 November 2021.

BACKGROUND

2. On 11 March 2021, the Rent Officer registered a rental of £118.00 per week, including services of £6.53 per week, in respect of the Property, effective from 12 April 2021. The rent prior to this registration was £112.00 per week, including services of £1.83 per week registered on 4 March 2019.
3. By a letter received by the Valuation Office dated 23 May 2021, the Tenant objected to the rent determined by the Rent Officer. With the agreement of the Landlord, the late objection was accepted, and the matter was referred to the Tribunal.
4. A copy of the tenancy agreement dated 29 February 1980 was included within the parties' submissions.

THE PROPERTY

5. The Tribunal were unable to carry out an inspection of the Property.
6. From the information available to The Tribunal and provided by the parties, the Property comprises a modern end terraced house situated in the town of Leamington Spa.
7. The accommodation (arranged over 3 storeys) comprises the following:

Ground Floor	garage, kitchen, cloakroom;
First Floor	lounge, one bedroom;
Second Floor	two bedrooms, bathroom, Separate WC.
8. The Property benefits from central heating and double glazing.
9. Ms Fisher advised that the Property was, with the exception of the back gate, was in reasonable repair.

Submissions of the Parties

10. The Tribunal held a hearing by video platform on the 4 November 2021. Participants in the hearing were the Tenant, Ms Elizabeth Fisher who was supported by Mr Chris Allen, and behalf of the Landlord were Mr Guy Butler

(Service Charge and Rent Compliance Officer) and Mr Tristan Hopper (Service Charge Operations Manager).

11. The Tribunal explained at the outset of the hearing that in this matter, that the Tribunal's jurisdiction in this matter would be to consider the rent registered by the Rent Officer and either to confirm or adjust the same. It was further explained that the rent and service charge (believed to be a fixed service charge) would be considered as a whole and not as individual items.
12. The principal issue as far as Ms Fisher was concerned was the service charge element of the rent which the Tribunal noted in the 2019 registration was £1.83 per week but in the 2021 registration had risen to £6.53 per week. Ms Fisher was told by her landlord earlier in the year that the rise in the amount she paid would increase by approximately 1.5% in line with the Consumer Price Index (CPI).
13. In response, Mr Butler said that the CPI increase relates to the rental element alone and the service charge is not so limited. Mr Butler further confirmed that the total amount sought by the Landlord from April 2021 was in total £100.60 per week made up of rent of £94.07 per week and service charges of £6.53 per week
14. It was pointed out by Mr Allen that clause 2 (2) of the lease stated as follows:

2. (1) The rent in respect of the premises unless and until varied as hereinafter provided shall be the amount set out in the Second Schedule which amount includes a sum for services provided by the Landlord in pursuance of his obligations under this Agreement.

In the opinion of Ms Fisher and Mr Allen, this therefore indicated that the total amount i.e. the rent and service charge amount should increase by no more than 1.5%.

15. A further issue noted by Ms Fisher was that an element of the service charge was for the removal of fly tipped rubbish which she considered unreasonable as the Local Authority were removing the same and as she was paying Council Tax, she was effectively being charged twice. On behalf of the Landlord, Mr Hopper explained that the Local Authority would only remove waste from adopted areas in their control. Ms Fisher said that this was not the case and she had seen Local Authority workmen removing waste from the communal areas of the development. Mr Hopper offered to provide Ms Fisher with a map indicating the extent of Orbit's responsibility in relation to the development in which the Property is situated.

16. Ms Fisher also provided a copy of a local circular which indicated that the maintenance of local public areas had been delayed which had raised concerns amongst residents.

THE LAW

17. 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.
18. 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

19. As indicated above, section 70 of the Rent Act 1977 sets out the criteria by which the Tribunal should determine the rent. In addition, the Rent Acts (Maximum Fair Rent) Order 1999 limits the increase permitted to the increase in the Retail Prices Index plus a factor of 5% from the rent previously registered by the Rent Officer which in this matter was £112.00 per week, including services of £1.83 per week.
20. The Tribunal notes the discussion between the parties with regard to a CPI increase of 1.5% and also that the rent is not so limited in the tenancy agreement. This is not therefore a determinant in the Tribunal's determination of the rent.
21. 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 Leamington Spa area. Having done so, it concluded that such a likely market rent would be £175.00 per week. Due to issues locally with regard to fly tipping and poorly maintained public realm, the Tribunal made a deduction of £15.00 per week.

22. To allow for the Tenant's decorating liability, it was necessary to make an additional deduction of £10.00 per week and a further adjustment of £18.00 was made to allow for the Tenant's fittings (floor coverings, curtains and white goods).
23. 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 Warwickshire 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.
24. 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.
25. The Tribunal found that there was scarcity and, accordingly, made a further deduction of £14.00 per week.
26. The Tribunal therefore determined that the fair rent for the Property was therefore £118.00 per week to include service charges of £6.53 per week.
27. The maximum fair rent permitted by the Rent Acts (Maximum Fair Rent) Order 1999 is £127.00 to include £6.53 service charges. The level of rent determined by the Tribunal is not therefore limited by the Order. Details of the maximum fair rent calculation are provided with this decision.

DECISION

28. The fair rent determined by the Tribunal for the purposes of Section 70 was £118.00 per week to include service charges of £6.53 per week from 4 November 2021 which confirms the amount registered by the Rent Officer.
29. 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

30. 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.