



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

Case reference : **CAM/F77/38UD/2021/0029**

Tenant : **Mr SJ and Mrs AP Ray**

Landlord : **Mrs J Falinska**

Property : **18 Crescent way, Cholsey,
Wallingford, Oxford, OX10 9NE**

Date of Objection : **Referred to First-tier Tribunal
by Valuation Office Agency**

Type of Application : **Section 70 Rent Act 1977 (the Act)**

Tribunal : **Mr R T Brown FRICS**

Date of Decision : **16th November 2021**

REASONS FOR DECISION

Background

1. The Tribunal gave formal notice of its decision by a Notice dated 16th November 2021 that the rent will be, after applying the Maximum Fair Rent Order, **£127.00 per week (pw)** with effect from the same date.
2. On the 28th April 2021 the landlord of the above property applied to the Rent Officer for registration of a fair rent of £170.00 pw. The rent having been previously determined by the Rent Officer at £108.00 pw on 17th September 2017 and effective from the same date.
3. On the 17th June 2021 the Rent Officer registered a fair rent of **£124.00 pw** effective from the same date.
4. The Landlord objected to the rent determined by the Rent Officer and the matter was referred to the First-tier Tribunal (Property Chamber) (Residential Property).
5. The tenancy appears to be a statutory protected periodic tenancy. There is no written tenancy agreement but the tenancy is understood to have commenced in 11th March 1974. The tenancy (not being for a fixed periodic tenancy of 7 years or more) is subject to Section 11 of the Landlord and Tenant Act 1985 (the landlord's statutory repairing obligations).

Factual Background and Submissions

6. Following the Directions dated 17th September 2021 and the explanation contained therein, the Tribunal did not inspect the premises. A telephone hearing was requested and took place on 16th November 2021.
7. Extracting such information as it could from the papers supplied to the Tribunal by the parties, upon hearing from the parties, by reference to information publicly available on the internet and with the benefit of its knowledge and experience, the Tribunal reached **the following conclusions and found as follows:**
8. The property comprises a centrally heated double glazed terrace house located in a village to the south west of Wallingford .
9. The accommodation comprises: entrance hall, 1 reception/dining room, kitchen, ground floor bathroom, separate W.C. 3 bedrooms. Outside: garden and car parking.
10. All mains services are assumed to be connected.
11. The Tribunal noted during its consideration:
 - a) The property was let unfurnished without carpets, curtains or white goods.
12. **The Tenant** completed the Reply Form in which they said (summarised):
 - a) There was damp in the living/dining room and bathroom walls.

- b) The kitchen floor was tiles laid on soil and damp.
 - c) When they moved in 1974 they were given £50.00 towards the cost of upgrading the electrics to provide an electrical circuit to the first floor.
 - d) At their own expense they fitted a new kitchen sink and cupboards, and electric storage radiators.
 - e) The Landlord fitted a new back door in 2021.
 - f) The walls are single brick and the outside walls are very damp and draughty.
 - g) There are old fireplaces in all rooms and when its windy the carpets lift particularly in the middle bedroom.
 - h) The house has never been modernised.
 - i) The Landlady has installed new double glazed windows, guttering and fencing.
 - j) The Tenant paid for the hardstanding at the front of the property.
13. The Tenant did not make any representation as to the level of rent apart from a letter to the rent Officer in which the Tenant said a 15.00% increase since the previous registration on 11th October 2017 was too much.
14. At the hearing the Tenant said:
- a) The property was still damp due to the single brick walls. Black mould on walls and floorboards damp.
 - b) The quarry tile floor in the kitchen was damp.
 - c) Apart from replacing the polystyrene ceiling tiles in the kitchen neither the kitchen nor bathroom had been modernised.
 - d) At the time they took on the tenancy there was only a white sink in the kitchen.
15. **The Landlord** did not complete the Reply Form but made written representations (summarised):
- a) Between June 2018 and May 2020 the following work was undertaken at a cost of £10,823.19: Gas supply, central heating with thermostatic valves, installed double glazed door and window in the kitchen and renewed guttering.
 - b) Other general maintenance (plumbing and electrical) was not included as it does not affect the rent.
 - c) The rent increase was delayed due to Covid.
 - d) The Landlord also owns:
No 24: Let for 13th February 2020 at £995.00 per calendar month (£229.61 pw).
No 22: Let 9th April 2021 at £1050.00 pcm (£242.30 pw).
 - e) The plot extends to 60 square metres and has off street parking.
 - f) The Rent Officer determined the new rent at £124.00 pw but the uncapped rent would have been £204.00 pw. A rent nearer this figure would be fair.
16. At the hearing the Landlord said:
- a) The works were carried out to improve the Energy performance Rating with a view to meeting government targets.

- b) Prior to 2017 all 6 properties in the block and prior to last registration she had installed solid wall insulation to the first floor.
 - c) The property had an EPC of D, current Electrical and Gas Safety Certificates.
 - d) The Landlord acknowledged that the ground floor was still damp.
17. The Chairman questioned The Landlord about the recent lettings of No 24 in March 2020 and in particular about No: 22 let in April 2021. In response the Landlord said:
- a) The wiring had been upgraded, the EPC rating was E and there was a Gas Safety Certificate.
 - b) The property is fully double glazed with solid wall insulation to the first floor.
 - c) The bathroom was moved upstairs and refitted in 2006. The kitchen was updated at the same time. The result was a 2 bedroom house.
 - d) The current letting included carpets, curtains, cooker and fridge.

The Law

18. When determining a fair rent the Tribunal, in accordance with section 70 of the Rent Act 1977, had regard to all the circumstances including the age, location and state of repair of the property. It 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.
19. In *Spath Holme Ltd v Chairman of the Greater Manchester etc Committee (1995) 28 HLR 107* and *Curtis v London Rent Assessment Panel [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).
20. The Rent Acts (Maximum Fair Rent) Order 1999 restricts the amount by which the rent may be increased to a maximum 5.00% plus RPI since the last registration.
21. The only exception to this restriction is provided under paragraph 7 of the Order where a landlord carries out repairs or improvements which increase the rent by 15% or more of the previous registered rent.

Tribunal's deliberations

22. The Tribunal considered the matter with the benefit of the submissions made by the Landlord and Tenant. The Tribunal does not take into consideration the personal circumstances of the Landlord or Tenant in making its determination (including issues between Landlord and Tenant which do not affect the rental value of the property itself).
23. The Tribunal checked the National Energy Performance Register and noted that the property was rated on the register at D expiring on the 3rd June 2029. The minimum standard is Rating E (unless exempt) for offering a property to let on the open market.
24. The Tribunal looked at the Rent Officer's valuation of the Fair Rent under Section 70 of the Rent Act 1977. The Rent Officer had started with a market rent for the property assuming it was in good repair and available in the market today. He found that the Market Rent would be £254.00 pw (£1,100.00 pcm).
25. The Rent Officer then considered that certain deductions should be made to reflect the condition, facilities and differing nature of the tenancy. He concluded that the sum of £50.00. pw should be deducted from the market rent to reflect these matters (which included, but not exclusively): Tenant repairing and decorating liability, no white goods, no floor covering or curtains, un-modernised kitchen and bathroom, Tenant improvements and general condition.
26. He no adjustment for scarcity (see explanation below).
27. The result was a Fair Rent of £204.00. After applying the maximum Fair Rent Capping Provisions (see below) a rent of £124.00 pw was registered.
28. The Tribunal considered the Landlady's suggestion that the improvements carried out increased the Fair Rent by more than 15.00% of the previous registered rent. The Tribunal acknowledged that significant work has been undertaken since last registration but there was still significant work (including damp rectification, modernisation of kitchen and bathroom) required to bring the property up to the standard required.
29. The Tribunal, acting as an expert tribunal, determined what rent the landlord could reasonably be expected to obtain for the subject property in the open market if it were let today in the condition and subject to the terms of such a tenancy that is considered usual for such an open market letting. It did this by having regard to the evidence supplied by the parties and the Tribunal's own general knowledge of market rent levels in the wider area of Oxfordshire. Having done so, concurring with the Rent Officer, it concluded that such a likely market rent for a similar property in fair condition with central heating double glazing, modern bathroom and kitchen facilities, floor coverings, curtains, white goods and an EPC Rating above E would be **£254.00 pw (£1,100.00pcm)**.

30. However, the subject property is not in the condition considered usual for a modern letting at a market rent. It is therefore necessary to adjust that hypothetical rent of **£254.00 pw (£1,100.00 pcm)** to allow for

the differences between the condition considered usual (including responsibility of tenants to maintain decorations as opposed to decorate) for such a letting and the condition of the actual property as stated in the papers (disregarding the effect of any disrepair or other defect attributable to this tenant or any predecessor in title), and the improvements carried out by the Tenant.

31. If this property were to come onto the open market it would of course come on the market in its present condition and not in the condition normally seen in such market lettings. The Tribunal found that the deductions (totalling £50.00 pw - see above) made by the Rent Officer were reasonable to reflect the current condition of the property:
32. The Tribunal determined a Fair Rent of £204.00 pw (£884.00 pcm).

Scarcity

33. The matters taken into account by the Tribunal when assessing scarcity were:-
- a) The Tribunal interpreted the 'locality' for scarcity purposes as being the wider area of Oxfordshire (i.e. a sufficiently large area to eliminate the effect of any localised amenity which would, in itself, tend to increase or decrease rent.
 - b) Local Authority and Housing Association waiting lists.
 - c) House prices which could be an indicator of increased availability of housing and a reduction in scarcity.
 - d) Submissions of the parties.
 - e) The members of the Tribunal have between them many years of experience of the residential letting market and that experience leads them to the view that there is no substantial shortage of similar houses available to let in the locality defined above.
34. Assessing a scarcity percentage cannot be a precise arithmetical calculation because there is no way of knowing either the exact number of people looking for a particular type of house in the private sector or the exact number of such properties available. It can only be a judgment based on the years of experience of members of the Tribunal. The Tribunal agreed with the Rent Officer that there was no substantial scarcity accordingly made no deduction.
35. This leaves a fair rent for the subject property of **£204.00 pw (£884.00)pcm.**

Relevant Law

36. The Rent Act 1977.
37. Rent Acts (Maximum Fair Rent) Order 1999. In particular paragraph 7 which states:

This article does not apply in respect of a dwelling-house if because of a change in the condition of the dwelling-house or the common parts as a result of repairs or improvements (including the replacement of any fixture or fitting) carried out by the landlord or a superior landlord, the rent that is determined in response to an application for registration of

a new rent under Part IV exceeds by at least 15% the previous rent registered or confirmed.

Rent Acts (Maximum Fair Rent) Order 1999

38. The rent to be registered is limited by the Fair Rent Acts (Maximum Fair Rent) Order 1999 it is above the maximum fair rent (see calculation on reverse of decision sheet) of **£127.00 pw** (£550.00 pcm) and accordingly the sum of £127.00 pw (£550.00 pcm) will be registered as the fair rent on and with effect from 16th November 2021 being the date of the Tribunal's decision.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision (on a point of law only) to the Upper Tribunal (Lands Chamber) 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. Where possible you should send your application for permission to appeal by email to rpeastern@justice.gov.uk as this will enable the First-tier Tribunal Regional office to deal with it more efficiently.
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