



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

Case reference : **CHI/00HA/F77/2021/0051**

Tenant : **Mr F Mayell**

Landlord : **Ashmarden Ltd**

Property : **2 Barnfield Cottages, Borden,
Petersfield, Hampshire BA2 1ES**

Date of Objection : **Referred to First-tier Tribunal
by Valuation Office Agency on
15th October 2021**

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

Tribunal : **Mr R T Brown FRICS
Mr J Reichel BSc MRICS
Mr M Ayres FRICS**

Date of Decision : **21st December 2021**

REASONS FOR DECISION

Background

1. The Tribunal gave formal notice of its decision by a Notice dated 22nd December 2021 that the rent would be **£215.00 per week (pw)** with effect from the same date.
2. On the 16th August 2021 the landlord's agent of the above property applied to the Rent Officer for registration of a fair rent of £250.00 pw. The rent having been previously determined by the Rent Officer at £196.00 pw on 24th May 2019 and effective from the 23rd May 2019.
3. On the 30th September 2021 the Rent Officer registered a fair rent of **£214.50 pw** effective from the 10th November 2021.
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. 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 26th October 2021 and the explanation contained therein, the Tribunal did not inspect the premises. A hearing was not requested in the current proceedings.
7. Extracting such information as it could from the papers supplied to the Tribunal by 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 is described as a semi-detached house with full central heating and double glazing.
9. The accommodation comprises: 2 reception rooms, kitchen, utility room, conservatory, 3 bedrooms, bathroom and WC. Outside: car space and gardens.
10. The property was let unfurnished without carpets, curtains, white goods and with the Tenant responsible for internal decoration.
11. All mains services, excluding gas, are assumed to be connected.
12. The Tribunal noted during its consideration:
 - a) The property was let unfurnished.
 - b) Dated Kitchen and Bathroom Fittings.
13. **The Tenant** in the Reply Form said:

- a) Tenant carried out the following works:
- 1) Installed oil fired central heating (1994). Boiler replaced by landlord 2019.
 - 2) Installed 'lean to' conservatory.
 - 3) Fitted Kitchen (1993).
 - 4) Fitted Bathroom (1994) Shower installed by Landlord in 2015.

b) Disrepair:

- 1) Asbestos guttering.
- 2) Roof not leaking but in need of repair.
- 3) Kitchen 28 years old wear and tear evident.
- 4) Bathroom 27 years old wear and tear evident.

c) Rent. The Tenant considers that, given the current state of repair, the current rent (£195.00 pw) is reasonable the proposed increase to £250.00 would be reasonable if the property were in good repair.

14. **The Landlord's agent** completed the Reply Form. In which he stated:

- a) New central heating boiler and oil tank installed in 2015.
- b) Full double glazing installed 2018.
- c) Guttering is leaking and there are some missing roof tiles.
- d) Age and condition of kitchen and bathroom fittings not known and not the landlord's responsibility.
- e) No white goods provided.
- f) The assessment of market rental value is £1,300 per calendar month (£300.00 per week) on the basis let unfurnished with landlord responsible for all repairs and external decoration, tenant responsible for internal decoration.
- g) Demand exceeds supply.
- h) Two similar 3 bedroom semi-detached properties are put forward as comparables:
 - 1) 3 Bridgets Lane, Martyr Worthy, Winchester, SO21 1AR. £1,300.00 pcm (£300.00 per week). EPC rating E.
 - 2) Westbury Manor Farm Cottages, West Meon, Petersfield GU32. £1,295.00 pcm (£299.00 pw) but newly decorated with detached garage and carpets. EPC rating E.

The Law

15. 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.

16. 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).

17. 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.
18. 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

19. The Tribunal considered the matter with the benefit of the submissions of the parties. 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).
20. The Tribunal checked the National Energy Performance Register and noted that the Energy Performance Certificate (EPC) rates the property at F and the certificate expired on 30th April 2019. The minimum standard is Rating E (unless exempt) for offering a property to let on the open market the Tribunal considers that a rating of this level would have an adverse effect on the rent achievable.
21. 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. The Rent Officer found that the Market Rent would be £277.00 pw. The Rent Officer then considered that certain deductions should be made to reflect the condition, facilities and differing nature of the tenancy. The Rent Officer concluded that the sum of £62.00 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 and unmodernised kitchen and bathroom. No adjustment for scarcity (see explanation below) was made. The result was a Fair Rent of £215.00 pw capped at £214.50 pw.

22. 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 Hampshire. Having done so, it concluded that, after considering the observations of the Rent Officer, the calculation of market rent was correct and that it was appropriate to make a deduction of £62.00 pw to reflect those matters in paragraph 21 above.
23. The Tribunal confirms the fair rent as calculated by the Rent Officer of £215.00 pw.

Scarcity

24. The matters taken into account by the Tribunal when assessing scarcity were:-
 - a) The Tribunal interpreted the 'locality' for scarcity purposes as being the area the wider area of Hampshire (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.
25. 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. However, the Tribunal did not consider that there was a substantial scarcity element and accordingly made no further deduction for scarcity.
26. The Tribunal confirms the Fair Rent at £215.00 pw.

Relevant Law

27. The Rent Act 1977.
28. 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

29. The rent to be registered is not limited by the Fair Rent Acts (Maximum Fair Rent) Order 1999 because it is below the maximum fair rent (see calculation on reverse of decision sheet) of **£220.50 pw and accordingly the sum of £215.00 pw** will be registered as the fair rent on and with effect from 21st December 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 rpsouthern@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