



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

**Case reference** : **CHI/23UC/F77/2021/0053**

**Tenant** : **Mrs J Boulton C/o Lansdowne  
Legal**

**Landlord** : **Mrs R Wooldridge C/o Sewell  
Mullings and Logie Solicitors**

**Property** : **Townsend Cottage, Culkerton,  
Tetbury, Gloucestershire GL8 8SS**

**Date of Objection** : **Referred to First-tier Tribunal  
by Valuation Office Agency on  
1st July 2021**

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

**Tribunal** : **Mr R T Brown FRICS  
Mr M J F Donaldson FRICS MCI Arb  
MAE  
Mr S Hodges FRICS**

**Date of Decision** : **4th January 2021**

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**REASONS FOR DECISION**

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## **Background**

1. The Tribunal gave formal notice of its decision by a Notice dated 4th January 2022 that the rent would be **£560.00 per calendar month (pcm)** with effect from the same date.
2. On the 31st July 2021 the landlord of the above property applied to the Rent Officer for a first registration of a fair rent of £700.00 pcm.
3. On the 28th September 2021 the Rent Officer registered a fair rent of £650.00 pcm effective from the same date. This is the first time the rent has been registered and consequently exempt from the Maximum Fair Rent Order (see below).
4. The Tenant 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 commenced in 1936. There is no written tenancy agreement but the tenancy appears to be a statutory protected periodic tenancy. 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 **30th November 2021** and the explanation contained therein, the Tribunal did not inspect the premises. A hearing was not requested in the current proceedings by either party.
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 comprises a Grade 2 listed semi-detached house believed to date from 1800. The accommodation: Hall, 2 reception rooms, 1 kitchen, 1 bathroom/W.C, 2 bedrooms. Outside: Stores, garden and on the site opposite an orchard, parking and garage.
9. The property is situated in a rural location 4 miles from shopping, medical, educational and leisure facilities in Tetbury. Infrequent village bus service. Train station at Kemble 4 miles away.
10. Mains water and electricity are assumed to be connected. Drainage is via septic tank emptied by the Landlord.
11. The Tribunal noted during its consideration:
  - a) The property was let unfurnished and does not include carpets, curtains or white goods.

- b) There is no central heating nor double glazing.
- c) The property internally is assumed in tenantable decorative order.

12. **The Tenant's representative** completed the Reply Form and provided submissions, the main points of which are summarised below:

a) The kitchen units (apart from the sink), the carpets, curtains, white goods, woodburner, immersion heater for hot water, surfacing to parking space and garage were provided by the Tenant.

b) Landlord provided 3 electric heaters in 2017.

c) Tenant installed telephone, chicken shed, 2 greenhouses and obtained permission to move the orchard wall.

d) Defects noted:

1. Poor external condition and decoration.
2. Re-pointing needed to front and rear wall.
3. Guttering requires overhaul.
4. Damp on kitchen and bathroom walls.
5. Rotten, draughty window frames and front door.
7. No gas supply, no damp proof course, no insulation. Dated electrical installation.
8. No Energy Performance or Electrical Safety certificates.
9. Poor plastering.
10. Dated kitchen sink and bathroom fittings.

e) Rental evidence:

1: The Old Post Office, Culkerton. RPTS Case Reference CHI/23/UC/002 - 16th March 2020. Market Rent set at £866.66 pcm adjusted to £541.66 to reflect condition and fixtures and fittings.

2: 5 Culkerton. RPTS Case CHI/23UC/2020 -27th July 2021. Market Rent set at £850.00 pcm adjusted to £560.00 pcm to reflect condition and fixtures and fittings.

3: Townsend Cottage is a slightly larger property and a market rent of £895.00 pcm is put forward from which the following deductions are made (similar to those made by the previous Tribunals in respect of the Old Post Office and 5 Culkerton):

- (1) Lack of double glazing, decaying rear windows, draughty front windows: £50.00
- (2) Lack of central heating: £100.00.
- (3) Tenant provision of carpets, curtains and white goods: £30.00.
- (4) Provision of kitchen units: £40.00
- (5) Dated Bathroom: £50.00.
- (6) Dampness at Ground level: £50.00.
- (7) Dampness/water ingress First floor: £10.00.
- (8) Provision of telephone £5.00.
- (9) Provision of woodburner: £10.00.

- (10) Poor/no insulation lack of EPC £50.00.
- (11) Dated wiring lack of EIRC £20.00.
- (12) General poor condition: £50.00.
- (13) Tenant provision of parking access, surfacing, planning consent and garage: £50.00.

Total £515.00 deducted from £895.00 leaves a Fair Rent of £380.00 pcm.

f) Without an EPC, possibly no EIRC, and evidence of lack of compliance it is not expected this property would meet the requirements of the market today.

g) Mrs Boulton is a protected tenant by succession to an agricultural occupancy and pays no rent. It is therefore submitted the Tribunal does not have jurisdiction to deal with this matter during the lifetime of Mrs Boulton.

h) The property is exempt from the Maximum Fair Rent Order because this is a first registration.

i) There is no substantial scarcity as evidenced by the availability of 100 2 bedroom properties on Rightmove on 18th December 2021 and 160 such properties within 15 miles of the GL8 postcode.

j) Witness statement of Mrs Boulton which says:

- 1) She married Edward Boulton on 2nd April 1949 and has lived in the cottage ever since.
- 2) Edward Boulton started work for the farm in 1936 aged 14 and paid no rent during his retirement and there was no written agreement.
- 3) The occupation includes the orchard and Mr Boulton carried out the works listed above.
- 4) They lived in the property rent free on the basis that Mr Boulton undertook 2 hours overtime each fortnight.

k) Photographs showing the site of the property, the orchard and of the house itself are attached to the statement.

13. **The Landlord** completed the Reply Form and provided submissions, the main points of which are summarised below:

- a) The Landlord acknowledges that the large garden area, garage and parking area are included in the tenancy.
- b) In addition to the accommodation listed there is a pantry, box room and attic space.
- c) Fixed electric heaters on the Ground Floor in approx 2017.
- d) The Landlord pays for the septic tank to be emptied several times a year and the cost is not recovered from the tenant.
- e) There is a bus stop near to the property and a mainline railway station in Kemble approx 4.5 miles away.

- f) The parking area, garden and garage are not included within the Rent Officer's assessment.
- g) There is no evidence to support Mrs Boulton's claim she and her late husband could live in the property rent free for their lifetimes.
- h) There are no available cottages to rent in the village as comparables.
- i) Photographs of the property and land registry plans of the two plots are attached to the form.

### **The Law**

- 14. 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.
- 15. 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).

### **Tribunal's deliberations**

- 16. The Tribunal considered the matter with the benefit of both parties submissions. The Tribunal notes it 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).
- 17. Specifically the Tribunal states that is not within the Tribunal's jurisdiction to determine the type of tenancy held by Mrs Boulton. This is a matter for the County Court. The Rent Office has made its registration on the basis that the tenancy is subject to the Rent Act 1977 and it is the jurisdiction of this Tribunal to determine whether or not that assessment is correct and if it is not to then determine the correct Fair Rent within the definition of Section 70 of the Rent Act 1977. If it is subsequently determined by the appropriate court that Mrs Boulton is not a protected tenant with security of tenure then the registration and this determination will be of no effect.
- 18. The Tribunal checked the National Energy Performance Register and noted that there was no certificate for this property on the register. The

minimum standard is Rating E (unless exempt) for offering a property to let on the open market and the Tribunal considers that a rating below this level would have an adverse effect on the rent achievable.

19. The Rent Officer determined the market rent at £925.00 pcm and has made deductions of £275.00 pcm to reflect matters including the general state of repair, the tenants decorating liability, the dated bathroom and kitchen, lack of white goods, carpets and curtains. Registering the Fair rent at £650.00 pcm.
20. The Tribunal noted that, although it is agreed by the parties, the Rent Officer had excluded the orchard, parking space and garage. The Tribunal's determination will include these facilities.
21. 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 **Gloucestershire**. Having done so, it concluded that such a likely market rent for a similar modernised property in fair condition with central heating, modern bathroom and kitchen facilities, floor coverings, curtains and an EPC Rating above F would be **£975.00 pcm (including orchard, parking space and garage)**.
22. 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 **£975.00 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 also disregarding the improvements carried out by the Tenant.
23. 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 considers that to reflect these matters, a deduction should be made to the hypothetical rent.
  - (1) General disrepair (including rotten woodwork, dated electrics, damp and lack of insulation £75.00.
  - (2) Lack of double glazing and central heating: £100.00.
  - (3) Dated bathroom and kitchen: £80.00
  - (4) Lack of carpets, curtains, kitchen units and white goods: £90.00
  - (5) Tenant's decorating obligations: £45.00.
  - (6) Tenant provision of parking access, surfacing, planning consent and garage: £25.00.
24. Total £415.00 deducted from £975.00 leaves a Fair Rent of £560.00 pcm.

## **Scarcity**

25. The matters taken into account by the Tribunal when assessing scarcity were:-
- a) The Tribunal interpreted the 'locality' for scarcity purposes as being the conurbation of **Gloucestershire** (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.
26. 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.
27. This leaves a fair rent for the subject property of **£560.00 pcm**.

## **Relevant Law**

28. The Rent Act 1977.
29. Rent Acts (Maximum Fair Rent) Order 1999 (Paragraph 6).

The rent to be registered is not limited by the Fair Rent Acts (Maximum Fair Rent) Order 1999 as it falls outside the scope of the Order because it is the first time this property has been the subject of an application to the Rent Office for the registration of Fair Rent under Section 70 of the Rent Act 1977.

30. Accordingly the sum of **£560.00 pcm** will be registered as the fair rent on and with effect from 4th January 2022 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](mailto: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.