



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

Case Reference : **BIR/00CT/F77/2021/0040**

**HMCTS (paper, video : PAPER
audio)**

Property : **165 Summerfield Road Solihull B92 8PT**

Landlord : **Northumberland & Durham Property Trust**

Representative : **Grainger plc**

Tenant : **Mr B F Bennett**

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
D Douglas**

Date of Decision : **22 February 2022**

DECISION

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 11 January 2022 that the fair rent payable by the Tenant in accordance with Schedule 11 of the Rent Act 1977 shall be £612 per calendar month.
2. By way of background, on 28 July 2021, the Landlord applied to the Rent Officer for registration of a fair rent of £702 (pcm) per calendar month in respect of 165 Summerfield Road Solihull B92 8PT (the "Property").
3. The rent payable at the time of the application was £585 per calendar month which was registered by the Rent Officer on 10 September 2019, effective from 24 October 2019.
4. The Rent Officer registered a rental of £615 per calendar month on 14 September 2021, effective from 24 October 2021.
5. On 14 October 2021, 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 21 October 2021. It advised that the matter would be determined based on written submissions made by the parties and that the Tribunal would carry out an inspection of the property on 11 January 2022.
7. The Tribunal received a written submission and a completed Reply Form from Mr Ryan Tucker Portfolio Manager of Northumberland & Durham Property Trust Ltd. and a completed Reply Form and additional comments from Mr Bennett.

The Property

8. The Property is located approximately 2 miles north of Solihull town centre in a residential area.
9. The accommodation comprises a 2-storey semi-detached house of brick and pitched roof construction. On the ground floor is a front and rear living room, fitted kitchen and on the first floor two bedrooms, a box room and bathroom (with electric shower, WC and wash hand basin). Externally there is a garden area to the front and rear, a prefabricated garage to the side and space for parking a vehicle.

10. The Property has no central heating, the only source of heating being provided by electric radiators. The Landlord has provided double-glazed windows and re-laid the driveway.
11. The Tenant has installed/ replaced the kitchen units, supplied the white goods, installed the fire place in the front room, refitted the bathroom, fitted carpets and curtains and decorated throughout.

Submissions of the Tenant

12. The Tenant submitted a statement with the Reply Form effectively disputing the proposed rent increase on the basis that the Property should be valued un-modernised as it has no heating and that the kitchen, bathroom, floor coverings, curtains and decorations are all the Tenant's. Furthermore, the Tenant considers that the Landlord's evidence of similar properties in the area are not comparable because they vary in size and accommodation.
13. The Tenant also submits that the works undertaken to the driveway by the Landlord were not done at his request and nor were they done to an adequate standard at the outset requiring subsequent remedial works to be carried out by the contractor.

Submissions of the Landlord

14. Submissions for the Landlord were provided by Ryan Tucker, Property Manager for Northumberland & Durham Property Trust Ltd.
15. The submissions briefly set out the location, accommodation and condition of the Property
16. Since the last rent increase the Landlord has carried out works to the driveway at a total cost of £3,060. As regard the rest of the Property the Landlord considers it is in fair condition given its type and age but accepts that it is not up to modern standards and advise they undertake works as and when reported.
17. In the opinion of the Landlord, having regard to the age and condition of the property the rent should be increased from £585 to £702 per calendar month.
18. In support, the Landlord has had regard to the following evidence:

Coniston Avenue Solihull

A 2-storey unfurnished semi-detached house comprising two reception rooms, fitted kitchen, utility, downstairs WC, three bedrooms and a fourth bedroom/ playroom in the loft and a large rear garden as well as a side garage.

The property was to let at £950pcm through Encase Estate Agents

Hobs Moat Road Solihull

A 2-storey unfurnished semi-detached house comprising two large reception rooms, downstairs WC, fitted kitchen, family bathroom (including bath and separate shower) and three double bedrooms. Externally there is a rear garden and to the front off-road parking

The property was to let at £975pcm through Burchell Edwards Estate Agents.

Rock Road Solihull

A 2-story unfurnished semi-detached house comprising through living room, fitted kitchen, two bathrooms, three bedrooms with gardens to the front and rear and off-road parking

The property was to let at £1,095pcm through Open Rent Estate Agents.

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

Gas Central Heating	£50pcm
Loft Room	£25pcm
Utility Area	£15pcm
Downstairs WC	£10pcm

20. In total the above deductions amount to £100 per calendar month. In addition, the Landlord made a further adjustment of £100 per calendar month for the Tenant improvements/ obligations.
21. The Landlord also considered that no adjustment is necessary for scarcity.

THE LAW

22. 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.

23. ***Rent Act 1977***

24. ***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.”

25. 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.

26. 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).

27. 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.

28. 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

29. 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.

30. The Tribunal considered the evidence adduced by the Landlord and made various adjustments to reflect the differences in the accommodation and in

particular that the Property lacked central heating and the third bedroom/ box room was too small. The adjustments produced an adjusted market rent of £850pcm.

31. The Tribunal then made adjustments for the condition/ disrepair of the Property in addition to the Tenant's improvements/obligations including floor coverings & curtains, kitchen white goods, bathroom, fireplace, fence and redecoration liability totalling £185pcm.
32. 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.
33. The Tribunal is aware 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 is of the view that there was scarcity and, accordingly, made a deduction of 8% amounting to £53.20pcm.
34. This leaves a fair rent for the subject property of £612pcm.
35. 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 £662.50 per calendar month. Accordingly, the capping provisions did not apply.

DECISION

36. The fair rent determined by the Tribunal for the purposes of Section 70 is, therefore £612 per calendar month with effect from 11 January 2022, being the date of the Tribunal's decision.
37. 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

38. 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