



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

Case Reference : **BIR/00CT/F77/2021/0041**

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

Property : **161 Summerfield Road Solihull B92 8PT**

Landlord : **Northumberland & Durham Property
Trust**

Representative : **Grainger plc**

Tenant : **Mr B McDonald**

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 £630 per calendar month.
2. By way of background, on 18 August 2021, the Landlord applied to the Rent Officer for registration of a fair rent of £667 per calendar month in respect of 161 Summerfield Road Solihull B92 8PT (the "Property").
3. The rent payable at the time of the application was £580 per calendar month which was registered by the Rent Officer on 16 October 2019, effective from 15 November 2019.
4. The Rent Officer registered a rental of £610 per calendar month on 30 September 2021, effective from 15 November 2021.
5. On 28 October 2021, the Applicant objected to the rent determined by the Rent Officer and the matter was referred to the Tribunal. The Tribunal also received an objection to the rent increase from the Respondent by way of email dated 5 November 2021.
6. The Tribunal issued its Directions dated 3 November 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 various emails from Mr McDonald.

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 living room, fitted kitchen and on the first floor two bedrooms, a box room and a shower room with WC and wash hand basin. Externally there is a garden area to the front and rear and a space for parking a vehicle.

10. The Property has gas fired central heating and double-glazed windows which were provided by the Landlord. The Landlord has also updated the electrics and installed a gas fire in the living room. The Tenant has knocked through the living room into the dining area, replaced the kitchen units, supplied the white goods, replaced the doors (including the front door and porch door), updated the bathroom into a wet room, provided the carpets and curtains and decorated throughout as well as fitted a new side gate.

Submissions of the Tenant

11. The Tenant submitted an email dated 5 November 2021 stating that he wished to appeal the rent increase on the basis it is only has 2 bedrooms as the third room only extends to just over 4.22 sq. m. and is therefore little more than a box room.
12. The Tenant also submitted a further email dated 15 November 2021 setting out what works he had carried out to the Property and that following the fitting of a new bay window in the front bedroom various cracks had appeared throughout the walls and ceiling which the Tenant has had to fix.
13. The Tenant also submitted various photographs and additional comments with their Reply Form showing the cracks referred to.

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. No improvements have been undertaken by the Landlord to the Property since the last increase and in the opinion of the Landlord the Property is in fair condition given its type and age but accept 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 £580 to £667 per calendar month.
18. In support, the Landlord has had regard to the following evidence:

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 bedrooms. Externally there is a rear garden and to the front off-road parking

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

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

Second Reception Room	£25pcm
Downstairs WC	£10pcm
Three Double Bedrooms	£15pcm
Landlord Floor Coverings	£15pcm
Landlord Appliances	£15pcm

20. In total the above deductions amount to £80 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 considered the third bedroom/ box room was too small and also lacked a radiator for heating. 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, doors and redecoration liability totalling £165pcm.
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 £54.80pcm.
34. This leaves a fair rent for the subject property of £630pcm.
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 £655 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 £630 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