



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

Case Reference : **BIR/00CN/F77/2021/0042**

Property : **28 Moor Pool Avenue, Birmingham
West Midlands B17 9HN**

Landlord : **BPT (Residential Investments) Limited**

Representative : **Grainger plc**

Tenant : **Mr P White**

Type of Application : **Determination of a fair rent under
section 70 of the Rent Act 1977**

Tribunal Members : **Judge M K Gandham
Mr N Wint FRICS ACI Arb**

Date of Decision : **23 February 2022**

Issue Date : **07 April 2022**

STATEMENT OF REASONS

Background

1. This Statement of Reasons is prepared at the request of Mr Peter White, following the decision made by the Tribunal on 23 February 2022. It should be read in conjunction with that decision.
2. Mr White is the tenant of the property known as 28 Moor Pool Avenue, Birmingham, West Midlands, B17 9HN ('the Property'). The landlord is BPT (Residential Investments) Limited.
3. By an application, received by the Valuation Office on 17 September 2021, the Landlord applied to the Rent Officer for registration of a fair rent for the Property of £151.20 per week (pw). The rent previously registered on 19 November 2019, with effect from 6 December 2019, and payable at the time of the application, was £126.00 pw.
4. On 29 October 2021, the Rent Officer registered a fair rent of £136.00 pw, with effect from 6 December 2021.
5. By a letter, received by the Valuation Office on 25 November 2021, the Tenant objected to the rent determined by the Rent Officer and the matter was referred to the Tribunal on 3 December 2021.
6. The Tribunal received written representations from the Landlord on 13 December 2021 and from the Tenant on 24 January 2022.
7. Neither party requested an oral hearing and the Tribunal inspected the Property on 23 February 2022.
8. After consideration of the available evidence and the applicable law, the Tribunal determined that a sum of £144.00 pw was to be registered as the fair rent, with effect from 23 February 2022.

The Law

9. 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.

Rent Act 1977

Paragraph 9(1) Part 1 Schedule 11 (as amended)

“Outcome of determination of fair rent by appropriate tribunal

9. – (1) The appropriate tribunal shall –

- (a) if it appears to them that the rent registered or confirmed by the rent officer is a fair rent, confirm that rent;
- (b) 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-

- (a) the age, character, locality and state of repair of the dwelling-house,...
- (b) if any furniture is provided for use under the tenancy, the quantity, quality and condition of the furniture, and
- (c) 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.”

10. 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.

11. 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).
12. 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.
13. 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.

The Inspection

14. The Tribunal inspected the Property on the morning of 23 February 2022. The Tribunal was met, and shown around the Property, by the Tenant. The Landlord did not attend.
15. The Property is a mid-terrace house on the Moor Pool Estate in Harborne, built circa. 1910. It is of brick construction with a pitched tiled roof.
16. The accommodation is laid out over three floors. In the basement there is a kitchen/dining room, shower room with wc and store; on the ground floor there is an entrance hall, a split level lounge and a bathroom and, on the first floor, there are two double bedrooms and a box-room, which has been converted into a third bedroom. Externally there is a small front garden but good-sized rear garden.
17. The Property does not have the benefit of a garage or any off-street parking. The Property does have the benefit of gas-fired central heating but only the rear windows have been double-glazed.

18. The Property was in a good condition, other than the windows to the front elevation, which were in need of some repair.
19. The Tenant had, since his occupation, created the whole of the basement living area – laying a concrete floor, altering the walls and installing and fitting the kitchen and shower room. The Tenant had also converted one of the rooms on the ground floor to form the bathroom and converted the previous bathroom on the first floor to a third bedroom, enlarging the room by re-positioning the internal wall. Additionally, the Tenant had created the lounge, installed the gas central heating; installed fireplaces; landscaped the garden; supplied the white goods in the kitchen; provided the carpets and curtains and decorated throughout.
20. The Landlord had, since the last inspection, provided double-glazing to the rear windows.

Submissions

Landlord

21. The Landlord's Representative sent a written submission describing the Property and providing details of six properties advertised to let in the area that they described as comparable. They comprised:

Ravenhurst Road, Moor Pool Estate

A two-bedroom maisonette, with gas central heating and timber windows, with a let agreed at £254.00 pw;

Margaret Grove, Moor Pool Estate

A two-bedroom mid-terrace house, with gas central heating and timber/UPVC windows, with a let agreed at £254.00 pw;

Carless Avenue, Moor Pool Estate

A two-bedroom end terrace house, with gas central heating and timber windows, advertised to let at £323.00 pw;

Margaret Grove, Moor Pool Estates

A three-bedroom terrace house, with gas central heating and timber/UPVC windows, advertised to let at £335.00 pw;

Carless Avenue, Moor Pool Estate

A three-bedroom terrace house, with gas central heating and timber/UPVC windows, with a let agreed at £358.00 pw; and

Carless Avenue, Moor Pool Estate

A three-bedroom end terrace house, with gas central heating and timber windows, advertised to let at £358.00 pw.

Based on this information, the Landlord considered the minimum achievable market rent to be £254.00 pw. The Landlord noted that the comparable properties would benefit from the following:

- Modernised bathroom
- Double glazing
- Modernised kitchen
- Landlord supplied floor coverings/curtains
- White goods/furnishing

Using a theoretical figure of £20.00 pw per item, they considered the rent requested by the Landlord of £151.20 still to be £2.80 pw less than the comparable rent.

22. The Landlord's Representative also supplied, on 25 January 2022, a copy of an invoice dated 16 November 2021 for the installation of the partial double glazing to the Property.

Tenant

23. The Tenant confirmed that he had installed the central heating, carpets and curtains and white goods and referred the Tribunal to his letter dated 24 November 2021 to the Valuation Office, in which he had detailed the improvements he had made to the Property. The Tenant also submitted that the comparison of market rents with regulated rents was irrelevant and pointed to the registered rent of another property on Moor Pool Avenue being lower than his own.

Reasons for the Decision

24. The Tribunal noted the Tenant's submissions regarding the comparison of market rents to fair rents, however, considered that the Tenant had failed to take into account that the Landlord had adjusted the achievable market rent to allow for the same. In relation to the Landlord's submissions, the Tribunal noted that, although the Landlord had installed partial double glazing, they had failed to take into account, in their written submissions, that the Tenant had installed the central heating. In addition, the Tribunal considered that scarcity did apply.
25. In the first instance, the Tribunal determined what rent the Landlord could reasonably be expected to obtain for the Property in the open market if it were let today in the condition that was 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 levels in Harborne.
26. The Tribunal considered that the converted third bedroom was too small to contain a standard single bed and noted that the comparables supplied by the Landlord did include two bedroom properties with partial double glazing. The Tribunal concurred with the Landlord that a likely market rent would be £254.00 pw.
27. That being said, the Tribunal considered that the actual property was not in the condition considered usual for a modern letting at a market rent.

Therefore, it was first necessary to adjust the hypothetical rent of £254.00 pw to allow for the differences between the condition considered usual for such a letting and the condition of the Property, as observed by the Tribunal (disregarding the effect of any disrepair or other defect attributable to the Tenant or any predecessor in title), and any Tenant's improvements.

28. The Tribunal considered that this required a deduction of £94.00 pw in respect of the floor coverings, curtains and white goods (which were all provided by the Tenant), the internal decorating liability and the Tenant's improvements (detailed above).
29. The Tribunal considered the question of scarcity in s.70(2) of the Rent Act 1977 and found that the number of potential tenants looking for accommodation of this type in the area would have been greater than the number of units available to let. The Tribunal found that the excess demand represented around 10% of rental value or £16.00 pw and deducted this from the adjusted market rent to arrive at the statutory basis for a fair rent.
30. This left a fair rent for the Property of £144.00 pw.

Decision

31. The fair rent determined by the Tribunal, for the purposes of section 70, was £144.00 pw.
32. There was no service charge and the rent was not registered as variable.
33. The section 70 fair rent determined by the Tribunal was the same as the maximum fair rent permitted by the Rent Acts (Maximum Fair Rent) Order 1999, consequently, that rent limit had no effect.
34. Accordingly, the sum of £144.00 pw was registered as the fair rent with effect from 23 February 2022, being the date of the Tribunal's decision.

Appeal

35. If any party is dissatisfied with this decision, they may apply to the Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber) **on a point of law only**. Such an application must be made within 28 days of this decision being sent to the parties in accordance with Rule 52(2) of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, and must state the grounds on which that party intends to rely in the appeal.

M. K. GANDHAM
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Judge M. K. Gandham