



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

Case Reference : BIR/47UF/F77/2022/0005

Property : 3 Underhill Cottages, Sidings Lane, Charlton,
Worcestershire, WR10 3LA

Applicant : Northumberland & Durham Property Trust Ltd.

Representative : Grainger plc

Respondent : Mr D Barnfield

Type of Application : Appeal against the Rent Officer's Decision of Fair Rent under
s.70 of the Rent Act 1977

Tribunal Members : Judge C Payne
Mr I.D. Humphries B.Sc.(Est.Man.) FRICS

**Date and Venue of
Hearing** : Paper Determination

Date of Decision : 17 March 2022

Date Reasons issued : 25 April 2022

DECISION

Decision

The Fair Rent is determined at £375.00 (Three Hundred and Seventy Five Pounds) per calendar month from 17 March 2022.

Background

1. Mr Barnfield holds a protected tenancy of 4 Underhill Cottages, Sidings Lane, Charlton, Worcestershire, WR10 3LA. The fair rent had previously been registered by the First-tier Tribunal at £425.00 per month on 20 January 2020 to take effect from that date. On 20 October 2021 the landlord applied for a rent increase to £510.00 per calendar month and on 8 December 2021 the Rent Officer registered a new rent of £440.00 per month to take effect from 20 January 2022.
2. The landlord appealed against the Decision by letter received by the Valuation Office Agency on 6 January 2022 and the matter was referred to the First-tier Tribunal for Determination. The Tribunal reached its decision on paper on 17 March 2022 determining a Fair Rent of £375.00 from that date and the Decision papers were sent to the parties.
3. The Landlord's agents requested Reasons by letter received 24 March 2022 which are the subject of this document.

The Law

4. Mr Barnfield is a protected tenant. This is acknowledged by the landlord. The Tribunal had not been provided with a copy of the tenancy agreement but understood from the application for a fair rent completed by the landlord that the property had been let unfurnished, with the landlord responsible for repairs to the structure and exterior and the tenant responsible for internal repair and decoration in accordance with s.11 of the Landlord & Tenant Act 1985.
5. Accordingly, the rent was to be determined under s.70 of the Rent Act 1977.
6. S.70(1) states that in determining a fair rent, regard has to be had to all the circumstances of the tenancy (other than personal circumstances) including the age, character, locality, and state of repair of the house, whether the property is let furnished and whether a premium had been paid or would be required to renew, continue, or assign the tenancy.
7. s.70(2) adds a further qualification that it is assumed that the number of parties seeking to become tenants of similar houses in the locality on the terms of the tenancy (other than the rent) is not substantially greater than the number of houses available to let on such terms. This is usually referred to as 'scarcity' and the Court of Appeal held in *Spath Holme Ltd. v Chairman of the Greater Manchester Rent Assessment Committee* (1995) 28 HLR 107 and *Curtis v London Rent Assessment Committee* (1999) QB 92 that under normal circumstances the fair rent is the market rent discounted for scarcity. The Court also held that assured tenancy rents could be considered comparable to market rents.
8. s.70(3) requires the valuation to disregard any disrepair due to a tenant's failure to comply with the terms of the tenancy and any improvements carried out by the tenant or their predecessor in title.

Facts Found

9. The Tribunal inspected the front of the property on 17 March 2022. They were unable to inspect the interior. It is a semi-detached house in a rural area on the outskirts of Charlton, a village mid-way between Pershore and Evesham in a location adjacent to areas of high flooding that cut off access when the main road through Charlton becomes impassable. It is subject to an agricultural tie.
10. The house is two storey brick and tile construction with an entrance lobby, two reception rooms, kitchen, and toilet on the ground floor with a landing, three bedrooms, bathroom and separate w.c. on the first floor. There are gardens to the front and rear and space to park a car on the adjoining roadway. The house has double glazing and it is confirmed in the landlord's submissions that it continues to have no central heating. There is no mains gas supply to Underhill Cottages.
11. The landlord acknowledged the tenant had made some improvements, but they were not particularised for the Tribunal.

Submissions

12. Neither party requested a Hearing.
13. The landlord's agent sent written submissions that described the house and referred to two properties they considered comparable;
 - a) A larger 3 bedroom refurbished semi-detached house located in Burlingham Avenue, Evesham with gas-fired central heating, a fully fitted modern kitchen, modern bathrooms, modern decoration throughout, front and rear gardens advertised at £1,050 per month. Situated in a popular area of Evesham town with access to the town's local amenities.
 - b) A 3 bedroom fully refurbished semi-detached house in Balmoral Close, Evesham advertised at £900 per month, again with gas-fired central heating, a brand new modern fitted kitchen with integrated new appliances, brand new combi boiler, brand new modern family bathroom with overhead shower, new carpets and floor coverings, newly decorated throughout with a garage and gardens to the front and rear. This property was located near to the Evesham High Street, Railway Station and other transport links.
14. Using these properties as points of reference, they submitted that the market rental value of the subject house would be at least £900 per month if it had the same facilities as the comparables. However, to allow for the difference in amenities, they deducted £375 for facilities found in the comparables but unavailable in the subject property:

a. Central Heating	£50
b. Modernised Kitchen	£25
c. Modernised Bathroom	£25
d. Floor coverings and curtains	£25
e. White goods/appliances	£10

i.e., a deduction of £135 per month.

They then deducted £15 pcm for tenant's improvements and £225 pcm for the

agricultural tie to leave a net valuation figure of £525.00 per calendar month. From there they chose to request a slightly lower rent of £510.

15. The landlord suggested the property was in fair condition for its age and acknowledged it was not equivalent to all modern standards. The Tribunal noted in the landlord's submissions that the property had no central heating and that the kitchen and bathroom had not been modernised.
16. Mr Barnfield made no submissions.

Decision

17. To assess the Fair Rent the Tribunal need to assess the rental value of the house in good condition as a starting point, assuming it had been well maintained and modernised with central heating, reasonable kitchen units and a bathroom suite in fair condition, fully equipped with carpets and curtains and ready to let in the open market. The Tribunal did not consider the properties referred to by the landlord comparable since they were both modernised, offered better facilities in more popular locations. The Tribunal therefore applied its own general knowledge and experience (but no specific or secret knowledge) to assess the rental value and found the full rental value in good condition, fully modernised to have been £825.00 per month.
18. However, the property had not been let in that condition.
19. It was subject to an agricultural tie which restricted the potential letting market for which the Tribunal deducted 33.3% (£275.00 per month).
20. There was no central heating for which the Tribunal deducted £60.00 per month, no carpets or curtains included in the tenancy for which the Tribunal deducted £25.00, no white goods for which the Tribunal deducted £10.00, poor upkeep and lack of refurbishment (which is expected in modern rental properties) for which the Tribunal deducted £65. The deductions for lack of amenity totalling £160.00.
21. The Tribunal deducted £15.00 per month to reflect the value of the tenant's improvements, as submitted by the landlord.
22. In summary, £825.00 less £275.00 for the agricultural tie, £160.00 for lack of amenity and £15.00 for tenant improvements left £375.00 per month.
23. 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 may not have exceeded the number of units available to let due to the agricultural tie. Had it been free of tie, the Tribunal may have deducted 10% for scarcity but to do so in this instance where allowance has already been made for the tie would have amounted to double counting. Accordingly, it made no further discount.
24. The Rent Acts (Maximum Fair Rent) Order 1999 was of no effect as £375.00 was less than the maximum that could have been registered under the Order, as in the calculation sheet sent with the Decision Notice.
25. There was no service charge and the rent was not registered as variable.
26. Accordingly, the Tribunal determined the Fair Rent at £375.00 per month with effect from the date of decision on 17 March 2022.

Appeal

27. If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property) on a point of law only. Any such application must be received within 28 days after these reasons have been sent to the parties under Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Judge C Payne
Chairman