



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

Case Reference : **BIR/00CT/F77/2022/0007**

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

Property : **36 Hungerfield Road Birmingham B36 9SD**

Landlord : **Platform Housing Group**

Representative : **Not applicable**

Tenant : **Mr M Forde**

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 : **4 April 2022**

DECISION

BACKGROUND

1. This Decision arises as a consequence of an application made by the Tenant for extended reasons arising from the Tribunal's decision dated 4 April 2022 that the fair rent payable by the Tenant in accordance with Schedule 11 of the Rent Act 1977 shall be £440.00 per calendar month (including £30.44 per month for services).
2. By way of background, on 18 November 2021, the Landlord applied to the Rent Officer for registration of a fair rent of £400.83 per calendar month in respect of 36 Hungerfield Road, Parkfields, Castle Bromwich, Birmingham B36 9SD (the "Property").
3. The rent payable at the time of the application was £387.72 per calendar month which was registered by the Rent Officer on 25 October 2017 effective from the same date.
4. The Rent Officer registered a rental of £440.00 per calendar month (with services of £30.44 per calendar month) on 6 January 2022, also effective from 6 January 2022.
5. On 23 January 2022, 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 4 February 2022.
7. The Tribunal proceeded by way of written submissions as neither party requested a hearing. The Tribunal also advised it would carry out an internal and external inspection of the Property. However, as no response was received from Mr Forde to the Risk Assessment Form (for an internal inspection) the Tribunal was only able to proceed with an external inspection only.
8. The Tribunal received a Property Reply Form from the Landlord but not from the Tenant. No other submissions were received from either party.
9. The Tribunal carried out its external inspection on 4 April 2022 at 10:30am.

The Property

10. The Property is located in Castle Bromwich approximately 5 miles east of Birmingham city centre situated off the A452 and a short distance from Junction 5 of the M6 motorway.
11. The Property forms part of a relatively low-density residential housing estate situated on Hungerfield Road located off Parkfield Drive

12. The self-contained flat forms part of a 3-storey building of brick and pitched tiled roof construction built in the late 1970's. The accommodation is located on the second floor and provides a living room, 2 bedrooms, kitchen, and bathroom with WC. Externally there are shared communal grounds.
13. The Property has full central heating and double-glazed windows.
14. The Property is subject to a service charge for various services provided including:
 - Communal Electricity & Lighting
 - Communal Cleaning
 - Grounds Maintenance & Tree Maintenance
 - Fire Fighting & Smoke Alarm Maintenance
 - Communal Door Entry System Maintenance
15. The total cost for the year ended 31st March 2022 is split between 52 units of which the subject Property's contribution amounts to £30.44 per month.

Submissions of the Tenant

16. In response to the new registered rent set by the rent officer, Mr Forde objected via email dated 23 and 16 January 2022 stating that there were various issues concerning the loft space not having a moisture barrier under the roof tiles, that due to the proximity to the M6 motorway and the ensuing noise the flat should have triple glazing, it was unclear that the guttering had been cleared and the kitchen had not been replaced in 10 years.
17. No other submissions were received from the Tenant.

Submissions of the Landlord

18. The Landlord submitted a completed Reply Form confirming the extent of the accommodation as detailed above however were unable to confirm the exact sizes of the rooms and any notable features or condition as they were unable to gain access.
19. In support of their valuation the Landlord submitted that their rental value was simply based on comparable social properties on the estate with the same layout and number of bedrooms.
20. No other submissions were received from the Landlord.

THE LAW

21. 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.

22. **Rent Act 1977**

23. **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.”

24. 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.

25. 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).

26. 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.

27. 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

28. 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. As neither party submitted any specific evidence the Tribunal had regard to its own general knowledge of market rent levels in the local area.
29. The Tribunal then made adjustments for the Tenant's white goods and floor coverings & curtains and internal redecoration liability.
30. 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.
31. The Tribunal finds 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 found that there was scarcity and, accordingly, made a deduction of 10%.
32. The Tribunal therefore arrived at a fair rent for the subject property of £440pcm (including £30.44 per month for services).
33. 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 £458.00 per calendar month (inclusive of services). Accordingly, the rent limit does not apply.

DECISION

34. The fair rent determined by the Tribunal for the purposes of Section 70 is, therefore £440.00 per calendar month (inclusive of services amounting to £30.44 per month) with effect from 4 April 2022, being the date of the Tribunal's decision.
35. In reaching its determination, the Tribunal has only had regard to the limited 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

36. 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