



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

**Case reference** : **CHI/19UG/F77/2022/0029**

**Tenant** : **Mr W Carmichael**

**Landlord** : **Trustees of MJA Bond  
Discretionary Trust c/o Woolley  
Wallis**

**Property** : **100 East Street, Corfe Castle,  
Wareham, Dorset BH20 5EQ**

**Date of Objection** : **Referred to First-tier Tribunal  
by Valuation Office Agency**

**Type of Application** : **Section 70 Rent Act 1977 (the Act)**

**Tribunal** : **Mr R T Brown FRICS  
Mr S Hodges FRICS  
Mr N Robinson FRICS**

**Date of Decision** : **20<sup>th</sup> July 2022**

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**REASONS FOR DECISION**

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## **Background**

1. The Tribunal gave formal notice of its decision by a Notice dated 20<sup>th</sup> July 2022 that the rent will be **£6,480.00 per year (py)(£540.00 pcm)**.
2. On the 1st December 2021 the landlord of the above property applied to the Rent Officer for registration of a fair rent of £5,904.00 py (£492.00 pcm). The rent having been previously determined by the Rent Officer at £5,366.00 py (£447.16 pcm) on 20<sup>th</sup> April 2020 and effective from the same date.
3. On the 20<sup>th</sup> May 2022 the Rent Officer registered a fair rent of **£6,201.00 py (£516.75 pcm)** effective from the same date.
4. The Tenant objected to the rent determined by the Rent Officer and the matter was referred to the First-tier Tribunal (Property Chamber) (Residential Property).
5. The tenancy appears to be a statutory protected periodic tenancy which commenced in 1982. There is no written tenancy agreement. The tenancy (not being for a fixed periodic tenancy of 7 years or more) is subject to Section 11 of the Landlord and Tenant Act 1985 (the landlord's statutory repairing obligations).

## **Factual Background and Submissions**

6. Following the Directions dated 27<sup>th</sup> June 2022 and the explanation contained therein, the Tribunal did not inspect the premises. A hearing was not requested in the current proceedings.
7. Extracting such information as it could from the papers supplied to the Tribunal by the parties, by reference to information publicly available on the internet and with the benefit of its knowledge and experience, the Tribunal reached **the following conclusions and found as follows:**
8. The property comprises a centrally heated double glazed pre 1800 terrace house.
9. The accommodation comprises: 2 reception rooms, kitchen, separate W.C. 3 bedrooms and bathroom/ W.C. Outside: Gardens and off street parking.
10. The property is let unfurnished without carpets, curtains or white goods.
11. All mains services are assumed to be connected.
12. **The Tenant's daughter** completed the Reply Form and says (summarised)
  - a) With the agreement of the Landlord between 1982 and 1986 the Tenant undertook the following works:
    - i) Rear extension to provide 3<sup>rd</sup> bedroom and full bathroom upstairs and convert old bathroom to kitchen. Previously the W.C. was in the garden.
    - ii) Kitchen converted to downstairs cloakroom
    - ii) Single storey extension (Landlord contributed £2,500.00 towards kitchen units).

- b) Part of that agreement was that the Tenant would be able to purchase the Freehold but to date this option has not been granted.
  - c) Photographs of 'before and after' are attached.
  - d) The kitchen is in reasonable order but the units are 30 years old. Downstairs cloakroom and bathroom are in good order.
  - e) The objection is that the increase is based on what the property is like now not without the improvements made by the Tenant.
  - f) Installation of double glazing and central heating.
  - g) The Tenant has been unable to find any suitable comparables. Demand appears to be for Airbnb or holiday lets.
13. **The Landlord's agent** completed the Reply Form.
- a) The agent agrees with the work undertaken by the Tenant but noted the first works were funded on a loan (now repaid) from the Landlord. The Landlord contributed £2,500.00 towards the second works.
  - b) The cottage is in good order and now maintained by the Landlord. The agent says the Landlord installed the double glazing and central heating.
  - c) The Landlord correctly applies the Maximum Fair Rent Order to the previous registered rent.
  - d) The current demand for vacant properties far outstrips supply since Covid and rents have soared by as much as 20% over the last 2 years.

## **The Law**

14. When determining a fair rent the Tribunal, in accordance with section 70 of the Rent Act 1977, had regard to all the circumstances including the age, location and state of repair of the property. It 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.
15. In *Spath Holme Ltd v Chairman of the Greater Manchester etc Committee (1995) 28 HLR 107* and *Curtis v London Rent Assessment Panel [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).

16. The Rent Acts (Maximum Fair Rent) Order 1999 restricts the amount by which the rent may be increased to a maximum 5.00% plus RPI since the last registration.
17. The only exception to this restriction is provided under paragraph 7 of the Order where a landlord carries out repairs or improvements which increase the rent by 15% or more of the previous registered rent.

### **Tribunal's deliberations**

18. The Tribunal considered the matter with the benefit of the submissions made by the Landlord and the Tenant. The Tribunal does not take into consideration the personal circumstances of the Landlord or Tenant in making its determination (including issues between Landlord and Tenant which do not affect the rental value of the property itself).
19. The Tribunal checked the National Energy Performance Register and noted that that the property has an Energy Performance Certificate (EPC) of D. The certificate expires on 9<sup>th</sup> March 2032. The minimum standard is Rating E (unless exempt) for offering a property to let on the open market.
20. The Tribunal looked at the Rent Officer's valuation of the Fair Rent under Section 70 of the Rent Act 1977. The Rent Officer had started with a market rent for the property assuming it was in good repair and available in the market today. He found that the Market Rent would be £12,000.00 py (£1,000.00 pcm).
21. The Rent Officer then considered that certain deductions should be made to reflect the condition, facilities and differing nature of the tenancy. He recorded in his decision the accommodation as it now stands (i.e., kitchen extension and 3 bedrooms as opposed to the 2 bedrooms as originally let). He concluded that the sum of £3,500.00 py (£291.66 pcm) should be deducted from the market rent to reflect these matters, which included, but not exclusively: Tenant repairing and decorating liability, no white goods, no floor covering or curtains and the extensions carried out by the Tenant. He made no adjustment for scarcity (see explanation below). The result was a Fair Rent of £8,500 py (£708.33 pcm). After applying the Maximum Fair Rent Order, the rent to be registered was £6,201.00 py (£516.75 pcm).
22. The Tribunal noted that the parties appear to disagree as to whom installed the central heating and double glazing. Doing the best it can with the evidence before it the Tribunal concluded that the Landlord acknowledges that the repair, maintenance and certification of the central heating were a landlord's responsibility. However, the Rent Officer has recorded the central heating as being installed by the Tenant.
23. The Tribunal identified from the EPC (paragraph 18 above) that the property was fully double glazed. In the circumstances the Tribunal makes no adjustment.

24. The Tribunal, acting as an expert tribunal, determined what rent the landlord could reasonably be expected to obtain for the subject property in the open market if it were let today in the condition and subject to the terms of such a tenancy that is 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 rent levels in the wider area of Dorset. Having done so, it concluded that such a likely market rent for a similar property in fair condition with central heating, modern bathroom and kitchen facilities, floor coverings, curtains and an EPC Rating of E or above would be **£12,000.00 py (£1,000.0000 pcm)**.
25. However, the subject property is not in the condition considered usual for a modern letting at a market rent. It is therefore necessary to adjust that hypothetical rent of **£12000.00 py (£1,000.00 pcm)** to allow for the differences between the condition considered usual (including responsibility of tenants to maintain decorations as opposed to decorate) for such a letting and the condition of the actual property as stated in the papers (disregarding the effect of any disrepair or other defect attributable to this tenant or any predecessor in title), the Tenant's improvements and the lack of modernisation referred to above.
26. The Tribunal considered the observations of the Rent Officer and concluded, using its own knowledge and judgement, that it was appropriate to make deductions to reflect the following:
  - a) Tenant's decorating liability: £600.00 py (£50.00 pcm)
  - b) Lack of Carpets curtains and white goods: £720.00 py (£60.00 pcm)
  - c) Value attributable to 1982 improvements carried out and paid for by the Tenant reflecting the provision of additional bedroom and bathroom: £2,400.00 py (£200.00 pcm)
  - d) Value attributable to 1986 improvements carried out and paid for by the Tenant (after allowing for the £2,500.00 contribution from the Landlord): £1,200.00 pa (£100.00 pcm)
  - e) Dated Kitchen and bathroom fittings: £600.00 pa (£50.00 pcm)
27. The Tribunal determines the total deductions at **£5,520.00 pa (£460.00 pcm)**.

### **Scarcity**

28. The matters taken into account by the Tribunal when assessing scarcity were:-
  - a) The Tribunal interpreted the 'locality' for scarcity purposes as being the wider area of Dorset as a whole (i.e., a sufficiently large area to eliminate the effect of any localised amenity which would, in itself, tend to increase or decrease rent).
  - b) Local Authority and Housing Association waiting lists.
  - c) House prices which could be an indicator of increased availability of housing and a reduction in scarcity.
  - d) Submissions of the parties.
  - e) The members of the Tribunal have between them many years of experience of the residential letting market and that experience leads them to the view that there is no substantial shortage of similar houses available to let in

the locality defined above.

29. Assessing a scarcity percentage cannot be a precise arithmetical calculation because there is no way of knowing either the exact number of people looking for a particular type of house in the private sector or the exact number of such properties available. It can only be a judgment based on the years of experience of members of the Tribunal. However, the Tribunal considered that there was no substantial scarcity element and accordingly made no deduction.
30. This leaves a fair rent for the subject property of **£6,480.00 pa** (£540.00 pcm).

### **Relevant Law**

31. The Rent Act 1977.
32. Rent Acts (Maximum Fair Rent) Order 1999. In particular paragraph 7 which states:

This article does not apply in respect of a dwelling-house if because of a change in the condition of the dwelling-house or the common parts as a result of repairs or improvements (including the replacement of any fixture or fitting) carried out by the landlord or a superior landlord, the rent that is determined in response to an application for registration of a new rent under Part IV exceeds by at least 15% the previous rent registered or confirmed.

### **Rent Acts (Maximum Fair Rent) Order 1999**

33. The rent to be is not limited by the Fair Rent Acts (Maximum Fair Rent) Order 1999 because it is below the maximum fair rent (see calculation on reverse of decision sheet) of **£6,504.00 pa and accordingly the sum of £6,480.00 pa** will be registered as the fair rent on and with effect from 20<sup>th</sup> July 2022 being the date of the Tribunal's decision.

### **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision (on a point of law only) to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case. Where possible you should send your application for permission to appeal by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) as this will enable the First-tier Tribunal Regional office to deal with it more efficiently.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking