



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

Case Reference : **BIR/00CT/F77/2022/0013**

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

Property : **3 Fallowfield Road, Solihull, B92 9HJ**

Landlord : **Northumberland & Durham Property Trust**

Representative : **Grainger plc**

Tenant : **Mr Drake**

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
I Humphries FRICS**

Date of Decision : **9 August 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 19 May 2022 that the fair rent payable by the tenant in accordance with Schedule 11 of the Rent Act 1977 shall be £647.50 per calendar month.
2. By way of background, on 5 January 2022, the landlord applied to the Rent Officer for registration of a fair rent of £672 (pcm) per calendar month in respect of 3 Fallowfield Road Solihull B92 9HJ (the "Property").
3. The rent payable at the time of the application was £560 per calendar month which was registered by the Rent Officer on 13 February 2020, effective from 25 March 2020.
4. The Rent Officer registered a rental of £590 per calendar month on 18 February 2022, effective from 25 March 2022.
5. On 17 March 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 25 March 2022. It advised that the matter would be determined via written submissions made by the parties and that the Tribunal would carry out an inspection of the property on 19 May 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 additional comments made by Mr Cant. Mr Cant did write to the Tribunal on 5 April 2022 to advise that he wished to withdraw his objection however the Tribunal advised that as the initial objection was raised by the landlord it was not able to withdraw the application at the request of the tenant and the matter would proceed.

The Property

8. The Property is located approximately 3 miles north of Solihull town centre in a residential area near Elmdon Park.
9. The Tenant requested that no internal inspection be undertaken and the Tribunal therefore carried out an external visual inspection only. The landlord's evidence states that the accommodation comprises a hallway, front living room/ through rear dining room and separate kitchen. On the first floor are three bedrooms, a bathroom with WC and WHB.

10. Externally there is a garden area to the front and rear, external shed and WC and a parking space/ driveway.
11. The Reply form states that the landlord has fitted double-glazing throughout. However, the tenant has fitted a kitchen, installed the central heating (storage heaters), fitted a bathroom, fitted carpets and curtains and amongst other things, supplied all the white goods.
12. All external repairs and decorations are the responsibility of the landlord with the tenant responsible for all internal decorations.

Submissions of the Tenant

13. The tenant submits that proposed increase is excessive and does not reflect the condition/ repair of the Property and the improvements carried out at their expense.

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 which it considers is in fair condition given its type and age but accepts that it is not up to modern standards and advise they undertake works as and when reported.
16. Having regard to the age and condition of the property the landlord considers the rent should be increased from £560 to £672 per calendar month based on the following evidence:

Fallowfield Road Solihull

A 2-storey unfurnished semi-detached house comprising through lounge/ diner, fitted kitchen, utility area with WC, modernised bathroom and three bedrooms (two double and one single). External rear garden and front off-road parking and garage.

The property was to let at £1,100pcm through John Shepherd.

17. To reflect the differences between the subject Property and the evidence the landlord made the following adjustments:

Landlord Installed Kitchen	£50pcm
Landlord Installed Bathroom	£50pcm
Garage	£25pcm

Utility	£15pcm
Landlord Supplied Floor Coverings	£15pcm
Landlord Supplied Appliances	£15pcm

18. In total the above deductions amount to £170 per calendar month. In addition, the landlord made a further adjustment of £100 per calendar month for the various tenant improvements/ obligations.
19. The landlord also considered that no adjustment is necessary for scarcity.

THE LAW

20. 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.

21. Rent Act 1977

22. 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.”

23. 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.

24. 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).

25. 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.

26. 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

27. 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 and decided on an initial market rent of £1050pcm.
28. The Tribunal then made various adjustments amounting to £65pcm to reflect the difference in the size of the accommodation and the lack of a utility and downstairs WC.
29. The Tribunal then made further adjustments of £265pcm for the tenant’s improvements/obligations including floor coverings & curtains, kitchen fittings and white goods and other improvements.
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 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 10% amounting to £72pcm.

32. This leaves a fair rent for the subject property of £648pcm.
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 £647.50 per calendar month. Accordingly, the capping provisions apply.

DECISION

34. The fair rent determined by the Tribunal for the purposes of Section 70 is, therefore £647.50 per calendar month with effect from 19 May 2022, being the date of the Tribunal's decision.
35. 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

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