



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

Case Reference : **BIR/00CN/F77/2022/0023**

Property : **46 Darnick Road, Sutton Coldfield,
West Midlands, B73 6PF**

Landlord : **Mr R Cowley**

Tenants : **Mr and Mrs D Jones**

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

Tribunal Members : **Judge M K Gandham
Mr D Satchwell FRICS**

Date of Decision : **21 July 2022**

Issue Date : **19 August 2022**

STATEMENT OF REASONS

Background

1. This Statement of Reasons is prepared at the request of Mr and Mrs Jones, following the decision made by the Tribunal on 21 July 2022. It should be read in conjunction with that decision.
2. Mr and Mrs Jones are the tenants of the property known as 46 Darnick Road, Sutton Coldfield, West Midlands, B73 6PF ('the Property'). The landlord is Mr Cowley.
3. By an application, dated 9 December 2021, the Landlord via his agents, Countrywide, applied to the Rent Officer for registration of a fair rent for the Property of £640.00 per calendar month (pcm). The rent previously registered on 12 November 2019, with effect from that date, and payable at the time of the application, was £615.00 pcm.
4. On 10 March 2022, the Rent Officer registered a fair rent of £635.00 pcm, with effect from 8 April 2022.
5. By an email dated 3 May 2022, the Landlord objected to the rent determined by the Rent Officer and the matter was referred to the Tribunal on 5 May 2022.
6. The Tribunal received a completed pro forma giving details of the Property from the Landlord's agents on 26 May 2022 and a completed pro forma and written representations from the Tenants on 14 June 2022.
7. Neither party requested an oral hearing and the Tribunal inspected the Property on 21 July 2022.
8. After consideration of the available evidence and the applicable law, the Tribunal determined that a sum of £728.00 pcm was to be registered as the fair rent, with effect from 21 July 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 Tenants 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 21 July 2022. The Tribunal was met by Mrs Jones. The Landlord did not attend.
15. The Property is a semi-detached house near Sutton Park, in the South West of Sutton Coldfield, close to its border with Kingstanding in Birmingham. It is of brick construction, built circa. 1930, with a pitched tiled roof.
16. The accommodation comprises, on the ground floor, an entrance hall, a front and rear living room, a kitchen, a utility area and a w.c. (without a wash-basin). On the first floor, there are two double bedrooms, a third single bedroom and a bathroom. The Property has the benefit of gas-fired central heating and double-glazed windows.
17. Externally there is a front garden with a drive and a good-sized rear garden. The Property also has the benefit of a garage and sufficient space on the drive for at least one vehicle.

18. The Property was, generally, in a fair condition but in need of complete modernisation. There was some disrepair to the rear elevation of the house and the downstairs w.c. and some areas of damp to one of the rear bedrooms.
19. The Tenants had, since their occupation of the Property, replaced the overhead shower in the bathroom, added a fireplace and surround to the rear living room, installed wardrobes to the front and rear double bedrooms, fitted cupboards in the utility area and paid for some additional cupboards in the kitchen. Additionally, the Tenants had supplied the white goods (other than the cooker), the bedroom carpets and the curtains and blinds throughout the Property.
20. The Landlord did not provide any details of improvements he had made to the Property since the last inspection.

Submissions

Landlord

21. In an email dated 30 April 2022 to his agents, in reply to the Rent Officer's valuation, the Landlord stated that he did not believe that an increase of £20.00 was adequate, as it was only a 3% increase from the previous rental figure. He also queried why the house was detailed as unfurnished and confirmed that the rent included the water rates to the Property, amounting to around £700.00.
22. The Landlord's agents completed the pro forma forwarded by the Tribunal with its directions but did not provide any additional submissions. The form indicated that the Landlord had provided the central heating and double glazing, as well as the carpets and curtains, but that the Tenants had supplied all of the white goods.
23. Some of the information given in the pro forma was clearly incorrect as it stated that the Property did not benefit from a garage or any off-street parking.

Tenants

24. The Tenants had completed the pro forma and had also provided written representations, by way of a letter dated 12 June 2022, and a photograph of the downstairs w.c. The pro forma indicated items which had been provided by the Tenants and stated that, although the Landlord had supplied some carpets and the cooker, the Tenants had provided the other white goods, some carpets and all of the curtains and blinds.
25. The letter confirmed that the Landlord was responsible for the payment of water rates as this was a provision in the original tenancy entered into in August 1983.

26. The Tenants disputed that the rent increase of £20.00 was insufficient and stated that, although the rate of inflation in Uruguay (where the Landlord resided) had averaged 8.86% over the period in question, the UK average rate of inflation was only 3.1% and, accordingly, they considered that a more appropriate rental figure would have been £634.00.
27. In addition, the Tenants referred to being without heating to the front bedroom, due to a radiator leak, for approximately three months and that the downstairs w.c. had been left in a poor state following replacement of the previous unit.
28. Finally, the Tenants provided details of the improvements and replacements they had made (as referred to above).

Reasons for the Decision

29. The Tribunal noted the Tenants' submissions regarding the poor level of service received from the Landlord's agents, however, could only take this into account so far as it resulted in disrepair to the Property. The Tribunal also noted both parties' submissions with regard to the percentage increase in the rent compared to the previous rent and rates of inflation, however, this did little to assist the Tribunal in determining the *fair rent* under section 70(1) of the Rent Act 1977 and neither party had provided any details of rentals for similar properties in the locality.
30. 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. As neither party had provided any comparables, the Tribunal determined this figure by having regard to its own general knowledge.
31. Having done so, it concluded that such a likely market rent would be £1,050.00 pcm, taking into account the age, character and locality of the Property (being in the South West of Sutton Coldfield, near to its border with Birmingham, and in close proximity to Sutton Park) and noting that the tenancy included an obligation on the Landlord to pay the water rates (such a figure not being separately identified but merely encompassed within the rental charge).
32. 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 £1,050.00 pcm 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 Tenants or any predecessor in title), and any Tenants' improvements.

33. The Tribunal considered that this required a deduction of £218.00 pcm in respect of the lack of a modern kitchen and bathroom, the internal decorating liability, the items of disrepair, the Tenants' improvements (as detailed above) and those floor coverings, curtains and white goods which had been provided by the Tenants.
34. The Tribunal considered the question of scarcity in section 70(2) of the Rent Act 1977 and found that the number of potential tenants looking for accommodation of this type in the local area would have been greater than the number of units available to let. The Tribunal found that the excess demand represented around 12.5% of the rental value or £104.00 pcm and deducted this from the adjusted market rent to arrive at the statutory basis for a fair rent.
35. This left a fair rent for the Property of £728.00 pcm.

Decision

36. The fair rent initially determined by the Tribunal, for the purposes of section 70, was £728.00 pcm.
37. There was no service charge and the rent was not registered as variable.
38. The section 70 fair rent determined by the Tribunal was below the maximum fair rent permitted by the Rent Acts (Maximum Fair Rent) Order 1999, consequently, that rent limit had no effect.
39. Accordingly, the sum of £728.00 pcm was registered as the fair rent with effect from 21 July 2022, being the date of the Tribunal's decision.

Appeal

40. 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