



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

**Case Reference** : **BIR/00CT/F77/2022/0021**

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

**Property** : **66 Tanhouse Farm Road Solihull B92 9EY**

**Landlord** : **Northumberland & Durham Property Trust**

**Representative** : **Grainger plc**

**Tenant** : **Mr D J Smallwood**

**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** : **23 August 2022**

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**DECISION**

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## **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 27 June 2022 that the fair rent payable by the Tenant in accordance with Schedule 11 of the Rent Act 1977 shall be £657 per calendar month.
2. By way of background, on 4 February 2022, the Landlord applied to the Rent Officer for registration of a fair rent of £726 per calendar month in respect of 66 Tanhouse Farm Road Solihull B92 9EY (the "Property").
3. The rent payable at the time of the application was £605 per calendar month which was registered by the Rent Officer on 17 March 2020, effective from 29 April 2020.
4. The Rent Officer registered a rental of £640 per calendar month on 17 March 2022, effective from 29 April 2022.
5. On 13 April 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 26 April 2022. It advised that the matter would be determined based on written submissions made by the parties, an inspection of the property and advised either party may request a hearing if required. However, neither party requested a hearing and the Tribunal only undertook an external inspection as the Tenant did not return the risk assessment form allowing an internal inspection to be carried out.
7. The Tribunal received written submissions and a completed Reply Form from Mr Ryan Tucker Portfolio Manager of Northumberland & Durham Property Trust Ltd. and a completed Reply Form and a letter dated 28 April 2022 from Mr Smallwood.

### **The Property**

8. The Property is located in a residential area approximately 2 miles north of Solihull town centre with Sheldon lying immediately to the north.
9. The accommodation comprises a 2-storey semi-detached house built in the 1950's of brick and pitched roof construction. On the ground floor is a through living/ dining room, kitchen and rear conservatory. On the first floor are three bedrooms (two double and one single) and a bathroom. Externally there is a private garden to the front and rear, an external WC, car space/ driveway for a vehicle.

10. The Tenant has occupied the Property since 1968 and advises that he fitted the central heating in 1972 which was subsequently replaced in 2011 via a government grant, fitted a conservatory and car port and has provided all the carpets and curtains and white goods. The Landlord however advises that they installed the gas fired central heating (replacing the boiler in 2019) and also fitted the double glazing.
11. The Landlord is responsible for all repairs and external decorations and the Tenant for any internal decorations.

### **Submissions of the Tenant**

12. Submissions for the Tenant were provided by Mr Smallwood.
13. In a letter dated 28 April 2022 Mr Smallwood effectively sets out the improvements he has carried out since occupying the Property and also objects to the rental increase set by the Rent Officer on the grounds that it is excessive in the current economic climate.

### **Submissions of the Landlord**

14. Submissions for the Landlord were provided by Ryan Tucker, Property Manager for Northumberland & Durham Property Trust Ltd.
15. Mr Tucker sets out a brief description of the Property and its accommodation and advises that he considers it is in fair condition given its type and age but accepts that it is not up to modern standards. He also advises that works are carried out as and when reported. It also appears no improvements have been undertaken to the Property by the Landlord since the last increase.
16. Mr Tucker confirms that the current rent is £605 per calendar month set with effect from 29 April 2020 and that having regard to the age and condition of the Property is of the opinion that the rent should be increased to £726 per calendar month.
17. In support of this Mr Tucker refers to two comparable properties currently available through local agents from the nearby area.

### **Fallowfield Road, Solihull**

A 2-storey unfurnished semi-detached house described in the details as comprising on the ground floor an entrance porch, hallway, through lounge/dining room, modern kitchen (including appliances) and utility with WC and on the first floor, three bedrooms (two double and one single), family bathroom with shower over and WC. The property also has gas fired central heating, double-

glazed windows and includes gardens to the front and rear as well as a single garage and driveway.

The property was being offered at £1,100pcm by John Shepherd Lettings.

### **Old Load Lane, Solihull**

A 2-storey unfurnished semi-detached house described in the details as comprising on the ground floor an entrance porch, hallway, two reception rooms, kitchen (including appliances/ white goods), utility and on the first floor 3 bedrooms and bathroom. The property includes gardens to the front and rear as well as a single garage and driveway.

The property was offered at £1,200pcm by Solihull Sales and Lettings.

18. 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 |
| Landlord floor coverings & curtains | £15pcm |
| Landlord supplied appliances        | £15pcm |

19. In total the deductions amount to £130 per calendar month. In addition, the Landlord has made further adjustments of £100 per calendar month for Tenants improvements and obligations.
20. In the Landlord's opinion the achievable market rent for the Property is £1,100pcm to which they have deducted £230pcm to reflect the above adjustments. As their requested rent of £726pcm is below their valuation they therefore conclude that the registered rent is too low.
21. The Landlord also considers that no adjustment is necessary for scarcity as they consider there is an adequate supply of property in the area.

### **THE LAW**

22. 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.
23. ***Rent Act 1977***
24. ***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.”*

25. 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.
26. 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).*
27. 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.
28. 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**

29. 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.

30. The Tribunal considered the best comparable to be Fallowfield Road Solihull as it is very similar in appearance to the subject Property and considers the achievable market rent would be in the order of £1,100pcm. However, the Tribunal considered various adjustments were necessary to reflect the differences in the accommodation. In particular the Tribunal made adjustments for the garage, modernised kitchen, utility, modernised bathroom, shower, car port and general repairs totalling £235pcm arriving at an adjusted market rent of £865pcm.
31. The Tribunal then made adjustments for the various Tenant's improvements/obligations including floor coverings & curtains, gas fired central heating, built-in wardrobes, kitchen white goods, car port, conservatory and redecoration liability totalling £135pcm.
32. 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.
33. 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% amounting to £73.00pcm.
34. This leaves a fair rent for the subject property of £657pcm.
35. 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 £722.50 per calendar month. Accordingly, the rent limit does not apply.

## **DECISION**

36. The fair rent determined by the Tribunal for the purposes of Section 70 is, therefore £657 per calendar month week with effect from 27 June 2022, being the date of the Tribunal's decision.

37. In reaching its determination, the Tribunal 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**

38. 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