



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

**Case reference** : **CHI/00MS/F77/2022/0031**

**Tenant** : **Mr Lee Clark**

**Landlord** : **S Properties Ltd**

**Property** : **GFF 31 Livingstone Road,  
Southampton, SO14 6WL**

**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 J Reichel BSc MRICS  
Mr M Woodrow MRICS**

**Date of Decision** : **12<sup>th</sup> August 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 12<sup>th</sup> August 2022 that the rent will be **£550.00 pcm**.
2. On the 30<sup>th</sup> March 2022 the landlord of the above property applied to the Rent Officer for registration of a fair rent of £760.00 pcm. The rent having been previously determined by the Rent Officer at £510.00 pcm on 18<sup>th</sup> June 2020 and effective from the same date.
3. On the 6<sup>th</sup> June 2022 the Rent Officer registered a fair rent of **£550.00 pcm** effective from the 18<sup>th</sup> June 2022.
4. The Landlord 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 July 1977. 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 5<sup>th</sup> July 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 is located in an established residential area of mixed dwellings. Local amenities are available.
9. The property comprises a centrally heated, self contained ground floor flat in a converted terrace house.
10. The accommodation comprises: 1 reception room, kitchen, 1 bedroom, bathroom and separate W.C. Outside: rear garden.
11. The property is let unfurnished without carpets, curtains or white goods.
12. All mains services are assumed to be connected.
13. **The Tenant** completed the Reply Form but says in emails to the Rent Officer (summarised)
  - a) The Landlord fitted upvc back door and bedroom cill in 2020.
  - b) The Tenant repaired bay window in 2019.

- c) Disrepair includes: Damage to front room ceiling and around bedroom window. Polystyrene tiles to bedroom ceiling.
  - d) Apart from double glazing, the Bathroom, W.C and Kitchen, are the same as in 1977.
  - e) Many of the properties are student lets and during term time parking is very difficult and the area has been compared to a recycling site.
  - f) Photographs of the property are included showing: ill fitting windows, damp and rotting plaster to front room ceiling.
14. As to rent, the Tenant is satisfied with the rent as set by the Rent Officer.
15. **The Landlord**, despite making the objection, did not complete the Reply Form or make any submissions.

### **The Law**

16. 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.
17. 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).
18. 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.
19. 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**

20. The Tribunal considered the matter with the benefit of the submissions made by 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).

21. 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 30<sup>th</sup> March 2030. The minimum standard is Rating E (unless exempt) for offering a property to let on the open market.
22. 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 £650.00 pcm.
23. The Rent Officer then considered that certain deductions should be made to reflect the condition, facilities and differing nature of the tenancy. He concluded that the sum of £100.00 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. He made no adjustment for scarcity (see explanation below). The result was a Fair Rent of £550.00 pcm.
24. The Tribunal, acting as an expert Tribunal and after considering the limited evidence submitted confirmed the Rent Officers assessment.

### **Scarcity**

25. 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 Southampton 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.
26. 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.
27. This leaves a fair rent for the subject property **of £550.00 pcm.**

### **Relevant Law**

28. The Rent Act 1977.

29. 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**

30. 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 **£618.00 pcm and accordingly the sum of £550.00 pcm** will be registered as the fair rent on and with effect from 12<sup>th</sup> August 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