



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

Case reference : **CHI/43UJ/F77/2022/0026**

Tenant : **Mrs J Ledger**

Landlord : **T Hilling and Co Ltd**

Property : **Hookwater, Hookstone Lane, West
End, Woking Surrey GU24 9QP**

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 M Woodrow MRICS
Mr J Reichel BSc MRICS**

Date of Decision : **12th August 2022**

REASONS FOR DECISION

Background

1. The Tribunal gave formal notice of its decision by a Notice dated 12th August 2022 that the rent will be **£280.00 per week (pw)**.
2. On the 30th November 2021 the landlord and the Tenant applied jointly to the Rent Officer for registration of a fair rent of £350.00 pw (£1,517.00 pcm). The rent was not previously registered, the protected agricultural tenant having transferred from another property (Tixley, Hookstone Lane GU24 9QP) belonging to the same Landlord.
3. On the 10th February 2022 the Rent Officer registered a fair rent of **£287.50 pw** (£1,246.00 pcm) effective from the same date.
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 1976, the tenancy being transferred to the subject on 1st November 2021. 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 27th May 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 on an isolated rural lane with no local amenities to the south of the M3 between Lightwater and Chobham.
9. The property comprises a double glazed centrally heated semi detached bungalow believed built in the 1930's.
10. The accommodation comprises: 1 reception room, kitchen/diner , utility room, 2 bedrooms and bathroom/shower room/W.C. Outside: 2 sheds, 1 greenhouse, front garden and off street parking.
11. The property is let unfurnished without carpets, curtains or white goods.
12. Electricity, water and drainage are assumed to be connected. Gas is supplied by LPG.

The Tenant completed the Reply Form (summarised):

13. In which she says:

- a) She is an Agricultural Secure Tenant.
 - b) The white goods and carpets were part of the 'house swop' arrangement. The Tenant having left newer items in the previous property (Tixley).
 - c) Outstanding Repairs:
Damp in every room causing mildew and smells. Door to Living room will not open properly. The furniture is mouldy.
Floorboards bend when you walk on them.
 - d) There is no street lighting or public transport.
 - e) Electricity meter serves 3 properties (Hookwater, The Annexe and The Stables). The Landlord calculates the amount each tenant should pay.
 - f) The same arrangement applies to the Liquid Petroleum Gas supplied.
 - g) Smell, flies, vermin and noise from the adjoining 9 stable livery yard.
 - h) Photographs of the property and surrounding area are included.
14. As to rent, the Tenant says that given the above problems, £287.50 pw (£1,246.00 pcm) is generous but acceptable. The property previously rented (Tixley) at £350.00 pw (£1,517.00 pcm) from the same Landlord is 200m away and has 3 bedrooms and 2 living rooms, is warm and dry with a large garden, garage and outbuildings. The Tenant is concerned that the comments about rent made by the Tenants of adjoining properties in the same ownership may be biased.
15. Also included is an undated agents advertising page which includes various 2 and 3 bedroom properties, both let and to let, available at rents between £1,045.00 and £1,500 pcm (£241.00 and £346.00 pw).

The Landlord completed the Reply Form (summarised):

16. In which he says:
- a) The property was in excellent condition when let and the damp has only appeared since the Tenant moved in and the issue may be lack of ventilation.
 - b) White goods, fittings, oven and carpets have been gifted to the Tenant but remain the property of the Landlord.
 - c) A letter from the occupier of the adjoining property advising that two of the stables are let privately and the others occupied by their own horses. Horses are not exercised before 08.00 hours and the horsebox is used approximately once a fortnight. In rent they pay £1,250.00 pcm (288.50 pw) reduced from £1,350.00 (£311.50 pw) on account of an agreement to maintain the property.
 - d) A letter from the previous Tenant of Hookwater saying the rent represents good value.
17. As to rent, the property was previously let for £1,750.00 pcm (£404.00 pw) and the rent should be registered at this level. An independent report for rental by Chancellors indicates an expected monthly rental for the property at £1,650.00 to £1,750.00 pcm (£381.00 to £404.00 pw).

The Law

18. 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.
19. 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).
20. 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.
21. 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

22. 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).
23. The Tribunal checked the National Energy Performance Register and noted that that the property does not have an Energy Performance Certificate (EPC) as required by statute for new lettings. The minimum standard is Rating E (unless exempt) for offering a property to let on the open market.
24. The Tribunal looked at the Rent Officer's assessment of the Fair Rent under Section 70 of the Rent Act 1977. In his letter of 16th February 2020 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 £311.50 after allowing £23.50 per week for the effect of the adjoining stables.

25. 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 £24.00 pw 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. In this case the Rent Acts (Maximum Fair Rent) Order 1999 does not apply because the property has not been previously registered and accordingly the sum of £287.50 pw (£1,246.00 pcm) was registered.
26. The Tribunal considered the information and limited rental evidence supplied by the parties.
27. The Tribunal is concerned about:
 - a) The lack of an Energy Performance Certificate.
 - b) The lack of clarity in the calculation and division of utility bills. The tenant is unable to choose the supplier from the market place or monitor her own usage but is bound by the Landlord's choice with no clear explanation as to how that share is calculated.
28. 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 Surrey. 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, all white goods and an EPC Rating of E or above would be **£335.00 pw (£1,450.00 pcm)**.
29. 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 **£335.00 pw (£1,450.00 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).
30. 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: £20.00 pw
 - b) Effect of the adjoining livery stables: £10.00 pw
 - c) Lack of carpets, curtains and white goods (when compared to the market): £10.00 pw
 - d) Disrepair: damp and floor issues: £5.00 pw
 - e) Unsatisfactory arrangements for the supply of electricity and gas: £10.00 pw
31. The Tribunal determines the total deductions at **£55.00 pw**.

Scarcity

32. 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 Surrey 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.
33. 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.
34. This leaves a fair rent for the subject property of **£280.00 pw** (£1,213.00 pcm).

Relevant Law

35. The Rent Act 1977.
36. 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

37. The rent to be is not limited by the Fair Rent Acts (Maximum Fair Rent) Order 1999 because this is a first registration after transfer of a protected tenant from another property in the same landlord's ownership.

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 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