



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

Case Reference : **BIR/00CT/F77/2022/0020**

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

Property : **33 Fallowfield Road, Solihull B92 9HJ**

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

Representative : **Ryan Tucker – Portfolio Manager of Grainger plc**

Tenant : **Mr Ray K Sprason**

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
J Arain**

Date of Decision : **29 June 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 29 June 2022 that the fair rent payable by the Tenant in accordance with Schedule 11 of the Rent Act 1977 shall be £697.50 per month.
2. By way of background, on 19 January 2022 the Landlord applied to the Rent Officer for registration of a fair rent of £720 per month in respect of 33 Fallowfield Road Solihull B92 9HJ (the "Property").
3. The rent payable at the time of the application was £600 per month which was registered by the Rent Officer on 17 March 2020, effective from 18 April 2020.
4. The Rent Officer registered a rental of £635 per month on 8 March 2022, effective from 18 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. Upon receipt the Tribunal issued its Directions dated 22 April 2022. It advised that the matter would be determined based on written submissions made by the parties, an inspection of the property and, if required, a hearing which neither party requested.
7. The Tribunal received written submissions and a completed Reply Form from the Landlord's representative and a completed Reply Form from the Tenant.
8. The Tribunal's inspection of the Property was held on 29 June 2022 without the Landlord's representative in attendance.

The Property

9. The Property is located approx. 3 miles north of Solihull town centre in Elmdon close to Elmdon Park off the A45 Coventry Road in a residential area.
10. The Property comprises a 2-storey detached house built in the late 1940's of brick and pitched roof construction.
11. The accommodation on the ground floor extends to an entrance hallway, through living room and kitchen and on the first floor a landing, three bedrooms (two double and one single) and bathroom with WC and WHB. Externally there is a garden to the front and rear, brick store shed and a driveway.

12. As regard repairs and decorations, the Landlord is responsible for all repairs and external decorations and the Tenant for any internal decorations.

Submissions of the Tenant

13. The Tenant advises he has fitted all the carpets and curtains and provided all the white goods (cooker, washing machine and fridge).
14. As regard the proposed increase the Tenant considers the proposed increase is excessive and given their personal circumstances effectively unaffordable.

Submissions of the Landlord

15. The Landlord's submission sets out a brief description of the Property and its accommodation and advises that the Property is considered to be in fair condition given its type and age but accepts that it is not up to modern standards.
16. The Landlord advises that works are carried out as and when reported and it also appears no improvements have been undertaken to the Property by the Landlord since the last increase.
17. The Landlord also advises that the kitchen was installed by the Tenant but the bathroom was refurbished by the Landlord to provide a new shower room. The Landlord also installed the central heating and double glazing as well as new rainwater pipes and UPVC soffits and fascia coverings.
18. Having regard to the age and condition of the Property the Landlord is of the opinion that the rent should be increased to £720 per month and in support of this has considered the following comparable evidence:

Fallowfield Road Solihull

A 2-storey unfurnished semi-detached house described as comprising on the ground floor an entrance hallway, large reception room, modern kitchen, utility area with WC and on the first floor, three bedrooms (two double and one single), family bathroom (with electric shower over). The property also has central heating, double-glazed windows and includes gardens to the front and rear as well as off road parking on the driveway and benefits from overlooking Elmdon Park to the rear.

The property was being offered at £1,100 per month (£254 per week) by John Shepherd.

19. To reflect the differences between the subject Property and the evidence the Landlord has made the following adjustments:

Landlord installed kitchen	£50 per month
Utility	£15 per month
Landlord floor coverings & curtains	£15 per month
Landlord supplied appliances/ white goods	£15 per month

20. In total the deductions amount to £95 per month. In addition, the Landlord has then made further adjustments of £100 per month for Tenants improvements and obligations.
21. In the Landlord’s opinion the achievable market rent for the Property is £1,100 per month to which £195 per month has been deducted to reflect the above adjustments. As the requested rent of £720 per month is below their valuation, they therefore conclude that the registered rent is too low.
22. 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

23. 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.

24. **Rent Act 1977**

25. **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.”

26. 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.
27. 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).

28. 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.

29. 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

30. 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.

31. The Tribunal considered the achievable market rent would be in the order of £1,000 per month. The Tribunal then considered the various adjustments necessary to reflect the differences in the accommodation. In particular the Tribunal made adjustments for the utility and WC, bedrooms and general disrepair totalling £85 per month arriving at an adjusted market rent of £915 per month.

32. The Tribunal then made adjustments for the various Tenant’s improvements/obligations including floor coverings & curtains, fitted kitchen white goods, fireplace, rear garden and patio area and redecoration liability totalling £140 per month.

33. 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.

34. 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 £77.50 per month.
35. This leaves a fair rent for the subject property of £697.50 per month.
36. 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 £716.50 per month. Accordingly, the rent limit does not apply.

DECISION

37. The fair rent determined by the Tribunal for the purposes of Section 70 is, therefore £697.50 per month with effect from 29 June 2022, being the date of the Tribunal's decision.
38. 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

39. 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