



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

Case Reference : **BIR/00CT/F77/2022/0030**

Property : **175 Dove House Lane, Solihull,
B91 2ER**

Landlord : **Grainger Finance Company Limited**

Representative : **Grainger plc**

Tenant : **Mrs Shirley Martin**

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 : **2 September 2022**

Issue Date : **13 October 2022**

STATEMENT OF REASONS

Background

1. This Statement of Reasons is prepared at the request of Grainger plc, the Landlord's Representative, following the decision made by the Tribunal on 2 September 2022. It should be read in conjunction with that decision.
2. Mrs Shirley Martin is the tenant of the property known as 175 Dove House Lane, Solihull, B91 2ER ('the Property'). The landlord is Grainger Finance Company Limited.
3. By an application to the Valuation Office dated 17 September 2021, the Landlord applied to the Rent Officer for registration of a fair rent for the Property of £906.20 per calendar month (pcm). The rent previously registered on 11 November 2019, with effect from 13 December 2019, and payable at the time of the application, was £788.00 pcm.
4. On 29 October 2021, the Rent Officer registered a fair rent of £828.00 pcm, with effect from 13 December 2021.
5. By a letter dated 25 November 2021, the Landlord objected to the rent determined by the Rent Officer and the matter was referred to the Tribunal on 3 December 2021.
6. The Tribunal received written submissions from the Tenant on 25 July 2022 (comprising a completed pro forma Reply Form) and from the Landlord (comprising a completed pro forma Reply Form and a written representation) on 26 July 2022.
7. Neither party requested an oral hearing.
8. After consideration of the available evidence and the applicable law, the Tribunal determined that a sum of £848.25 pcm was to be registered as the fair rent, with effect from 2 September 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, character, location and (where possible) state of repair of the Property. It also disregarded the effect of (a) any relevant tenant’s improvements and (b) (where possible) 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.

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 Tenant did not give her consent to an internal inspection of the house, so the Tribunal carried out a 'drive-by' inspection of the Property on the morning of 2 September 2022. As an internal inspection was not possible, the Tribunal was unable to view the state of repair or any disrepair to the house or rear of the Property.
15. The Property is located in the north side of Solihull in the vicinity of the Jaguar Land Rover factory. It is positioned close to the end of Dove House Lane, near to its junction with Lode Lane, a busy dual-carriageway. The section of Dove House Lane adjacent to the Property is subject to a no waiting restriction during certain prescribed hours.
16. The Property comprises a semi-detached house, built circa 1950, with a front garden and paved drive allowing for off road parking for two cars. Based on internet mapping, the Property also benefits from a fair sized rear garden. The house is of brick construction with a pitched tiled roof

and an integral garage and, based on the Tribunal's limited inspection, appeared to be in a fair condition.

Submissions

Tenant

17. The Tenant's Reply Form confirmed that the house had two storeys and comprised two living rooms, a kitchen, four bedrooms and a bathroom, with central heating and double-glazing, both of which had been provided by the Landlord. The form stated that there were no carpets, curtains or white goods but confirmed that the Property had the benefit of a garage and off-street parking.

Landlord

18. The information given in the Landlord's Reply Form accorded with that given by the Tenant, other than the form confirmed that the Property benefited from private gardens, that it had a downstairs/outside wc, that any carpets, curtains and white goods had been provided by the Tenant and that both the bathroom and kitchen were unmodernised.
19. In its written representation, the Landlord submitted that the Property was in a fair condition, given its type and age, although it accepted that the Property was not equivalent to all modern standards.
20. The Landlord offered one comparable:

Henley Crescent, Solihull

A four-bedroom semi-detached house with gas central heating and double glazing, unfurnished, with an integral garage, advertised to let at £1,250.00 pcm.

As such, the Landlord submitted that the minimum achievable market rent for the Property was £1,250.00 pcm.

21. The Landlord noted that the comparable property would benefit from:
 - Landlord supplied floor coverings/curtains
 - Landlord supplied appliances

Using a theoretical figure of £15.00 pcm per item, plus tenant improvements/obligations valued at £100.00 pcm, the Landlord considered the rent requested of £906.20 still to be £213.80 less than the comparable rent.

22. The Landlord submitted that scarcity did not apply as there was an adequate supply of properties within the area.

Reasons for the Decision

23. 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. It did this by having regard to the evidence supplied by the parties and the Tribunal's own general knowledge of market levels in the locality.
24. The Tribunal noted that, although the comparable supplied by the Landlord appeared to be of a similar age and character to the Property, it was located on Henley Crescent. The Tribunal considered that this would be a more desirable location, as Henley Crescent was not subject to the same road restrictions as the Property and the Property was located close to the busy junction with Lode Lane. The Tribunal also noted that the comparable rent of £1,250.00 appeared to be the advertised rental figure rather than a let agreed figure.
25. Taking into account all of the above the Tribunal considered that a likely market rent for the Property would be £1,150.00 pcm.
26. The Tribunal considered that the Property was not in the condition considered usual for a modern letting at a market rent. Therefore, it was necessary to adjust the hypothetical rent of £1,150.00 pcm to allow for the differences between the condition considered usual for such a letting and the condition of the Property.
27. The Tribunal noted that the Tenant had not provided details of any improvements but considered that a deduction of £207.50 pcm was appropriate in respect of any floor coverings, curtains and white goods (which had not been provided by the Landlord), the lack of a modern kitchen and bathroom (which the Landlord accepted in their representations the Property did not have) and the internal decorating liability.
28. The Tribunal considered the question of scarcity in section 70(2) of the Rent Act 1977 and, despite the submission from the Landlord, found that the number of potential tenants looking for accommodation of this type in the area would have been greater than the number of units available to let. The Tribunal found that the excess demand represented around 10% of the rental value or £94.25 pcm and deducted this from the adjusted market rent to arrive at the statutory basis for a fair rent.
29. This left a fair rent for the Property of £848.25 pcm.

Decision

30. The fair rent determined by the Tribunal, for the purposes of section 70, was £848.25 pcm.
31. There was no service charge and the rent was not registered as variable.

32. 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.
33. Accordingly, the sum of £848.25 pcm was registered as the fair rent with effect from 2 September 2022, being the date of the Tribunal's decision.

Appeal

34. 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