



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

**Case Reference** : **BIR/00CR/F77/2022/0037**

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

**Property** : **1 Westbourne Road Halesowen Birmingham  
B62 9NE**

**Landlord** : **Roger Lees Ltd**

**Representative** : **Scriven & Co**

**Tenant** : **Mrs J F Gough**

**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** : **17 May 2023**

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**DECISION**

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## **BACKGROUND**

1. This Decision arises because of an application made by the Landlord for extended reasons arising from the Tribunal's decision dated 26 January 2023 that the fair rent payable by the Tenant in accordance with Schedule 11 of the Rent Act 1977 shall be £125 per week.
2. By way of background the Landlord applied to the Rent Officer for registration of a fair rent respect of 1 Westbourne Road Halesowen B62 9NE (the "Property").
3. The rent payable at the time of the application was £122 per week which was registered by the Rent Officer on 2 December 2020, effective from 3 December 2020. The Rent Officer registered a rental of £130 per week on 31 October 2022, effective from 3 December 2022.
4. The Applicant objected to the rent determined by the Rent Officer and the matter was referred to the Tribunal.
5. The Tribunal issued its Directions and advised that the matter would be determined based on written submissions made by the parties and that the Tribunal would carry out an inspection of the property.
6. The Tribunal inspected the property on 26 January 2023 in the presence of the tenant.

## **THE PROPERTY**

7. The Property is in a residential area approximately 8 km west of Birmingham city centre off Long Lane close to its junction with the A458 Hagley Road West/ Mucklow Hill. The surrounding properties on Westbourne Road are similar style inter-war semi-detached houses.
8. The accommodation comprises a 2-storey semi-detached house of brick and pitched roof construction. On the ground floor is a hall, living room and dining/ kitchen and on the first floor three bedrooms and a bathroom. Externally there is a garden to the front and rear and space for parking a vehicle.

## **SUBMISSIONS OF THE TENANT**

9. The Tenant made no written submissions. However, during the Tribunal's inspection the Tenant advised that she had carried out various improvements to the property. This included decorations throughout, fitted kitchen, fire place and surround gas fire, light fittings, shower screen over bath, tiled bathroom and fitted wardrobes as well as having some of the radiators installed. In addition,

the Tenant confirmed that all the white goods belonged to her as well as the timber shed in the garden.

## **SUBMISSIONS OF THE LANDLORD**

10. The Landlord's agent – Scriven & Co – advised that they would not be submitting evidence (either written or at a hearing) and would leave the matter to the Tribunal to decide. The Landlord's agent did however state that the Landlord had spent approximately £7,400 (extending to replacement fencing, garden maintenance and an improved driveway) whilst the increase set by the valuation office of approximately 6% was below the RPI increase of 14.2% set over the preceding 12 months. The Landlord was also of the opinion that given the expenditure since the previous registration and their perceived increase in market rents over the past 12 months the rent should have been set at more than the figure given by the rent officer. In addition, the Landlord referred to a typical rent for an improved 3-bedroom semi-detached house without a garage in Westbourne Road is £925 per month which is significantly more than the rent set by the rent officer at £563 per month (£130 per week).

## **THE LAW**

11. 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.

12. ***Rent Act 1977***

13. ***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.”*

14. 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.

15. 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).*

16. 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.
17. 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**

18. In the first instance, the Tribunal determined what rent the Landlord could reasonably expect to obtain for the property in the open market if it were let 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 having regard to the comments provided by the parties and based on this determined a weekly rent of £185.
19. The Tribunal considered various adjustments were necessary for the Tenant’s improvements/obligations totalling £36 per week.
20. The Tribunal also 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.
21. 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 £18.50 per week.

22. The Tribunal then made an adjustment of 5% to reflect the Tenants obligation to carry out internal decorations.
23. This leaves a fair rent for the subject property of £125.77 which the Tribunal rounded to £125 per week.
24. 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 £154 per week. Accordingly, the rent limit did not apply.

## **DECISION**

25. The fair rent determined by the Tribunal for the purposes of Section 70 is, therefore £125 per week with effect from 26 January 2023, being the date of the Tribunal's decision.
26. 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**

27. 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**