



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

Case reference : **CHI/18UG/F77/2023/0016**

Property : **8 The Drive, Bicton, East Budleigh,
Budleigh Salton, Devon EX9 7BH**

**Applicant
(Landlord)** : **Clive Banks**

Representative : **None**

**Respondent
(Tenant)** : **Donald Causley**

Representative : **None**

Type of application : **Section 70 of the Rent ACT 1977**

Tribunal members : **Mr D Jagger MRICS
Mrs J Coupe FRICS
Mr J Reichel BSc MRICS**

Venue : **Paper determination**

Date of decision : **30th May 2023**

DECISION

The Tribunal determines £889.50 per month is to be registered as the fair rent for the above property with effect from 30th May 2023 being the date of the Tribunal's decision.

The reasons for this decision are set out below.

Reasons

Background

On 3rd January 2023 the landlord, applied to the Valuation Office Agency (Rent Officer) for registration of a fair rent of £980 per month for the property.

The rent registered at the time of the application was £717.50 per week effective from 11th September 2017. In the landlords statement it is confirmed however the current passing rent is £800 from the 1st December 2021. This was considered a private agreement between the two parties.

On 20th February 2023 the Rent Officer registered a fair rent of £774.25 per month, effective from the 20th February 2023. The rent increase imposed by the Rent Officer had not been “capped” or limited by the operation of the Rent Acts (Maximum Fair Rent) Order 1999 (the Order).

By an email and letter dated 9th March 2023 from Clive Banks, the Landlord objected to the rent determined by the Rent Officer and the matter was referred to this Tribunal.

The law

When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, must have regard to all the circumstances including the age, location and state of repair of the property. It also must disregard the effect of (a) any relevant tenant's improvements and (b) the effect of any disrepair or other defect attributable to the tenant, on the rental value of the property. Section 70(2) of the Rent Act 1977 imposes on the Tribunal an assumption that the number of persons seeking to become tenants of similar dwelling house 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. This is commonly called ‘scarcity’.

In *Spath Holme Ltd v Chairman of the Greater Manchester Council (1995) 28 HLR 107* and *Curtis v London Rent Assessment Tribunal [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).

The Rent Acts (Maximum Fair Rent) Order 1999 places a “cap” on the permissible amount of the increase of a fair rent between one registration and the next, by reference to the amount of the increase in the United Kingdom Index of Retail Prices between the dates of the two registrations. Where the cap applies the Rent Officer and the Tribunal is prevented from increasing the amount of the fair rent that it registers beyond the maximum fair rent calculated in accordance with the provisions of the Order and the mathematical formula set out in the Order.

By article 2(7) of the 1999 Order the capping provisions do 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.”

Facts found without Inspection

The parties did not request the Tribunal to inspect the property and the Tribunal were satisfied this was not required and relied on information provided by the parties together with its expert knowledge.

The property is a 1960s/70s three-bedroom semi-detached house located in a semi-rural area. There are limited amenities.

The accommodation comprises: living room kitchen, utility room, lavatory, 3 bedrooms, bathroom, good size rear garden and parking.

There is an electric central heating system to radiators.

Terms of the tenancy

The Periodic Protected Tenancy commenced on the 11th September 2017 and this was a statutory tenancy transfer. It is agreed that the landlord is responsible for structural repairs and external decoration; the tenant is responsible for internal decorations. The property was let unfurnished.

Tenant's improvements and Condition

The tenant says the sanitary fittings are original and therefore dated around the 1970s. It is also confirmed the sanitary fittings were installed by the tenant during the 1970s. The kitchen was installed by the landlord in 2006. There is an electric heating system and double glazing. The tenant provided carpets and curtains.

Evidence

The Tribunal had copies of the Valuation Office Agency correspondence and including the rent registers effective 11th September 2017 and 20th February 2023 together with the calculations for the most recent registration.

In a bundle of 54 pages, the parties provided information in connection with the property in the form of completed Reply forms, the tenancy agreement, photographic evidence, floor plan and a list of comparable evidence provided by the landlord with no precise addresses, no date of transaction or specification.

Valuation

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 is considered usual for such an open market letting.

Based upon the generic list of comparable evidence provided by the landlord together with its expert knowledge, the Tribunal consider that the subject property, if finished to a reasonable standard would be likely to attract a rent let on an assured shorthold tenancy, for **£1100** per month.

We now need to **adjust that hypothetical net rent of £1100 per month** to allow for the differences between the terms of this tenancy and the lack of white goods, carpets and curtains, the tenants decorating responsibilities and dated bathroom fittings (disregarding the effect of tenant's improvements and any disrepair or other defect attributable to the tenant).

The Tribunal has considered very carefully the parties' submissions and the notes prepared by the Rent Officer.

Using our own expertise, we considered that deductions of 15% should applied to take into account the terms of the tenancy, and the condition of the property at the commencement of the tenancy. This provides a deduction of £165 per month from the hypothetical rent. This reduces the figure to £935 per month.

It should be noted that this figure cannot be a simple arithmetical calculation and is not based upon capital costs but is the tribunal's estimate of the amount by which the rent would need to be reduced to attract a tenant.

Scarcity

Thirdly, the tribunal then went on to consider whether a deduction falls to be made to reflect scarcity within the meaning of section 70(2) of the 1977 Act. The tribunal followed the decision of the High Court in *Yeomans Row Management Ltd v London Rent Assessment Committee*, in which it was held that scarcity over a wide area should be considered rather than scarcity in relation to a particular locality.

Next, the Tribunal need to subtract the sum of £25 which is attributable to services (sewage treatment) This gives us a figure of £910 per month.

In the Tribunals opinion there should be a deduction of 5% for scarcity as it is considered demand outweighs supply of rented properties in the area. This provides a figure of £45.50 and therefore reduces the rent to £864.50

Finally, we have to add back the £25 figure for services which crystalizes a rental figure of £889.50

Conclusion

The capping provisions of the Rent Acts (Maximum Fair Rent) Order do not apply and therefore the above figure applies. The fair rent in accordance with the attached calculations is **£889.50 per month.**

Therefore, this is the fair rent to be registered limited by the Rent Acts (Maximum Fair Rent) Order 1999 with effect from the **30th May 2023** being the date of the Tribunals decision.

Detailed calculations for the capped maximum fair rent are provided on the back of this decision form.

D Jagger MRICS Valuer Chair

30th May 2023

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).