



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

**Case Reference** : **BIR/00CN/F77/2023/0007**

**HMCTS (paper, video : Video Hearing  
audio)**

**Property** : **11 Moor Pool Avenue Harborne Birmingham  
B17 9HL**

**Landlord** : **BPT (Bradford Property Trust) Ltd.**

**Representative** : **Grainger plc**

**Tenant** : **Mr D Aherne**

**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 Rossiter MBA MRICS**

**Date of Decision** : **3 May 2023**

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**DECISION**

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## **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 3 May 2023 that the fair rent payable by the Tenant in accordance with Schedule 11 of the Rent Act 1977 shall be £130 per week.
2. By way of background, on 4 May 2021, the Landlord applied to the Rent Officer for registration of a fair rent of £146.40 per week in respect of 11 Moor Pool Avenue Harborne Birmingham B17 9HL (the "Property").
3. The rent payable at the time of the application was £122.00 per week which was registered by the Rent Officer on 18 June 2019, effective from 28 July 2019.
4. The Rent Officer registered a rental of £130 per week on 21 June 2021, effective from 28 July 2021.
5. On 21 July 2021, the Landlord objected to the rent determined by the Rent Officer and the matter was referred to the Tribunal.
6. The Tribunal issued its Directions dated 8 February 2023. It advised that the matter would be determined based on any written submissions made by the parties, an inspection of the property and advised either party may request a hearing if required.
7. The Tribunal duly carried out an internal inspection of the Property on 3 May 2023 in the presence of the Tenant only.
8. The Tenant also requested a hearing which was held by way of VHS (Video Hearing Service) following the inspection on 3 May 2023. The Landlord's representative advised they did not wish to attend and did not do so.

### **The Property**

9. The Property is in a residential conservation area known as Moor Pool approximately 2 miles south west of Birmingham city centre.
10. The property comprises a 2-storey semi-detached house built in the early 1900's of brick and pitched roof construction. On the ground floor is a hall, living room, kitchen/ diner, WC and store room and rear lobby area. The first floor comprises two bedrooms, family bathroom with WC and cupboard. Externally there is a small garden area to the front and rear. Parking is restricted to kerb-side only along Moor Pool Lane. The Property also has the benefit of gas fired central heating throughout.

11. The Landlord is responsible for all repairs and external decorations and the Tenant for any internal decorations.
12. The Tenant advised he had carried out some improvements to the property including an electric shower to the first-floor bathroom, fireplace surround in the living room, and a shed in the rear garden. The Tenant also advised he had carried out some additions to the kitchen when he moved in albeit in 1988.

### **Submissions of the Tenant**

13. The Tribunal received a completed Reply Form from the Tenant and photographs of a leak from the upstairs bathroom which caused damage to the walls and ceiling in the living room. The Tenant also referred to water ingress from a leaking rainwater gutter which also caused damage to the kitchen and living room walls.
14. The Tenant confirmed he fitted all the carpets and curtains and all the white goods.
15. The Tenant did not provide any evidence of any comparable properties to support his opinion as to the rental value of the subject Property however at the hearing the Tenant reiterated his objection to the rental increase referring the Tribunal to the disrepair caused by the leaks and the overall condition of the Property and the fact that the kitchen and bathrooms needed updating and modernising.
16. The Tenant also objected to the rental increase set by the Rent Officer on the grounds that the Landlord had failed to repair a leak which had caused significant damage/ disrepair to the plasterwork in the living room. The Tenant therefore considered that the proposed increase was excessive particularly given the current economic climate and the cost-of-living crisis.

### **Submissions of the Landlord**

17. The Tribunal received a completed Reply Form and a written submission from Mr M Parmar of BPT Residential Investments) Ltd appointed as representative for Grainger plc.
18. The Landlord also advised they did not wish to attend the hearing. However, the Landlord did confirm prior to the hearing that they had completed the plastering works to the living room.
19. The Tribunal understands no improvements have been undertaken to the Property since the last increase. In addition, in the opinion of Mr Parmar the

Property is in fair condition given its type and age but accepts that it is not up to modern standards and that they undertake works when reported by the Tenant.

20. Mr Parmar advises that having regard to the age, condition and location of the property he considers that the regulated rent should be increased to £146.50 per week.
21. In support of this Mr Parmar provided details of the following evidence:

**Margaret Grove Harborne**

A 2-bedroom mid-terraced house located on the Moor Pool estate that includes gas central heating, timber windows, modern kitchen and bathroom and which is on the market with Agents John Shepherd at £242 per week.

22. To reflect the differences between the subject Property and the evidence Mr Parmar made adjustments for the following matters:
  - (1) Modernised bathroom
  - (2) Double glazing
  - (3) Modernised kitchen
  - (4) Landlord's floor coverings and curtains
23. In total the deductions made by Mr Parmar for the above amount to £40 per week but made no adjustment for scarcity as he considers there to be an adequate supply of property in the area.

**THE LAW**

24. 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.

25. ***Rent Act 1977***

26. ***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.”*

27. 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.

28. 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).*

29. 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.

30. 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**

31. 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 parties submissions and from the hearing.

32. The Tribunal considered the market rent to be in the order of £1,050 per month. However, the Tribunal considered various adjustments were necessary to reflect the nature of the accommodation. In particular, the Tribunal made adjustments for the unmodernised kitchen, bathroom, flooring and curtains and overall general condition of the property and disrepairs as well as the various Tenants

improvements/ obligations totalling £370 per month arriving at an adjusted market rent of £680pcm.

33. The Tribunal also made an adjustment to reflect the tenant's responsibility for internal decorations.
34. 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.
35. 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 £68.00pcm.
36. This leaves a fair rent for the subject property of £559.50pcm which equates to £129.12 per week which the Tribunal then rounded up to £130 per week.
37. 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 £153 per week. Accordingly, the rent limit does not apply.

## **DECISION**

38. The fair rent determined by the Tribunal for the purposes of Section 70 is, therefore £130 per week with effect from 3 May 2023, being the date of the Tribunal's decision.
39. 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**

40. 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**