



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

Case Reference : **CHI/23UC/F77/2022/0015**

Property : **Elm Tree Cottage
Fyfield
Lechlade
Gloucestershire
GL7 3NS**

Landlord : **Mr S Grundy**

Representative : **None**

Tenant : **Mrs C Bousfield**

Representative : **Moore Allen & Innocent**

Type of Application : **Rent Act 1977 (“the Act”) Determination
by the First-Tier Tribunal of the fair rent
of a property following an objection to
the rent registered by the Rent Officer.**

Tribunal Members : **Mr I R Perry BSc FRICS
Mrs J Coupe FRICS
Mr M Jenkinson**

Date of Inspection : **17th November 2022**

Date of Decision : **17th November 2022**

DECISION

Summary of Decision

On 17th November 2022 the Tribunal determined a fair rent of £650 per calendar month with effect from 17th November 2022.

Background

1. On 29th November 2021 the Tenant's Agent applied to the Rent Officer for registration of a fair rent of £350 per calendar month for the above property to replace the existing rent of £730 per month. The Application included the name and postal address of the Landlord.
2. On 7th December 2021 the Rent Officer wrote to the Landlord at the address quoted in the Application, advising that an application had been received.
3. Three days later, on 10th December 2021, the Rent Officer wrote to the Tenant and to the Tenant's Agent informing them that the Rent Officer proposed to hold a jurisdictional hearing at the property some 3 days later, on 14th December 2021. The Landlord was not informed.
4. Having held the jurisdictional hearing and viewed the property on 14th December 2021 the Rent Officer decided that it was appropriate to assess a Fair Rent for the property. This would be a first registration for the property.
5. A rent was registered on 28th January 2022 at a figure of £657 per calendar month with effect from the same date. Both parties were informed of this decision.
6. The Landlord wrote to the Rent Officer on 16th February 2022 with questions about the assessment of rent and wrote again on 17th February 2022 to say that he had not had the opportunity to attend the jurisdictional hearing or to make representations regarding the rent.
7. By a letter dated 25th February 2022 the Landlord objected to the rent determined by the Rent Officer and the matter was referred to the First Tier Tribunal Property Chamber (Residential Property) formerly a Rent Assessment Committee.
8. In light of the Coronavirus pandemic the Tribunal had issued a Practice Statement to the effect that, given the considerations of health, there would be a suspension of inspections and of Tribunal hearings in person until further notice.
9. Directions were issued by the Tribunal office on 25th April 2022 and were sent by email informing the parties that the Tribunal intended to determine the rent based on written representations, subject to the parties requesting an oral hearing.

10. The parties were invited to include photographs or video within their representations if they so wished. Representations were to be copied to the other party. The parties were also informed that the Tribunal might seek information about the property readily available on the internet.
11. Neither party requested an oral hearing. The Tenant provided some written evidence and photographs of the property. The Tribunal received no evidence or correspondence from the Landlord.
12. The Tribunal convened via video link on 25th May 2022 and registered a rent for the property in the sum of £700 per calendar month.
13. The Landlord contacted the Tribunal office in a letter dated 17th June 2022 requesting permission to appeal. This was followed up by an email dated 12th July 2022. His grounds for seeking permission were:-
 - i) He was not notified of the original jurisdictional hearing so could not have attended the property to discuss and explain important matters to the Rent Officer. He had not had the benefit of inspecting the property internally.
 - ii) The Rent Officer has not answered his questions about the findings of that hearing.
 - iii) The Rent Officer lives far away and is not familiar with rental values in the area.
 - iv) The Rent Officer did not inspect the house.
 - v) The Landlord had not been able to attend a consultation with the First Tier Tribunal and the Tribunal did not inspect the property.
14. Unusually the Tribunal has also received an application for permission to appeal from the Tenant, made through her Agent. Her grounds for seeking permission were:-
 - i) The Tribunal should not have increased the rent above the figure assessed by the Rent Officer who had viewed the property, and that the Tribunal has relied solely on photographs and letters.
 - ii) The rent assessed by the Tribunal is not in line with rentals in the area and does not truly reflect the condition of the property.
 - iii) That she, the Tenant, has made improvements to the property over a period of years commencing in 1984.
 - iv) That the Landlord has not carried out repairs to the Property when they have been needed.
15. When the original application for an assessment of a Fair Rent was received, the Rent Officer wrote to the Tenant and her Agent but, it later transpired, did not notify the Landlord about the jurisdictional hearing or property inspection.

16. In addition, the Landlord said that the Tribunal Directions dated 25th April 2022 were sent in error to a defunct email address for him so that he was placed at a further disadvantage as he had not had the opportunity to make any representations to the Tribunal.
17. Clearly the Landlord had been put at a considerable disadvantage and the Tribunal decided that the Landlord should be given an opportunity to submit his case in accordance with those original Directions.
18. With regard to the Tenant's submission that the Tribunal should not have varied the original decision of the Rent Officer, it is the Tribunal's very purpose to consider afresh any assessment made by a Rent Officer which it had done based on the information provided by the Tenant or her Agent and using its own experience of rental values in the wide area of north Gloucestershire. The Tenant had been given an opportunity to make representations and the Tribunal had made its assessment based on that information.
19. Through her Agent, the Tenant had previously made various representations to the Tribunal including extensive improvements that she had made to the Property and the Tribunal had taken these into account in reaching its decision.
20. The Tribunal considered whether any error had been made in considering the papers and comparable evidence provided and found that the Landlord had been placed at a considerable disadvantage by not having been invited to the original inspection or jurisdictional hearing and not having received the original Directions.
21. Had the Landlord been present at the original jurisdiction hearing he would have heard the evidence given to the Rent Officer and would have been able to comment upon the condition of the property. Had he received the Directions dated 25th April 2022 he would have been able to make written representations to the Tribunal.
22. Section 51 of the Tribunal procedure (First-tier Tribunal) (Property Chamber) Rules 2013 states that the Tribunal may set aside a decision if (a) the Tribunal considers that it is in the interests of justice to do so.
23. The original Practice Direction regarding inspections was amended on 23rd June 2020 to allow inspection of the exterior of buildings or parcels of land, including drive-by inspections, at the discretion of the Tribunal. This was later amended again to allow the inspection of the interior of buildings and premises in particular circumstances.
24. Accordingly on 12th August 2022 the Tribunal decided to set aside its original decision made on 25th May 2022 and issued a fresh set of Directions. The Tribunal office informed the parties of its decision to carry out a full inspection of the property on Thursday 17th November 2022.

The Inspection.

25. The Tribunal attended the property as arranged at 10.00am on Thursday 17th November 2022. The Landlord and Tenant were both present.
26. Mrs Bousfield refused to allow Mr Grundy to enter the property at the same time as the Tribunal but was content to show him round the property once the Tribunal had finished. The Tribunal explained this to Mr Grundy and suggested that it should carry out the inspection and report its findings to him verbally when they had finished. Mr Grundy said that he was content with this and in no way did he wish to inconvenience Mrs Bousfield. The Tribunal inspected the property and reported its findings to Mr Grundy with Mrs Bousfield present.
27. Mr Grundy had hoped that he would be able to make verbal representations to the Tribunal at the inspection. It was explained to him that this was not the case.
28. The Property is a semi-detached cottage dating from the 17th Century. At ground level the front door opens into a small Living Room, with an open fireplace, which in turn leads to a larger Sitting Room with open fireplace and stone surround. There is a Kitchen accessed through the Sitting Room and a walk-in Pantry.
29. At first floor level there are two double Bedrooms, a single Bedroom and a Bathroom with WC. There is a staircase from one of the Bedrooms to two attic spaces which have windows but limited headroom.
30. Outside there is a well-tended garden, mostly to the front of the property, and a stone-built garden store and a parking space.
31. The Property is situated in a small hamlet about 3 miles north of Lechlade-on-Thames where there are shopping and schooling facilities.

Evidence and representations

32. The Tribunal was provided with written details of the history of the property by the Tenant which included a list of works undertaken by her over the many years of her occupation. The original tenancy had commenced on 16th April 1984 when the cottage had been in the centre of a working dairy farm.
33. During her time at the property the Tenant has undertaken works to the garden including planting and improvement to the boundary walls. Internally she has carried out considerable works including refitting the Kitchen and Bathroom, providing new plumbing and electrical points, fitted cupboards and shelving. She says that she also carried out general repairs to the inside and outside of the property, although the property is still not in good condition.

34. The Tenant also provided personal information regarding her circumstances which, as directed by statute, the Tribunal cannot consider or take into account when assessing the rent. Neither can they consider personal information from or about the Landlord.
35. Internally the Tribunal noted that the fitted units in the Kitchen are basic and in poor condition. These were second hand when originally fitted by the Tenant. There is evidence of dampness throughout at ground level which has damaged some floor coverings. The Tribunal noted that external ground levels are above internal floor levels.
36. First floor ceilings are stained at various points around the property where there have been roof leaks in the past.
37. Mrs Bousfield explained to the Tribunal that she had replaced the bath and washbasin which were broken many years ago, and she has made some efforts to insulate the attic spaces.
38. Mrs Bousfield had made written representations, supported by photographs, about the works she had carried out over the years. In particular the Tribunal noted that the gardens were now attractive and well-tended, having originally been something of a junk yard. She also emphasised that she was responsible for all internal decoration.
39. White goods, carpets and curtains are all provided by the Tenant. There is no space heating.
40. The Landlord had renewed the electrical wiring within the property in 2007 and had replaced the roof covering. In the Kitchen there is a long defunct Rayburn stove.

The Law

41. When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, 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.
42. 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).
43. The Tribunal also has to have regard to the Rent Acts (Maximum Fair Rent) Order 1999 where applicable. Most objections and determinations of registered rents are now subject to the Order, which limits the amount of rent that can be charged by linking increases to the Retail Price Index. It is the duty of the Property Tribunal to arrive at a fair rent under section 70 of the Act but in addition to calculate the maximum fair rent which can be registered according to the rules of the Order. If that maximum rent is below the fair rent calculated as above, then that (maximum) sum must be registered as the fair rent for the subject property.

Valuation

44. 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 a condition that is considered usual for such an open market letting. Such an open market letting would normally reflect a property in good condition throughout and would include carpets, curtains and white goods. The rental market is sensitive to the condition of a property and particularly the age and condition of bathroom and kitchen fittings.
45. The Tribunal assessed such an open market rental by having regard to the evidence supplied by the parties and the Tribunal's own general knowledge of market rent levels in north Gloucestershire. Having done so it agreed with the Rent Officer and concluded that such a likely market rent would be £1,250 per calendar month.
46. However, the property was not let in a condition considered usual for a modern letting at a market rent. Therefore, it was first necessary to adjust that hypothetical rent of £1,250 per calendar month particularly to reflect the Tenants' improvements, condition of the property and the fact that the carpets, curtains and white goods were all provided by the Tenant which would not be the case for an open market assured shorthold tenancy.
47. The Tribunal therefore considered that this required a total deduction of £600 per month made up as follows:

Lack of central heating	£125
Tenant's responsibility for internal decoration	£50
Tenant's provision of white goods	£30
Tenant's provision of carpets	£50
Tenant's provision of curtains	£20
Basic unmodernised kitchen	£100
Bathroom sanitary ware provided by Tenant	£50
General condition including damp floors and walls	

and other Tenant's improvements including gardens	£175
TOTAL	<u>£600</u>

48. The Tribunal did not consider that there was any substantial scarcity element in the area of north Gloucestershire.

Decision

49. Having made the adjustments indicated above the fair rent initially determined by the Tribunal for the purpose of section 70 of the Rent Act 1977 was accordingly £650 per calendar month.
50. The fair rent to be registered is not limited by the Rent Acts (Maximum Fair Rent) Order 1999 because this is a first registration of rent.

Accordingly, the sum of £650 per month will be registered as the fair rent with effect from the 17th November 2022, this being the date of the Tribunal's decision.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.