



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

Case reference : **BIR/OOCN/F77/2023/0026**

Property : **9 Park Edge
Harborne
Birmingham
B17 9ER**

Applicant : **BPT (Residential Investments) Limited**

Representative : **Grainger PLC**

Respondent : **Mrs B A Cunningham**

Representative : **None**

Type of application : **Application under Section 70 of the Rent
Act 1977 by the Applicant against the rent
assessed for the property by the Rent
Officer**

Tribunal members : **Mr G S Freckelton FRICS (Chairman)
Mrs K Bentley**

Inspection/Hearing : **Neither party requested an inspection or
hearing**

**Date of original
decision** : **8th January 2024**

DETAILED REASONS

BACKGROUND

1. On 14th April 2023, the Applicant Landlord applied to the Rent Officer for registration of a fair rent of £171.60 per week for the property 9 Park Edge, Harborne, Birmingham, B17 9ER. The rent payable at the time of the application was stated as being £143.00 per week.
2. The rent was previously registered at a rental of £143.00 per week with effect from 3rd July 2021 following a registration by the Rent Officer.
3. The Rent Officer registered a rental of £153.00 per week with effect from 3rd July 2023.
4. By letter dated 17th November 2023, the Applicant objected to the rent determined by the Rent Officer and the matter was referred to the Tribunal.
5. The Tribunal made a determination of the rent payable on 8th January 2024 and these Detailed Reasons are given in response to a request for same by the Applicant.

INSPECTION

6. Neither party requested the Tribunal to carry out an inspection of the property and the determination was therefore made based upon the submissions received by the Tribunal.
7. Based on the submissions provided, the Tribunal understands that the property comprises of an end terraced house with hallway, two reception rooms, kitchen, conservatory, store and porch on the ground floor. On the first floor the landing leads to three bedrooms and bathroom with three-piece sanitary suite.
8. Based on the Rent Register the Tribunal understands that outside there is a garden, store, W.C. and garage/parking space.
9. The Tribunal understands that some modernisation and updating is required although the property does have central heating. There is no double glazing.

EVIDENCE

10. The Tribunal received written representations from the Applicant which was copied to the other party.
11. Neither party requested a hearing and the matter was therefore dealt with by a paper determination.

THE APPLICANT'S SUBMISSIONS

12. The Applicant submitted that the property was in fair condition given its age and type although it acknowledged that it was not equivalent to modern standards and

in making its application for a fair rent had taken account of the fact that it required a modernised bathroom, double glazing and a modernised kitchen.

13. The Applicant also acknowledged that the tenant had provided carpets, curtains and floor coverings.
14. The Applicant further submitted that the proposed rent of £171.60 was some £67.40 per week less than similar market tenancies.
15. To determine a Market Rental the Applicant referred in particular to:
 - 1) West Pathway, Moor Pool Estate, Harborne – a three-bedroom terraced house marketed at £358.00 per week.
 - 2) Gordon Road, Harborne – A three-bedroom terraced house let at £299.00 per week.

THE LAW

16. 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.
17. In *Spath Holme Limited v Chairman of the Greater Manchester, etc. Committee* [1995] 28HLR107 and *Curtis v London Rent Assessment Committee* [1999] QB92 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 were usually appropriate comparables. (These rents may have to be adjusted where necessary to reflect any relevant differences between those comparables and the subject property).

VALUATION

18. In the first instance, the Tribunal determined what rent the Applicant 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 open market lettings. It did this by having regard to the Tribunal's own general knowledge of market rent levels in the area of Birmingham.
19. Having taken the various matters into consideration it determined that the open market value of the property in good condition would be the sum of £225.00 per week.
20. However, the actual property is not in the condition considered usual for a modern letting at a market rent. Therefore, it was first necessary to adjust the hypothetical rent of £225.00 per week to allow for the differences between the condition considered usual for such a letting and the condition of the actual property as described by the parties and the Rent Officer (disregarding the effect of any disrepair or other defects attributable to the tenant or any predecessor in title).

21. The Tribunal determined that the following weekly deductions were appropriate:

a) Double Glazing	18.00
b) Modernised kitchen	14.00
c) Modernised bathroom	10.00
d) Carpets and curtains	10.00
e) White goods	6.00
f) <u>Decorating liability</u>	<u>12.00</u>
Total	£70.00

22. The Tribunal then considered the question of scarcity. This is done by considering whether the number of persons genuinely seeking to become tenants of similar properties in the wider area of the West Midlands 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.

23. 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.

24. In this case the Tribunal, having carried out appropriate research, is satisfied that it is not appropriate to make a deduction for scarcity. This leaves a fair rent for the subject property of £155.00 per week (£225.00 – £70.00).

25. The Section 70 fair rent determined by the Tribunal is below the level of the maximum fair rent permitted by the Rent Acts (Maximum Fair Rent) Order 1999 and accordingly the rent is therefore determined at £155.00 per week.

DECISION

26. The fair rent determined by the Tribunal for the purposes of Section 70 was accordingly £155.00 per week.

APPEAL

27. If either of the parties is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the upper Tribunal (Lands Chamber), **on a point of law only**. Any such application must be received within 28 days after these written reasons have been sent to them (Rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Graham Freckelton FRICS
Chairman
First-tier Tribunal Property Chamber (Residential Property)