



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

Case reference	:	CHI/18UH/F77/2023/0085
Property	:	Witcombe Farmhouse, Kenton, Exeter, Devon, EX6 8LP
Applicant Landlord	:	The Right Honourable Earl of Devon
Representative	:	Stags Chartered Surveyors
Respondent Tenant	:	Mrs H McMahon
Representative	:	Dr A McMahon
Type of application	:	Determination of a registered rent Section 70 Rent Act 1977
Tribunal members	:	Mrs J Coupe FRICS Mr M Woodrow MRICS Ms C Barton MRICS
Date of decision	:	12 February 2024

REASONS

Decision of the Tribunal

On 12 February 2024 the Tribunal determined that a sum of £4,717.50 per half year will be registered as the Fair Rent with effect from the same date.

Background

1. On 4 October 2023 the Rent Officer received an application from the landlord, dated 2 October 2023, for registration of a Fair Rent of £9,416.00 per annum, in lieu of the passing rent of £7,310.00 per annum.
2. The rent, payable in arrears by two equal sums, is due on 25 March and 29 September.
3. On 6 November 2023, the Rent Officer registered a Fair Rent of £3,757.25 per half-year, effective from the same date (equating to £7,514.50 per annum).
4. On 1 December 2023, the landlord objected to the registered Fair Rent and requested the Rent Officer to refer the matter to the Tribunal.
5. The tenancy appears to be a statutory protected tenancy commencing 29 September 1984. The Tribunal was provided with a copy of the tenancy agreement.
6. The Rent Register provides that the landlord is responsible for repairs and external decorations. The tenant covenants to decorate internally. Section 11 Landlord and Tenant Act 1985 applies.
7. On 2 January 2024, the Tribunal issued Directions advising the parties that it considered the matter suitable for determination on papers unless either party objected, in writing, within 7 days. The parties were also advised that no inspection would be undertaken. No objections were received.
8. The Directions required the landlord and tenant to submit their statements to the Tribunal by 16 January 2024 and 30 January 2024 respectively. Both parties complied.
9. Having reviewed the parties' submissions, the Tribunal concluded that the matter was capable of being determined fairly, justly and efficiently on the papers, consistent with the overriding objective of the Tribunal.
10. These reasons address in **summary form** the key issues raised by the application. They do not recite each point referred to but concentrate on those issues which, in the Tribunal's view, are fundamental to the determination.

Law

11. When determining a Fair Rent the Tribunal, in accordance with section 70

of the Rent Act 1977, must have regard to all the circumstances including the age, location and state of repair of the property. The Tribunal must disregard the effect, if any, of any relevant tenant's improvements and the effect of any disrepair or any other defect attributable to the tenant or any predecessor in title under the regulated tenancy, on the rental value of the property.

12. In *Spath Holme Ltd v Chairman of the Greater Manchester etc Committee* (1995) 28HLR 107 and *Curtis v London Rent Assessment Committee* (1999) QB 92 the Court of Appeal emphasised:

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 to that of a regulated tenancy, and

That for the purposes of determining the market rent, assured tenancy market rents are usually appropriate comparables; adjusted as necessary to reflect any relevant differences between the comparables and the subject property.

13. The Rent Acts (Maximum Fair Rent) Order 1999 restricts the amount by which the rent, less variable service charge, may be increased to a maximum 5.00% plus Retail Price Index since the last registration.
14. Under paragraph 7 of the Order an exemption to this restriction applies where the Landlord proves that repairs or improvements undertaken have increased the rent by at least 15% of the previous registered rent.

The Property

15. In accordance with current policy, the Tribunal did not inspect the property, but did view it externally via information obtained from publicly available online platforms.
16. The property is a detached house, built c.1800-1918, of solid masonry construction with brick faced elevations, under a pitched roof clad in slates. The property is situated in a rural area, with village amenities locally.
17. Accommodation comprises two reception rooms, kitchen, utility/WC at ground floor level, and three rooms plus a bathroom at first floor level. Externally: garden, outbuilding and off-road parking. The letting is unfurnished and no services are included within the tenancy.
18. The parties concur that the property has gas central heating (installed approximately 15 years ago), single glazing and that the tenant provides carpets, curtains and white goods. A replacement fuse box was installed by the landlord approximately 5 years ago.

Submissions – Landlord (summarised)

19. The property is located close to Exeter and Starcross, with both providing a railway station.
20. The property is in an average condition with dated, but functional, bathroom and kitchen fittings.
21. The open market rent, prior to Rent Act deductions, is fairly represented by £18,300 per annum.
22. Comparable evidence in support of such valuation comprises the following:
 - i. The Garden House, Powderham: Detached house, 3 bedrooms, 2 reception rooms, garden, parking.
July 2023: Let agreed at £18,300 per annum.
 - ii. 1 Kennel Cottage, Kenton: Semi-detached house, 2 bedrooms, 1 reception room, garden.
November 2023: Let agreed at £13,500 per annum.
23. Subject to a reasonable period of marketing, tenants are typically found for such properties. The landlord makes no comment as to whether there is any scarcity of supply in the market.

Submissions – Tenant (summarised)

24. The landlord has failed to meet his maintenance obligations and, as a consequence, the property has fallen into disrepair. The tenant drew attention to three specific areas of concern, each evidenced by photographs:
 - i. Roof and gutters: joinery deterioration; defective rainwater goods; roof disrepair.
 - ii. Windows: joinery decay; dislodged window panes; ineffective window locks.
 - iii. Cracks and fittings: ceiling cracks; bathroom tap not functioning.
25. Kitchen and bathroom fittings are “very dated”.
26. The third room upstairs is accessed via another bedroom and, furthermore, is only considered a box room due to its size.
27. The tenant did not provide any comparable rental evidence but states the property would require significant investment in repairs and refurbishment prior to being let on the open market.
28. The tenant made no comment as to whether the demand for such properties exceeds supply.

Determination

29. The Tribunal has carefully considered all the submissions before it.
30. 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.
31. The landlord relies upon two comparable lettings and values the subject property at an equal rent to their first comparable known as the Garden House, a three-bedroom detached house let at £1,525.00 per month, subject to Rent Act deductions. The landlord's second comparable, 1 Kennel Cottage, is a two-bedroom cottage let at £1,125.00 per month.
32. Whilst the landlord provides brief details of the accommodation of each comparable, they chose not to include any letting particulars or photographs to assist the Tribunal. The Tribunal was somewhat surprised at this paucity of information, especially as the landlord relied upon their own housing stock in evidence. That said, the Tribunal were able to identify some of the comparables either online or from particulars advertised on Stags' website. In doing so, the Tribunal found that the first rent relied upon in evidence, that being £1,525.00 per month for the Garden House included a £25.00 per month pet fee.
33. Both the tenant and the Rent Officer refer to the third 'bedroom' as interconnected with another room. The tenant also describes this room as a 'box room'. In the absence of any objection by the landlord to such statements, the Tribunal finds the property to be a two-bedroom house with a third, interconnecting, box room.
34. Accordingly, the Tribunal consider the Garden House, advertised as offering 'three double bedrooms' to be a superior property.
35. In the absence of any comparable evidence from the tenant and having weighed the landlord's evidence against the Tribunal members' own experience as a specialist and expert property Tribunal and its knowledge of rental values in the locality, the Tribunal determined the open market rent, in good tenable condition, to be £1,300.00 per month.
36. Once the hypothetical rent was established, it was necessary for the Tribunal to determine whether the property meets the standard of accommodation, repair and amenity of a typical modern letting. In this instance the Tribunal determined that the subject property falls considerably short of the standard required by the market.
37. It is common ground between the parties that the property has no double glazing, dated kitchen and bathroom fittings, and that the white goods, carpets and curtains are provided by the tenant.
38. Furthermore, the tenant is responsible for the internal decoration of the property. The Tribunal considers such a covenant a greater burden than the normal responsibility for an assured shorthold tenant to keep the

landlord's decorations in good order.

39. The Tribunal also finds that the property is in want of considerable repair and maintenance, as evidenced by the undisputed statement and photographic evidence submitted by the tenant.
40. In reflection of such differences the Tribunal makes a deduction of 30% from the hypothetical rent to arrive at an adjusted rent of £910.00 per month.
41. The Tribunal then directed itself to the question of scarcity, as referenced in paragraph 12 above and, in arriving at its decision on the point, takes account of the following:
 - a. The Tribunal interpreted the 'locality' for scarcity purposes as being the whole area of Exeter and rural surrounds (i.e. a sufficiently large area to eliminate the effect of any localised amenity which would, in itself, tend to increase or decrease rent);
 - b. Availability of similar property to rent;
 - c. Local Authority and Housing Association waiting lists;
 - d. Property rental prices which could be an indicator of increased availability of housing and a reduction in scarcity;
42. Neither party made submissions on the point of scarcity, the landlord only commenting that similar properties typically let after an appropriate marketing period. The members of the Tribunal have, between them, many years of experience of the residential letting market and that experience, coupled with the above, leads them to the view that there is currently no shortage of similar properties to let in the locality defined above. Accordingly, the Tribunal declines to apply a deduction for scarcity.

Maximum Fair Rent

43. This is the rent calculated in accordance with the Maximum Fair Rent Order, details of which are shown on the rear of the Decision Notice.
44. The Rent Acts (Maximum Fair Rent Order) 1999 restricts the amount by which the rent, less any variable service charge, may be increased, to a maximum 5% plus RPI since the last registration.
45. The only exception to this restriction is provided under paragraph 7 of the Order where a landlord carries out repairs or improvements which increase the rent by 15% or more of the previous registered rent. The Tribunal determined that such exception does not apply in this instance.
46. The rent to be registered in this application is limited by the Fair Rent Acts (Maximum Fair Rent Order) 1999 because it is above the Maximum Fair Rent that can be registered of £4,717.50 per half year (equating to £786.25 per month) prescribed by the Order.

47. The Tribunal accordingly determines that the rent of **£4,717.50 per half year is registered as the Fair Rent with effect from 12 February 2024**, that being the date of the Tribunal's decision.
48. The rental figure determined by the Tribunal is the maximum rent that can be charged for the property and is fixed until the next registration. The landlord is under no obligation to charge the full amount.

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.