



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

Case reference : **CHI/45UF/F77/2024/0002**

Property : **2 Arun Cottages, Loxwood,
Billingshurst, West Sussex RH14 0RE**

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

Representative : **Grainger Trust PLC**

**Respondent
(Tenant)** : **Mr Godfrey Cooper**

Representative : **None**

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

Tribunal members : **Mr D Jagger MRICS
Mr S Hodges FRICS
Mr K Ridgeway MRICS**

Venue : **Paper determination**

Date of decision : **22nd February 2024**

DECISION

The Tribunal determines £228 per week is to be registered as the fair rent for the above property with effect from the 22nd February 2024 being the date of the Tribunal's decision.

The reasons for this decision are set out below.

Reasons

Background

On 19th October 2023 the landlord, applied to the Valuation Office Agency (Rent Officer) for registration of a fair rent of £261.30 per week (£1132 per month) for the property.

The rent payable at the time of the application was £201 per week effective from 29th December 2021

On the 29th December 2023 the Rent Officer registered a fair rent of £212.00 per week, effective from the 21st November 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 dated 14th December 2023 from Deborah Caslaw, on behalf of 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 brick built semi-detached Victorian cottage located in the small village of Loxwood just north of the larger village of Billingshurst which provides superior amenities and station.

The accommodation over three floors comprises: living room, kitchen, bathroom and lavatory, 2 bedrooms, rear garden, garage and off street parking.

There is double glazing and oil central heating.

Terms of the tenancy

It is understood that this tenancy commenced on the 1st January 1964, although an agreement was not provided by the parties. 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.

Landlord's improvements and evidence

The landlord submitted written representations together with three invoices confirming significant works of repair and maintenance in 2022/2023 which we shall deal with later in this decision and have been fully taken into consideration when determining the rental value. Two single comparables for properties in High Street Billingshurst and Luxford Way Billingshurst which are being advertised on Rightmove at £358 per week and £288 per week respectively. The tenant did not provide any written submissions.

The Rent Officer Calculations.

The Tribunal had copies of the Valuation Office Agency correspondence and including the rent registers effective 29th December 2021 and the most recent being the 29th December 2023 together with the calculations for the most recent registration.

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 evidence provided 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, of £300 per week (£1,300 per month)

Next, we need to **adjust that hypothetical rent of £300 per week** to allow for the differences between the terms of this tenancy and the lack of white goods, carpets and curtains, tenants internal decoration responsibility and dated sanitary 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 landlord's submissions and the calculations prepared by the Rent Officer.

Using our own expertise we considered that deductions of approximately 20% should applied in order to take into account the terms of the tenancy, and condition of the property. This provides a deduction of £60 per week from the hypothetical rent. This reduces the figure to **£240** per week.

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.

In the Tribunal's opinion there should be a deduction of 5% for scarcity as it is considered that demand outweighs supply for rented properties in the area. Applying this deduction of £12 produces a weekly rental figure of **£228**.

Maximum Fair Rent Exemption

The final matter for the Tribunal to consider is the impact on the rental value of the works carried out by the landlord and whether the Rent Acts (Maximum Fair Rent) Order 1999 would apply in this case. It should also be noted that the Tribunal is required to consider the impact on the rental value as consequence of works and not the actual amount that has been spent on the property. If it is determined that the new rent exceeds the rent previously registered by at least 15% as a result of repairs and improvements, the capping arrangements do not apply to this application. Therefore, the Tribunal must firstly calculate the uncapped rent taking into account the landlord's works (£300 per week) and then calculate the uncapped rent excluding the landlord's works. If the amount of rent attributable to landlord's works (the difference between the two figures is greater than 15% of the previously registered rent then exemption applies.

In the evidence provided by the landlord, there are three detailed invoices from Young and Harris Building Contractors for external and internal repair works carried out to the property during 2022/2023. Examination of the invoices revealed the majority of the works undertaken were for maintenance and repair to the fabric of the building such as new roof covering, rainwater fittings, soffit and fascia boards and external redecoration, replacement ceilings, internal replastering and external works such as new fencing and garden works. These works form part of the landlord's obligations to maintain the building in accordance with the agreement.

Whilst, it is recognised an element of the works might be considered an improvement and therefore have an effect on rental value. The Tribunal do not consider them significant enough to come anywhere close to the 15% exemption and it for this reason the Tribunal conclude the Rent Acts (Maximum Fair Rent) Order 1999 continues to apply to this property.

Conclusion

The capping provisions of the Rent Acts (Maximum Fair Rent) Order do not apply and therefore the above figure applies. For information, the capped fair rent in accordance with the attached calculations is £249.50 per week. For the tenant's information, this calculated figure is based upon the latest RPI figure

and therefore there has been an increase since the Rent Officers registered rent.

Therefore, £228 per week is the fair rent to be registered limited by the Rent Acts (Maximum Fair Rent) Order 1999 with effect from the 22nd February 2024 being the date of the Tribunals decision.

Detailed calculations are provided attached to this decision form.

D Jagger MRICS Valuer Chair

22nd February 2024

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).