



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

**Case Reference** : **BIR/00CN/F77/2023/0025**

**HMCTS (paper, video : Paper  
audio)**

**Property** : **14 East Pathway Birmingham B17 9DN**

**Landlord** : **BPT (Residential Investments) Ltd**

**Representative** : **M Parmar – Portfolio Manager of Grainger  
plc**

**Tenant** : **R Haycock & S Haycock**

**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  
K Bentley**

**Date of Decision** : **30 April 24**

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**DECISION**

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## **BACKGROUND**

1. This Decision arises from a request made by the Landlord for extended reasons following the Tribunal's decision dated 20 December 2023 that the fair rent payable by the Tenant in accordance with Schedule 11 of the Rent Act 1977 shall be £172.75 per week.
2. By way of background, on 14 April 2023 the Landlord applied to the Rent Officer for registration of a fair rent of £182.40 per week in respect of 14 East Pathway Harborne Birmingham B17 9DN (the "Property").
3. The rent payable at the time of the application was £152 per week which was registered by the Rent Officer on 12 May 2021, effective from 15 June 2021.
4. The Rent Officer registered a rental of £162 per week on 2 June 2023, effective from 15 June 2023.
5. On 27 June 2023, the Landlord objected to the rent determined by the Rent Officer and the matter was referred to the Tribunal.
6. Upon receipt the Tribunal issued its Directions dated 7 August 2023 and advised that the matter would be determined based on written submissions made by the parties, without an inspection or hearing (unless required by the parties) which neither party requested.
7. The Tribunal received written submissions from the Landlord's representative and a completed Reply Form from the Tenant.

### **The Property**

8. The Property is in Harborne Birmingham, an established residential area known as the Moor Pool Estate.
9. The Property comprises a 4-bedroom mid terrace house with hallway, two living rooms, kitchen, bathroom, toilet, store, external WC and rear garden.
10. The Landlord is responsible for all repairs and external decorations with the Tenant for any internal decorations.

### **Submissions of the Tenant**

11. In the Tenant's Reply Form, they advise it was let to them in a shell condition since which time they have carried out various improvements to the Property including fitting a fireplace, fitted wardrobes in the bedrooms, installed a bathroom suite, replaced the kitchen units twice, created a small utility, laid out

the garden, replaced the boiler twice and tiled the separate WC. They also state they fitted the central heating radiators and supplied the carpets and curtains as well as all the white goods (cooker, washing machine and fridge).

12. The Tenant also claim that the Landlord has not been particularly attentive in dealing with its responsibility to carry out repairs and maintenance and has not repainted the external areas for over 7 years.
13. In terms of rental evidence, the Tenant refers to 6 East Pathway where the registered rent is £147.50 per week. The Tenant advises they do not know the size of the property but are aware it includes a garage and driveway. The Tenant also refers to the evidence of the Landlord and in particular various properties on Emerson Road and Station Road which they discount on the basis they are not completed transactions and are merely asking rents. As regard the Landlord's evidence in respect of Gordon Road at £392, the Tenant advises the property benefits from a number of features the subject does not have but advise they are unable to comment on the reasonableness of the Landlord's deductions.
14. In conclusion, the Tenant considers the proposed increase is excessive and above the rate of inflation despite the fact that the headline figure was now starting to fall. The Tenant therefore advises they are content to pay £162 per week.

### **Submissions of the Landlord**

15. The Landlord's submission sets out a brief description of the Property and its accommodation and advises it is considered to be in fair condition given its type and age but accepts that it is not up to modern standards. The Landlord also advises that works are carried out as and when reported.
16. In assessing the rental value of the Property, the Landlord has considered a number of similar properties; Emerson Road at an asking rent of £450 per week which is a 4 bed mid terrace house with gas fired central heating, modernised kitchen and bathroom, white goods, floorings and let unfurnished; Station Road let at £462 per week for a 4 bed mid terrace house with gas fired central heating, mixture of timber and UPVC windows, modernised kitchen and bathroom, white goods, floorings and let fully furnished; Gordon Road let at £392 per week for a 4 bed mid terrace house with gas fired central heating and mixture of timber and UPVC windows, modernised kitchen and bathroom, floorings and let fully furnished.
17. The Landlord considers the market rent to be £392 per week having regard to its age, condition and the type of tenancy. However, to reflect the differences between the subject Property and the evidence the Landlord then makes the following adjustments:

Modernised bathroom	£15 per week
Modernised kitchen	£15 per week
Double glazing	£10 per week
Gas fired central heating	£10 per week
White goods	£10 per week
Floor coverings	£10 per week

18. In total these deductions amount to £70 per week. The Landlord has not however made any further adjustments for any of the Tenant's improvements and obligations.
19. The Landlord calculates that after deducting these adjustments which amount to £70 per week from the market rent of £392 per week it produces a net rent of £322 per week. When compared to the Landlord's rental proposal of £182.40 per week it is £139.60 per week lower than this figure and therefore, they consider their proposal is reasonable.
20. The Landlord makes no adjustment for scarcity as they consider there is an adequate supply of property in the area.

## **THE LAW**

21. 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.

22. ***Rent Act 1977***

23. ***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.”*

24. 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.

25. 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).*

26. 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.

27. 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**

28. 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 representations.

29. The Tribunal considered the achievable market rent would be in the order of £400 per week. The Tribunal then considered the various adjustments necessary to reflect the differences in the accommodation. In particular, the Tribunal made adjustments of £75 per week for disrepair and a further £115 per week for the improvements carried out by the Tenant arriving at an adjusted market rent of £210 per week.

30. The Tribunal then made adjustments for the Tenant’s internal decoration liability/ responsibility liability and 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.

31. 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 £77.50 per month.
32. This leaves a fair rent for the subject property of £172.75 per week.
33. 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 £198 per week. Accordingly, the rent limit does not apply.

## **DECISION**

34. The fair rent determined by the Tribunal for the purposes of Section 70 is, therefore £172.75 per week with effect from 20 December 2023, being the date of the Tribunal's decision.
35. 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**

36. 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**