



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

Case Reference : **BIR/44UF/F77/2023/0029**

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

Property : **28 East Dene Lillington Leamington Spa CV32
7RF**

Landlord : **Stonewater Ltd**

Representative : **None**

Tenant : **I Jones**

Representative : **None**

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
David Satchwell FRICS**

Date of Decision : **7 April 2024**

DECISION

BACKGROUND

1. This Decision arises as a consequence of an application made by the Tenant for extended reasons arising from the Tribunal's decision dated 11 December 2023 that the fair rent payable by the Tenant in accordance with Schedule 11 of the Rent Act 1977 shall be £163 per month.
2. By way of background, on 28 April 2023 the Landlord applied to the Rent Officer for registration of a fair rent of £165.99 per month in respect of 28 East Dene Lillington Leamington Spa CV32 7RF (the "Property").
3. The rent payable at the time of the application was £130.61 per month which was registered by the Rent Officer on 9 February 2021, effective from the same date.
4. The Rent Officer registered a rental of £164.20 per month on 23 June 2023, also effective from the same date.
5. On 4 July 2023, the Tenant 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 1 September 2023. It advised that the matter would be determined based on any written submissions made by the parties, without an inspection of the property and a hearing which neither party requested.
7. The Tribunal received a completed Reply Form from the Landlord and the Tenant.

The Property

8. The Property is located in Lillington near Leamington Spa in a residential area.
9. The Property comprises a post war circa 1950's 3-bedroom semi-detached house which is owned by the tenant under a shared ownership scheme paying rent for 25% of the Property.
10. The accommodation includes a living room, kitchen, 2 bedrooms and one small box room, bathroom, garage and driveway. Externally there is a garden to the front and rear, brick store shed and a driveway.
11. The Property has double glazing but no central heating and all floor coverings and curtains as well as white goods are the Tenant's. As the Property is under the shared ownership scheme the Tenant is responsible for all repairs and maintenance and decorations.

Submissions of the Tenant

12. In the Tenant's Reply Form, the Tenant advises that the only heating is a gas fire in the living room and that there is no central heating. Further the third bedroom is only a small box room and not capable of being used as a proper bedroom.
13. The Tenant also states that she has carried out some improvements including cavity wall insulation, loft insulation, some roof repairs and replaced the garage door as well as installed the double glazing and replaced the fire and fireplace, refitted the bathroom and replaced the internal doors.
14. As regard the proposed increase the Tenant considers the proposed increase is excessive and unjustified given the work she has carried out.
15. No further submissions were received from the Tenant.

Submissions of the Landlord

16. In the Landlord's Reply Form, the Landlord also confirms the Property has the same accommodation as described by the Tenant but states that the Landlord initially provided central heating although the repair and replacement is now the responsibility of the Tenant as is the double glazing. The Landlord also states that as this is a shared ownership property the overall condition of the house, central heating and double glazing is unknown to them.
17. The Landlord also provided details of several comparable properties in the area in support of the revised rent. These ranged between £1250 to £1495 per month and several sales transactions of similar properties in the area.
18. No further submissions were received from the Landlord.

THE LAW

19. 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.

20. ***Rent Act 1977***

21. ***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.”

22. 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.

23. 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).

24. 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.

25. 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

26. 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.

27. The Tribunal considered the achievable market rent would be in the order of £1,000 per month. The Tribunal then considered the various adjustments

necessary to reflect the differences in the accommodation. In particular the Tribunal made adjustments for the lack of central heating, bathroom refit, fire place upgrade upgrade totalling £100 per month arriving at an adjusted market rent of £900 per month.

28. The Tribunal then made adjustments for the various Tenant's improvements/obligations including floor coverings & curtains, white goods, fireplace, etc. and redecoration liability totalling £165 per month.
29. The Tribunal 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.
30. 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 £78 per month.
31. This leaves a fair rent for the subject property of £657 per month.
32. The Tribunal then adjusted the fair rent of £657 per month to reflect the shared ownership arrangements to arrive at a figure of £163.24 per month which it rounded down to £163 per month.
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 £173.50 per month. Accordingly, the rent limit does not apply.

DECISION

34. The fair rent determined by the Tribunal for the purposes of Section 70 is, therefore £163 per month with effect from 11 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



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