



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

**Case Reference** : **BIR/00GG/F77/2023/0043**

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

**Property** : **2 The Warren Upper Longwood Eaton  
Constantine Shrewsbury SY5 6SE**

**Landlord** : **Raby Estate Office**

**Tenant** : **Mr Sherwood**

**Type of Application** : **Determination of a fair rent under section  
70 of the Rent Act 1977 – Extended Reasons**

**Tribunal Members** : **Nicholas Wint FRICS  
R P Cammidge FRICS  
J Arain**

**Date of Decision** : **20 June 2024**

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**DECISION**

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## **BACKGROUND**

1. This Decision arises as a consequence of an application made by the Landlord for extended reasons arising from the Tribunal's decision dated 9 February 2024 that the fair rent payable by the Tenant in accordance with Schedule 11 of the Rent Act 1977 shall be £568 per month.
2. By way of background, on 20 July 2023 the Landlord applied to the Rent Officer for registration of a fair rent in respect of 2 The Warren Upper Longwood Eaton Constantine Shrewsbury SY5 6SE (the "Property").
3. The rent payable at the time of the application was £506 per month which was registered by the Rent Officer on 27 July 2021, effective from 27 July 2021.
4. The Rent Officer registered a rental of £549 per month on 13 September 2023, effective from 13 September 2023.
5. On 11 October 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 1 November 2023. It advised that the matter would be determined based on written submissions made by the parties, an inspection of the property, if required, and a hearing which neither party requested.
7. The Tribunal received a completed Reply Form from the Landlord who also submitted further submissions setting out details of comparable properties from the area. The Tenant did not complete or return their Form but did submit an email dated 1 August 2023 which had previously been sent to the Rent Officer.

## **THE PROPERTY**

8. The Property is located in Eaton Constantine near Shrewsbury in a residential area.
9. The Property comprises a 2-bedroom semi-detached house providing a living room, conservatory, kitchen, and bathroom and garden.
10. The repairs and external decorations are the Landlord's responsibility with the Tenant responsible for any internal decorations.

## **EVIDENCE**

11. The Tenant did not complete or return a Reply Form. However, in the Tenant's email dated 1 August 2023 to the Rent Officer it states that he had replaced a

light fitting, added gravel to the driveway, replaced the kitchen and fitted the conservatory, repainted the external doors and redecorated internally. The Tenant also states that the Landlord has failed to redecorate the external parts of the Property and attend to leaking gutters and replace the front boundary fence.

12. In the Landlord's Reply Form, it describes the extent of the accommodation, and states that the conservatory and bathroom and internal doors were installed by the Tenant and that the carpets and curtains and white goods also belong to the Tenant. The Landlord however fitted a new central heating system and fitted 6 new double glazed window units.
13. The Landlord also advises that the Tenant had previously complained about leaking gutters but was unaware if this had been resolved but would undertake to investigate and resolve the issue if necessary. Also as regard any external redecoration or repairs that are the responsibility of the Landlord, they would seek to undertake this work next Spring/ Summer.
14. It also appears no improvements have been undertaken to the Property by the Landlord since the last increase.
15. The Rent Officer also describes the Property as being circa 1800-1918 with a living room, two kitchen's, conservatory, 2 bedrooms, bathroom/wc, car space, stores and garden and full central heating.
16. In calculating the Property's rental value, the Landlord based their proposal on the evidence submitted in a table showing rents ranging between £8,580 to £24,000 per annum

## **THE LAW**

17. 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.

### **18. *Rent Act 1977***

### **19. *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.”*

20. 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.

21. 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).*
22. 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.
23. 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**

24. 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.
25. The Tribunal considered the achievable market rent would be in the order of £875 per month. The Tribunal then considered the various adjustments necessary to reflect the differences in the accommodation and improvements. In particular, the Tribunal made adjustments for the improvements carried out by the Tenant described above and including the responsibility to carry out internal

decorations calculated this equated to £238.75 per week arriving at an adjusted market rent of £636.25 per month.

26. 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.
27. 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 £68 per month.
28. This leaves a fair rent for the subject property of £568 per month.
29. 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 £653.50 per week. Accordingly, the rent limit does not apply.

## **DECISION**

30. The fair rent determined by the Tribunal for the purposes of Section 70 is, therefore £568 per month with effect from 9 February 2024, being the date of the Tribunal's decision.
31. 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**

32. 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**