



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

Case Reference : BIR/41UG/F77/2024/0019

Property : 4 Portland Drive, Scholar Green, Stoke-on-Trent, ST7 3BT

Applicant : Mr I. Alcock

Respondent : Mr and Mrs Capper

Type of Application : Appeal against the Rent Officer's Decision of Fair Rent under the s.70 Rent Act 1977

Tribunal Members : I.D. Humphries B.Sc.(Est.Man.) FRICS
M. Alexander B.Sc.(Hons.) MRICS

Date and Venue of Hearing : Not Applicable, paper determination

Date of Decision : 17 June 2024

DECISION

- 1 The Fair Rent is determined at £90.00 (Ninety Pounds) per week from 17 June 2024.

REASONS

Introduction

- 2 Mr and Mrs Capper have held a protected tenancy of 4 Portland Drive, Scholar Green, Stoke-on-Trent, ST7 3BT since November 1968. The fair rent had been registered at £76.50 per week on 7 September 2021 to take effect from the same date. On 19 October 2023 the landlord applied for a rent increase to £90.00 per week and on 20 November 2023 the Rent Officer registered a new rent of £98.00 per week to take effect from that date.
- 3 The tenants appealed against the Decision by letter to the Valuation Office Agency dated 27 November 2023 which was referred to the First-tier Tribunal for Determination. The Tribunal reached its decision on 17 June 2024 and the Decision papers were sent to the parties. On 24 June 2024 the Tribunal received a request for Reasons from the landlord which are the subject of this document.

The Law

- 4 Mr and Mrs Capper are protected tenants as acknowledged by the landlord. We have not been provided with a copy of the tenancy agreement but understand the property had been let unfurnished with the landlord responsible for repairs to the structure and exterior and the tenant responsible for internal decorations in accordance with s.11 of the Landlord & Tenant Act 1985.
- 5 Accordingly, the rent falls to be determined in accordance with s.70 of the Rent Act 1977.
- 6 S.70(1) states that in determining a fair rent, regard has to be had to all the circumstances of the tenancy (other than personal circumstances) including the age, character, locality and state of repair of the house, whether the property is let furnished and whether a premium had been paid or would be required to renew, continue or assign the tenancy.
- 7 s.70(2) adds a further qualification that it is assumed that the number of parties seeking to become tenants of similar houses in the locality on the terms of the tenancy (other than the rent) is not substantially greater than the number of houses available to let on such terms. This is usually referred to as 'scarcity' and the Court of Appeal held in *Spath Holme Ltd. v Chairman of the Greater Manchester Rent Assessment Committee* (1995) 28 HLR 107 and *Curtis v London Rent Assessment Committee* (1999) QB 92 that under normal circumstances the fair rent is the market rent discounted for scarcity. The Court also held that assured tenancy rents could be considered comparable to market rents.
- 8 s.70(3) requires the valuation to disregard any disrepair due to a tenant's failure to comply with the terms of the tenancy and any improvements carried out by either the tenant or their predecessor in title.

Facts Found

- 9 The Tribunal did not inspect the property but relied on the parties' submissions where it is described as a two bedroom, semi-detached house with designated parking space. It is located in the village of Scholar Green, about two miles north of Kidsgrove, Staffordshire.

- 10 The house is two storey brick and tile construction with two reception rooms, a kitchen, two bedrooms and bathroom.
- 11 The tenant has carried out significant improvements during the 56 years of the tenancy including but not limited to a new kitchen, new bathroom, a shower, tiling, 8 new doors and the installation of gas-fired central heating. These are the main value affecting improvements that are significant and disregarded for the purposes of valuation under the Rent Act 1977.

Submissions

- 12 A Hearing was arranged for 17 June 2024 but unfortunately there were technical issues with the Tribunal video platform and the Hearing had to be abandoned. The parties then agreed that the matter could proceed for Tribunal determination based on their written submissions.
- 13 The tenants' submission was an objection to the rate of rent increase set by the Rent Officer which was 28% higher than two years earlier when it had been set by a previous Tribunal.
- 14 They drew attention to all the improvements they had made to the accommodation, listed in paragraph 11 above.
- 15 The landlord had not sent specific submissions but in the documentary return to the Tribunal, said the rooms were in excellent condition, the house had double glazing and had been completely rewired in April 2021. The Form indicated that the double glazing and central heating had been provided by the landlord. Mr Alcock said he had accepted the Rent Officer's assessment of £98.00 per week and that the adjoining house which he also owned and which was subject to a protected tenancy, was let at £105 per week.

Decision

- 16 To assess the Fair Rent the Tribunal need to assess the rental value of the house in good condition as a starting point, assuming it had been well maintained and modernised with central heating, reasonable kitchen units and a bathroom suite in fair condition, fully equipped with carpets and curtains and ready to let in the open market. The Tribunal considered the submission and found the full rental value in good condition to be £160.00 per week.
- 17 However, the property had not been let in that condition. There were no white goods included in the tenancy for which we deducted £10.00 and the tenant was liable for internal decoration for which we deducted a further £5.00 bringing the total for lack of amenity to £15.00 per week.
- 18 The Tribunal considered whether the rent should be reduced to reflect the value of the central heating installation as both parties claimed it was theirs. On a balance of probabilities, the Tribunal found it more likely to have been installed by the tenants since they have occupied the house since 1968 whereas the present landlord had owned the Freehold for a shorter time, coupled with the fact that the tenants specifically said on the forms that they had the gas supply and central heating system installed whereas the landlord had just ticked a box saying it was a landlord's fixture.
- 19 Overall, we made deductions of £45.00 per week to reflect the value of the following tenant's improvements:

kitchen improvements	£15.00
bathroom improvements	£15.00
Central heating	<u>£15.00</u>
	£45.00

- 20 The Tribunal considered the question of scarcity in s.70(2) of the Rent Act 1977 and found that the number of potential tenants looking for accommodation of this type in the area would have been greater than the number of units available to let. We found that the excess demand represented 10% of the market rent and deducted this from the full market rent to arrive at the statutory basis for 'fair rent'.
- 21 £160.00 full market value less £15.00 for lack of amenity and £45.00 for tenant improvements leaves £100.00 per week.
- 22 Deducting 10% for scarcity, £10.00, leaves a net Fair Rent of £90.00 per week.
- 23 The Maximum Fair Rent Order limits the amount that can be charged by increasing the previous registered rent by inflation, measured by increases in the retail price index since the last registration and adding 5%, which would limit the maximum new rent to £99.50 per week. As the rent derived from comparable transactions is less, the Order is of no effect on this occasion.
- 24 There was no service charge within the rent.
- 25 Accordingly, the Tribunal determined the Fair Rent at £90.00 per week with effect from the date of its decision on 17 June 2024. Under the Rent Act 1977, the new Registered Rent takes effect from the date of Tribunal determination, not the date of increase in the landlord's Notice.

I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman