



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

Case Reference : BIR/OOCN/F77/2024/0010

Property : 52 Carless Avenue, Harborne, Birmingham, B17 9BW

Applicant : BPT (Residential Investments) Limited

Representative : Grainger plc

Respondent : Mr Terence Mason

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 £170.00 (One Hundred and Seventy Pounds) per week from 17 June 2024.

REASONS

Introduction

- 2 Mr Mason holds a protected tenancy of 52 Carless Avenue, Harborne, Birmingham, B17 9BW. The rent had previously been registered at £152.00 per week on 4 January 2022. In 2023 the landlord applied for a rent increase to £190.00 per week and on 3 January 2024 the Rent Officer registered a new rent of £157.00 per week to take effect on 6 February 2024.
- 3 The landlord appealed against the Decision on 1 February 2024 and the matter 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 20 June 2024 the Tribunal received a request for Reasons from the landlord's agents, Grainger plc, which are the subject of this document.

The Law

- 4 Mr Mason is a protected tenant which is 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 was described as a three bedroom, end-terraced house built around 1910. It is located in the popular residential suburb of Harborne about three miles west of Birmingham city centre.

- 10 The house is two storey brick and tile construction with two reception rooms, a kitchen, three bedrooms and bathroom. It has private gardens but no garage although there is usually roadside parking available in the area.
- 11 The landlord's submission to the Tribunal claims that the central heating was installed by the landlord and its value should be reflected in the rent.
- 12 By contrast, the tenant advised the Rent Officer that he had installed the central heating system and boiler together with numerous other improvements over the years including an en-suite, kitchen and bathroom improvements and some double glazing to the rear of the house.

Submissions

- 13 Neither party requested a Hearing.
- 14 The landlord's agents sent a written submission. The submission described the property and provided details of several comparable properties in the area to use as a basis of valuation:

<u>Address</u>	<u>Agreed Rent £ pw</u>
Ravenhurst Road, Harborne 3 bedroom, mid-terraced, modern kitchen and bathroom, with central heating and white goods. Unfurnished.	368.00
West Pathway, Harborne 3 bedroom, mid-terraced, modern kitchen and bathroom, with central heating and white goods. Unfurnished.	358.00

In the Landlord's opinion the open market rental value would be £358.00 per week from which they deducted £60.00 per week for facilities enjoyed by the comparable properties that were not provided by the landlord of the subject property. They comprised:

modernised bathroom	£15.00 per week
double glazing	£10.00 per week
modernised kitchen	£15.00 per week
carpets and curtains	£10.00 per week
white goods	<u>£10.00 per week</u>
total for lack of amenity	£60.00 per week

They requested a new rent of £190.00 per week which was still £108.00 per week less than comparable rents after allowing for the lack of amenity.

- 15 The landlords considered there was an adequate supply of property to let in the area and that there should be no discount for 'scarcity' under the terms of section 70(2) of the Rent Act 1977.
- 16 The tenant, Mr Mason, made no comment.

Decision

- 17 To assess the Fair Rent the Tribunal needed 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 have been £300.00 per week.
- 18 However, the property had not been let in that condition. The Tribunal accepted the landlord's deductions for lack of amenity in full, at £60.00 per week. The Tribunal deducted a further £10.00 per week for the tenant's decorating liability. The total deducted by the Tribunal for lack of amenity was therefore £70.00 per week.
- 19 The Tribunal considered the value of any tenant's improvements to be deducted from the rent. There had been a discrepancy in the evidence as the landlords claimed they had installed the central heating but the tenant claimed at least in evidence to the Rent Officer, that he had installed it. On balance, the Tribunal found it more likely to have been installed by the tenant since he had spent so much improving other aspects of the house and deducted £20.00 per week to reflect its value. The Tribunal deducted a further £10.00 per week for the value of the en-suite installed by the tenant. The total for tenant's improvements was therefore £30.00 per week.
- 20 The Tribunal then considered the question of scarcity in accordance with s.70(2) of the Rent Act 1977 and found that the number of potential tenants looking for accommodation to let of this type in the area would have been greater than the number of units available. We found that the excess demand represented 15% of the market rent and deducted this from the full market rent to arrive at the statutory basis for a 'fair rent'.
- 21 £300.00 full market value less £70.00 for lack of amenity and £30.00 for tenant's improvements leaves £200.00 per week.
- 22 Deducting 15% for scarcity, £30.00, leaves a net rent of £170.00 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 £192.00 per week. As the rent derived from comparable transactions is less, the Order is of no effect on this occasion.
- 24 There is no service charge included in the rent.
- 25 Accordingly, the Tribunal determined the Fair Rent at £170.00 per week with effect from the date of its decision, 17 June 2024.

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