



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

**Case Reference** : BIR/OOCN/F77/2024/0009

**Property** : 24 Croyde Avenue, Great Barr, Birmingham, B42 1JB

**Applicant** : Berkswell Properties Limited

**Representative** : Carters Property Management Limited

**Respondent** : Miss Catherine Frost

**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  
W. Jones FRICS

**Date and Venue of Hearing** : 15 May 2024 by on-line video Hearing

**Date of Decision** : 15 May 2024

---

**DECISION**

---

- 1 The Fair Rent is determined at £558.00 (Five Hundred and Fifty Eight Pounds) per month from 15 May 2024.

## REASONS

### Introduction

- 2 Miss Frost holds a protected tenancy of 24 Croyde Avenue, Great Barr, Birmingham, B42 1JB. The fair rent had previously been registered at £500.00 per month on 31 December 2021 to take effect on 17 January 2022. On 20 November 2023 the landlord applied for a rent increase to £676.00 per month to include water rates and on 5 January 2024 the Rent Officer registered a new rent of £534.00 per week to take effect on 17 January 2024.
- 3 The landlord appealed against the Decision by letter to the Valuation Office Agency dated 17 January 2024 and the matter was referred to the First-tier Tribunal for Determination. The Tribunal reached its decision on 15 May 2024 and the Decision papers were sent to the parties. On 6 June 2024 the Tribunal received a request from the landlord's agents asking for clarification as to whether the new rent included or excluded water rates.

### The Law

- 4 Miss Frost is a protected tenant which is acknowledged by the landlord. The tenancy agreement submitted with the application shows that the property had been let by the landlord's predecessor in title to Miss Frost and co-tenant Mr Thompson on 29 October 1988 for an initial period of a year at a rent of £280.00 per month.
- 5 Clause 1 of the agreement indicated that the rent was 'inclusive of rates' and to the right of that was a column of three headings, 'General Rates, Water rates and Other' with a £ sign next to each heading but no sums included after the £ signs.
- 6 By contrast, Clause 2 indicated:  

'2 THE TENANT hereby agrees with the PROPERTY OWNER as follows;  
(2) to pay all the following outgoings in respect of the property during the Tenancy:  
(a) All General Rates, Water Rates & Sewerage Charges (if applicable)'
- 7 There was clearly an issue but the question of liability to pay the water rates was settled by Birmingham County Court (Claim Ref.O79MC277) on 26 November 2021, where it was found that the landlord was liable to pay the cost.
- 8 The landlord is responsible for repairing the structure and exterior and the tenant for internal decorations in accordance with s.11 of the Landlord & Tenant Act 1985.
- 9 Accordingly, the rent falls to be determined in accordance with s.70 of the Rent Act 1977.
- 10 S.70(1) of the Rent Act 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.

- 11 s.70(2) adds a further qualification that it is assumed the number of parties seeking to become tenants of similar houses in the locality on the terms of the tenancy (other than the rent) would not be 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 would be the market rent discounted for scarcity. The Court also held that assured tenancy rents could be considered comparable to market rents.
- 12 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**

- 13 The Tribunal did not inspect the property but relied on the parties' submissions where the property is described as a three bedroom, semi-detached house. It is in Great Barr which is a suburb about five miles north west of Birmingham city centre.
- 14 The house is two storey brick and tile construction with central heating and double glazing. It has a garage and gardens.
- 15 The tenant has carried out improvements including refitting the kitchen, fitting new wardrobes and constructing a new patio. Photographs of the kitchen and garden were included in the tenant's evidence. These were the main value affecting improvements and were disregarded for valuation purposes under the Rent Act 1977.

### **Submissions**

- 16 An on-line Hearing was held by video on 15 May 2024, at which the landlord was represented by Miss J. Waugh of the letting agents, Carters, and the tenant Miss Frost represented herself.
- 17 The landlord's agents had written to the Valuation Office on 17 January 2024 pointing out that the landlord paid the water rates and asking for this to be reflected in the valuation. This was also stated in the landlord's application for a revised fair rent on Form RR1.
- 18 At the Hearing, Miss Waugh for the landlord said there was strong demand for this type of house in the rental market.
- 19 The tenant listed the improvements they made to the property during the tenancy and provided a schedule of regulated rents in the area. They advised that the landlord paid the water rates and submitted a copy of the county court Judgment. The tenant also said there were ongoing problems with the central heating system, particularly the lounge radiator.

### **Decision**

- 20 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. It was noted that the rent was to be assessed assuming the landlord paid for the water rates. The Tribunal considered the submissions and found that the full rental value in good condition was £800.00 per calendar month.

- 21 However, the property had not been let in that condition. There were no carpets or curtains included in the tenancy for which we deducted £15.00, no white goods for which we deducted £15.00, the tenant was liable for internal decorations for which we deducted £40.00 and there were problems with the central heating system for which we deducted £20, making the total for lack of amenity £90.00 per month.
- 22 We made a further deduction of £90.00 per month to reflect the value of the tenant's improvements comprising £60.00 for the kitchen refit, £10.00 for the wardrobes and £20.00 per month for the garden patio.
- 23 The Tribunal considered the question of scarcity in s.70(2) of the Rent Act 1977 and found the number of potential tenants looking for accommodation of this type in the area would have been substantially greater than the number of units available to let. We found the excess demand represented 10% of the market rent and deducted this from the full market rent to arrive at the statutory basis for a 'fair rent'.
- 24 £800.00 full market value less £90.00 for lack of amenity and £90.00 for tenant improvements left £620.00 per month.
- 25 Deducting 10% for scarcity left a net rent of £558.00 per month.
- 26 The Maximum Fair Rent Order limited the amount that could be charged by increasing the previously registered rent by inflation, measured by increases in the retail price index since the last registration, and adding 5%, which would have limited the maximum new rent to £628.00 per month. As the rent determined by the Tribunal was less than this, the Order was of no effect.
- 27 There was no service charge included in the rent.
- 28 Accordingly, the Tribunal determined the Fair Rent at £558.00 per month with effect from the date of its decision 15 May 2024.

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