



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

Case Reference : BIR/OOCN/F77/2023/0052

Property : 72 Church Green, Handsworth Wood, Birmingham, B20 2HP

Applicant : Midland Heart Housing Association

Respondent : Ms B. Marks

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 : Not Applicable, paper determination

Date of Decision : 15 May 2024

DECISION

- 1 The Fair Rent is determined at £141.00 (One Hundred and Forty One Pounds) per week from 15 May 2024.

REASONS

Introduction

- 2 Ms Marks holds a protected tenancy of 72 Church Green, Handsworth Wood, Birmingham, B20 2HP. The fair rent had previously been registered at £108.00 per week on 8 July 2021 including £3.28 for services. On 24 August 2023 the landlord applied for a rent of £108.97 per week including £3.42 per week for services and on 20 October 2023 the Rent Officer registered a new rent of £117.50 per week including £3.42 for services to take effect on 20 October 2023.
- 3 The tenant appealed against the Decision by letter dated 28 October 2023 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 10 June 2024 the Tribunal received a letter from the tenant asking for Reasons for the Decision which are the subject of this document.

The Law

- 4 Ms Marks is a protected tenant which is acknowledged by the landlord. The tenancy agreement was not submitted with the application.
- 5 The landlord is assumed to be responsible for repairing the structure and exterior and the tenant for internal decorations in accordance with s.11 of the Landlord & Tenant Act 1985.
- 6 Accordingly, the rent falls to be determined in accordance with s.70 of the Rent Act 1977.
- 7 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.
- 8 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.
- 9 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

- 10 The Tribunal did not inspect the property but relied on the Rent Register which described it as a modern terraced house with garage, built around 1979. It is part of a development of

similar houses near Handsworth Park about two miles to the north west of Birmingham city centre.

- 11 The house is of three storey brick and tile construction with a garage on the ground floor.
- 12 It was assumed the tenant had not carried out any value affecting improvements that would have to be disregarded for the purposes of rent assessment under the Rent Act 1977.

Submissions

- 13 Ms Marks' letter of 28 October 2023 said she was dissatisfied with the standard of repair carried out by the landlord. Fences had blown down in December 2022 and had still not been repaired by the following October. Ms Marks had lived at the property for 30 years and noticed that the services provided by the landlord had been reduced over time.
- 14 The landlord did not send any submissions.
- 15 Neither party requested a Hearing.

Decision

- 16 The case was determined on paper based on the information provided and the Tribunal's general, but not specific, knowledge of rents across the West Midlands.
- 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 location and market and found the full rental value in good condition to have been £200.00 per week.
- 16 The tenant was liable for internal decorations for which we deducted £10.00 per week. The landlord had not provided carpets or curtains for which we also deducted £10.00 per week or provided white goods for which we deducted a further £5.00 per week. The reduction for lack of amenity was therefore £25.00 per week.
- 17 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 substantially greater than the number of units available to let. We found the excess demand represented 15% of the market rent after allowing for lack of amenity, (i.e. £26.25) and deducted this from the full market rent to arrive at the statutory basis for a 'fair rent'.
- 18 £200.00 full market value less £25.00 for lack of amenity and £26.25 per week for scarcity left a net rent of £148.75 per week.
- 19 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 limited the maximum new Fair Rent to £141.00 per week.
- 20 There was a service charge of £3.42 per week included in the rent for the landlord's costs of grounds maintenance, gardening, a 'mobile caretaker' and 'ranger' which is to be noted on the Rent Register.

21 Accordingly, the Tribunal determined the Fair Rent at £141.00 per week including £3.42 per week for services with effect from the date of its decision, 15 May 2024.

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