



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

Case Reference	:	CAM/26UG/F77/2023/0057
Property	:	Ladywell Ford End Clavering, Saffron Walden Essex CB111 4PU
Applicant	:	Pat Dennison & Mick Dennison (Tenants)
Representative	:	None
Respondent	:	Mrs Patricia Rowe (Landlord)
Representative	:	Kevin Henry (Letting Agent)
Type of Application	:	S.70 Rent Act 1977 – Determination of a new fair rent
Tribunal Members	:	Mr N. Martindale FRICS
Tribunal	:	First Tier Tribunal (Eastern) HMCTS Cambridge CB1 1BA
Date of Decision	:	9 May 2024

REASONS FOR DECISION

Background

- 1 By an application dated 29 August 2023 the landlord applied to the Rent Officer for registration of a fair rent of £119.50 per week for the Property. The rent payable at the time of the application was £113.50 per week registered on 2 August 2017.
- 2 On 31 October 2023 the Rent Officer registered a fair rent of £161.50 per week with effect from 31 October 2023. By an email dated 14 November 2023 to the Rent Officer and then forwarded to the First Tier Tribunal, the tenant objected to the rent determined by the Rent Officer

and the matter was referred to the First Tier Tribunal Property Chamber for a fresh determination of the rent.

Directions

- 3 Directions dated 23 November 2023 were issued for case progression. The landlord did not request a hearing. The tenant did not request a hearing. Both parties completed the standard Tribunal Reply Form giving background to the Property and the circumstances surrounding the letting. The Tribunal is grateful to both parties for their representations and has taken them into account in making its decision.

Hearing

- 4 As neither party requested one and the case did not otherwise require a hearing, the application was decided on the papers alone.

Inspection

- 5 There was no inspection owing to current Tribunal practice. Neither party specifically requested one. From the two Forms submitted by the parties and from the existing entry in the Rent Register the Tribunal found the Property to be a small 3 bedroom semi-detached house from the late nineteenth century. Accommodation was on 2 levels, ground and first.
- 6 The house was a rural area at the edge of and appeared to be at an entrance to a small rural estate in a largely agricultural area of the county, away from Saffron Walden. There appeared to be two or three other houses nearby but, it is otherwise in a relatively remote location.
- 7 There appeared to be a little land with the house incorporating some off street parking at the Property. There were no on street parking restrictions but, it is served by a narrow single track road, only. There were small private, front and rear gardens. There was no garage, but a shed provided by the tenants. The tenants also paid for hard standing to be provided for the parking of their own vehicles off road at the Property.
- 8 From Google Streetview of May 2009, the Property is largely excluded from view. The Tribunal relies on the details of the Forms and the existing Register entry. It is assumed to be of traditional brick main walls and with a double pitched tiled main roof covering and essentially a typical late nineteenth century cottage built originally for estate employees and tenants of the landowner.
- 9 The Property was described in their Form by the tenant as having 3 bedrooms and 1 reception room, with a kitchen/ diner. There was a bathroom/WC, though the floor in which it was located was unclear. There was a utility room apparently ground floor. The tenant marked

down that there was no central heating but that double glazing to some of the ground floor windows provided by the landlord. Heating to some rooms was from simple fixed electric storage heaters provided by the tenant. Carpets and curtains and white goods were also provided by the tenants.

- 10 The tenants described a house lacking in a bathroom and kitchen and that they had provided these at their expense around 1990 and 2000, respectively.
- 11 The tenant labelled all rooms as “damp”. The bedrooms and utility room were described as the worst. Their comments in the Form gave the impression that the Property had been little changed since it was first let to the tenants, by the landlord in March 1970, with few concessions to modernity.
- 12 The tenant included some printed photographs suggesting mould growth to some rooms arising from mainly from condensation, the walls being single brick. Essentially thermally un-insulated, the Property potentially falls foul of the HHSRS Housing Health and Safety Rating System HHSRA operated by the local authority, particularly for “excess cold”, rendering it un-lettable without improvement but subject to potential enforcement. The current EPC status was also unclear, a measure also separately monitored by the local authority and also potentially rendering the Property entirely un-lettable.
- 13 The Property was described by the landlords agent in their Form in similar terms to the tenants Form save for the clarification of issues regarding double glazing, the absence of a garage and tenant funded hardstanding; and the funding and fitting of kitchen and bathroom by the tenant.
- 14 The Tribunal noted that the tenancy had been running from March 1970. In the Tribunal’s experience even if the letting had originally included white goods, carpets and curtains (though unusual from that period) such an original provision would by now be entirely worthless. The Tribunal preferred the evidence that the tenant had provided and renewed these items in a similar way to their funding and provision of kitchen and bathroom fittings, again often found in longstanding tenancies of this nature.
- 15 The Tribunal took the view that if there had been any internal fittings to kitchen, bathroom and WC from the landlord, whilst originally functional, would, from a tenancy of this age, by now be dated and effectively absent, replaced instead, by those funded by the tenant.

Law

- 11 When determining a fair rent the Committee, in accordance with the Rent Act 1977, 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.

- 12 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 emphasized
- (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).

Decision

- 13 Where the condition of a property is poorer than that of comparable properties, so that the rents of those comparables are towards twice that proposed rent for the subject property, it calls into question whether or not those transactions are truly comparable. Would prospective tenants of modernized properties in good order consider taking a tenancy of an unmodernised house in poor repair and with only basic facilities or are they in entirely separate lettings markets? The problem for the Tribunal is that the only evidence of value levels available to us is of modernised properties. We therefore have to use this but make appropriate discounts for the differences, rather than ignore it and determine a rent entirely based on our own knowledge and experience, whenever we can.
- 14 On the evidence of the comparable lettings and our own general knowledge of market rent levels in and around Saffron Walden, surrounding villages and adjacent rural parts of the County, the Tribunal would accept that the subject property if modernized and in good order would let on normal Assured Shorthold Tenancy (AST) terms, for £280 per week. This then, is the appropriate starting point from which to determine the rent of the property as it falls to be valued.
- 15 A normal open market letting would include carpets, curtains and "white goods", but they are absent here. The Property has 3 bedrooms but is assumed to have essentially no functioning kitchen or bathroom fittings, partial double glazing, no central heating and is very poorly insulated, subject to the exact extent to be determined. To reflect these

several factors and uncertainties the Tribunal deducts £125 per week, leaving the adjusted market rent at £155 per week.

- 16 The Tribunal also has to consider the element of scarcity and whether demand exceeded supply. The Tribunal found that there was no scarcity in the locality of Saffron Walden and surroundings and therefore makes no further deduction from the adjusted market rent to reflect this element. The fair rent to be registered would therefore be £155 per week but, this figure would be subject to the Market Fair Rent Cap of it were lower.
- 17 The Tribunal is required to calculate the Maximum Fair Rent Cap (MFR). This is determined by a formula under statutory regulation, which whilst allowing for an element of inflation may serve to prevent excessive increases. The capped rent here would be £165.50 per week.
- 18 As this cap is above, the fair rent determined by the Tribunal for the purposes of S.70, **the new fair rent is not capped so the new fair rent is £155 per week and is effective from and including the date of determination, 9 May 2024.** Whilst the landlord is not compelled to charge this rent, it must not charge a figure in excess of this.

Chairman N Martindale FRICS

Dated 9 May 2024

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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 to the person making the application (regulation 52 (2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rule 2013).

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e., give the date, the property, and the case

number), state the grounds of appeal and state the result the party making the application is seeking.
If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).