



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

Case Reference : **CAM/34UF/F77/2023/0044**

Property : **2 Chestnut Close
Rushden
Northamptonshire
NN10 9RS**

Applicant : **Orbit Housing Association
(Landlord)**

Representative : **None**

Respondent : **G. Suter (Tenant)**

Representative : **None**

Type of Application : **S.70 Rent Act 1977 – Determination
of a new fair rent**

Tribunal Members : **Mr N. Martindale FRICS**

Date and venue of Meeting : **8 December 2023
First Tier Tribunal (Eastern)
HMCTS Cambridge CB1 1BA**

Date of Decision : **8 December 2023**

REASONS FOR DECISION

Background

- 1 By an application dated 9 June 2023, the landlord applied to the Rent Officer for registration of a fair rent of £141.81 per week. The rent stated by the landlord, payable at the time of the application was said to be £103.50 per week (including a service charge of £10.69 per week). The registered rent prior, was however, £116 per week (including a service charge of £3.45 per week).

- 2 On 11 September 2023, the Rent Officer registered a fair rent of £116 per week with effect from 16 October 2023. By a letter dated 21 September the landlord objected to the new fair rent.
- 3 The First Tier Tribunal was notified of this objection and a request for a fresh determination of the rent.

Directions

- 4 Directions dated 3 October 2023 were issued by Laura Lawless Legal Officer, for case progression. Neither party requested a hearing and the matter was decided on written submissions received.

Tenant's Representations

- 5 The Tribunal did not receive back the standard Reply Form completed by the tenant, nor any other written representations.

Landlord's Representations

- 6 The landlord completed and returned the standard Reply Form on 5 October 2023. It largely confirmed the details in the existing Rent Register entry for this Property. The landlord included details of the service charge for the service charge year 2023/ 2024.
- 7 The reply confirmed that no furniture, nor white goods were included in the letting. There was off street parking, a store and a garden, but no garage or other space. There was full double glazing and full central heating.

Inspection

- 8 The Tribunal did not inspect the Property but was able to see Google Streetview online (@ April 2023). Neither party provided photographs.
- 9 The Property appeared to be of traditional construction in the 1960's, with brick walls and double pitched roof, finished in concrete tiles. The tenancy has been running since 6 October 1978. The Tribunal therefore assumes that the Property whilst maintained, is by now more functional than especially well finished, and in particular has only a basic kitchen and bathroom.
- 10 The Register entry and the Reply Form showed the accommodation was on 2 levels. GF 2 rooms, kitchen, WC; FF 3 rooms bathroom/ WC. There was full double glazing and full central heating.
- 11 There is said to be off road parking and a garden at the Property.

Law

- 12 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.
- 13 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).
- 14 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 un-modernised 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.
- 15 On the evidence of the comparable lettings and our own general knowledge of market rent levels in Rushden, we accept that the subject property would let on normal Assured Shorthold Tenancy (AST) terms, for £230 per week. This then, is the appropriate starting point from which to determine the rent of the property as it falls to be valued.
- 16 A normal open market letting would include carpets, curtains and "white goods", but the Tribunal concludes that since 1960's when the tenancy began, if they were, these were no longer provided here by the landlord. The kitchen and bathroom are assumed functional but, basic.

The Tribunal deducts £30 per week for these shortcomings, leaving the adjusted market rent at £200 per week.

- 17 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 Rushden for this type and size of property and therefore makes no further deduction from the adjusted market rent to reflect this.
- 18 The fair rent to be registered on this basis alone would be £200 per week, but, the new rent can be limited by the statutory Maximum Fair Rent Cap calculation. This limits any increase to the change in RPI between the date of the last registration of a fair rent and the current, plus 5%. The element of services is dealt with separately and has risen from £3.45 pw at last registration to £10.69 pw and these are included in the rent.
- 19 The calculations are shown in the MFR form and this caps the new rent at £200 per week. However as this is lower than the adjusted market rent, the new fair rent is capped at £154.69 pw. The Rent Act makes no allowance for the Tribunal to take account of hardship arising from the new rent payable compared with the existing rent.
- 20 The landlord is entitled but, not compelled, to charge the new rent at the registered figure from the effective date. However the landlord may not charge more than the fair rent.

Chairman N Martindale FRICS

Dated 8 December 2023

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).