



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

Case Reference	:	CAM/38UF/F77/2023/0060
Property	:	79 Lancut Road Witney Oxfordshire OX28 5AQ
Applicant	:	Mr C Parsloe (Tenant)
Representative	:	None
Respondent	:	Sanctuary Housing (Landlord)
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	:	29 January 2024 First Tier Tribunal (Eastern) HMCTS Cambridge CB1 1BA
Date of Decision	:	29 January 2024

REASONS FOR DECISION

Background

- 1 By an application dated 11 September 2023, the landlord applied to the Rent Officer for registration of a fair rent of £120.67 per week. The rent stated by the landlord, payable at the time of the application was said to be £108.57 per week. The intended effective date was unclear from the application. The registered rent was actually £144.50 per week from 25 November 2020, though this was not the rent charged.

- 2 On 31 October 2023, the Rent Officer registered a fair rent of £187.00 per week with effect from 31 October 2023. By a letter dated 19 November 2023, the tenant objected to the new fair rent. The First Tier Tribunal was notified of this objection and a request for a fresh determination of the rent.

Directions

- 3 Directions dated 4 December 2023 were issued by Laura Lawless, Legal Officer, for case progression. Neither party requested a hearing. The tenant's written representations did not include a completed standard Reply Form but was in the form of a letter of 19 November 2023 to the VOA. The Tribunal did not receive landlord's written representations.
- 4 The Tribunal determined the rent on written statements received.

Tenant's Representations

- 5 The tenant referred to the new passing rent proposed by the landlord of £120.67 per week. This figure was challenged as it was said to not have taken account of the tenant's improvements and repairs to the Property.
- 6 In particular the tenant referred to his replacement of some ceiling plasterboards in the hallway and upstairs landing and their re-plastering. This followed his earlier removal of an older polystyrene tile ceiling covering that he had been required to remove by the Council, for fire safety purposes.
- 7 The tenant also referred to a previous longstanding disrepair at the patio doors, it is presumed to the rear of the Property which took 3 years to remedy by the landlord. It is unclear when this disrepair was evident.
- 8 The tenant also referred to the collapse of "the ceiling" in the kitchen at the Property. The cause was water release from a burst pipe to the first floor. The tenant stated that he had remedied the pipe leak, the missing ceiling boards and plaster to the kitchen at his expense.
- 9 The tenant highlighted that the already old kitchen installed at the grant of the lease to that room, was further damaged by the ceiling collapse in December 2022. This damage and a new kitchen had yet to be repaired and installed respectively by the landlord.
- 10 The tenant found neither the new Fair Rent set by the Rent Officer at £187 per week and the new rent to be charged by the landlord at £120.67 per week to be "fair". The tenant asked for the rent passing of £108.57 per week to remain unchanged.

Landlord's Representations

- 11 The Tribunal did not receive any representations from the landlord.

Inspection

- 12 The Tribunal did not inspect the Property. The Tribunal was however able to externally view the Property from Google Streetview (@ September 2023). The semi detached house appears to date from the 1960's, on a residential housing estate of the same age in Witney.
- 13 The Property has a double pitched single lap concrete tiled roof and elevations of brick and partial render. There is a mono-pitch roof to the front ground floor entrance porch as well. There appear to be modern double glazed windows. Externally the Property appears in fair to good condition on the front and side elevations.
- 14 There is a shared front concrete hard standing/ pathway extending down the side of the house to the rear garden.
- 15 The accommodation comprises: Ground Floor; living room, kitchen, First Floor; 3 bedrooms, bathroom/ WC. There was full central heating.

Law

- 16 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.
- 17 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).

- 18 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.
- 19 On the evidence of the comparable lettings and our own general knowledge of market rent levels in and around Witney, we accept that the subject property would let on normal Assured Shorthold Tenancy (AST) terms, for £350 per week. This is the appropriate starting point from which to determine the rent of the property as it falls to be valued.
- 20 A normal open market letting would include carpets, curtains and “white goods”, but not usually provided in social housing lets and were assumed not provided here by the landlord. The Tribunal assumes the kitchen and bathroom whilst functional are basic. There are also items of disrepair that the tenant has arranged and paid for and others where remedy was awaited. Deduction for these shortcomings amount to £70 per week, leaving the adjusted market rent at £280 per week.
- 21 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 Witney for this type of property and makes no further deduction from the adjusted market rent.
- 22 The fair rent to be registered on this basis alone would be £280 per week, but, the new rent is limited by the statutory Maximum Fair Rent Cap calculation which limits the increase in the final Fair Rent.
- 23 The MFRC limits any increase to the change in RPI (set two months prior at each date), between the date of the last registration of a fair rent and the current, plus 5%. The calculations are shown in the MFR form and this caps the new rent at £193.18 per week including £1.18 per week service charge. The fair rent is therefore capped at this figure.
- 24 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 registered. The landlord is entitled, but not compelled, to charge the tenant the new Fair Rent at the registered figure from the effective date. However the landlord may not charge more than this figure.

Chairman N Martindale FRICS

Dated 29 January 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).