



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : CAM/22UG/F77/2024/0032

Property : 2 Railway Cottages Spring Gdns Rd
Wake Colne Colchester CO6 2DR

Applicant : Mrs S. Letch (Tenant)

Representative : None

Respondent : Miss S T Villiers-Smith (Landlord)

Representative : J Coston MRICS

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 : 4 November 2024
First Tier Tribunal (Eastern)
County Court Cambridge CB1 1BA

Date of Decision : 4 November 2024

REASONS FOR DECISION

Background

- 1 By an application of 1 July 2024 the landlord applied to the Rent Officer for registration of a fair rent. The rent stated as payable at the time of the application was said to be £135 per week. There was no service charge.
- 2 With effect from 22 August 2024 the Rent Officer registered a fair rent of £156 pw. There was an objection 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 13 September 2024 were issued by the Tribunal, for case progression. Neither party requested a hearing.

Representations

- 4 Standard Reply Forms were issued by the Tribunal prior and both parties invited to complete and return them. The Tribunal determined the new rent with the assistance of such written statements from the parties as were received for which it is grateful.

Inspection

- 5 The Tribunal did not inspect the Property. The Tribunal was however able to externally view the Property from Google Streetview (@ May 2009). The Property was part of a short 2 storey terrace of houses dating from the 1890's forming an isolated set of dwellings in remote open countryside on a narrow County lane. Off street parking was not obviously included but there was a garage and a large rear garden.
- 6 Externally the short terrace of which the Property forms part, appears to be in fair to good condition, with fair faced brick walls, a low double pitched single lap tiled concrete main roof. The Property had 3 rooms to the first floor, a living room, kitchen and bathroom/wc to ground floor. There was double glazing and full central heating. The tenant provided the carpets curtains and white goods. The decorations were said to be in poor condition but, these were down to the tenant to renew under the tenancy which started 10 April 1965.
- 7 Both parties completed and returned the standard Reply Forms. The tenant mentioned that there had been no repairs or works to the Property by the landlord and in particular that there were some leaks to the garage which had affected the wiring to that building. By contrast the landlord replied that the wiring in the garage had been effected by the tenant, was unauthorised and that the garage as built, served its basic purposes as such.
- 8 The landlord's agent briefly listed past landlord's improvements to the Property: 2004/5 Double glazing. 2006 New bathroom. 2010 Central heating. 2014 a new kitchen. 2022 a new heating boiler. The landlord's agent drew the attention of the Tribunal to brief details of similar houses available: Granville Close CO6 £323pw, St Alban Road Colchester £300pw. Stanley Wooster Way Colchester £312 pw. Ploughmans Headland Colchester £346 pw. Sudbury Road Halstead CO9.
- 9 The Tribunal is grateful to the parties for the details that they supplied.

Law

- 10 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.
- 11 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).
- 12 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.
- 13 On the evidence of the comparable lettings and our own general knowledge of market rent levels in rural areas around Colchester, the Tribunal accepts that the Property would let on normal Assured Shorthold Tenancy (AST) terms, for £300 per week. This then, is the appropriate starting point from which to determine the rent of the Property as it falls to be valued.
- 14 A normal open market letting would include carpets, curtains and "white goods", the deduction for this shortcoming being £25 pw, leaving the adjusted market rent at £275 pw.

- 15 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 rural locality around Colchester for this type of property and makes no further deduction from the adjusted market rent of £275 pw.
- 16 The fair rent to be registered on this basis alone would be £275 but, the new rent is limited by the statutory Maximum Fair Rent Cap calculation. 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 fair rent at £160 per week. The fair rent is therefore capped and registered at this figure.
- 17 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 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 4 November 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).

Notice of the Tribunal Decision

Rent Act 1977 Schedule 11

Address of Premises

2 Railway Cottages Spring Gardens Road
Wake Colne, Colchester CO6 2DR

The Tribunal members were

Mr N Martindale FRICS

Landlord

Miss S T Villiers-Smith

Tenant

Mrs S Letch

1. The fair rent is

£160

Per

week

(excluding water rates and council tax
but including any amounts in paras
3&4)

2. The effective date is

4 November 2024

3. The amount for services is

nil

Per

negligible/not applicable

4. The amount for fuel charges (excluding heating and lighting of common parts) not counting for rent allowance is

nil

Per

negligible/not applicable

5. The rent is to be registered as not variable.

6. The capping provisions of the Rent Acts (Maximum Fair Rent) Order 1999 apply.

7. Details (other than rent) where different from Rent Register entry

As register entry

8. For information only:

The fair rent to be registered is the maximum fair rent as prescribed by the Rent Acts (Maximum Fair Rent) Order 1999. As the rent was above the MFR, it is capped. The uncapped Fair Rent without the MFR capping provisions, would otherwise be £275 per week.

Chairman

N A Martindale

Date of decision

4 November 2024

MAXIMUM FAIR RENT CALCULATION

LATEST RPI FIGURE (2 months prior) X 388.60

PREVIOUS RPI FIGURE (2 months prior) Y 343.20

X 388.60 **Minus Y** 343.20 = (A) 45.40

(A) 45.40 **Divided by Y** 343.20 = (B) 0.1323

First application for re-registration since 1 February 1999 NO

If yes (B) plus 1.075 = (C)

If no (B) plus 1.05 = (C) 1.1823

Last registered rent* £135 **Multiplied by (C) =** £159.61 pw

**(exclusive of any variable service charge)*

Rounded up to nearest 50p = £160 pw

Variable service charge **NO**

If YES add amount for services Nil

MAXIMUM FAIR RENT = £160 **Per** Per week

Explanatory Note

1. The calculation of the maximum fair rent, in accordance with the formula contained in the Order, is set out above.
2. In summary, the formula provides for the maximum fair rent to be calculated by:
 - (a) increasing the previous registered rent by the percentage change in the retail price index (the RPI) since the date of that earlier registration and
 - (b) adding a further 7.5% (if the present application was the first since 1 February 1999) or 5% (if it is a second or subsequent application since that date).

A 7.5% increase is represented, in the calculation set out above, by the addition of 1.075 to (B) and an increase of 5% is represented by the addition of 1.05 to (B).

The result is rounded up to the nearest 50 pence.
3. For the purposes of the calculation the latest RPI figure (x) is that published in the calendar month immediately before the month in which the Tribunal's fair rent determination was made.
4. The process differs where the tenancy agreement contains a variable service charge and the rent is to be registered as variable under section 71(4) of the Rent Act 1977. In such a case the variable service charge is removed before applying the formula. When the amount determined by the application of the formula is ascertained the service charge is then added to that sum in order to produce the maximum fair rent.