



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

Case Reference : **BIR/17UK/F77/2018/0034**

Property : **30 Mill Lane, Hilton
Derby DE65 5GP**

Landlord : **BPT (Bradford Property Trust) Ltd**

Representative : **Grainger plc**

Tenant : **Mrs M Land**

Type of Application : **Determination of a fair rent under
Rent Act 1977 Schedule 11**

Tribunal Members : **Mrs A Rawlence MRICS (Chair)
Mrs K Bentley**

Date of Decision : **17 October 2018**

Reasons Issued on : **7 November 2018**

STATEMENT OF REASONS

DECISION

Background

1. By application dated 28 June 2016 the Landlord applied to the Rent Officer for registration of a fair rent of £517.80 per calendar month for the property.
2. The rent payable at the time of the application was £431.50 per calendar month.
3. The rent was previously registered on 23 September 2016 with effect from that date at £431.50 per calendar month by the Rent Officer
4. On 19 July 2018 the Rent Officer registered a fair rent of £455.00 per calendar month with effect from 23 September 2018.
5. By a letter dated 15 August 2018 the Landlord objected to the rent determined by the Rent Officer and the matter was referred to First-tier Tribunal (Property Chamber).
6. Neither party requested an oral hearing to determine its objection.
7. The Landlord made written representations dated 11 September 2018.
8. The Tribunal inspected the property on 17 October 2016.
9. After consideration of the available evidence and the applicable law the Tribunal confirmed that a sum of £455.00 per calendar month shall be registered as the fair rent with effect from 17 October 2018.
10. The Tribunal's decision was sent to the parties. By a letter dated 26 October 2018 the Landlord requested extended reasons for the determination.

The Law

The Jurisdiction of the Rent Assessment Committee

11. Paragraph 9(1) Part 1 Schedule 11 of Rent Act 1977 provides that;

“The Committee shall make such inquiry, if any, as they think fit and consider any information supplied or representation made to them in pursuance of paragraph 7 or paragraph 8 above and –

- a) if it appears to them that the rent registered or confirmed by the Rent Officer is a fair rent, they should confirm that rent;
- b) if it does not appear to them that the rent is a fair rent, they shall determine a fair rent for the dwelling house.”

Determination of a Fair Rent

12. Section 70 of the Rent Act 1977 provides that:

“(1) In determining, for the purposes of this Part of this Act, what rent is or would be a fair rent under a regulated tenancy of a dwelling-house, regard shall be had to all the circumstances (other than personal circumstances) and in particular to-

- (a) the age, character, locality and state of repair of the dwelling-house,
- (b) if any furniture is provided for use under the tenancy, the quality and condition of the furniture, and
- (c) any premium, or sum in the nature of a premium, which has been or may be lawfully required or received on the grant, renewal, continuance or assignment of the tenancy.

(2) For the purposes of the determination it shall be assumed that the number of persons seeking to become Tenants of similar dwelling-houses in the locality on the terms (other than those relating to rent) of the regulated tenancy is not substantially greater than the number of such dwelling-houses in the locality which are available for letting on such terms.

(3) There shall be disregarded –

- (a) any disrepair or other defect attributable to a failure by the Tenants under the regulated tenancy or any predecessor in title of his to comply with any terms thereof;
- (b) any improvement carried out, otherwise than in pursuance of the term of the tenancy, by the Tenants under the regulated tenancy or any predecessor in title of his”;

13. When determining a fair rent the Tribunal, 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 Tenants’ improvements and (b) the effect of any disrepair or other defect attributable to the Tenants or any

predecessor in title under the regulated tenancy, on the rental value of the property.

14. 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 emphasised
 - (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).
15. In considering scarcity under section 70(2) the Tribunal recognised that:
 - (a) there are considerable variations in the level of scarcity in different parts of the country and that there is no general guidance or "rule of thumb" to indicate what adjustment should be made; the Tribunal therefore considered the case on its merits;
 - (b) terms relating to rent are to be excluded. A lack of demand at a particular rent is not necessarily evidence of no scarcity; it may be evidence that the prospective Tenants are not prepared to pay that particular rent
16. Fair rents are subject to a capping procedure under The Rents Acts (Maximum Fair Rent) Order 1999 which limits increases by a formula based on the proportional increase in the Retail Price Index since the previous registration.

Inspection

17. The property was inspected 17 October 2016 when the Tribunal were met by the Tenant.
18. The property was constructed of part rendered stone and tile roof with UPVC double glazing. The property had gas central heating.
19. The property was a three bedroom end terraced house. The accommodation provided Hall, Living Room and Kitchen with Three First Floor Bedrooms and a Bathroom (bath and sink only). At the rear of the property had been an integral WC with external access only.
20. At the front of the property was a garden with vehicular access at the side. There was a large garden to the rear of the property

21. The property was in a fair state of repair, with double glazing carried out by the Landlord some six years ago and gas central heating installed three years ago. The property had not been re-wired and there were minimal sockets in the bedrooms. A modern fuse box had been installed two years ago.
22. The Tenant had made the following improvements to the property:

Kitchen improvements including worktops units, knocked through Pantry, re-arrangement of the WC to bring access indoors, gas fire in the Living room which was maintained by the Landlord, two new internal doors, tiling in the Bathroom, garden shed and outside tap
23. The Tenant owned the white goods, furniture, curtains and carpets.

The Landlord's Objection

24. The Landlord's representations dated 11 September 2018 stated that the property was located in a residential area near to the popular village of Hilton, a semi-rural area within easy reach of Derby and burton-upon-Trent where all amenities, schools, shopping and rail network are available. Hilton also had local amenities close to local amenities including shops and local schools. They believed that the requested rent of £517.80 was an accurate assessment of the rental value of this property taking account of its age, condition and tenancy type.

Comparable Evidence

25. The Landlord produced evidence of rent for one comparable property:

Kyle Road, Hilton. A modern three bedroom house with fully fitted kitchen including fitted white goods, modern family bathroom, ensuite to master bedroom and driveway parking.
The agreed rent was £650

Reasons for the Decision

26. In the first instance the Tribunal determined what rent the Landlord could reasonably be expected to obtain for the property in the open market if it were let today in the condition that is considered usual for such an open market letting. It did this by having regard to the evidence supplied by the Landlord and the Tribunal's own general knowledge of market rent levels in the area. Having done so it concluded that such a likely market rent would be £645.00 per calendar month.
27. However, the actual property is not in the condition considered usual for a modern letting at a market rent. Therefore, it was first necessary to adjust that hypothetical rent of £645.00 per calendar month to allow for the differences between the condition considered usual for such a letting and the condition of the actual property as observed by the Tribunal (disregarding the effect of any disrepair or other defect attributable to the Tenants or any predecessor in title). The Tribunal

considered that this required a deduction of £65.00 per calendar month in respect of the carpets, curtains and white goods which were provided by the Tenant and a deduction of £17.00 to reflect the basic first floor Bathroom with separate Ground Floor WC and the wiring.

28. The Tenant had carried out improvements to the property as listed above and an additional deduction of £75.00 per calendar month was made for these.
29. The Tribunal made a further deduction of £33.00 per calendar month for the Tenant's greater statutory responsibility for internal decoration under the Rent Act.
30. The Tribunal found that there was no scarcity in the locality and therefore make no deduction from the market rent to reflect this element. Please see paragraphs 14 and 15 above.
31. This left a fair rent for the subject property of £455.00 per calendar month assuming the landlord's repairing obligations were in accordance with section 11 of the Landlord and Tenant Act 1985.

The Decision

32. The fair rent confirmed by the Tribunal, for the purposes of section 70 was according £455.00 per calendar month.
33. The section 70 fair rent determined by the Tribunal is below the level which is the maximum fair rent permitted by the Rent Acts (Maximum Fair Rent) Order 1999 and accordingly that rent limit has no effect (details have been provided to the parties with the Tribunal's decision).
34. Accordingly, the sum of £455.00 per calendar month will be registered as the fair rent with effect from 17 October 2018.
35. If either party believes this decision is incorrect on a point of law, they may apply for permission from the First-tier Tribunal to appeal to the Upper Tribunal (Lands Chamber). Any such application must be made within 28 days of this decision (Rule 52 (2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

A J RAWLENCE
CHAIR

7 November 2018