



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

Case Reference : **CAM/26UC/F77/2018/0027**

Property : **134, London Road, Hemel Hempstead
Hertfordshire HP3 9AP**

Tenant : **Mr Kim Parry**

Landlord : **The Box Moor Trust**

Date of Objection : **4th September 2018**

Type of Application : **Section 70 Rent Act 1977 (First
Registration)**

Tribunal : **Tribunal Judge Dutton
Miss M Krisko BSc (Est Man) FRICS
Mr J Francis QPM**

Date of Consideration : **15th November 2018**

DECISION

The sum of £877.00 per month will be registered as the fair rent with effect from 15th November 2018.

We exercise our powers under Rule 50 to correct the clerical mistake, accidental slip or omission at paragraphs 1 and 2 of our Decision dated 15th November 2018. Our

amendments are underlined. We have corrected our original Decision because the misnaming was a typographical error. Our apologies.

Signed: *Andrew Dutton* - Tribunal Judge Dated 22nd November 2018

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FULL REASONS

1. Background

In an application dated 18th May 2018 the landlord applied to the Rent Officer for a re-registration of the fair rent to £900.00 per calendar month for the above property. Mr Parry, with his wife, have occupied the property since 1981. The rent previously registered with effect from 15th August 2016 was £800 per calendar month.

On 16th July 2018 the Rent Officer registered a fair rent of £900 per calendar month with effect from 15th August 2018.

By an email dated 4th September 2018 Mr Parry objected to the rent determined by the Rent Officer and the objection was referred to the Tribunal.

2. Inspection

The Tribunal inspected the property on 15th November 2018 in the company of Mr and Mrs Parry and Ms Jo Rough from the Landlord.

134, London Road, Hemel Hempstead (the Property) is a two storey semi-detached house with a conservatory and store room converted into a utility room and equipped with a shower, wash hand basin and toilet, these being tenant's improvements. There are extensive gardens to the rear with a large decking area laid by the tenant. There are also sheds, also constructed by the tenant.

The Property is of brick construction with a tiled roof built perhaps pre second World War. The Property has parking to the front and side access. It does front a fairly busy main road.

At ground floor level there is a separate WC with wash hand basin installed by the tenant, although the window in this room had not been replaced. There is a good sized living room, with behind that a good sized modern kitchen and what could be used as a dining room to the side. To the rear is the conservatory referred to above. The kitchen has a full range of cupboards and tenant's white goods.

At first floor level there are three bedrooms, two being doubles and the third being a small single bedroom. The bathroom is in the original state, with a bath and shower

over, WC with wash hand basin. There is a hole in the floor beneath the sink and the room is in need of attention.

There is gas central heating and the Property has the benefit of UPVC double glazing throughout installed by the Landlord but which had required attention to rectify problems only recently. The ground floor has attractive wooden flooring save for the kitchen and dining room which are tiled, again installed by Mr Parry. The Property appears to have the original wiring. The Property was in good decorative order. We did note that the roof was in need of attention. There was evidence of flashing separating from the chimney stack and slipped and broken tiles, especially to the rear. Apparently there is no felt lining. Indeed it was drawn to our attention that there appeared to be recent water staining to the ceiling in rear bedroom.

3. Evidence

The tenant had requested a hearing which took place at the Property with Ms Rough attending for the Trust. We also had submissions made by the tenant and a letter from the Trust indicating that at the time of the letter (20th June 2018) decorators were poised to attend to the exterior and replace any loose tiles. The letter told us that the Property had the benefit of double glazing installed in 2014 and accepted that some remedial work was required. There was also confirmation that a contribution of £2,250 would be made to the refurbishment of the bathroom.

At the inspection we had been able to see that there had been decorative work, although Mr Parry complained about the standard and indeed the front door appears to have seen better days. The double glazing had been the subject of recent improvement works although we noted that there was decorative works required, especially to the walls where the windows to the rear had been replaced.

Tenant's written Representations:

Mr Parry had sent in detailed submissions in letters dated 5th and 8th October 2018. We carefully noted all that was said.

Landlord's Representations:

The Landlord's written to the Tribunal on 3rd October 2018. Again we carefully noted the contents.

We have taken both representations into account when reaching our decision. We note in particular the Landlord's wish to work with Mr Sharp.

4. The law

A summary of the law in respect of this case is attached to this decision.

5. Determination and Valuation

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. The Tribunal considered the market in and around Hemel Hempstead from its own general

knowledge, rather than any specific knowledge of market rent levels in the area. However, we were provided with details at the hearing, that the adjoining property, rented by Mr Parry's brother a monthly rent of £1,050, although not an open market rent and the neighbouring house at 136 had recently been rented by the Trust at £1,400 per month. This property was larger both in its physical size and the plot size, with much more extensive off road parking than the subject property. The Tribunal concluded that an open market rent for three bedroom houses in the vicinity would be in the region of £1,300 per month. This level of rent assumes a property in a refurbished condition.

We need to consider any deduction to reflect the numerous improvements undertaken by the Tenant. These include the modernisation of the kitchen, the installation of the under stair WC, the erection of the conservatory and the creation of the utility room with shower, sink and toilet in the store to the rear, wooden flooring and the external work we referred to above. The state of the bathroom, the old wiring and the disrepair of the roof have also been considered. Taking these matters into account we consider that a reduction in the open market rent of 25%, or £325 fairly reflects these issues. This therefore reduces the open market rent to £975.00 per month

Next we need to consider the issue of scarcity. We were not provided with any specific evidence on this issue. However, the issue of scarcity is considered on the basis of the number of properties available to let and also considering the demand for such properties and over a really large area. Therefore using our general, rather than any specific knowledge and experience, we consider that in the wide geographical area being north west of Great London to include Buckinghamshire, Hertfordshire and Bedfordshire there is an imbalance between supply and demand and this impacts upon rental values. Accordingly we make a deduction of approximately 10% for scarcity. The full valuation is shown below.

	£/month
Market Rent	1,300.00
Less	
location, tenants improvements, roof in disrepair and dated bathroom	<u>325.00</u>
	975.00
Scarcity say	<u>98.00</u>
Fair rent	£877.00

6. Decision

Accordingly the sum of £877 per month will be registered as the fair rent with effect from 15th November 2018 being the date of the Tribunal's decision.

Tribunal Judge Dutton

Date: 15th November 2018



First-tier Tribunal Property Chamber (Residential Property)

The Law Relating to the Assessment of Fair Rents

INTRODUCTION

1. This is a brief summary of the law applied by the Tribunal (formerly called a Rent Assessment Committee) when reaching its decision. It is an integral part of the decision.
2. The definition of **Fair Rent** is contained in the Rent Act 1977 i.e.:-

70(1) In determininga 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 dwellinghouse
- b) if any furniture is provided for use under the tenancy, the quantity, quality and condition of the furniture, and
- c) any premium, or sum in the nature of a premium.....

70(2) For the purposes of the determination it shall be assumed that the number of persons seeking to become tenants of similar dwellinghouses 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 dwellinghouses in the locality which are available for letting on such terms

70(3) There shall be disregarded:-

- a) any disrepair or other defect attributable to a failure by the tenant under the regulated tenancy or any predecessor in title of his.....
- b) any improvement carried out, otherwise than in pursuance of the terms of the tenancy, by the tenant under the regulated tenancy or any predecessor in title of his
- e) **if any furniture is provided for use under the regulated tenancy, any improvement to the furniture by the tenant under the regulated tenancy or any predecessor in title of his or, as the case may be, any**

deterioration in the condition of the furniture due to any ill-treatment by the tenant, any person residing or lodging with him or any sub-tenant of his

3. *The Tribunal also has to take into account the Human Rights Act 1998. However, when interpreting the Rent Act 1977 (primary legislation) the Tribunal will have to follow the wording of the Act if it cannot be read or given effect in a way which is compatible with rights contained in the European Convention on Human Rights. Any party dissatisfied will then have to refer the matter to the High Court for the making of a Declaration of Incompatibility.*
4. All other rights granted by the Convention such as the right to a fair and public hearing by an independent tribunal and the right to respect for a person's private and family life are to be observed by the Tribunal
5. There have been a number of cases decided over the years most of which have been either unreported or reported only in professional journals. However in 1997 a Court of Appeal decision was reported as *Curtis v London RAC (No. 2) [1997]4 AER 842* where the Court reviewed the various authorities and provided guidance to Tribunals to assist them in reaching decisions.
6. The Court confirmed that a Tribunal must first find an open market rent for the property taking into account evidence before it from the parties and the Rent Officer. It will not consider other registered rents unless there are very exceptional circumstances which will be set out in the decision if appropriate.
7. A Tribunal can use such factors as comparable rents being paid for similar properties in the locality, capital values and return on expenditure as well as the experience and expertise of its members.
8. Having established an open market rent the Tribunal then has to consider the deductions and allowances referred to above
9. In all cases the Tribunal will try its best to give the parties details of its calculations. The *Curtis* case (above) made it clear that a Tribunal's decision must be supported by some workings out, but precise arithmetical calculations are not possible in all cases. There are many properties where the deductions and allowances are of such proportions that a Tribunal must simply take a view as to how much a rent would have to be reduced in order to obtain a tenant. This may not be the same as the sum total of the Statutory deductions/allowances.
10. If the Tribunal considers that the demand for similar properties in the locality is substantially greater than the supply then a deduction has to be made in accordance with Section 70(2) Rent Act 1977. This is the so-called "scarcity factor". The Tribunal is obliged to look at scarcity in terms of people wanting regulated tenancies. However the reality is that no new regulated tenancies are created nowadays and scarcity is therefore considered using the types of tenancy currently in use.
11. The word "locality" in Section 70(2) has a different meaning to that in Section 70(1). In the case of *Metropolitan Property Holdings Limited v Finegold [1975] 1 WLR 349* it was decided that the "locality" for this purpose should be a really large area. A Tribunal must define the extent of that "locality" when reaching its decision.

12. In determining scarcity, Tribunals can look at local authority and housing association waiting lists but only to the extent that people on such lists are likely to be genuine seekers of the type of private rented accommodation in question if the rent were to exclude the scarcity element.
13. The Tribunal must apply the Rent Acts (Maximum Fair Rent) Order 1999 – known as the “capping” provision – unless there is an exemption.

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. 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.
4. 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.

Notice of the Tribunal Decision

Rent Act 1977 Schedule 11

Address of Premises

134 London Road, Hemel Hempstead,
Hertfordshire, HP3 9AP

The Tribunal members were

Judge Dutton
Miss Marina Krisko BSc (EstMan) FRICS
Mr. J Francis QPM

Landlord

The Box Moor Trust

Tenant

Mr Kim Parry

1. The fair rent is

£877.00

Per

Cal month

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

2. The effective date is

15th November 2018

3. The amount for services is

not applicable

Per

not applicable

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

not applicable

Per

not applicable

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

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

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

[Empty box for details where different from Rent Register entry]

8. For information only:

The fair rent to be registered is not limited by the Rent Acts (Maximum Fair Rent) Order 1999, because it is below the maximum fair rent of £ 903.00per calendar month.

Andrew Dutton Judge
Dutton

Date of decision

15th November 2018

MAXIMUM FAIR RENT CALCULATION

LATEST RPI FIGURE	X	284.1			
PREVIOUS RPI FIGURE	Y	263.4			
X	284.1	Minus Y	263.4	= (A)	20.70
(A)	20.7	Divided by Y	263.4	= (B)	0.0785876

First application for re-registration since 1 February 1999 NO

If yes (B) plus 1.075 = (C)			
If no (B) plus 1.05 = (C)	1.1285876		
Last registered rent*	800	Multiplied by (C) =	902.87
<i>*(exclusive of any variable service charge)</i>			
Rounded up to nearest 50p =	903.00		
Variable service charge	NO		
If YES add amount for services			
MAXIMUM FAIR RENT =	£903.00	Per	Calendar month

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.