



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

Case Reference : **CAM/38UD/F77/2019/0009**

Property : **107 Harpsden Road, Henley on Thames,
Oxfordshire RG9 1ED**

Applicant (Landlord) : **Whitestrاند Ltd**
Agent : **Martin & Pole**

Respondent (Tenant) : **D B Dewdney**

Type of Application : **Determination of a fair rent under
Section 70 of the Rent Act 1977**

Tribunal Members : **Judge JR Morris**
Mrs Wilcox BSc MRICS

Date of Decision : **30th April 2019**

DECISION

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DECISION

1. The Fair Rent for the Property payable from 30th April 2019 is determined to be £640.00 per calendar month which is below the capped rent under the Rent Acts (Maximum Fair Rent) Order 1999. The uncapped rent being £753.50.

REASONS

THE PROPERTY

2. The Property is a two-storey end of terrace house of brick under a slate roof.

Accommodation

The front door opens directly into the living room. The house comprises a living room, a kitchen, a utility room and a w.c.. On the first floor are two bedrooms one of which has a wash hand basin and a shower. There is an entrance garden to the front and a larger garden to the side and rear. There is side access to the garden.

Services

The Property has mains electricity, gas, water and drainage. Space heating is by night storage heaters and a wood burning stove installed by the Tenant and water heating is by an electric water heater over the kitchen sink and another over the wash hand basin, also installed by the Tenant.

Furnishing

The Property is let unfurnished.

Location

The Property is situated in a residential area of Henley on Thames.

THE TENANCY

3. The Tenancy is a statutory regulated weekly tenancy, which commenced in 1983. Being a tenancy for 7 years or less, section 11 of the Landlord and Tenant Act 1985 applies in respect of Landlord's repairing obligations. The Tenant is responsible for internal decoration.

THE REFERRAL

4. The current rent is £650.00 per calendar month registered on 5th November 2014 and effective from 23rd November 2014. The Landlord by a notice in the prescribed form received by the Valuation Office Agency on 28th January 2019 proposed a new rent of £800.00 per calendar month. On 20th February 2019 the Rent Officer registered a rent of £650.00 per calendar month effective from that date. The registered rent was below the capped rent under the Rent Acts (Maximum Fair Rent) Order 1999. On 15th March 2019 the Tenant referred the Rent Officer's assessment to the Tribunal. The referral was by way of written representations.

THE INSPECTION

5. The Tribunal inspected the Property in the presence of the Tenant.
6. Externally the Property is in poor condition. The front door is in need of refurbishment and redecoration. There have been attempts to fill the holes where the wood has rotted around the weather board. The windows are timber and single glazed and in need of refurbishment and redecoration although some are likely to require replacement as they are severely rotted. On at least one window the joints have come apart on the sashes and the glass looks precarious. The guttering is upvc and appears to have been recently replaced except that a corner section above the bay window is missing. The roof is in a poor condition with cracked, chipped, clipped and slipped slates on all faces. A slate is missing from the second row from the ridge on the front roof and a hole is apparent into the void. The Landlord has recently rebuilt the chimney.
7. The single storey structure containing the utility room at the rear of the house appears to be subsiding. The present crack appears small although its significance may be masked by the attempts to fill the aperture externally and

internally in the past. This is further apparent from the hanging of the back door, the lintel of which is displaced and the door is snagging on the floor so that it cannot be opened more than a third of its full extent but also cannot be locked by security bolts only the rim lock. The door itself is in poor condition. These defects in respect of the door may amount to a fire and security risk.

8. There is no off-road parking but there is unrestricted parking on the road outside the house. A section of the boundary wall to the side of the Property facing the road was being rebuilt at the time of the inspection.
9. Internally the Property is in fair condition although the plaster has perished in numerous places through the Property making decoration difficult. As let the kitchen would be in what is now the utility room and would be basic and dated having only a sink unit and a gas point. As let, there would be no bathroom and only an outside w.c. The present kitchen and bathing faculties of shower and wash hand basin in one of the bedrooms are as a result of the Tenant's improvements. The current arrangement whereby the w.c. can be accessed internally is also a Tenant's improvement.
10. As let water was heated by a Burco water heater which had to be replaced by the Tenant. Therefore, the provision of hot water by the current arrangement installed by the Tenant of electric water heaters and an electric shower is a Tenant's improvement. As let space heating was by 4 night storage heaters. These had to be replaced by the Tenant and therefore the present space heating arrangements are a Tenant's improvement. The floorcoverings, curtains and white goods are the Tenant's.
11. The Tribunal noted that the electrical installation was dated being a fuse board rather than a modern consumer unit and that as let there would be insufficient electrical sockets for modern living.

THE LAW

12. The law applicable to this application is contained in section 70 of the Rent Act 1977.
 - (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 dwelling house
 - 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.....
 - (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 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
 - c) 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

REPRESENTATIONS

Tenant's Representations

13. In written representations the Tenant stated that the present landlord had not inspected the Property to see what condition it was in. The tenant said that the following works had been carried out by the Landlord over the past 10 months or so:
- The chimney stack had been rebuilt as it was in a dangerous state and a roofing slate had been replaced.
 - The boundary wall was collapsing and that had been demolished but not rebuilt. The Tribunal found the wall to be re-built on the day of the inspection.
 - The guttering has been repaired. The Tribunal found that a section above the bay was missing.
 - The back door does not open properly, possibly due to subsidence and requires refitting. A new backdoor has been delivered but not fitted.
14. The windows and roof are in a state of disrepair. No electrical safety check has been carried out and the plaster is blown on a lot of the walls.
15. The Tenant said that when she moved in there was only an outside toilet, water was heated by a Burco boiler in the kitchen and heating was by four old storage heaters.

Landlord's Representations

16. The Landlord's Agent submitted that the Rent Officer's registering the same rent was out of line with the market and other Rent Officer determinations.
17. He submitted two registered rent determinations as comparables:
- 4 Stanley Road, Wokingham – a two-bedroom semidetached house in a cul de sac on the outskirts of Wokingham. The rent was increased from £710.00 (assessed four years earlier) to £740.00 per calendar month on 20th March

2019. The new rent was believed to have been a capped rent under Rent Acts (Maximum Fair Rent) Order 1999.

51 London Road, Bagshot – a small two-bedroom mid terrace house with a reception room, kitchen, bathroom and w.c. on the ground floor situated on a very busy road. There is no car parking nearby. The rent was increased from £561.00 (assessed four years earlier) to £646.00 per calendar month on 5th March 2019.

18. It was submitted that the latter property was a good comparable in that it was said to be in virtually identical condition but that the Property was in a better location in terms of the address and the position, London Road being very busy and there being no nearby parking. It was submitted that the rent for the Property should be £75 to £100 more than 51, London Road, Bagshot.

RENT ASSESSMENT

19. The Tribunal assessed the rent for the Property as at the day of the inspection pursuant to section 70(1) Rent Act 1977 (having regard in particular to the age, character, locality, state of repair of the property and all the circumstances other than personal circumstances). The Tribunal took account of the relevant cases and legislation including *Spath Holme Ltd v Greater Manchester Rent Assessment Committee* (1996) 28 HLR 107, *Curtis v The London Rent Assessment Committee* [1997] 4 All ER 842 and *BTE Ltd v Merseyside and Cheshire Rent Assessment Committee* 24th May 1991.
20. The Tribunal is required under the legislation and case law to assess a rent for the Property by reference to rental values generally and to the rental values for comparable properties in the locality in particular. It does not take into account the present rent and the period of time which that rent has been charged nor does it take into account the percentage increase which the proposed rent represents to the existing rent.
21. It then considers whether or not a deduction for scarcity should be made, which varies depending on the market within a locality from time to time. That is to say that rents for similar dwelling houses in the locality may be substantially 'inflated' because demand for them exceeds supply. If a Rent Officer or tribunal find this to be so they must make a percentage reduction to the rent to reflect this 'inflation'.
22. Registered rents are not considered to be a satisfactorily comparable because they are subject to variables which may not be apparent from the rent alone. For example, the rents may be capped under the Rent Acts (Maximum Fair Rent) Order 1999 and so may not relate to a market rent. In addition, the rent may have been reduced due to the effects of scarcity under section 70 of the Rent Act 1977.
23. Even if these provisions did not apply, substantial details would need to be given regarding the property and its condition with details of any tenant's improvements which would be disregarded, together with any deductions made in respect of condition and improvements. None of this information was

available. Therefore, the Tribunal did not find that the evidence of rental values submitted by the Landlord's Agent suitable comparables.

24. As neither of the parties provided suitable evidence of market rents for comparable properties the Tribunal used the knowledge and experience of its members. The Tribunal determined that the rent for the Property, taking into account the location, in good condition with central heating, double-glazing, modern kitchen and bathroom, and let with carpets, curtains and white goods on an Assured Shorthold Tenancy on the same terms at the time of inspection, would be £1,100.00 per calendar month. However, the Property as let and maintained by the Landlord, does not have the facilities and features found in similar houses let at this rent. Therefore, the Tribunal made a deduction of £460.00 per calendar month to take account of the:

- the basic and dated kitchen;
- the outside w.c.;
- the lack of bathroom;
- the lack of space or water heating;
- the lack of carpets, curtains or white goods;
- the state of repair including: the missing guttering, the missing tile and poor condition of the roof generally, the single glazed and rotting windows, the rotting front and back doors, the perished plaster and dated electrical installation.

It should be noted that this figure cannot be a simple arithmetical calculation and is not based specifically upon capital cost but is the Tribunal's estimate of the amount by which the rent would have to be reduced to attract a tenant.

25. It should be noted that the rent is assessed as the Property is let taking into account any improvements, repairs, replacements and updating carried out by the Landlord up to and including the inspection. However, improvements, repairs, replacements and updating carried out by the Tenant are determined to be tenant's improvements and so are disregarded under section 70(3)(b) Rent Act 1977.

SCARCITY

26. Assessing a scarcity percentage cannot be a precise arithmetical calculation because there is no way of knowing either the exact number of people looking for properties similar to the subject property in the private sector or the exact number of such properties available. It can only be a judgement based on the years of experience of members of the Tribunal together with a consideration of the properties advertised as being to let as at the time of the assessment.
27. That experience and consideration leads the Tribunal to the view that there is no substantial scarcity of "... similar dwelling houses in the locality...", in this case Oxfordshire as at the day of the inspection, that are available for letting, and so no deduction is made to reflect this.

TRIBUNAL'S CALCULATIONS

28. Market Rent: £1,100.00 per calendar month

