



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

Case Reference : BIR/47UG/F77/2021/0033

Property : Flat 7, Hurcott Court, Hurcott Road, Kidderminster, DY10 2QT

Applicant : Miss J.L. Kendal

Respondent : Stonewater Ltd.

Type of Application : Appeal against the Rent Officer's Decision of Fair Rent under s.70 of the Rent Act 1977

Tribunal Members : Mr I.D. Humphries B.Sc.(Est.Man.) FRICS
Mrs K. Bentley

Date and Venue of Hearing : Not Applicable, paper determination

Date of Decision : 21st September 2021

DECISION

- 1 The Fair Rent is determined at £108.00 (One Hundred and Eight Pounds) per week from 21st September 2021.

REASONS

Introduction

- 2 Miss Kendal holds a protected tenancy of Flat 7, Hurcott Court, Hurcott Road, Kidderminster, DY10 2QT.
- 3 The recent history of the rent is as follows:

18.3.13	Rent Officer registers £92.00/week including £10.10 for services.
7.4.21	Landlord applies for a rent increase to £129.66/week including £13.66 for services.
22.6.21	Rent Officer registers £112.00/week including £13.66 for services.
4.8.21	The Tenant objects to the new rent and the appeal is referred to the First-tier Tribunal.
21.9.21	The Tribunal determines a new rent of £108.00 including £13.66 for services.
14.10.21	The Tenant requests Reasons for the Tribunal's decision.
- 4 The Reasons are set out below.

The Law

- 5 Miss Kendal is a protected tenant as acknowledged by the landlord. The Tribunal had not been provided with a copy of the tenancy agreement but understood from the application for fair rent completed by the landlord that the property had been let unfurnished, with the landlord responsible for repairs to the structure and exterior and the tenant responsible for internal repair and decoration in accordance with s.11 of the Landlord & Tenant Act 1985.
- 6 Accordingly, the rent was determined under s.70 of the Rent Act 1977.
- 7 S.70(1) states that in determining a fair rent, regard has to be had to all the circumstances of the tenancy (other than personal circumstances) including the age, character, locality and state of repair of the house, whether the property is let furnished and whether a premium had been paid or would be required to renew, continue or assign the tenancy.
- 8 s.70(2) adds a further qualification that it is assumed that the number of parties seeking to become tenants of similar houses in the locality on the terms of the tenancy (other than the rent) is not substantially greater than the number of houses available to let on such terms. This is usually referred to as 'scarcity' and the Court of Appeal held in *Spath Holme Ltd. v Chairman of the Greater Manchester Rent Assessment Committee* (1995) 28 HLR 107 and *Curtis v London Rent Assessment Committee* (1999) QB 92 that under normal circumstances the fair rent is the market rent discounted for scarcity. The Court also held that assured tenancy rents could be considered comparable to market rents.
- 9 s.70(3) requires the valuation to disregard any disrepair due to a tenant's failure to comply with the terms of the tenancy and any improvements carried out by the tenant or their predecessor in title.

Facts Found

- 10 The Tribunal relied on information provided by the parties to describe the accommodation which is a first floor flat in a block. It comprised a living room, kitchen, two bedrooms, bathroom and toilet with central heating and double glazing provided by the landlord. The tenant had provided the carpets, curtains and white goods.
- 11 There is a communal laundry in the building. Outside, the facilities provided within the scheme include a laundry, off-road parking and communal gardens.

Submissions

- 12 Neither party requested a Hearing.
- 13 The landlord did not make any submissions.
- 14 The tenant had written to the Rent Officer objecting to the landlord's alleged failure to provide services to the building and in particular a lack of window cleaning since 2016. It was claimed that the garden had not been properly maintained and the cost of providing other services such as a communal tv aerial was excessive. A charge had been made for a cctv but there was a question regarding its effectiveness or indeed whether it was working at all because it was claimed that when Police asked for a copy of the recordings to assist with enquiries the landlord had been unable to provide it.
- 15 The tenant included a copy of a 'Service Schedule' with her letter relating to the cost of service charges for 2012-2014 which had itemised communal electricity, gardening (including tree surgery), window cleaning, a door entry system, fire equipment, a cctv system, site equipment and management charges and at the time the cost had been divided between each flat at £10.10 per week.
- 16 Overall, Miss Kendal was dissatisfied with the services which were inadequate and over charged. She did not consider she was receiving value for money.

Decision

- 17 Having been unable to carry out a site inspection the Tribunal was unable to determine whether or not services were being provided in accordance with the landlord's obligations in the tenancy agreement. However, the Tribunal has no power to force any party to comply with the terms of a tenancy agreement as its only jurisdiction is to determine a fair rent under the terms of the statutory definition in the Rent Act 1977 ('the Act').
- 18 Under section 70 the Act, the Tribunal has to assess the fair rent using the full market rental value of the property as a starting point, assuming the accommodation is in good condition, well maintained and modernised with central heating, reasonable kitchen units and a bathroom suite in fair condition, equipped with carpets and curtains and ready to let in the open market, and then adjust that figure to reflect the circumstances of the case.
- 19 In this case, the Tribunal assumed the landlord was providing a reasonable level of services and apart from a lack of window cleaning, Miss Kendal was not suggesting that any of the other services were not being provided, only that she considered the cost of providing them to be excessive.

- 20 However, from a Tribunal perspective, the cost charged for the services is irrelevant. There is a ceiling to the rent a tenant in the market would pay for any accommodation and it would make no difference whether the services comprised 10% or 50% of that rent as far as the tenant was concerned, the overall sum would be exactly the same for any given level of services. The Tribunal's only concern is the maximum sum, the market rent, which is the starting point.
- 21 In this application neither the landlord nor tenant gave any evidence of the full market rental value described in paragraph 18 above, and so using its own general knowledge and experience, the Tribunal determined the full market value of this flat at £130.00 per week.
- 22 The Tribunal then took account of the specific facts of the tenancy to put the flat on comparable terms with property generally available to let in the market. To do so, it deducted £5 per week for the fact that the tenant had provided the white goods and £5 per week for the carpets and curtains, i.e. £10.00 per week from the comparable market rent of £130.00 per week, to leave a net rent of £120.00 per week for a tenancy on the same terms.
- 23 The Tribunal considered the question of scarcity in s.70(2) of the Rent Act 1977 and found that the number of potential tenants looking for accommodation of this type in the area exceeded the number of units available to let. It deducted a further 10% to reflect this, generally known as 'scarcity', leaving a net rent of £108.00 per week for the tenancy of the subject flat on the statutory basis.
- 24 The Rent Acts (Maximum Fair Rent) Order 1999 was of no effect as it capped the maximum potential increase at £118.00 per week, as shown in the calculations sent with the Decision Notice, which was higher than the Tribunal assessment.
- 25 Accordingly, the Tribunal determined the Fair Rent at £108.00 per week with effect from the date of its decision on 21st September 2021.

I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman

Appeal

If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property) on a point of law only. Any such application must be received within 28 days after these reasons have been sent to the parties under Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.