



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

Case reference : **CHI/24UJ/F77/2021/0035**

Tenant : **Mr P and Mrs J Jenkins**

Landlord : **Stonewater Ltd**

Property : **Flat 6, Eliot House, Barton Court Road, New Milton, Hampshire BH25 6NP**

Date of Objection : **Referred to First-tier Tribunal by Valuation Office Agency on 1st July 2021**

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

Tribunal : **Mr R T Brown FRICS
Mr M C Woodrow MRICS**

Date of Decision : **20th August 2021**

REASONS FOR DECISION

Background

1. The Tribunal gave formal notice of its decision by a Notice dated 20th August 2021 that the rent would be **£125.00 per week** with effect from the same date.
2. On the 12th April 2021 the landlord of the above property applied to the Rent Officer for registration of a fair rent of £156.80 per week (including variable service charge of £9.80). The rent having been previously determined by the Rent Officer at £117.00 per week (including variable service charge £7.33) on and effective from the 12th December 2013.
3. On the 9th June 2021 the Rent Officer registered a fair rent of £130.00 per week (including services of £5.50) and effective from the same date.
4. The Tenant objected to the rent determined by the Rent Officer and the matter was referred to the First-tier Tribunal (Property Chamber) (Residential Property).
5. The tenancy commenced on 12th September 1983. The written agreement provided to the Tribunal is illegible. Part of a 'Tenants Handbook' which appears to explain the tenancy terms is included in the Tenant's submission. The tenancy appears to be a statutory protected periodic tenancy. The tenancy (not being for a fixed periodic tenancy of 7 years or more) is subject to Section 11 of the Landlord and Tenant Act 1985 (the landlord's statutory repairing obligations).

Factual Background and Submissions

6. Following the Directions dated **16th July 2021** and the explanation contained therein, the Tribunal did not inspect the premises. A hearing was not requested in the current proceedings by either party.
7. Extracting such information as it could from the papers supplied to the Tribunal by the parties, by reference to information publicly available on the internet and with the benefit of its knowledge and experience, the Tribunal reached **the following conclusions and found as follows:**
8. The property comprises a self-contained purpose built first floor flat within a three storey building of 9 units believed built during the 1970's. The accommodation comprises 1 living room, 2 bedrooms, Kitchen, bathroom and separate w.c. Outside: Communal gardens and parking.
9. All mains services are assumed to be connected including full gas fired central heating. The windows are double glazed.
10. The property is situated in an established residential area of mixed dwellings close to the town centre. Local amenities are available.
11. The property is assumed in tenantable decorative order.

12. The Tribunal noted during its consideration:
 - a) The property was let unfurnished and does not include carpets, curtains or white goods.
13. **The Tenant** completed the Reply Form and provided submissions, the main points of which are summarized below:
 - a) Refers the Tribunal to correspondence with the Rent Officer detailing concerns about the service charge and management of the four similar blocks comprising the development by the Landlord. A selection of supporting photographs was included showing disrepair of a communal door, electric meter boxes and dumped vehicles.
 - b) There is little or no local rental evidence available.
 - c) The service charges are incorrect and despite requesting explanation from the Landlord, none has been forthcoming.

Various questions were raised and observations/comments made in submissions including:

- 1) There is never any proper maintenance
 - 2) There is no fire safety equipment to maintain. How is £3,429.61 justified? There is only battery powered emergency lighting.
 - 3) There are no dustbins only broken wheelie bins.
 - 4) There is no explanation of 'Common Area Costs'
 - 5) The TV aerial has always been poor. Most tenants make other arrangements. How is £1,701.31 justified?
 - 6) Electric usage TV and cleaners?
 - 7) Failure to act on dumped vehicles in the car park
 - 8) £920.00 on door entry maintenance as nearly every door in Byron, Shelley and Keats House is faulty.
 - 9) The grass is cut 9 times a year at cost of £5,123.05 for 30 hours work (£170.00 per hour).
 - 11) The rotary driers are replaced by residents as the Landlord ignores requests for replacements.
14. **The Landlord** in an email of the 26th May 2021 to the Rent Officer acknowledges various problems highlighted by the Tenant and stated they were arranging surveys and investigating these issues.

The Law

15. When determining a fair rent the Tribunal, in accordance with section 70 of the Rent Act 1977, had regard to all the circumstances including the age, location and state of repair of the property. It 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.
16. In *Spath Holme Ltd v Chairman of the Greater Manchester etc Committee (1995) 28 HLR 107* and *Curtis v London Rent Assessment*

Panel [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).

17. The Rent Acts (Maximum Fair Rent) Order 1999 restricts the amount by which the rent may be increased to a maximum 5.00% plus RPI since the last registration.
18. The only exception to this restriction is provided under paragraph 7 of the Order where a landlord carries out repairs or improvements which increase the rent by 15% or more of the previous registered rent.

Tribunal's deliberations

19. The Tribunal considered the matter with the benefit of the tenant's submissions. The Tribunal notes it does not take into consideration the personal circumstances of the Landlord or Tenant in making its determination (including issues between Landlord and Tenant which do not affect the rental value of the property itself).
20. The Tribunal checked the National Energy Performance Register and noted that there was no certificate for this flat on the register. The minimum standard is Rating E (unless exempt) for offering a property to let on the open market and the Tribunal considers that a rating below this level would have an adverse effect on the rent achievable.
21. The Tribunal, acting as an expert tribunal, determined what rent the landlord could reasonably be expected to obtain for the subject property in the open market if it were let today in the condition and subject to the terms of such a tenancy that is considered usual for such an open market letting. It did this by having regard to the evidence supplied by the parties and the Tribunal's own general knowledge of market rent levels in the wider area of **West Hampshire and East Dorset**. Having done so, it concluded that such a likely market rent for a similar modernised property in fair condition with central heating, modern bathroom and kitchen facilities, floor coverings, curtains and an EPC Rating above F would be **£180.00 per week**.
22. However, the subject property is not in the condition considered usual for a modern letting at a market rent. It is therefore necessary to adjust that hypothetical rent of **£180.00 per week** to allow for the differences between the condition considered usual (including responsibility of tenants to maintain decorations as opposed to decorate) for such a letting and the condition of the actual property as stated in the papers

(disregarding the effect of any disrepair or other defect attributable to this tenant or any predecessor in title), and the improvements carried out by the Tenant.

23. If this property were to come onto the open market it would of course come on the market in its present condition and not in the condition normally seen in such market lettings. The Tribunal considers that to reflect these matters, a deduction should be made to the hypothetical rent.
24. The Rent Officer has made a deduction of £35.00 per week to reflect the tenants decorating liability, the tired bathroom and the lack of white goods, carpets and curtains. The Tribunal has been presented with no evidence to justify varying this figure.
25. In addition, the Tribunal notes the Landlord's acknowledgement of various issues on the estate but, as at the date of the Tribunal's consideration, no evidence has been produced to indicate that any changes have taken place. The Tribunal consider that the standard of services provided by the Landlord would have an impact on the market rent achievable and to reflect the alleged shortcomings indicated, which have not been refuted, the Tribunal deduct a sum of £20.00 per week.
26. The Tribunal noted the Rent Officer allowed a total amount of £5.50 per week for services as opposed to the £9.80 claimed by the Landlord. In the absence of any representations from the Landlord either to justify the figure claimed or, indeed, contest the Rent Officers reasoning, the Tribunal has adopted this figure in its decision.
27. This leaves a fair rent of £125.00 (including variable charge service of £5.50) per week.

Scarcity

28. The matters taken into account by the Tribunal when assessing scarcity were:-
 - a) The Tribunal interpreted the 'locality' for scarcity purposes as being the conurbation of West Hampshire and East Dorset (i.e. a sufficiently large area to eliminate the effect of any localised amenity which would, in itself, tend to increase or decrease rent).
 - b) Local Authority and Housing Association waiting lists.
 - c) House prices which could be an indicator of increased availability of housing and a reduction in scarcity.
 - d) Submissions of the parties.
 - e) The members of the Tribunal have between them many years of experience of the residential letting market and that experience leads them to the view that there is no substantial shortage of similar houses available to let in the locality defined above.
29. 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 a particular type of house in the private sector or

the exact number of such properties available. It can only be a judgment based on the years of experience of members of the Tribunal. However, the Tribunal did not consider that there was a substantial scarcity element and accordingly made no further deduction for scarcity.

30. This leaves a fair rent for the subject property of **£125.00 per week**.

Relevant Law

31. The Rent Act 1977.
32. Rent Acts (Maximum Fair Rent) Order 1999. In particular paragraph 7 which states:

This article does not apply in respect of a dwelling-house if because of a change in the condition of the dwelling-house or the common parts as a result of repairs or improvements (including the replacement of any fixture or fitting) carried out by the landlord or a superior landlord, the rent that is determined in response to an application for registration of a new rent under Part IV exceeds by at least 15% the previous rent registered or confirmed.

Rent Acts (Maximum Fair Rent) Order 1999

33. The rent to be registered is not limited by the Fair Rent Acts (Maximum Fair Rent) Order 1999 because it is below the maximum fair rent (see calculation on reverse of decision sheet) of **£143.50.00 per week and including variable services of £5.50**. Accordingly the sum of **£125.00 per week** will be registered as the fair rent on and with effect from 20th August 2021 being the date of the Tribunal's decision.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision (on a point of law only) to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case. Where possible you should send your application for permission to appeal by email to rpsouthern@justice.gov.uk as this will enable the First-tier Tribunal Regional office to deal with it more efficiently.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.