



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

Case reference : **CHI/45UE/F77/2021/0054**

Tenant : **Ms V L M Lee C/o J Tarbutt**

Landlord : **Ellis and Sons Amalgamated
Properties Ltd C/o Greenwood and
Co**

Property : **Crayford, Green Lane, Worth,
Crawley, West Sussex RH10 7RR**

Date of Objection : **Referred to First-tier Tribunal
by Valuation Office Agency on
23rd November 2021**

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

Tribunal : **Mr R T Brown FRICS
Mr N Robinson FRICS
Mr M J F Donaldson FRICS MCI Arb
MAE**

Date of Decision : **21st January 2022**

REASONS FOR DECISION

Background

1. The Tribunal gave formal notice of its decision by a Notice dated 21st January 2022 that the rent will be **£635.00 per calendar month (pcm)** with effect from the same date.
2. On the 6th August 2021 the landlord's agent of the above property applied to the Rent Officer for registration of a fair rent of £630.00 pcm. The rent having been previously determined by the Rent Officer at £526.00 pcm on 18th April 2006 and effective from the same date.
3. On the 2nd August 2021 the Rent Officer registered a fair rent of **£849.50 pcm (capped)** 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 appears to be a statutory protected periodic tenancy. There is a written tenancy agreement which commenced on 18th January 1971. 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 3rd December 2021 and the explanation contained therein, the Tribunal did not inspect the premises. A hearing was not requested in the current proceedings.
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 double glazed detached bungalow located in a residential area to the East of Crawley town centre.
9. The accommodation comprises: 2 reception rooms, kitchen, 2 bedrooms and bathroom. Outside: Garden and off street parking.
10. All mains services are assumed to be connected.
11. The Tribunal noted during its consideration:
 - a) The property was let unfurnished but the Landlord provides cooker (replaced about 6 years ago) and fridge (replaced about 2 years ago).
 - b) There is no central heating.
12. **The Tenant** completed the Reply Form and submitted a copy of a letter to the Rent Officer dated 17th November 2021. Those documents are summarised below:

13. In that letter a number of repair concerns, of which the Landlord is aware, were listed together with a series of photographs.
 - a) Bay window frame is rotten.
 - b) Ceilings and walls affected by mould.
 - c) The property smells damp throughout.
 - d) Cooker hood no longer works.
 - e) Storage heaters are 35 years old and virtually useless.
 - f) Bath waste broken and floods onto garden.
 - g) The property has no shower and the bottom of the bath is like sandpaper.
14. The rent registered exceeds the rent applied for by the Landlord.
15. In the Reply form:
 - a) A letter (written in November 2021) from Shillan Estates stating that they do not consider the property suitable for letting in its current condition. The EPC rating would be below the rate permitted for offer to let thus precluding the property from the market.
16. **The Landlord's agent** completed the Reply Form in which he says (summarised):
 - a) No improvements have been carried out during the present ownership which completed in June 2021.
 - b) Since the purchase no requests for repairs have been received from the Tenant.
 - c) The rent has not been reviewed for 15 years.
17. No rental evidence was submitted by the agent.

The Law

18. 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.
19. 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).

20. 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.
21. 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

22. The Tribunal considered the matter with the benefit of the submissions made by the Landlord and the Tenant. The Tribunal 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).
23. The Tribunal checked the National Energy Performance Register and noted that that the Energy Performance Certificate (EPC) rated the property at F expiring on 16th December 2029. The minimum standard is Rating E (unless exempt) for offering a property to let on the open market.
24. The Tribunal looked at the Rent Officer's valuation of the Fair Rent under Section 70 of the Rent Act 1977. The Rent Officer had started with a market rent for the property assuming it was in good repair and available in the market today. He found that the Market Rent would be £1,200.00 pcm.
25. The Rent Officer then considered that certain deductions should be made to reflect the condition, facilities and differing nature of the tenancy. He concluded that the sum of £285.00 pcm should be deducted from the market rent to reflect these matters (which included, but not exclusively): Tenant repairing and decorating liability, no white goods, no floor covering or curtains and un-modernised bathroom. He made no adjustment for scarcity (see explanation below). The result was a Fair Rent of £915.00 pcm. After applying the Maximum Fair Rent Order a rent of £849.50 pcm was registered.
26. 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 Sussex. Having done so, it concluded that such a likely market rent for a similar property in fair condition with central heating, modern bathroom and kitchen facilities, floor coverings, curtains and an EPC Rating of E or above would be **£1,000.00 pcm**.
27. 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 **£1,000.00 pcm** 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.

28. The Tribunal considered the observations of the Rent Officer and concluded, using its own knowledge and judgement, that it was appropriate to make deductions to reflect those matters in paragraph 13 above:

- a) Rotten woodwork: £50.00.
- d) Damp and mould: £50.00
- c) lack of modern bathroom and kitchen: £75.00
- d) lack of carpets and curtains: £40.00
- e) General disrepair: £50.00
- f) Inadequate heating and an EPC below the legal minimum of E: £100.00.

A total deduction of £365.00

29. The Tribunal determines the fair rent at **£635.00 pcm**.

Scarcity

30. The matters taken into account by the Tribunal when assessing scarcity were:-

- a) The Tribunal interpreted the 'locality' for scarcity purposes as being the wider area of Sussex (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.

31. 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.

32. This leaves a fair rent for the subject property of **£635.00 pcm**.

Relevant Law

33. The Rent Act 1977.

34. 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

35. The rent to be 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 **£868.00 pcm and accordingly the sum of £635.00 pcm** will be registered as the fair rent on and with effect from 21st January 2022 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