FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**BIR/00CN/F77/2021/0009**
HMCTS (paper, video audio)	**:**	**P: PAPERREMOTE**
Property	**:**	**38 Common Lane Sheldon Birmingham B26 3BP**
Landlord	**:**	**Northumberland and Durham Property Trust Limited**
Representative	**:**	**Grainger plc**
Tenant	**:**	**Mrs P Nimmo**
Type of Application	**:**	**An application under section 70 of the Rent Act against the Fair Rent assessed for the Property by the Rent Officer**
Tribunal Member	**:**	**V Ward BSc Hons FRICS** **Mrs K Bentley**
Date of Decision	**:**	**20 April 2021**
Date of Statement Of Reasons	**:**	**13 May 2021**

STATEMENT OF REASONS

BACKGROUND

1. On 18 January 2021, the Rent Officer registered a rental of £95.00 per week in respect of the Property, effective from 18 January 2021. The rent prior to this registration was £90.00 per week.

2. By a letter dated 8 February 2021, the Landlord objected to the rent determined by the Rent Officer and the matter was referred to the Tribunal.

3. The fair rent determined by the Tribunal for the purposes of Section 70 was £99.00 per week with effect from 20 April 2021.

4. On 22 April 2021, the Landlord requested that the Tribunal provide reasons for its decision.

THE PROPERTY

5. Due to the Covid-19 Public Health Emergency, the Tribunal were unable to carry out an inspection of the Property.

6. From the information provided by the parties, and available to the Tribunal, the Property is a semi-detached house situated in the Birmingham suburb of Sheldon.

7. The accommodation comprises the following:

Ground Floor	hall, kitchen, living room;
First Floor	three bedrooms, shower-room, WC;
Externally	garage, WC, gardens and driveway.

8. The Property benefits from central heating and double glazing.

Submissions of the Parties

9. Neither party requested an oral hearing.

10. The Landlord sought a rental of £112.50 per week. The representations from Mr Ryan Tucker Portfolio Manager of Grainger Plc on behalf of the Landlord, provided details of the comparable properties on Forest Hill Road, Sheldon and on Deepdale Avenue, Birmingham which were being offered at £202.00 and £204.00 per week respectively.

11. Acknowledging that the Property was not in a condition commensurate with modern standards, Grainger analysed the comparable rental of £202.00 per week by making deductions as follows:

- Modernised kitchen £20.00 per week
- Utility Area £5.00 per week
- Guest WC £5.00 per week
- Landlord supplied appliances £5.00 per week
- Landlord decorations £10.00 per week
- Landlord floor coverings/curtains £10.00 per week

Making an additional deduction of £10.00 per week for Tenant's improvements, this gave a rental of £137.00 per week which was £24.50 per week more than the rental sought.

12. Grainger had also provided a copy of an invoice dated 27 March 2019 in the sum of £4,396.80 for the installation of UPVC windows and door at the Property.

13. The Tenant provided details of the condition of the Property which are summarised as follows:

- The boiler had been obtained with the help of a grant at no cost to the landlord.
- The kitchen is unmodernised and the original installation was by the Tenant.
- Cracking to bedroom ceilings.
- Dampness to several bedrooms.
- Roof leaks.
- The front door was installed by the Tenant.

14. The Tenant had also provided details of the registered rents of comparable properties located within area. Of those highlighted by the Tenant, the registered rents ranged from £84.00 to £103.00 per week. A more general list showed rents as low as £57.00 per week.

THE LAW

15. When determining a fair rent, the Tribunal, in accordance with the Rent Act 1977, Section 70, had regard to all the circumstances including the age, location and state of repair of the property. It also 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 Limited v Chairman of the Greater Manchester, etc. Committee [1995] 28HLR107 and Curtis v London Rent Assessment Committee [1999] QB92 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 were usually appropriate comparables. (These rents may have to be adjusted where necessary to reflect any relevant differences between those comparables and the subject property).

VALUATION

17. In the first instance, the Tribunal determined what rent the Landlord could reasonably expect to obtain for the Property in the open market if it were let today in the condition that is considered usual for such open market lettings. It did this from its own general knowledge of market rent levels in the Sheldon area and by considering the evidence provided within the representations. Having done so, it concluded that such a likely market rent would be £190.00 per week. However, as the Property is not in the same condition as properties in the general market, and to make an allowance for the items of disrepair and lack of modernisation, the Tribunal made a deduction of £40.00 per week to reflect these items.

18. To allow for the Tenant's improvements of the central heating boiler and front door, and decorating liability, it was necessary to make an additional deduction of £24.50 per week.

19. A further deduction of £13.00 per week was made to allow for the Tenant's fittings (floor coverings, curtains and white goods).

20. The Tribunal then considered the question of scarcity. This was done by considering whether the number of persons genuinely seeking to become tenants of similar properties in the wider area of the West Midlands on the same terms other than rent is substantially greater than the availability of such dwellings as required by section 70(2) of the Rent Act 1977.

21. The Tribunal finds that many landlords dispute that scarcity exists because they are of the opinion that the market is 'in balance'. Although tenants do not in all cases have difficulty in finding accommodation, this ignores the fact that it is the price of such accommodation which creates a balance in the market. Section 70(2) specifically excludes the price of accommodation from consideration in determining whether there are more persons genuinely seeking to become tenants of similar properties than there are properties available. Although the rental market for Assured Shorthold properties may be in balance, many potential tenants may be excluded from it for various reasons such as age, poor credit history or because they are on housing benefit.

22. The Tribunal found that there was scarcity and, accordingly, made a further deduction of £11.25 per week.

23. The Tribunal determined that the fair rent for the Property was therefore £101.25 per week rounded to £101.00 per week.

24. However, the maximum fair rent permitted by the Rent Acts (Maximum Fair Rent) Order 1999 is £99.00 per week. The level of rent determined by the Tribunal is therefore limited by the Order. Details of the maximum fair rent calculation were provided with the decision.

DECISION

25. The fair rent determined by the Tribunal for the purposes of Section 70 was, therefore, £99.00 per week from 20 April 2021.

26. In reaching its determination, the Tribunal had regard to the evidence and submissions of the parties, the relevant law and their own knowledge and experience as an expert Tribunal but not any special or secret knowledge.

APPEAL

27. If either party is dissatisfied with this decision, they may apply for permission to appeal to the Upper Tribunal (Lands Chamber) **on any point of law arising from this Decision**. Prior to making such an appeal, an application must be made, in writing, to this Tribunal for permission to appeal. Any such application must be made within 28 days of the issue of this decision (regulation 52 (2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rule 2013) stating the grounds upon which it is intended to rely in the appeal.

V Ward