



FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : **BIR/00FK/F77/2021/0037**

Property : **52 Shalfleet Drive, Alvaston, Derby,
DE24 0US**

Applicant : **John Hughes**

Respondent : **Clarion Housing Association**

Application : **Application for determination of fair rent
Under s70 Rent Act 1977 and the Rent Acts
(Maximum Fair Rent)Order 1999**

Tribunal : **Tribunal Judge P. J. Ellis.
Tribunal Member Mr R. Cammidge**

**Date of Hearing
And Decision** : **08 December 2021**

Date of Reasons : **22 December 2021**

DECISION

Introduction and Background

1. On 10 August 2021 the rent officer registered a new rent for 52 Shalfleet Drive, Alvaston Derby DE24 0US (the Property) in the sum of £5200.00 per annum including £139.68 per annum for service charges. The new rent was registered pursuant to an application by the landlord Clarion Housing Association.
2. The Applicant, John Hughes is the tenant of the Property. He objected to the new rent by letter received on 17 September 2021 and the matter was referred to the Tribunal.
3. Directions for determination of the matter were issued on 12 October 2021 including that the Tribunal would inspect the Property before deciding based on written submissions. The parties were directed to provide details of the Property and any further comments they wished the Tribunal to take into consideration. The matter was listed for an inspection on 8 December but by reason of a clinically vulnerable tenant the Tribunal did not inspect the Property.
4. The parties did not serve substantial submissions. Mr Hughes letter of objection to the new rent referred to the increase in rent from the previous registration. He thought an increase of £22.91 was excessive for a social housing property. Mr Hughes completed the table giving details of the Property but gave no other evidence.
5. The Landlord served no evidence.

The Property

6. A description of the Property is derived from the rent register, the tenants reply form and examination of Google Streets.
7. The Property is part of an estate constructed in the late 1970s. It is a terraced two-bedroom house built of brick and tile. The ground floor comprises a kitchen diner and separate living room. On the upper floor are two bedrooms, a bathroom and WC. It has full central heating, double glazing, a shared car parking space and a private garden.

8. Carpets, curtains, and white goods are supplied by the tenant. The landlord is responsible for repairs and external decorations. The tenant is responsible for internal decorations subject to s11 Landlord and Tenant Act 1985.

The Statutory Framework.

9. It is not disputed the tenancy is regulated under the Rent Act 1977 (the Act) although the Tribunal was not shown any information relating to the tenancy. It is also accepted the Property is subject to rent capping under the Act and the Rent Acts (Maximum Fair Rent) Order 1999.

10. S70 of the Act provides:

(1) In determining, for the purposes of this Part of this Act, what rent is or would be a 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

2(c) any premium, or sum in the nature of a premium, which has been or may be lawfully required or received on the grant, renewal, continuance or assignment of the tenancy.

(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 to comply with any terms thereof;

(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)(d).

(e)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.”

11. The Maximum Fair Rent Order 1999 was implemented as the means to limit fair rent increases. Article 2 of the Order provides the calculation required to determine the maximum rent increase allowed for a regulated tenancy. A copy of Article 2 is set out below as an appendix to this Decision.

Reasons for Decision

12. Regulation of a tenancy involves determination of the maximum fair rent under the statutory framework set out in these Reasons. It means that fair rent is the market rent less the statutory disregards and scarcity.
13. The starting point is market rents. The best evidence of market rent is rent payable for similar properties close to the subject property. The parties did not adduce evidence of comparables. The Tribunal relied on its general knowledge and experience resulting from its research of the market.
14. The Property is situated on estate of properties in Alvaston. The Applicant made no complaint about the state of the Property.
15. There were no comparable properties for rent within quarter of a mile. As far as the Tribunal could determine no other properties owned by the Respondent were offered for letting at the time of the hearing.
16. The Tribunal did not inspect the Property and can only make an assumption about the state of repair of the Property but noting there were no complaints about the Property it assumes the state of the Property was reasonable. From its own knowledge and experience, the Tribunal decided the starting point for determining the fair rent is £725.00pcm or £8700.00 per annum.
17. The statutory deductions were calculated on a per annum basis as:

a. Tenant's Carpets and Curtains	£450.00
b. Tenant's White Goods	£250.00
c. Tenant's internal decoration @ 5%	£435.00

Total before scarcity deduction £1135.00

18. Alvaston is a popular residential area which is southeast of Derby with access to the city centre and nearby park and recreational amenity. The Tribunal has considered the village or suburb of Alvaston when determining scarcity value at 10% of market value, ie £870.00.
19. The total deductions from the starting rent of £8700.00pa is £2005.00 making the rent before capping, £6695.00 which the Tribunal rounded up to £6700.00 pa.
20. The Tribunal hearing was three months after the rent officer's valuation. The Tribunal did not disagree with the rent officer's determination of the maximum fair rent calculation although it disagreed with the valuation of the market rent.
21. It was the first rent review since 2017. The RPI had moved up 30.20 points between the reviews and a further 6.5 points by the date of the hearing. As the increase in the sum deduced under the statutory framework takes effect on the date of determination the increase in the maximum fair rent from the rent officer's determination reflected the change in RPI.
22. The Tribunal noted Mr Hughes's concern over the level of the rent increase but the key factors of firstly the length of time in-between rent reviews and secondly the rate of inflation during this period were determinative of the level of increase when the statutory methodology, which has to be adopted, was applied. It determined the maximum fair rent at the date of the hearing should be £5403.68 pa inclusive of services of £139.68.00pa.

Appeal

23. If either of the parties is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber) on a question of law only. Any such application must be received within 28 days after

these written reasons have been sent to them rule 52 of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013).

Tribunal Judge Peter Ellis

Appendix

Article 2 Maximum fair Rent order 1999

2.—(1) Where this article applies, the amount to be registered as the rent of the dwelling-house under Part IV shall not, subject to paragraph (5), exceed the maximum fair rent calculated in accordance with the formula set out in paragraph (2).

(2) The formula is—

$$MFR = LR \left[1 - \frac{(x - y)}{y} - P \right]$$

where—

- *MFR is the maximum fair rent;*
- *LR is the amount of the existing registered rent for the dwelling-house;*
- *x is the index published in the month immediately preceding the month in which the determination of a fair rent is made under Part IV;*
- *y is the published index for the month in which the rent was last registered under Part IV before the date of the application for registration of a new rent; and*
- *P is 0.075 for the first application for rent registration of the dwelling-house after this Order comes into force and 0.05 for every subsequent application.*

(3) Where the maximum fair rent calculated in accordance with paragraph (2) is not an integral multiple of 50 pence the maximum fair rent shall be that amount rounded up to the nearest integral multiple of 50 pence.

(4) If

$$\frac{(x - y)}{y} + P$$

is less than zero the maximum fair rent shall be the existing registered rent.

(5) In applying this article no account shall be taken of any variable sum to be included in the registered rent in accordance with section 71(4) of the 1977 Act.

(6) Subject to paragraph (7), this article applies where an application for the registration of a new rent in respect of a dwelling-house is made after this Order comes

into force and, on the date of that application, there is an existing registered rent under Part IV in respect of that dwelling-house.

(7) 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.

(8) For the purposes of this article:

(a) references to Part IV are to Part IV of the 1977 Act;

(b) "common parts", in relation to a building, includes the structure and exterior of the building and common facilities provided for the occupiers of the dwelling-houses in the building;

(c) "index" means the monthly United Kingdom Index of Retail Prices (for all items) published by the Office for National Statistics.