



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

**Case Reference** : **CHI/18UC/F77/2021/0016**

**Property** : **2 Lyncombe Close, Exeter, Devon EX4  
5EJ**

**Landlord** : **Dorrington Queensway Limited**  
**Representative** : **Allsop Letting & Management  
Limited**

**Tenant** : **Mr W Crosdale**  
**Representative** : **Charlotte Smith**

**Type of Application** : **Rent Act 1977 – Section 70  
Appeal of Registered Rent**

**Tribunal Members** : **R T Athow FRICS MIRPM (Chairman)**  
**N Robinson FRICS**  
**C Davies FRICS ACI Arb**

**Date of Inspection** : **22 March 2021**

**Date of Decision** : **22 March 2021**

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**DECISION**

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## **Background**

- 1) On 23 July 2020 the Landlord made an application to register the rent of the property at £10,656.00 per annum.
- 2) The rent payable at the time of the application was £740.00 per month.
- 3) The rent was previously registered on the 3<sup>rd</sup> August 2018 at £740.00 per month, with an amount attributed to services of £101.52 per month, with effect from the 14<sup>th</sup> of September 2018.
- 4) On the 2<sup>nd</sup> November 2020 the Rent Officer registered a Fair Rent of £760.00 per month exclusive of rates with effect from that date. The rent register notes £74.63 is attributable to services.
- 5) On the 24<sup>th</sup> November 2020 the Landlord objected, and the matter was referred to the First-Tier Tribunal (Property Chamber).
- 6) On 5<sup>th</sup> February 2021 the Tribunal made Directions informing the parties that in view of the Government's advice with respect to the Covid 19 outbreak an inspection would not take place. The parties were given the opportunity to provide supporting photographs of the property and if desired make representations to have the case stayed until an inspection was possible.
- 7) The Directions required the Landlord to send a statement to the Tenant and to the Tribunal supporting the application for an increase in rent. The Tenant was also required to send a statement to the Landlord and to the Tribunal in support of his objection.
- 8) Neither party requested a Hearing.
- 9) The Tribunal met on 22<sup>nd</sup> March 2021 to consider the application.
- 10) The matter is dealt with as a paper determination without hearing. In the current circumstances it has not been possible to inspect the property and the Tribunal relies on submissions from the Landlord and Tenant in correspondence, publicly available housing data online and its own expert knowledge.

## **Evidence**

- 11) The Tribunal received written representations from the Tenant and the Landlord and these were copied to the parties. The Rent Office supplied some records and copies of correspondence they had had with the parties.
- 12) It is a mid-terrace house close to the centre of Exeter. Local shops are within a few minutes' walk.
- 13) The accommodation comprises living room, kitchen, store, 3 bedrooms, and bathroom/WC. There is a garden at the rear of the property. There is full central heating and double glazing. There is an EPC rating of 59D. The Tenant

supplied the carpets and curtains and white goods. It is understood that the property has a flat roof, which adversely affects the EPC rating.

### **Landlord's submissions**

14) The Landlord's agent describes the property as a mid-terrace house in one sentence, and as a flat in the next, but it is assumed this to be a typographical error.

15) Details of five comparable properties were given taken from Rightmove as available on 17<sup>th</sup> February 2021, four of these were included in the Landlord's submissions. Four are Student Lets for a period of less than a year and not Assured Shorthold Tenancies. The fifth property is a modern 3 bedrooomed terraced house in Vine Close and is advertised at £995.00 per month. Minimal details are given, and it does not state what type of tenancy it is to be let on.

16) From the evidence submitted the agent concludes the market rent for the property is £19,329. This is the average of the rents sought for the four student lets. From this the agent deducts £1,600 for carpets and white goods, together with £2,500 for an outdated kitchen, giving a fair rent of £15,229 per annum.

17) Accepting that this is above the Maximum Fair Rent the agent computes the new Fair Rent to be £9,643 per annum.

18) The Landlord does not think there is any scarcity element in the area.

### **Tenant's submissions**

19) The Tenant accepts the rent officer's decision of the fair rent.

20) They Landlord has not carried out any maintenance to the building in the past two years.

21) The Tenant has done a similar search of Rightmove on the 12th February and states that only four similar properties with three bedrooms is available within half a mile radius of the property and the asking prices for these is between £950 and £1,150 per month, an average of £1,031.25 per month. No evidence of these were included in the Tenant's submissions.

22) The Tenant does not agree with the Landlord's opinion that there is no scarcity in the district. He believes there is scarcity and that it does significantly impact on the local rents achievable.

### **The law**

23) When determining a Fair Rent the Tribunal, in accordance with the Rent Act 1977, section 70, must have regard to all the circumstances including the age, location and state of repair of the property. It must also disregard the effect of (a) any relevant Tenants's improvements and (b) the effect of any disrepair or other defect attributable to the Tenants or any predecessor in title under the regulated tenancy, on the rental value of the property. That section also required the Tribunal not to take into account the personal financial and other circumstances of the Tenants.

24) In *Spath Holme Ltd v Chairman of the Greater Manchester etc. Committee* (1995) 28 HLR 107 and *Curtis v London Rent Assessment Committee* (1999) QB 92 the Court of Appeal emphasised that section 70 means that:

- a) Ordinarily a Fair Rent is the market rent for the subject property discounted for 'scarcity' and
- b) 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 these comparables and the subject property).

25) The Rent Act (Maximum Fair Rent) Order 1999 limits the increase from the previous registered rent. It is worked out by a formula based on the change in Retail Prices Index since the last registration plus a fixed percentage increase set by law. If the Rent Officer or the Tribunal decides the property is worth more than the maximum fair rent, the maximum fair rent becomes the registered rent. If the valuation is lower than the maximum fair rent that valuation becomes the registered rent.

26) There are two occasions when the maximum fair rent will not apply: -  
If there is no existing registered rent, and  
If the Landlord has improved or repaired the property and the Rent Officer and/or the Tribunal considers the improvement or repair has made the rent at least 15% more than the existing registered rent.

## **VALUATION**

### **The Market Rent**

27) The Tribunal firstly determined what rent the Landlord could reasonably be expected to obtain for the property in the open market if it were let today on an Assured Shorthold Tenancy in the condition that is considered usual for such an open market letting exclusive of water rates and council tax.

28) The letting market has grown substantially in recent years and there is now ample evidence of open market rents for Assured Shorthold Tenancies. In the competitive market that now exists, such properties need to be in first class structural and decorative order and be equipped with all amenities such as full modern central heating, double glazing and other energy-saving facilities along with white goods, carpets and curtains to ensure the property attains its full rental income potential. Where such items and facilities are missing the rent is found to be correspondingly lower.

29) The Tribunal received a copy of the Rent Officer's computations which started with an open market valuation of £950.00 per month from which he made adjustments of £190.00 to give a Fair Rent of £760.00. He computed the capping and, as the Fair Rent was below this capping it did not apply.

30) There is no reference to the service charge element as being “variable” and so the Tribunal follows the Rent Officer’s decision that this is a “fixed service charge”.

31) The Tribunal found the evidence of the Landlord for comparable rental values to be of no help as four were for a different type of tenancy, Student Lets. The Tenant’s submissions only mentioned rents but without evidence. This left one property from the Landlord as acceptable evidence which is considered to be insufficient evidence for the Tribunal to solely base its decision and therefore also relied on its own knowledge and experience of general rent levels for this type of property in this area.

32) The Tribunal’s conclusion was that an appropriate open market rent for the property let on a modern open market letting of an Assured Shorthold Tenancy where the Landlord supplies white goods, carpets and curtains and the Tenant has no liability to carry out repairs or decorations would be £950.00 per month, in line with the Rent Officer’s finding.

33) However, the Tribunal noted from the representations made, together with the notes from the Rent Officer, that the actual property is not in the condition considered usual for a modern letting at a market rent, and it was necessary to adjust that hypothetical rent of £950.00 per month to allow for the differences between the condition considered usual for such a letting and the condition of the actual property.

34) The Tribunal lists below several items that impact upon the rental value and requires an appropriate adjustment to be made:

- (a) Tenant’s Repairing and Decorating Liabilities
- (b) Tenant supplying White Goods
- (c) Tenant supplying Carpets and Curtains

There is no laid down formula for assessing each individual item’s impact on the rental value. The Tribunal has used its own knowledge and experience in assessing the overall impact these items would have when taken into account by a hypothetical tenant who would then require an appropriate reduction in rent to take these into account.

35) The Tribunal considered these factors separately and then considered whether the overall reduction was justified. We are satisfied that it is.

36) We decided to make a deduction of 20% for these factors which gives a rent of £760.00 per month.

**Scarcity**

37) The Tribunal did not consider that there was any substantial scarcity element for this type of property in this area and accordingly no further deduction was made for scarcity.

## **THE DECISION**

- 38) The Tribunal therefore determined that the uncapped Fair Rent is £760.00 per month exclusive of council tax and water rates.
- 39) As this amount is below the rent calculated in accordance with the Rent Acts (Maximum Fair Rent) Order 1999 details of which are shown on the rear of the Decision notice we determine that the lower sum of £760.00 per month is registered as the Fair Rent with effect from 22<sup>nd</sup> March 2021.

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## **Appeals**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber), which may be on a point of law only, 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.
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.