FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CHI/43UF/F77/2021/0032**
Tenant	**:**	**Mrs J Colborn**
Landlord	**:**	**Northumberland and Durham Property Trust Ltd c/o Grainger Plc**
Property	**:**	**11 Hanworth Road, Redhill, Surrey, RH1 5HS.**
Date of Objection	**:**	**Referred to First-tier Tribunal by Valuation Office Agency on 14th May 2021**
Type of Application	**:**	**Section 70 Rent Act 1977 (the Act)**
Tribunal	**:**	**Mr R T Brown FRICS** **Ms C D Barton MRICS** **Mr C Davies FRICS**
Date of Decision	**:**	**8th July 2021**

REASONS FOR DECISION

Background

1. The Tribunal gave formal notice of its decision by a Notice dated 8th July 2021 that the rent would be **£1,050.00 per calendar month (pcm)** with effect from the same date.

2. On the 8th March 2021 the landlord's agent of the above property applied to the Rent Officer for registration of a fair rent of £1,173.00 pcm. The rent having been previously determined by the Rent Officer at £1,020.00 pcm on 23rd April 2019 and effective from the 23rd May 2019.

3. On the 16th April 2021 the Rent Officer registered a fair rent of **£1050.00 pcm** effective from 23rd May.

4. The Landlord 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 no written tenancy agreement but the Tribunal is advised the tenancy commenced in 1966. 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 28th May 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 semi detached house with full central heating. The accommodation comprises: 1 reception room, 3 bedrooms, kitchenette and Bathroom/WC. Outside: gardens.

9. All mains services are assumed to be connected.

10. The Tribunal noted during its consideration:

    a) The property was let unfurnished and excludes carpets, curtains and white goods.

11. **The Tenant** did not complete the Reply Form or make any submissions as to condition of the property or the level of the rent.

12. **The Landlord's agent** did not complete the Reply Form or make any submissions as to condition of the property or the level of the rent.

13. In a letter to the Rent Officer the Landlord mentioned that the property had been rewired since last registration.

The Law

14. 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.

15. 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).

16. 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.

17. 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

18. The Tribunal considered the matter with the benefit of the submissions of the parties. The Tribunal notes is 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).

19. The Tribunal checked the National Energy Performance Register and noted that the Energy Performance Certificate (EPC) rates the property at D and the certificate expires on 2nd June 2029. The minimum standard is Rating E (unless exempt) for offering a property to let on the open market the Tribunal considers that a rating of this level would have an adverse effect on the rent achievable.

20. 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 Surrey. 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 above E would be **£1325.00 pcm.**

21. 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 **£1325.00 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.

22. 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.

23. The Tribunal considers that to reflect these matters, after considering the observations of the Rent Officer, the following deductions should be made:

    a) Decorating liability: £65.00.
    b) Un - modernised kitchen and bathroom: £100.00.
    c) Lack of floor coverings, curtains and white goods: £110.00.

24. A total deduction of **£275.00 pcm** was applied to the hypothetical rent.

25. This leaves a fair rent of **£1050.00 pcm**.

Scarcity

26. The matters taken into account by the Tribunal when assessing scarcity were:-
    a) The Tribunal interpreted the 'locality' for scarcity purposes as being the area of Redhill and the wider area of Surrey and the wider area of Surrey (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.

27. 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.

28. This leaves a fair rent for the subject property of **£1050**.00 pcm.

Relevant Law

29. The Rent Act 1977.

30. 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

31. 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 **£1,116.00 pcm and accordingly the sum of £1050.00 pcm** (including fixed services of 93.45) will be registered as the fair rent on and with effect from 22nd June 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