



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

Case Reference : **MAN/OODA/F77/2021/0001**

Property : **1 Baxter Road, Sheffield, S6 1JF**

Applicant Tenant : **Mrs Doreen Slack**

Respondent Landlord : **Mrs Handan Cinar**

Type of Application : **Determination Of Fair Rent, Section 70 Of The Rent Act, 1977**

Tribunal Members : **Judge C. P. Tonge, LLB, BA
Mrs S. A. Kendall, BSc, MRICS**

Date of Decision : **8 March 2021**

Date of Determination : **16 March 2021**

DECISION

Background

1. On 18 October 2020 Mrs Handan Cinar, “the landlord” applied to the Rent Officer for registration of a fair rent of £150 per week in respect of 1 Baxter Road, Sheffield, S6 1JF “the property”. Mrs Doreen Slack, "the tenant" has been the tenant of the property since 1963.
2. The Rent Officer had previously, on 9 February 2006, registered a fair rent for the property of £36.50 per week.
3. On 7 December 2020 the Rent Officer held a consultation meeting to consider the representations made by both landlord and tenant, relating (amongst other things) to the fact that there is a deed of surrender, made in 2008 which prevents the rent being increased from £36.50 per week, throughout the remaining period of the tenant's occupation of the property. The Rent Officer decided that the deed of surrender did not prevent him from registering a fair rent on the property, pointing out that this issue could be placed before the County Court for a judgement upon the status of the tenancy, pursuant to section 141 of the Act. The Tribunal pauses to note that, as yet, this has not been done.
4. On 9 December 2020 the Rent Officer registered a fair rent, effective from the same date, for the property, of £107 per week. This fair rent was not limited by the Rent Acts (Maximum Fair Rent) Order 1999, due to repairs and improvements being made to the property.
5. By a letter received by the Rent Officer on 23 December 2020, the tenant objected to the fair rent as determined by the Rent Officer and the matter was referred to this Tribunal. The principle objection being that the deed made in 2008 prevents such a rent increase being made.
6. Neither party requested a hearing.

Inspection of the property

7. The Tribunal inspected the exterior of the property, commencing at 11.10 am on 8 March 2021. The inspection took place during the Covid 19 Pandemic and the Parties had been informed that the Tribunal would only inspect the exterior of the property, due to the requirements of social distancing. Neither Party was present.

8. The property is an end of terrace of three houses. The property was built about 1880, it faces industrial units and at present is next to a building site. The side of the property facing the building site has an exterior door opening onto a very small, mainly hard surfaced area containing a garden shed. The side of the property that faces in the opposite direction towards some more recently constructed apartments has an exterior door into the garden area.
9. The property has some wooden window frames that need painting. The roof is slate that has been turnerised, covering it with a substance that is designed to enhance and prolong the roofs useful life span. This is a clear indication that the roof will soon need either extensive repair or replacement. The render on the walls is in places discoloured and requires attention. The wooden gutters are in need of attention and have foliage growing out of them at one point. The property does not have a garage or off road parking and the road is busy with commercial vehicles visiting the industrial units.
10. The remainder of the information here recorded is ascertained from the rent register and the information provided by both Parties. The property has three bedrooms one of which is a single bedroom in the attic, that is reached by stairs that commence on the first floor landing, this room has restricted head space due to the eaves in the attic ceiling. One of the first floor rooms that is described as a bedroom is incorrectly described, because it is necessary to walk through that room to gain access to stairs that lead to the third attic bedroom, this attic bedroom has limited head room due to the eaves in the attic ceiling. The property has part double glazing, has central heating and is a bare let, without furnishing or white goods. There is a bathroom that has been converted from an office that at one time was part of the adjoining building in the terrace, it is now only accessible from the property. This conversion appears to have coincided with the office area being converted into 14 and 16 Baxter Mews. Both Parties appear to be claiming to have fitted out this bathroom at some stage. If this were to become a material consideration further submissions would be necessary on this point.
11. The tenant has improved the property by fitting units to the kitchen and providing down stairs double glazed windows.
12. There is damp effecting various walls.

Written evidence

13. Both Parties submitted written evidence to the Rent Officer and to the Tribunal, these have been copied to the other Party.

The Law

In determining a fair rent the Tribunal, in accordance with section 70 of the Rent Act 1977, "the Act", has regard to all the circumstances, including the age, location and state of repair of the property. It also disregards the effect of (a) any relevant tenant's improvement and (b) the effect of any disrepair or other defect attributable to the tenant or any predecessor in the title under the regulated tenancy, on the rental value of the property. The Tribunal must also take account (section 70 (1)(c)) of any premium, or sum in the nature of a premium paid on the grant, renewal or continuance of the tenancy.

In *Spath Holme Ltd v Chairman of the Greater Manchester. Committee* (1995) 28 HLR 107 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 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.)

Rent Acts (Maximum Fair Rent) Order 1999 (SI 1999/6)

Regulation 2 limits the amount that the fair rent can be increased from registration to registration, unless Regulation 2 (7) applies:

(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.

Determination of the fair rent

14. The Tribunal first considers the deed of surrender made in 2008. The background to this is that the tenant has held this tenancy from 1963. Initially the property had a much longer garden that had a poly tunnel, usually used for growing produce. The Tribunal has not seen the plans relating to the building of the apartment block that now stands at the bottom of the shortened garden of the property, but it is clear that it was necessary for the freeholder to acquire some of the garden so that the apartment block could be built. The freeholder agreed to pay £20,000 to

the tenant for the surrender of this land and at schedule 1 clause 3 of the deed of surrender it is stated that, "the rent payable under the terms of this lease will remain at its current level of £36.50 per week throughout the remaining period of the tenant's occupation of the premises....and the landlord will ensure that any third party to whom it may subsequently sell its reversionary interest in the premises will enter into deed of covenant in similar terms to the covenants set out in this schedule 1 so that they remain binding on that third party...".

15. The current freeholder states that he purchased the freehold on 14 October 2020, via auction. Details of the auction are available on the internet and show that the property was on sale as a commercial investment, subject to a let to a protected tenant at a rent of £36.50 per week. The auction details indicate that the landlord paid £46,500 for the freehold, the Tribunal estimating that the property would be worth at least three times that figure without a regulated tenancy.
16. The present freeholder should have made a deed of covenant binding her to the deed of surrender and the rent of £36.50 per week. There is no evidence on the papers before the Tribunal on this point and so the Tribunal determines that it is fair and just to conclude that what should have been done was done. The Tribunal notes that the landlord submits that it would not be fair to deny her a rent increase, the Tribunal disagrees. The landlord is bound by the deed of surrender, and clearly bought this property knowing that she would receive £36.50 per week in rent from the tenant.
17. Section 70 of the Act requires the Tribunal, in determination of the fair rent, to have regard to all the circumstances. This deed of surrender is a vitally important circumstance that this Tribunal does take into account. The deed has varied the terms of the lease on this property so that the rent will be £36.50 for the duration of the lease.
18. Further, Section 70(1)(c) of the Act requires this Tribunal to have particular regard to any premium or sum in the nature of a premium paid on the grant, renewal or continuance of the lease. The deed of surrender required the then freeholder to pay a premium of £20,000 to the tenant, on continuance of the lease. The Tribunal determines that this sub section of the Act also requires the Tribunal to consider the circumstances in which the reverse premium was paid. The circumstances were that a garden was surrendered so that an apartment block could be built and that a premium of £20,000 had to be paid pursuant to a deed of surrender that also fixed the rent on the property at £36.50 per week, for the remainder of the lease.

19. As such the Tribunal in consideration of its overriding objective (Rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, as amended) determines that it is fair and just to set a fair rent pursuant to section 70 of the Act, for this property, at £36.50 per week. As such it not necessary to go further and consider the remaining procedure under section 70 of the Act with regard to assessing the open market rent, adjusting that for the factors that have to be taken into account and considering the Rent Acts (Maximum Fair Rent) Order 1999 and the question of whether there is scarcity of such properties in the Sheffield post coded areas.
20. The Tribunal has dealt with this case during the Covid 19 Pandemic. As such its prior to Covid 19 procedure has been modified so that the inspection of the property has been limited to an external inspection only. The Tribunal determines that no prejudice has been caused to either party as a result of this.

The decision

21. The fair rent determined by the Tribunal for the purposes of section 70 of the Rent Act 1977 is accordingly £36.50 per week.
22. Appeal against this decision involving points of law, such as the binding nature of the deed of surrender (as opposed to the factual determination of the rent to be paid) is to the Upper Tribunal. Any Party wishing to appeal to the Upper Tribunal must, within 28 days of this decision being sent to the Parties, deliver to this First-tier Tribunal an application for permission to appeal against this decision. That application should include the grounds of appeal, particulars of those grounds, identify the paragraphs of the decision that are challenged and state the outcome that is sought as a result of making the appeal.

Judge Tonge

16 March 2021.