



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

Case Reference : BIR/00CN/F77/2021/0032

Property : 37 Church Street, Lozells, Birmingham, B19 1QN

Applicant : Mr William McEwan

Respondent : Midland Heart

Type of Application : Appeal against the Rent Officer's Decision of Fair Rent under s.70 of the Rent Act 1977

Tribunal Members : Mr I.D. Humphries B.Sc.(Est.Man.) FRICS
Mrs K. Bentley

Date and Venue of Hearing : Not Applicable, paper determination

Date of Decision : 21st September 2021

DECISION

- 1 The Fair Rent is determined at £103.50 (One Hundred and Three Pounds Fifty Pence) per week from 21st September 2021.

REASONS

Introduction

- 2 Mr McEwan holds a protected tenancy of 37 Church Street, Lozells, Birmingham, B19 1QN.
- 3 The history of the case is as follows:

24.05.17	The Rent Officer registered £88.00/week including £0.52 for services.
13.05.21	The Landlord applied for a rent increase to £104.21/week including £0.43 for services.
29.06.21	The Rent Officer registered £100.00/week including £0.43 for services.
28.07.21	The Tenant objected to the new rent and the appeal was referred to the First-tier Tribunal.
21.09.21	The Tribunal determined a new rent of £103.50/week including £0.43 for services.
21.10.21	The Tenant requested Reasons.
- 4 The Reasons are set out below.

The Law

- 5 Mr McEwan is a protected tenant acknowledged by the landlord. The tenancy had been granted by Midland Area Improvement Housing Association Ltd. to Mr William McEwan as a secure weekly tenancy from 10th March 1986. The property was let unfurnished. The landlord is responsible for repair to the structure and exterior and the tenant for internal repair and decoration in accordance with s.11 of the Landlord & Tenant Act 1985.
- 6 Accordingly, the rent is to be determined under s.70 of the Rent Act 1977.
- 7 S.70(1) states that in determining a fair rent, regard has to be had to all the circumstances of the tenancy (other than personal circumstances) including the age, character, locality and state of repair of the house, whether the property is let furnished and whether a premium had been paid or would be required to renew, continue or assign the tenancy.
- 8 s.70(2) adds a further qualification that it is assumed that the number of parties seeking to become tenants of similar houses in the locality on the terms of the tenancy (other than the rent) is not substantially greater than the number of houses available to let on such terms. This is usually referred to as 'scarcity' and the Court of Appeal held in *Spath Holme Ltd. v Chairman of the Greater Manchester Rent Assessment Committee* (1995) 28 HLR 107 and *Curtis v London Rent Assessment Committee* (1999) QB 92 that under normal circumstances the fair rent is the market rent discounted for scarcity. The Court also held that assured tenancy rents could be considered comparable to market rents.
- 9 s.70(3) requires the valuation to disregard any disrepair due to a tenant's failure to comply with the terms of the tenancy and any improvements carried out by the tenant or their predecessor in title.

Facts Found

- 10 The Tribunal were unable to inspect the property due to Covid 19 Regulations.
- 11 The Tribunal relied on information provided by the tenant and Rent Officer to describe the property which is a traditional, two storey, three bedroom terraced house with part central heating. There is a back garden but no garage or off-street parking.
- 12 The carpets, curtains and white goods were provided by the tenant.
- 13 The rent includes a 'noted amount' of 43 p/week for 'services' to cover the cost of providing a Mobile Caretaker shared by 248 homes.

Submissions

- 14 Neither party requested a Hearing.
- 15 The landlord made no submissions.
- 16 The tenant's submission said that the floor in Living Room 1 was sinking, the walls in Living Room 2 and Kitchen were damp, two of the bedroom ceilings needed replastering and the house needed modernisation.

Decision

- 17 Having been unable to carry out an inspection the Tribunal was unable to determine whether or not services were being provided in accordance with the landlord's obligations in the tenancy agreement. However, the Tribunal has no power to force any party to comply with the terms of a tenancy agreement as its only jurisdiction is to determine a fair rent under the terms of the statutory definition in the Rent Act 1977 ('the Act').
- 18 Under section 70 the Act, the Tribunal has to assess the fair rent using the full market rental value of the property as a starting point, assuming the accommodation is in good condition, well maintained and modernised with central heating, reasonable kitchen units and a bathroom suite in fair condition, equipped with carpets and curtains and ready to let in the open market, and then adjust the figure to reflect the circumstances of the case.
- 19 From a Tribunal perspective, the cost of providing the services even though only 43 p / week is irrelevant. There is a ceiling to the rent a tenant would pay for any accommodation in the market and it would make no difference whether the services comprised 10% or 50% as far as a tenant was concerned, the overall sum they would be prepared to pay would be exactly the same for any given level of services. The Tribunal's only concern is the maximum sum, the market rent, which is the starting point.
- 20 In this application neither the landlord nor tenant gave any evidence of the full market rental value described in paragraph 18 above, so using its own general knowledge and experience the Tribunal determined the full market value of this house at £150.00 per week.
- 21 The Tribunal then took account of the specific facts of the tenancy to put the house on comparable terms with property generally available to let in the market. To do so, it deducted £5 per week as the tenant had provided the white goods and £5 per week for the

carpets and curtains, i.e. £10.00 per week from the comparable market rent of £150.00 per week, leaving a net rent of £140.00 for a tenancy on the same terms. The Tribunal made no reduction for the alleged defects as the property is around 100 years old and property of this age would not be expected to be in perfect condition. The condition is reflected in the £150.00 / week starting rent.

- 22 The Tribunal considered the question of scarcity in s.70(2) of the Rent Act 1977 and found that the number of potential tenants looking for accommodation of this type in the area exceeded the number of units available to let. It deducted a further 10% (£14.00) to reflect this, generally known as 'scarcity', to leave a net rent of £126.00 per week for the tenancy of the house on the statutory basis.
- 23 However, the Rent Acts (Maximum Fair Rent) Order 1999 capped the rent at £103.50 per week as shown in calculations sent with the Decision Notice, which was less than the Tribunal's assessment had there been no cap.
- 24 Accordingly, the Tribunal determined the Fair Rent at the capped figure of £103.50 per week with effect from the date of Decision on 21st September 2021.

I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman

Appeal

If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property) on a point of law only. Any such application must be received within 28 days after these reasons have been sent to the parties under Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.