

EASTERN RENT ASSESSMENT PANEL

STATEMENT OF REASONS FOR THE DECISION OF THE COMMITTEE WHICH MET ON 9th FEBRUARY 2007 TO DETERMINE A FAIR RENT IN RESPECT OF 15 CHRISTCHURCH COURT, 151 HIGHSTREET NORTH, DUNSTABLE BEDFORDSHIRE LU6 1JX

File Reference No.:	CAM/34UE/F77/2006/0131
Landlord:	Home Group Ltd, 1 st Floor, 1 Gosforth Business Parkway, Gosforth Business Park, Newcastle upon Tyne NE 12 8ET
Tenant:	Mrs D Cant
Existing Rent:	£385.00 (including £79.99 attributable to services) per calendar month which was below the capped amount for rent under Rent Acts (Maximum Fair Rent) Order
Rent Proposed by Landlord:	£416.00 (including £175.68 attributable to services) per calendar month
Rent Determined by Rent Officer:	£415.00 (including £86.26 attributable to services) per calendar month which was below the capped amount for rent under Rent Acts (Maximum Fair Rent) Order
Rent Determined by Committee:	£415.00 (including £119.87 attributable to services of which £33.61 relates to Supporting People) per calendar month which is below the capped amount for rent under Rent Acts (Maximum Fair Rent) Order 1999
Members of the Committee:	Mr JR Morris (Chairman) Mr DS Brown FRICS MCIArb Mrs N Bhatti
Clerk to the Committee:	Mr J Childe

THE PREMISES

1. The Property is a purpose built, first floor self-contained flat in a three-storey block of 24 flats constructed circa 1985 of brick under a pitched tile roof. The Building is in communal grounds, which comprise a car park with some 7 spaces and a small area of grass and shrubs. There is a door entry system giving access to the common parts. The internal common parts include a common room with kitchen, a toilet and a laundry room. Maintenance of these facilities is paid from the service charge. There is also a guest room with shower room. There is a lift to all floors. The Building is understood to have mains electricity, gas, water and drainage.

Accommodation

The Property comprises an entrance hall, a living room off which is a kitchen, a bedroom and a bathroom with wc.

Services

Space and water heating is by communal central heating system paid for through a service charge. Electricity is separately metered. The Building is sheltered housing and there is a warden in attendance during the day and a central emergency call system in the evening and at night. Each flat has an emergency pull chord.

Furnishing

The Property is let unfurnished.

Location

The property is adjacent to the town centre of Dunstable.

THE TENANCY

2. The tenancy appears to be a statutory monthly periodic tenancy, which commenced on 1st June 1984. According to the Rent Register the tenancy is in accordance with the standard form of agreement, which provides for a fixed service charge. The tenancy is subject to Section 11 of the Landlord and Tenant Act 1985 in relation to the Landlord's repairing obligations.

THE APPLICATION

3. A rent of £385.00 (including £79.99 attributable to services) per calendar month, which was below the capped amount for rent under Rent Acts (Maximum Fair Rent) Order was registered on 10th November 2004 effective from the 19th December 2004. The Landlord by a notice in the prescribed form received by the Rent Service on the 20th October 2006 proposed a new rent of £416.00 per calendar month (including £175.68 attributable to services). On the 29th November 2006 the Rent Officer registered a rent effective from the 19th December 2006 of £415.00 (including £86.26 attributable to services) per calendar month, which was capped under the Rent Acts (Maximum Fair Rent) Order 1999. On the 1st December 2006 the Landlord applied to the Rent Assessment Panel. The parties asked for the appeal to be dealt with by written representations only. The Landlord provided a Schedule of Services with Supporting Charge items identified.

THE INSPECTION

4. The Committee inspected the property in the presence of the Tenant. The exterior of the Building and communal grounds appear to be in fair condition and the internal common areas seem well maintained. The Property has a fitted kitchen although both kitchen and bathroom are now rather dated. The Landlord provides the fridge and cooker but not carpets or curtains. There was a double bedroom. It was noted that the Property had secondary double-glazing.

THE LANDLORD'S CASE

5. The Landlord stated in written representations that the Rent Officer's decision was unfair as only £86.26 had been noted on the Rent Register as being attributable to the service charges in the registered rent and the Officer had failed to include any amount for the Support Charge. The Landlord stated that the total cost of all the items in the service charge was £175.68. The amount of £86.26 excluded the supporting people element, which amounted to £89.42 per calendar month.

THE TENANT'S CASE

6. The Tenant did not submit any representations.

THE LAW

7. Attached to this Statement of Reasons is a resumé of the law applied by the Committee. It forms an integral part of the Reasons of the Committee.

THE DECISION

8. The Committee assessed the rent for the subject property completely afresh as at the day of the inspection pursuant to section 70(1) Rent Act 1977 (having regard in particular to the age, character, locality, state of repair of the property and all the circumstances other than personal circumstances). The Committee took account of the relevant cases and legislation including *Spath Holme Ltd v Greater Manchester Rent Assessment Committee* (1996) 28 HLR 107, *Curtis v The London Rent Assessment Committee* [1997] 4 All ER 842 and *BTE Ltd v Merseyside and Cheshire Rent Assessment Committee* 24th May 1991. The Committee assessed a market rent by reference to the market rent of comparable properties in the locality using the knowledge and experience of its members.
10. In the course of assessing a market rent of the Property the Committee referred to the Schedule of services provided and their cost. It was noted that the services included, amongst other things: gardening, cleaning of common parts, window cleaning of common parts and tenant's flats, gas for heating the communal areas and tenant's flats, electricity in relation to the communal areas and the costs for the warden and alarm system. The Committee found the range of services to be reasonable.
11. The charge to each flat for the cost of these services was found from the Schedule to be £86.26 per calendar month excluding the proportion of the cost of items such as the warden and alarm system that may be chargeable to Supporting People. This amount was shown on a separate part of the schedule and was noted to be a total of £9,277 per month. This divided between the 24 flats came to £33.61 per calendar month. The Committee could not find in the Schedule submitted as evidence of the amount that may be payable under Supporting People a sum that would amount to £89.42 per flat per calendar month.
12. The Committee therefore found that the total amount attributable to the services was a total of £119.87 comprising £86.26 plus £33.61 Supporting People. The Committee found that the total sum of £119.87 for the services provided to be reasonable.
13. Neither party submitted rental values of comparable properties. The Committee using the experience of its members determined that a market rent for a property similar to the subject property, taking into account its location, in good condition with central heating, double glazing, modern kitchen and bathroom, and let with some carpets, curtains and white goods on an Assured Shorthold Tenancy would be £575.00 per calendar month. However the Committee considered that a global deduction of £86.00 per calendar month should be made in respect of the subject property for a dated bathroom and kitchen and the lack of carpets and curtains. It should be noted that this figure cannot be a simple arithmetical calculation and is not based specifically upon capital cost but is the Committee's estimate of the amount by which the rent would have to be reduced to attract a tenant.
14. As to scarcity, the Committee decided that there is substantial scarcity of "... similar dwelling houses in the locality..." available for letting and a deduction would be made to reflect this. The matters taken into account by the Committee were:-
 - a. The Committee interpreted the "locality" for scarcity purposes as being South Cambridgeshire 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. The members of the Committee have many years of experience of the residential letting market between them and that experience leads them to the view that demand consistently exceeds supply for similar properties to the subject property in the locality defined above.
15. 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 properties similar to the subject property in the private sector or the exact number of such properties available. It can only be a judgement based on the years of experience of members of the Committee. That combined experience leads the Committee to the view that demand is particularly high for properties similar to the subject property in this locality. The Committee assessed scarcity at 15%.

SUMMARY

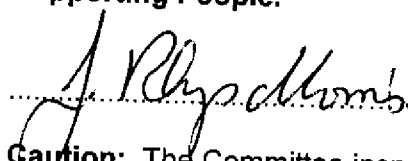
16. Open Market Rent:	£575.00 per calendar month
Less global deduction	<u>£ 86.00</u>
	£489.00
Less Scarcity 15%	<u>£ 73.35</u>
	£415.65

'Uncapped' fair rent say £415.00 per calendar month as assessed by the Rent Officer.

17. The provisions of the Rent Acts (Maximum Fair Rent) Order 1999 require that the registered rent is either the capped Fair Rent or the Fair Rent decided by the Committee whichever is the lower. The capped Fair Rent is calculated in accordance with a statutory formula using the existing rent as a base. The capped rent in this case is £432.50 per calendar month, which is higher than the Fair Rent assessed by the Committee and therefore the Fair Rent as assessed by the Committee and the Rent Officer is to be registered.

FAIR RENT = £415.00 per calendar month

Amount attributable to services is £119.87 of which £33.61 may be paid under Supporting People.

 J. R. Morris, Chairman

Caution: The Committee inspected the subject property for the purposes of reaching this decision. The inspection was not a structural survey and any comments about the condition of the property in this statement must not be relied upon as a guide to the structural or other condition of the property.

THE LAW RELATING TO THE ASSESSMENT OF FAIR RENTS

INTRODUCTION

1. This is a brief summary of the law applied by the Committee when reaching its decision. It is an integral part of the decision.
2. The definition of **Fair Rent** is contained in the Rent Act 1977 i.e.:-

70(1) In determininga 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 dwellinghouse
 - b) if any furniture is provided for use under the tenancy, the quantity, quality and condition of the furniture, and
 - c) any premium, or sum in the nature of a premium.....
70(2) For the purposes of the determination it shall be assumed that the number of persons seeking to become tenants of similar dwellinghouses 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 dwellinghouses in the locality which are available for letting on such terms

70(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.....
 - 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
 - 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
3. The Committee also has to take into account the Human Rights Act 1998. However, when interpreting the Rent Act 1977 (primary legislation) the Committee will have to follow the wording of the Act if it cannot be read or given effect in a way which is compatible with rights contained in the European Convention on Human Rights. Any party dissatisfied will then have to refer the matter to the High Court for the making of a Declaration of Incompatibility.
4. All other rights granted by the Convention such as the right to a fair and public hearing by an independent tribunal and the right to respect for a person's private and family life are to be observed by the Committee

5. There have been a number of cases decided over the years most of which have been either unreported or reported only in professional journals. However in 1997 a Court of Appeal decision was reported as *Curtis v London RAC (No. 2)* [1997] 4 AER 842 where the Court reviewed the various authorities and provided guidance to Committees to assist them in reaching decisions.
6. The Court confirmed that a Committee must first find an open market rent for the property taking into account evidence before it from the parties and the Rent Officer. It will not consider other registered rents unless there are very exceptional circumstances which will be set out in the decision if appropriate.
7. A Committee can use such factors as comparable rents being paid for similar properties in the locality, capital values and return on expenditure as well as the experience and expertise of its members.
8. Having established an open market rent the Committee then has to consider the deductions and allowances referred to above
9. In all cases the Committee will try its best to give the parties details of its calculations. The *Curtis* case (above) made it clear that a Committee's decision must be supported by some workings out, but precise arithmetical calculations are not possible in all cases. There are many properties where the deductions and allowances are of such proportions that a Committee must simply take a view as to how much a rent would have to be reduced in order to obtain a tenant. This may not be the same as the sum total of the Statutory deductions/allowances.
10. If the Committee considers that the demand for similar properties in the locality is substantially greater than the supply then a deduction has to be made in accordance with Section 70(2) Rent Act 1977. This is the so-called "scarcity factor". The Committee is obliged to look at scarcity in terms of people wanting regulated tenancies. However the reality is that no new regulated tenancies are created nowadays and scarcity is therefore considered using the types of tenancy currently in use.
11. The word "locality" in Section 70(2) has a different meaning to that in Section 70(1). In the case of *Metropolitan Property Holdings Limited v Finegold* [1975] 1 WLR 349 it was decided that the "locality" for this purpose should be a really large area. A Committee must define the extent of that "locality" when reaching its decision.
12. In determining scarcity, Committees can look at local authority and housing association waiting lists but only to the extent that people on such lists are likely to be genuine seekers of the type of private rented accommodation in question if the rent were to exclude the scarcity element