

**SOUTHERN
RENT ASSESSMENT PANEL & TRIBUNAL**

Statement of Reasons
for the Decision by a Committee of the Panel upon an
Inspection carried out on
Tuesday 18th October 2005

RENT ASSESSMENT COMMITTEE
Mr Michael R Horton FRICS (Chairman)
Mr R D Yeomans

<i>Reference</i>	<i>Address</i>	<i>Tenant</i>	<i>Landlord</i>
CHI/00MS/ F77/2005/0144	36 Chessel Avenue Bitterne Southampton SO19 4DX	Mr J Murphy	Mr J R Smith

Summary

- 1.1 This was an objection by the Tenant against the registration by the Rent Officer of a Fair Rent for the property of £448.00 p.c.m. registered on 5 August 2005 and effective from 10 September 2005. This rent had been subject to the *capping* legislation referred to below and the uncapped fair rent noted by the Rent Officer was £600.00 p.c.m.

The Landlord had requested a fair rent of £445.00 p.c.m.

The previous Fair Rent, registered on 15 July 2003 and effective from 10 September 2003, was £403.50 p.c.m. The uncapped fair rent at that time was noted as £545.00 p.c.m.

- 1.2 Neither party requested a Hearing but both submitted representations.

The Statutory Provisions

- 2.1 It may be helpful if we describe the legal background to the function we have to perform. We have paraphrased the provisions of section 70 of the Rent Act 1977 ("the Act") below, in the hope of making them reasonably comprehensible. The actual terms of the Act are in some ways rather more complex than our description indicates. This might suggest that we have failed to apply the terms of the Act properly. Therefore we make it plain that we have in practice carried out our work by reference to the actual wording of the Act and the decided cases upon it, and not by reference to this short description.
- 2.2. Section 70 of the Act provides that in determining what rent is the fair rent for a property let under a regulated tenancy we must have regard to all the circumstances (other than personal circumstances) surrounding the letting. In particular we are to have regard to the property's age, character, locality and state of repair.
- 2.3 Section 70 (2) of the Act requires us to take account of the letting market in the locality (which must be a substantial one) where the property is situated. We have to assume

that the number of tenants looking for property to rent is roughly the same as the number of similar properties available. If there are, in our view, more tenants than properties, and if we consider that this has pushed up open market rents substantially, then we have to estimate the financial effect on open market rents of this "scarcity". In that case we must make an allowance for it when we fix the fair rent.

- 2.4 Section 70 (3) requires us to disregard certain other matters when we make our determination. First, we must disregard any disrepair or other defect because of a failure by the tenant under the regulated tenancy (or any of his predecessors under the same tenancy) to comply with any of its terms. Secondly, we must also disregard any improvement carried out by the tenant or any of his predecessors, except one that he was required to make by the terms of his tenancy. An "improvement" for these purposes usually includes the replacement of any fixture or fitting, but not a repair.
- 2.5 The Rent Act (Maximum Fair Rent) Order 1999 ("the Capping Order") came into effect on 1 February 1999. In January 2000, the Court of Appeal declared that it had been improperly made because the Act under which it had been purported to be made did not give Parliament power to bring in secondary legislation of this nature. That decision in turn was reversed by the House of Lords in December 2000, and so the provisions of the Order apply to our decision.

The effect is to limit the amount of any increase in the fair rent by the way that the Order sets out, and which we have described below.

Inspection

- 3.1 On Tuesday 18 October 2005 the Committee in the presence of the Tenant and Ms L Long of Messrs Harcourts, agents for the Landlord, inspected the property.
- 3.2 The Committee found the property to comprise a two story detached house with brick and tile hung elevations under a slate covered roof.
- 3.3 Chessel Avenue is a popular and convenient residential location having good access to the City center and most urban amenities within easy reach
- 3.4 Accommodation is arranged as follows: **Ground Floor Entrance Hall** with stairs to first floor, **Front Living Room**, **Rear Living Room** with door to garden, **Kitchen**, **First Floor** – **Landing**, **Four Bedrooms**, and **Bathroom/w.c.** **Outside** **Fuel store** and reasonable sized gardens with ample parking for several vehicles.
- 3.5 The Committee recorded the general level of obsolescence affecting the property and the obvious lack of maintenance both by the landlord & Tenant over many years. The Committee noted a considerable amount of structural movement, evidence of rising and penetrating damp, the poor condition of external joinery which included a very large gap beneath the front door which might allow the ingress of vermin, very poor paintwork, deteriorating pointing, slipped roof slates, obsolete kitchen and bathroom, dated wiring and very basic hot water system.

The Committee noted the replacement windows to the front bay.

Representations

- 4.1 Messrs Harcourts, as agents for the landlord, submitted that they had no reason to doubt the accuracy of the Rent Officer's documents or findings and in dealing with over sixty properties with registered rents they had always found the Rent Officer to be fair and well informed on current rental values.

Further they had no knowledge of any report of essential repairs although they may have been reported direct to the Landlord.

Ms Long, who attended the inspection, advised that Messrs Harcourts did not manage the property and were only instructed with regard to the new registration

- 4.2 The main points of the Tenant's representation were as follows:.

- (i) The property is becoming structurally unsound.
- (ii) The roof leaks and the chimneys soak up water.
- (iii) Every room in the house suffers from damp.
- (iv) The house is insecure due to the rotting windows and door frames.
- (v) The refusal of the Landlord and Agents to do any repairs is in breach of the tenancy agreement and renders any increase void.
- (vi) The house cannot be compared with other damp free and modernized houses in the area and the increase is well above the rate of inflation.

Conclusions

- 5.1 In coming to their decision the Committee are directed by the provisions of Section 70 of the Rent Act 1977 and, in particular, they have to ignore any improvements carried out by the Tenant, otherwise than in pursuance of the terms of the tenancy. They also have to disregard any failure by the tenant to fulfill their repairing obligation, e.g. internal decorating.
- 5.2 The Committee carefully considered their findings at the time of the inspection and the representations submitted by the parties.
- 5.3 With regard to the general state of the property they found it to have been poorly maintained both by the Landlord and the Tenant. Indeed they find that even ignoring, as they have to, the failure of the Tenant to keep the interior in reasonable condition that the property would only let in the market at a deeply discounted rent.
- 5.4 The parties representations did not include any rental evidence of houses of this type in this locality.

Accordingly the Committee decided to rely on their own expertise and experience of rental values in the area. They concluded that a landlord could reasonably expect to let a similar house at a rent of £850.00 per calendar month.

However, at this figure a prospective tenant would expect to find a house in substantially better condition with modern kitchen and bathroom, full central heating, replacement double glazed windows and other modern amenities. They would also expect to find, at this level of rent, basic furnishings which would include at least a cooker, carpets and curtains and generally the house would be well maintained.

The Committee's experience indicates that with a considerably greater volume of property now available to rent tenants are becoming increasingly discerning and more selective so far as the standard of a property is concerned.

Further the "unfurnished" open market assured shorthold tenancy letting would almost certainly be for a term of some six to twelve months and on this basis the landlord would normally be expected to assume responsibility for internal decorations

It is necessary for the Committee to adjust the rental of £850.00 per month to reflect these differences.

5.6 The Committee arrived at the following valuation:

Base open market rent: £850.00 per month

Less adjustments:

No central heating £55.00 pm

No basic furnishings e.g. carpets, cooker etc. £60.00 pm

Tenants internal decorating responsibility £65.00 pm

Basic kitchen, bathroom and wiring £88.00 pm

Poor windows and doors £50.00 pm

Other disrepair/obsolescence £86.00 pm £404.00 per month

Adjusted Rent £446.00 per month

The Committee noted that the previous registration indicated an uncapped rent of £545.00 while on this occasion the uncapped rental determined by the Rent officer is £600.00 p.c.m. and carefully considered whether or not their above valuation might reflect an element of double discounting.

However, they found the property to be in such poor condition that it would be extremely difficult to let, except on terms which would be significantly different to those contained in the tenancy agreement for a customary open market letting, and concluded their valuation was a fair reflection of the rent the market would stand.

5.9 In para. 2.3 above we summarized section 70(2) of "the Act". Under this provision we have to consider whether or not scarcity of this type of property available for letting in the area is *substantial*. If we find this to be the case then we have to give consideration to making an appropriate deduction.

Appeal Court decisions dictate we have to consider the scarcity factor over a wide region and this Committee considers the appropriate area to be broadly that contained Winchester to the north, Fareham to the east and Cadnam to the west.

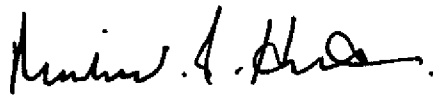
The Committee find that scarcity is no longer *substantial* in this area, within the meaning of the "Act", and accordingly no further deduction is applicable.

5.10 The rental value arrived at by the Committee is less than the amount of £449.00 per calendar month, which is the maximum they can register under the provisions of "the Capping Order", so the capping order does not apply.

Continued

Decision

- 6.1 The Rent Assessment Committee determine the Fair Rent of **36 Chessel Avenue, Bitterne, Southampton at £446.00 per calendar month.**
- 6.2 In arriving at their decision the Committee considered their inspection of the premises, the information supplied and representations made to them. They have disregarded the personal circumstances of the parties, have applied their collective knowledge and experience of the locality and they have had regard, in particular, to the provisions of Section 70 of the Rent Act 1977.
- 6.3 This decision was made on Tuesday 18th October 2005 which becomes the effective date of the registration.



MICHAEL R HORTON FRICS
(Chairman)