

Rent Assessment Committee: Summary reasons for decision.
Rent Act 1977

Address of Premises

2 Hampden Gardens
Newhaven
East Sussex BN9 0HJ

The Committee members were

Mr M Loveday BA(Hons) MCI Arb
Mr N Cleverton FRICS

1. Background

On 10 October 2006 the landlord's agent applied to the rent officer for registration of a fair rent of £110.40 per week for the above property.

The rent payable at the time of the application was £104.00 per week.

The rent was previously registered on 5 September 2002 with effect from the same date at £74.50 per week following a determination by the rent officer.

On 14 November 2006 the rent officer registered a fair rent of £88.00 per week with effect from that date.

By a letter dated 18 December 2006 the landlord objected to the rent determined by the Rent Officer and the matter was referred to the Rent Assessment Committee.

2. Inspection

The Committee inspected the property on 26 January 2007 and found it to be in good condition.

The following tenant's improvements had been made to the property – none.

3. Evidence

The Committee received written representations from the landlord and/tenant and these were copied to the parties. No written representations were received from the tenant.

Neither party requested a hearing at which oral representations could be made.

4. The law

When determining a fair rent the Committee, in accordance with the Rent Act 1977, section 70, had regard to all the circumstances including the age, location and state of repair of the property. It also 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.

In *Spath Holme Ltd v Chairman of the Greater Manchester etc. Committee* (1995) 28 HLR 107 and *Curtis v London Rent Assessment Committee* [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).

5. Valuation

Thus in the first instance the Committee determined what rent the landlord could reasonably be expected to obtain for the property in the open market if it were let today in the condition 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 Committee's own general knowledge of market rent levels in the area of Newhaven. Having done so it concluded that such a likely market rent would be £150 per week.

However, the actual property is not in the condition considered usual for a modern letting at a market rent. Therefore it was first necessary to adjust that hypothetical rent of £150 per week to allow for the differences between the condition considered usual for such a letting and the condition of the actual property as observed by the Committee (disregarding the effect of any disrepair or other defect attributable to the tenant or any predecessor in title). The Committee considered that this required a deduction of £20 per week.

The Committee did not consider that there was any substantial scarcity element and accordingly no further deduction was made for scarcity.

This leaves a net market rent for the subject property of £130 per week.

6. Decision

The fair rent initially determined by the Committee, for the purposes of section 70, was accordingly £130 per week.

However, the Rent Acts (Maximum Fair Rent) Order 1999 applies to this tenancy and the Committee must consider the level of the "cap" on the increase in rent imposed by the order.

One issue arose about capping – albeit not one raised by the parties. The application and the papers forwarded by the Rent Service were unclear as to whether there was previous registered rent for the property. Paragraph 13 of the application answered the question whether the rent officer had previously registered or confirmed a fair rent with both the answers "No" and "Yes". The rent register did not include any reference

to a previous registered rent – although the rent officer had capped the rent at £88.00 per week.

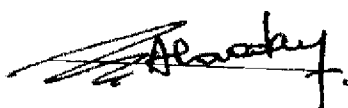
Enquiries were made with the Rent Service which forded a computer printout giving details of a previous registration for the subject premises on 5 September 2002 at a rent of £74.50 per week. However, an officer from the Rent Service suggested to the Committee's clerk that capping should be calculated by reference to the previous registered rent for a property which the respondent occupied until 2004 as the applicant's regulated tenant at 1 South Downs Villas South Heighton.

The Committee has no hesitation in calculating the Maximum Fair Rent for the subject premises on the basis of a registration of the subject premises. Paragraph 2 of the Rent Acts (Maximum Fair Rent) Order 1999 refers to the appropriate "base" rent as "LR". The clause goes on to define "LR" as the "amount of the existing registered rent for the dwelling-house". It is therefore clear that we must consider the existing registered rent for the subject premises – not the previous registered rent for 1 South Downs Villas.

The maximum fair rent that can be registered in the present case is the lower sum of £88.50 per week (Details are provided on the back of the decision form).

Accordingly the sum of £88.50 per week will be registered as the fair rent with effect from 26 January 2007 being the date of the Committee's decision.

Chairman



Dated 31 January 2007

This document contains a summary of the reasons for the Rent Assessment Committee's decision. If either party requires extended reasons to be given, they will be provided following a request to the committee clerk at the Panel Office which must be made within 21 days from the date of issue of this document.