

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

**Address of Premises**

7 Farm Street  
Gloucester  
Gloucestershire  
GL1 5AW

**The Committee members were**

Mr Ian Perry BSc FRICS  
Mr Michael Ayres FRICS

### 1. Background

On 27<sup>th</sup> June 2003 the landlord applied to the Rent Officer for registration of a fair rent of £80 per week for the above property.

The rent payable at the time of the application was £32 per week.

On 6<sup>th</sup> August 2003 the Rent Officer registered a fair rent of £47 per week with effect from that date.

By a letter dated 26 August 2003 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 23 October 2003 and found it to be as described more particularly in the Rent Officer's survey sheet which had been copied to the parties.

### 3. Evidence

The Committee received written representations from the landlord and tenant and these were copied to the parties.

A hearing was held on 23<sup>rd</sup> October 2003 in Cheltenham at which oral representations were made on behalf of the landlord and tenant.

Mr C Marshall of Messrs Michael Tuck and Co spoke on behalf of the landlord. He stated that the tenant had been in occupation for some 27 years and was initially paying a non commercial rent and a rent book had been provided.

The landlords had asked his company to advise on an open market rent and a colleague had advised that a figure of £385 per calendar month would be appropriate.

Mr. Marshall informed the hearing that his company managed some 450 houses and he admitted that he had not seen the inside of this particular property, although he had seen other flats in the property.

Mrs Moody, daughter in law to the landlord, was also present. She had appealed against the Rent Officer's decision.

She asserted that the electrical wiring had been inspected, was safe, but required some minor attention.

Mr Derrick spoke on behalf of the Tenant. He asserted that the property was not in good order as evidenced by the report from the environmental health officer.

It was established from cross questioning that the tenant pays the Council Tax but the Landlord pays the Water Rates.

The curtains in the property are owned by the tenant and he also owns approximately 50% of the carpets.

#### Findings of Fact

7 Farm Street, Gloucester comprises a ground floor flat within a converted brick and slate dwelling house. It adjoins commercial/industrial premises.

The accommodation includes a Hall, Sitting Room, 2 Bedrooms, Kitchen, Bathroom and WC, which were downstairs. There is parking for 1 vehicle, a small garden area and shared use of a garage store.

The property is in poor condition with evidence of damp penetration internally and soft or open mortar joints externally. Windows are generally in poor condition. The Landlord supplies a gas fire in the Sitting Room.

#### **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 their 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 the market rent levels in the area of Gloucester. Having done so it concluded that such a likely market rent would be £385 per month.

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 £385 per calendar month 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 £109 per calendar month reflecting the limited heating, tenant's carpets and curtains and general state of repair.

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 £276 per calendar month or £64 per week to which water rates should be added.

## **6. Decision**

The fair rent initially determined by the Committee, for the purposes of section 70, was accordingly £64 per week.

The fair rent to be registered is not limited by the Rent Acts (Maximum Fair Rent) Order 1999 because there was not an existing registered fair rent at the time of the application.

Accordingly the sum of £64 per week will be registered as the fair rent with effect from 23<sup>rd</sup> October 2003 being the date of the Committee's decision.

**Chairman**

**Signed**

**I R Perry FRICS**

**Dated**

**23<sup>rd</sup> October 2003**

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.

Re: 7 Farm Street, Gloucester, Glos, GL1 5AW

Case No: CHI/23UE/F77/2003/0197

## **Introduction**

- 1 The property the subject of this objection is a ground floor flat within a converted brick and slate dwelling house adjoining commercial premises. The property is let by Mrs Lydia Moody (the landlord) to Mr A Halliday (the tenant) on an unfurnished regulated tenancy governed by the Rent Act 1977 (the Act).

The previous rent payable had been £32.00 per week and the rent had not previously been registered as a fair rent.

The landlord had made the initial application for a registration of a fair rent to the Rent Officer on 22 June 2003 and on 6 August 2003 the Rent Officer had registered a fair rent of £47.00 per week with effect from that date.

By a letter dated 26 August 2003, the landlord had objected to the rent determined by the Rent Officer and the matter was referred to the Rent Assessment Committee.

## **The Statutory Provisions**

- 2 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 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.
- 3 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.
- 4 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.

- 5 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 of fitting, but not a repair.

### **Inspection**

- 6 The Committee inspected the property on 23 October 2003 in the presence of the tenant and his representative, Mr Derrick. Mr C Marshall of Messrs Michael Tuck and Co inspected on behalf of the landlord. Mrs Moody was present on site but declined to inspect the inside of the property.

Access to the property was via a porch leading to a kitchen, which in turn lead on into a living room. From the living room there was access to the front reception hall which in turn lead to the second bedroom. Access to bedroom one was from the kitchen. There was further access to the cellar from within the kitchen. The bathroom is situated off the porch.

Generally the premises were found to be in the condition as described by the Rent Officer. There was some disrepair both internal and external with dampness noted throughout at ground floor level. It was unclear whether this dampness was rising or penetrating the walls.

Externally the walls were in need of re-pointing, much of the brickwork was spalled and crumbling. There was evidence of structural movement within the property as a whole and the external timbers, particularly to the windows, was affected by wood rot.

It was evident that there was flooding of the cellar and further evidence of moisture in the bathroom which appeared to be due to condensation with mould growth evident.

- 7 The property is situated in an area of similar class residential and mixed commercial properties in the centre of Gloucester and forms part of a street scene within a no through road. Shopping and other amenities are all within easy reach of the property.

In addition to the accommodation mentioned above, Mr Halliday has shared use of a garage/store. He informed us that he also had one off-road parking space and was allowed a small garden area immediately adjacent to the rear porch.

### **Hearing**

- 8 The hearing was attended by the tenant and his representative, Mr Derrick, Mr C Marshall of Messrs Michael Tuck and Co spoke on behalf of the landlord

and Mrs Moody, daughter-in-law to the landlord, was also present. We introduced ourselves and briefly explained the factual and legal background to the objection that was before us and the way in which we would conduct the hearing.

Mr Marshall spoke on behalf of the landlord and stated that the tenant had been in occupation for some 27 years and was initially paying a non-commercial rent and a rent book had been provided.

The landlord had asked his company to advise on an open market rent and a colleague had advised that a figure of £385.00 per calendar month would be appropriate.

Mr Marshall informed the hearing that his company managed some 450 houses and he admitted that he had not seen the inside of this particular property although he had seen other flats in the property.

Mrs Moody asserted that the electrical wiring had been inspected, was safe, but required some minor attention. This work had not been done.

Mr Derrick spoke on behalf of the tenant. He asserted that the property was not in good order as evidenced by the report from the Environmental Health Officer which had been circulated to all parties and to the Committee itself prior to the hearing.

It was established from cross-questioning that the tenant pays the Council Tax but the landlord pays the water rates and that the curtains are owned by the tenant and he also owns approximately 50% of the carpets.

## **Consideration**

- 9 Recent cases make it clear that the method laid down by the courts for determining a fair rent is to start wherever possible with the rent for the property on the open market and then to make appropriate adjustments to establish the fair rent which applies to this regulated tenancy.
- 10 We concluded that the rent for the subject property let on an assured shorthold tenancy in the open market in good modern letting condition would be £385.00 per month. By “good modern letting condition” we mean what a prospective tenant would expect to find in this locality in a property available to be let on the open market. The property would be in good structural and decorative order both inside and out. It would have central heating, hot water in the kitchen and the bathroom and would be carpeted and have curtains. It might also have some “white goods” such as a cooker. Because the comparable figures available to us are for practical purposes all for properties let on assured shorthold tenancies in that condition we have to start from the evidence that such lettings provide.

- 11 The adjustments below take account of the differences between such a property and the one we are considering and allow for the effect that these differences would have on the rent it would fetch in the open market.
- 12 This property has no central heating system. We concluded that a prospective tenant in the open market would expect to pay £29.00 per calendar month less rent for this property by way of rent than he would pay for an otherwise identical property that has central heating. We made an adjustment of that amount to reflect the fact.
- 13 When properties are let in the open market in this area, the landlord includes carpets and curtains. No curtains were included in this letting and only 50% of the carpets were provided by the landlord. Accordingly we deducted a further £20.00 per calendar month to reflect this in belief that a prospective tenant would expect to negotiate a reduction in the open market because of their absence.
- 14 We also have to make an adjustment to reflect the different obligations about repairs and decorations, between the usual open market assured shorthold tenancy and a regulated tenancy. The assured shorthold tenant normally has no responsibility for repairs and decorations. A regulated tenant is usually responsible for them (subject to the statutory exceptions where they apply) so far as the inside of the property is concerned. Someone taking a tenancy in the open market that imposed those additional obligations upon him would be prepared to pay less by way of rent than he would pay if the landlord was to be responsible for them. The reduction would usually relate to what it would cost to keep the inside of this home in good decorative order and repair. Our adjustment reflects our view of the sort of reduction that would be likely to be made in the open market to deal with the point. We made a further reduction of £10.00 per calendar month to reflect this. We decided a further deduction of £50.00 per calendar month should be made to reflect the condition of the property having due regard to the poor standard of external pointing and windows, the evidence of dampness which was throughout at ground level and rendered the cellar unusable.
- 15 Finally, we considered whether there should be any allowance for the effects of scarcity. We considered the market in Gloucester for this purpose. That seems to us to be the area in which conditions of supply and demand would be likely to affect the rent for the property with which we are concerned. The population of that area is about 100,000. It seems to us to be the sort of "really large" area that the Courts have described as being appropriate to this purpose. We also took into account our collective knowledge and experience of the market in that area. We bore in mind that we must consider the effect that scarcity might have on the net rent after the adjustments, but before the allowance for voids and management. We have come to the conclusion that there is a broad balance of supply and demand in the locality we have described. Therefore no allowance for scarcity is appropriate.
- 16 We therefore produced the following calculation on a monthly basis:

Open market rent: £385.00

Less allowance for:		
Lack of central heating	£29.00	
Lack of carpets and curtains by the landlord	£20.00	
Tenant's internal decorating liability	£10.00	
Disrepair and dampness	£50.00	
	<hr/>	£109.00

Less allowances for:		
Scarcity	Nil	<hr/>

Fair rent: £276.00  
pcm

- 17 We therefore determined a fair rent for the subject property of £64.00 per week. The effective date of registration is now 23 October 2003, which is the date on which we made our decision.

Signed  
Mr I R Perry BSc (Est Man)FRICS  
Chairman

Date 18<sup>th</sup> December 2003