

Rent Assessment Committee: Summary reasons for decision.

Rent Act 1977

Address of Premises The Committee members were

27 Victoria Road,

Mr Adrian Jack

Brentwood,

Mr Frank James FRICS

Essex CM14 5DR

Mr Anthony Jackson JP

The Landlord: Registered Holdings Ltd

The Tenant: Mr W Bury

1. Background

On 28th October 2005 the landlord applied to the rent officer for registration of a fair rent of £85.67 per week for the above property.

The rent payable at the time of the application was £74.50 per week.

The rent was previously registered on 5th January 2004 with effect from 31st January 2004 £74.50 per week following a determination by the rent officer.

On 7th February 2006 the rent officer registered a fair rent of £83.00 per week with effect from that date.

By a letter dated 28th February 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 4th May 2006, but was unable to gain access. Externally it was in fair condition. For the interior we had to rely on the Rent Officer's survey sheet which had been copied to parties.

3. Evidence

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

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 Brentwood.. Having done so it concluded that such a likely market rent would be £650 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 £650.00 per 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 and allowing for the tenant's improvements). The Committee considered that this required a deduction of £162.00 per month..

This leaves an adjusted market rent for the subject property of £488.00 per month.

The Committee found that there was substantial scarcity in the locality of South West Essex (including Epping Forest and Thurrock) and therefore made a deduction of 15% from the market rent to reflect this element.

The figure of £488.00 per month therefore stood to be reduced by £73.00 per month, to £415.00 per month, or £95.75 per week, say £96.00.

5. Decision

The uncapped fair rent initially determined by the Committee, for the purposes of section 70, was accordingly £96.00 per week..

This rent is, however, higher than the maximum fair rent prescribed by the Rent Acts (Maximum Fair Rent) Order 1999. The maximum rent is £83.50 per week.

Accordingly the sum of £83.50 per week will be registered as the fair rent with effect from 4th May 2006 being the date of the Committee's decision.



Chairman: Adrian Jack

Dated: 17 May 2006

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 28 days from the date of issue of this document.

Rent Assessment Committee: Full reasons for decision.

Rent Act 1977

Address of Premises The Committee members were

27 Victoria Road, Brentwood, Essex CM14 5DR	Mr Adrian Jack Mr Frank James FRICS Mr Anthony Jackson JP
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The Landlord: Registered Holdings Ltd

The Tenant: Mr W Bury

Background

1. On 28th October 2005 the landlord applied to the rent officer for registration of a fair rent of £85.67 per week for the above property. The rent payable at the time of the application was £74.50 per week. The rent was previously registered on 5th January 2004 with effect from 31st January 2004 £74.50 per week following a determination by the rent officer. On 7th February 2006 the rent officer registered a fair rent of £83.00 per week with effect from that date. By a letter dated 28th February 2006 the landlord objected to the rent determined by the Rent Officer and the matter was referred to the Rent Assessment Committee.

Inspection

2. The Committee inspected the property on 4th May 2006. The property is a two storey end-of-terrace house. It backs onto the railway line and the ground slopes down from the front of the house. There is a small garden at the back with access to a basement. The steps down from the kitchen are dilapidated. Apart from this, the property appeared to be in a fair condition. There is a right of way across the garden so that neighbours in

the terrace have rear access. The Committee was unable to gain access to the interior. For the interior we had to rely on the Rent Officer's survey sheet which had been copied to parties. This indicated that there was no gas central heating. The Committee could accordingly not investigate the internal matters of which the tenant complained.

Evidence

3. The Committee received written representations from the landlord and the tenant and these were copied to the parties. The tenant complained that there was damp in the kitchen and one of the bedrooms. As noted above the Committee was unable to inspect the defects internal to the property. It was the tenant's right to refuse the Committee to inspect the property internally, but the effect is that the landlord was denied the opportunity of the Committee investigating the substance of the tenant's complaints.
4. The landlord made what appear to be *pro forma* submissions on law of a type which may well have been unchanged for many years and (as appears below) have been superseded. Neither the landlord nor the tenant drew our attention to any comparators.
5. Neither party requested a hearing at which oral representations could be made.

The law

6. The definition of a fair rent is contained in section 70 of the Rent Act 1977, which provides:
 - "(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.....
 - (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.

- (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 to comply with any terms thereof;
 - (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;
 - [(c) and (d) are repealed]
 - (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."

7. The Committee 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.
8. 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.
9. 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 Rent Assessment Committee* [1999] QB 92, [1997] 4 All ER 842 where the Court reviewed the various authorities and provided guidance to Committees to assist them in reaching decisions.
10. 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.
11. 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.
12. Having established an open market rent the Committee then has to consider the deductions and allowances referred to above.

13. 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 and allowances.
14. 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.
15. 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.
16. 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.
17. The Committee must apply the Rent Acts (Maximum Fair Rent) Order 1999 – known as the "capping" provision – unless there is an exemption.
18. The Committee accordingly 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.
19. In *Spath Holme Ltd v Chairman of the Greater Manchester etc. Committee* (1995) 28 HLR 107 and *Curtis* (above) 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).

20. B Bailey & Co relied additionally on a case described as *Spath Home* [sic] *Ltd v Greater Manchester Rent Assessment Committee*. We assume this was the *Spath Holme* case, which we cite above, but at first instance in July 1994.
21. Baileys also relied on *BTE v Merseyside & Cheshire Rent Assessment Committee*. We note that Baileys give no references for the cases which they cite. We assume that the *BTE* case to which they refer is that of 24th May 1991. Baileys, however, describe these as “recent cases”.
22. Both the *Spath Home* [sic] and *BTE* decisions have in our view been superseded by the *Spath Holme* and *Curtis* decisions which we cite above and it this law which we have followed.

Valuation

23. 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.
24. As indicated above the tenant’s complaints as regards the internal defects of the property have been disregarded (save insofar as they appear on the Rent Officer’s summary), but insofar as we were able to ascertain the external condition we took the tenant’s complaints into account.
25. Equally, as mentioned above the landlord provided no comparables. Rather the landlord argued that a landlord would seek to achieve a 10 per cent return on capital. The landlord adduced no evidence either of the capital value of the property or of the availability to landlord of a 10 per cent return. Baileys did not purport to give a professional opinion that landlords generally did obtain a 10 per cent return. We are not surprised that they did not, because no surveyor in current market conditions could honestly give such an opinion.
26. Baileys say: “We have found the rental market producing a return of 7 to 8 per cent of capital value on the majority of properties in this area.” The Committee is concerned that Baileys cite no evidence whatsoever to this effect.
27. The Committee is aware from other cases in which Baileys have acted that the firm sends out identical submissions in most, if not all, cases in which the firm is instructed. The firm appears to apply no consideration to the individual circumstances of the case.
28. The Committee accordingly attached no weight to Baileys’ evidence on the expected returns.

29. Accordingly the Committee had recourse to its own knowledge of market rent levels in the area of Brentwood.. Having done so it concluded that such a likely market rent would be £650 per month.
30. The actual property is not in the condition considered usual for a modern letting at a market rent, so we adjusted that hypothetical rent of £650.00 per 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. (The Committee disregarded the effect of any disrepair or other defect attributable to the tenant or any predecessor in title and allowed for the tenant's improvements, but did not take into account the tenant's complaints about the interior of the property, save as indicated above.). The Committee considered that this required a deduction of about a quarter. This figure is not a simple arithmetical calculation, but is rather the amount by which the rent would need to be reduced to attract a tenant. The Committee accordingly deducted £162.00 per month..
31. This leaves an adjusted market rent for the subject property of £488.00 per month.

Scarcity

32. The Committee first considered whether there was any evidence of scarcity at all. Baileys argued that there was no scarcity because rental returns were less than the 10 per cent which a landlord would generally seek. We have already rejected Baileys' submission that landlords do have any expectation of obtaining returns of 10 per cent.
33. Baileys adduced no evidence of the time taken to let dwellings in the area or any other relevant evidence as to whether demand exceeded supply or not. In an unregulated housing market, where demand exceeds supply, rents will rise until the increase in rent chokes off demand. In a free market economy such a rent is not too high, because it is the market-clearing rent.
34. However, Parliament in section 70(2) of the Rent Act 1977 has interfered with the free market by directing that an assumption must be made that "the number of persons seeking to become tenants of similar dwelling-housings in the locality... is not substantially greater than the number of such dwelling-housings in the locality which are available for letting on such terms." Accordingly the evidence needs to be considered as to the demand for dwellings to rent in locality of South West Essex in order to establish whether there is scarcity or not.
35. The Committee's own knowledge of local conditions shows that, although there is a plentiful supply of up-market accommodation, the demand for modest accommodation like the subject property in South West Essex (including Epping Forest and Thurrock) still exceeded supply. We

considered that a 15 per cent deduction for scarcity was appropriate in that area.

36. The figure of £488.00 per month therefore stood to be reduced by £73.00 per month, to £415.00 per month, or £95.75 per week, say £96.00.

Decision

37. The uncapped fair rent initially determined by the Committee, for the purposes of section 70, was accordingly £96.00 per week..
38. This rent is, however, higher than the maximum fair rent prescribed by the Rent Acts (Maximum Fair Rent) Order 1999. (The relevant calculation was attached to the original decision.) The maximum rent is £83.50 per week.

Accordingly the sum of £83.50 per week was registered as the fair rent with effect from 4th May 2006 being the date of the Committee's decision.

Chairman: Adrian Jack

Dated: June 2006