

# Southern Rent Assessment Panel

File Ref No.

CHI/00ML/F77/2006/0131



## Rent Assessment Committee: Extended Reasons for decision. Rent Act 1977

### Address of Premises

191A Eastern Road  
Kempton  
Brighton  
East Sussex

### The Committee members were

Mr R T A Wilson LLB Lawyer Chair  
Mr P Turner-Powell FRICS Valuer Member  
Ms J Morris Lay Member

### 1. Background

On 11<sup>th</sup> July 2006 the landlord applied to the rent officer for registration of a fair rent of £546 per month for the above property.

The rent payable at the time of the application was £440 per month.

The rent was previously registered on 20<sup>th</sup> April 2004 with effect from the same date at £440 per month following a determination by the rent officer.

On 11<sup>th</sup> September the rent officer registered a fair rent of £492.50 per month with effect from that date.

By a letter dated 12<sup>th</sup> September 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 9<sup>th</sup> November 2006 and found it to be in good condition as described more particularly in the Rent Officer's survey sheet which had been copied to the parties. The subject property is a furnished self-contained semi-basement flat comprising of two rooms, kitchen, bathroom, and wc with shared use of the rear garden. The committee considered the property to be in a

good state of repair and decorative order. The property is conveniently situated within easy walking distance of shopping facilities, hospitals, schools and the sea front.

### **3. Evidence**

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

A hearing was held on 9<sup>th</sup> November 2006 at the Brighton Town Hall at which oral representations were made by Mr Smith the landlord. The tenant was not present or represented.

### **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 Brighton and Hove, East Sussex. Having done so it concluded that such a likely market rent would be £585 per month.

However, the tenancy is not of a type and 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 £585 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). The Committee considered that this required a deduction of £ 40 per month as follows:-

- £20 for the lack of a modern kitchen and
- £20 for the increased repairing liability of the tenant arising out of the type of tenancy namely a regulated tenancy as opposed to an assured shorthold tenancy as is common in the open market.

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 £545 per month.

## **6. Decision**

The fair rent initially determined by the Committee, for the purposes of section 70, was accordingly £545 per month

However, by virtue of the Rent Acts (Maximum Fair Rent) Order 1999 the maximum fair rent that can be registered in the present case is the lower sum of £496.50 per month. (Details are provided on the back of the decision form).

Accordingly the sum of £496.50 per month will be registered as the fair rent with effect from 9<sup>th</sup> November 2006 being the date of the Committee's decision.

Chairman      Mr R Wilson LLB

Dated            17<sup>th</sup> November 2006

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Ms J Morris Lay Member

### BACKGROUND

1. On 11<sup>th</sup> July 2006 the landlords applied to the rent officer for registration of a fair rent of £546 per month for the above property.
2. The rent payable at the time of the application was £440 per month having been registered on 20<sup>th</sup> April 2004 with effect from the same date following a determination by the rent officer.
3. On 11<sup>th</sup> September 2006 the Rent Officer registered a fair rent of £492.50 per month with effect from that date.
4. By a letter dated 12<sup>th</sup> September 2006 the landlords objected to the rent determined by the Rent Officer and the matter was referred to the Rent Assessment Committee.

### INSPECTION

5. The Committee inspected the property on 9<sup>th</sup> November 2006 and found it to be in good condition. The property is a converted basement flat, forming part of a mid terraced house built circa 1910. It is close to the town centre and set between a hospital and a school. Eastern Road is a busy local distributor road carrying substantial volumes of traffic. The sea front is a few minutes walk away. There is no

on site car parking; 'permit holders' parking is in adjoining streets but is in short supply.

6. The flat is reached over a shared pathway and forecourt with steps down to a private front door. The property comprises of a porch with store, hallway, living room with bay window, double bedroom with door to boiler room, fully fitted kitchen with door to bathroom with separate W.C.
7. Outside there is a private patio area reached from the boiler room with steps up to a rear garden shared with the tenants of the ground floor flat. The flat benefits from modern sealed unit double glazing, gas fired central heating and a fitted kitchen. The flat is generally well presented.

## **EVIDENCE**

8. The Committee received written representations from the landlords and tenant and these were copied to the parties.
9. A hearing was held on 9<sup>th</sup> November 2006 at the Brighton Town Hall at which oral representations were made by Mr Smith on behalf of the landlords. The tenant was not present or represented.
10. Mr Smith opening the case on behalf of the landlords maintained that the subject flat was in an above average location and in an above average state of repair / decoration and accordingly the starting point for assessing the fair rent should take these matters into account. Furthermore and most importantly the property was fully furnished at the sole cost to the landlords and the rent should be increased to reflect this amenity. Moreover the landlords had carried out a substantial amount of work to the building so as to comply with the latest landlords and tenant legislation. In particular, since the last registration, fire protection / energy conservation works had been carried out and there was now in place a fully compliant and modern central fire alarm system with ongoing maintenance obligations. All this had been funded by the landlords without the benefit of any grant or other financial assistance. Mr Smith submitted that the

landlords' expenditure in this regard should be reflected in a higher rent and Mr Smith produced calculations setting out his opinion of the increased rent due to these works. He also commented that the final phase of the energy conservation work carried out by the landlords consisted of the installation of UPVC double glazed windows to the eastern elevation at a further substantial cost. Once again Mr Smith considered that the landlords should be entitled to recoup the capital cost of these works over an eight year period reflected in an increased annual rent.

11. Taking into consideration that the subject flat was last registered as unfurnished, when it should have been registered as furnished and if the cost incurred by the landlords in fire protection and energy conservation were taken into account, Mr Smith considered that it would not be unreasonable to expect a fair rent of at least £6,552 per annum i.e. £546 per calendar month or £126 per week.

## THE LAW

12. 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.

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- (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).

## **VALUATION.**

13. With the benefit of our collective knowledge and experience of open market rent generally in the area of Brighton and Hove, 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 £585 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 internally and externally. It would have a modern central heating system, hot water in the kitchen and bathroom and would have carpets. It would also have white goods such as a cooker and fridge. Furthermore it would have a modern kitchen and a modern bathroom with modern fittings in each. Because the comparable figures available to us are all for properties let on assured shorthold tenancies in that condition, we have to start from the evidence that such lettings provide.
14. The adjustments below take into account the differences between such a property and the one we are considering, and allow for the effect that those differences would have on the rent that it would fetch on the open market. The subject property is fully furnished and the freeholder invites us to mark a higher rent than we otherwise would for an unfurnished property. We reject this submission. In our experience there is no premium paid in this area for a fully furnished flat and in some cases a fully furnished flat commands less rent than an empty one. We find increasingly that tenants have their own furniture which they wish to use and they do not wish to incur storage costs for their own furniture.
15. Whilst the subject property does have a fitted kitchen, the kitchen is small and the fitted units are not particularly modern or luxurious. Experience tells us that since the



last registered rent, the letting market has become more competitive and selective with the result that tenants have increasingly come to expect a modern, high specification, fitted kitchen. We concluded therefore that a prospective tenant in the open market would expect to pay £20 per month less for this property by way of rent than he would otherwise pay for an otherwise identical property that had such a kitchen. We made an adjustment of that amount to reflect the fact.

16. We also considered that an adjustment of £20 per month was necessary to reflect the different repairing and decorating obligation between the usual open market assured shorthold tenancy and a regulated tenancy such as this one. An assured shorthold tenant normally has no responsibilities for repairs and decorations. A regulated tenant is usually responsible for internal decorations and some repairs. Someone taking a tenancy in the open market that imposed these additional obligations upon him would offer less rent than if the landlords was to be responsible for them. Our adjustment of £20 per month reflects our view of the sort of reduction that would be likely to be made in the open market to deal with this point.
17. We considered the landlords' evidence in relation to the substantial expenditure that they had carried out in fire precaution / energy conservation works over the years. The Committee accepted that all these works had been carried out at considerable expense. However, they rejected the landlords' assertion that the capital costs of these works should be paid back to the landlords over a period of eight years by an increase in the rent. In our experience a prospective tenant would expect properties to be fully 'landlords and tenant' legislation compliant and would not expect to pay any more rent for a compliant property over an otherwise identical but non-compliant property.
18. Finally we considered whether there should be any allowance for the effects of scarcity. We considered the market in East Sussex for this purpose. This seems to us to be the sort of 'really large' area that the courts have described as being appropriate for this purpose. We came to the conclusion that there is no significant imbalance of supply and demand in the locality in question and accordingly no further deduction was made for scarcity.

19. We therefore produced the following calculation:-

**Optimum Market Rent**

**£585.00 pcm**

**Less deductions for:-**

Lack of a modern kitchen	20.00	
Increased repairing liability	<u>20.00</u>	<b><u>40.00</u></b>

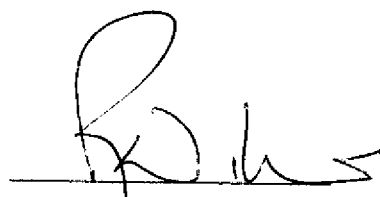
**Adjusted Rent**

**£545.00 pm**

**DECISION**

20. The fair rent initially determined by the Committee, for the purposes of section 70, was accordingly £545 per month
21. However, by virtue of the Rent Acts (Maximum Fair Rent) Order 1999 the maximum fair rent that can be registered in the present case is the lower sum of £496.50 per month. (Details are provided on the back of the decision form).
22. Accordingly the sum of £496.50 per month will be registered as the fair rent with effect from 9<sup>th</sup> November 2006 being the date of the Committee's decision.

Chairman

  
Mr R Wilson LLB

Dated

12<sup>th</sup> December 2006