

## **Rent Assessment Committee: Extended reasons for decision. Rent Act 1977**

**Address of Premises**

22 Great Cliffe Road  
Eastbourne  
East Sussex  
BN23 7AY

**The Committee members were**

Mr P B Langford MA LLB (Chairman)  
Ms J Dalal

### **1. Background**

On 26 June 2003 the landlord and the tenant applied to the rent officer for registration of a fair rent of £45.50 per week for the above property.

The rent payable at the time of the application was £2,132 per annum (£41.00 per week).

The rent was previously registered on 5 June 2001 with effect from the same date at £2,132 per annum following a determination by the rent officer.

On 9 October 2003 the rent officer registered a fair rent of £45.00 per week with effect from that date.

By a letter dated 20 October 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 20 January 2004 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. A new hot water cylinder in the kitchen cupboard was noted and the papers before us disclosed that it was fitted with an immersion heater. This was a tenant's improvement.

### **3. Evidence**

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

Having provisionally arrived at a fair rent in accordance with the criteria set out in Section 70, the Committee then had to consider the impact of the Rent Act (Maximum

Fair Rent) Order 1999 (“the Capping Order”). This set a maximum figure which a fair rent determined under Section 70 could not exceed. Broadly speaking, the Capping Order permitted a fair rent to be increased from the previous registered rent only up to the level of inflation (as measured by the Retail Prices Index) plus 5%.

## 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 Committee's own general knowledge of market rent levels in the area of Eastbourne. Having done so it concluded that such a likely market rent would be £130 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 £130 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).

Thus we considered that carpets and curtains would normally be provided, a modern kitchen would be installed, white goods would be provided and there would be central heating. Allowance also had to be made for the fact that open market rents were based on assured or assured shorthold tenancies where the repairing obligation of the tenant was normally minimal and less than that of a tenant under a regulated tenancy. We therefore made the following adjustments to the rent of £130 per week:-

Lack of carpets and curtains	£ 7.00 per week
Need for updated kitchen	£ 8.00 “ “
Lack of white goods	£ 5.00 “ “
Lack of central heating	£10.00 “ “
Difference in repairing obligation	<u>£10.00</u> “ “
	£40.00 per week

In addition we have to disregard the tenant's improvement, namely the replacement of the solid fuel boiler in the kitchen with a new water cylinder and immersion heater. Although not particularly costly in terms of capital outlay, the improvement was significant in rental terms and in our view warranted a further allowance of £5.00 per week. Thus the figure of £130.00 per week is reduced by £45.00 per week to £85.00 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 £85.00 per week, £4,420 per annum. This figure was precisely the same figure as the Rent Officer had determined in respect of the uncapped fair rent and neither party had sought to challenge that aspect of the Rent Officer's determination. The Landlord in his representations maintained that the Rent Officer's conclusion was wrong for two reasons. In the first place he considered that, his application having been lodged with the Rent Officer on 26 June 2003, he was prejudiced by the delay in the Rent Officer making a determination until 9 October 2003. Secondly, he maintained that the Rent Officer had applied the formula laid down in the Capping Order wrongly. As to the first point, if there is an objection to the rent registered by the Rent Officer which results in the matter being referred to the Rent Assessment Committee, the duty of the Committee is to consider the matter afresh and to fix a rent to take effect from the moment it reaches its decision. It does not put itself into the shoes of the Rent Officer and make a decision either from the date the Rent Officer made it or from the date when it is alleged he should have made it. The Committee's decision in this case was reached on 20 January 2004 and its decision therefore takes effect on that date. As to the second point raised by the Landlord, the capping calculation at 20 January 2004 was set out as a schedule attached to the notice of decision which the parties will already have received. However that schedule follows closely the way in which the capping calculation is set out in the Capping Order and it may be helpful to the parties to set it out below in a form which may be more readily understandable:-

Last fair rent registered on 5/6/2001	=	£2,132 per annum
Retail Prices Index (RPI) for November 2003 (The RPI published in the month before the month of decision)	=	182.7
<u>Less:</u>		
RPI for June 2001 (The RPI published for the month of the last registration)	=	<u>174.4</u>
Change in the RPI between the two dates		8.3
Percentage change between the two dates	=	4.75917%
<u>Plus:</u>		
Statutory percentage to be added	=	<u>5.0%</u>
Total percentage allowed	=	9.75917%
Rent of £2,132 per annum increased by 9.75917%	=	£2,340.06
Rounded up to nearest 50p	=	<u>£2,340.50</u>

(The rent in June 2001 is expressed as an annual rent and therefore the percentage increase calculation must be based on that annual rent).

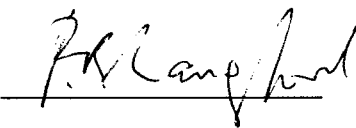
The scheme of the Capping Order is to measure the change in the RPI between two dates. The closing date, referred to in the Capping Order as “x”, is defined as “the index published in the month immediately preceding the month in which the determination of a fair rent is made.....” The Committee’s determination has been made in January 2004. The index published in the month immediately preceding January 2004 i.e., published in December 2003 shows the level of the index at the end of November 2003. The starting date for measuring the index, referred to in the Capping Order as “y” is defined as “the published index for the month in which the rent was last registered.....”. In this case the month in which the rent was last registered was June 2001. The Capping Order provides that the change in the RPI is to be measured between those two dates (the formula in the Capping Order refers to “x - y”). The effect of defining the starting date and the closing date by different yardsticks means that in practice any inflationary rise (or indeed deflationary decrease) during the last two months of the period will be omitted from the measure. It is this point which the Landlord has challenged and he refers to this interpretation of the Order as being lacking in equity and logic. That is a point which would have to be accepted if Parliament, in making the Capping Order, had intended the formula to reflect simply the effect of inflation between the date of the last registration and the

date of the current registration. However it appears clear that this was not its intention since it allowed a 5% increase over the rate of inflation. It may therefore be the case that Parliament decided, in laying down the formula it did, that this 5% would more than cover any inflationary change during the missing two months and still enable a landlord to derive some further benefit from any increase in rental incomes greater than the ordinary rate of inflation, as measured by the RPI.

However, whatever the rationale of the formula, its meaning is clear and must be applied by the Committee. The maximum figure permitted by the Capping Order is £2,340.50 per annum. Accordingly the figure provisionally determined by the Committee of £4,420.00 per annum cannot stand and must be reduced to £2,340.50 per annum.

## **6. Decision**

**For the reasons given the sum of £2,340.50 per annum will be registered as the fair rent with effect from 20 January 2004 being the date of the Committee's decision.**

Chairman   
P B LANGFORD

Dated 7<sup>th</sup> February 2004