

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

### **Address of Premises**

Basement Flat  
25 St Helen's Park Road  
Hastings  
East Sussex TN34 2DP

### **The Committee members were**

Ms J A Talbot MA Cantab  
Mr N J Cleverton FRICS  
Mr T W Sennett MA FCIEH

## **1. Background**

On 02/05/2003 the landlord applied to the rent officer for registration of a fair rent of £4464.00 per annum (£372.00 per calendar month) for the above property.

The rent payable at the time of the application was £3720.00 per annum (£310.00 per calendar month).

The rent was previously registered on 10/01/1996 with effect from the same date at £3720.00 per annum following a determination by the rent officer.

On 19/06/2003 the rent officer registered a fair rent of £364.00 per calendar month with effect from that date.

By a letter dated 08/07/2003 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 18/09/2003 and found it to be in fair condition as described more particularly in the Rent Officer's survey sheet which had been copied to the parties.

The property comprises a basement flat in a large converted detached Victorian house. Although the flat is in the basement it is not below ground level. It is accessed by several steps leading down through the front garden. The flat has 4 rooms, kitchen,

bathroom and WC, all leading off a wide hallway used as a dining area. The Committee noted sloping and settled flooring to the hallway and rear rooms.

The flat does not have central heating. The heating provision consists of gas fires and an electric storage heater installed by the tenant. Hot water to the bathroom is provided by a wall mounted boiler installed by the landlord. Hot water to the kitchen is provided by a water heater over the sink installed by the tenant, who also supplied hot water to the sink in the WC. The kitchen fittings and new back door were installed by the tenant, who has also carried out some internal replastering and decoration.

Externally, the tenant has cleared and well maintained the rear garden. There is evidence of defective rainwater goods, staining to the exterior wall and flooding by the back door caused by water overflowing from blocked guttering.

### **3. Evidence**

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

A hearing was held on 18/09/2003 in Bexhill at which oral representations were made on behalf of the tenant. The landlord 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 Hastings. Having done so it concluded that such a likely market rent would be £115.00 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 £115.00 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 £22.00 per week, calculated as follows:

<u>Optimum market rent</u>	£115.00
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### Deductions

Lack of white goods, carpets, curtains	£5.00
External decorations	£2.00

Electrical wiring	£1.00	
Guttering/rainwater goods	£2.00	
Lack of central heating	£10.00	
Tenant's decorating liability	<u>£2.00</u>	<u>£22.00</u>

Furthermore, to allow for the tenant's improvements (listed above) it was necessary to make a further deduction of £14.00 per week calculated as follows:

Hot water	£5.00	
Kitchen fittings	£4.00	
Bathroom fittings	£4.00	
Garden renovation	<u>£1.00</u>	<u>£14.00</u>
<u>Total deductions</u>		<u>£36.00</u>

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 £79.00 per week, equating to £342.33 per calendar month, or £4108.00 per annum.

## **6. Decision**

The fair rent initially determined by the Committee, for the purposes of section 70, was accordingly £4108.00 per annum (£342.33 per calendar month).

The section 70 fair rent determined by the Committee is below the maximum fair rent permitted by the Rent Acts (Maximum Fair Rent) Order 1999 and accordingly that rent limit has no effect. Details are provided on the back of the decision form.

**Accordingly the sum of £4108.00 will be registered as the fair rent with effect from 18/09/2003 being the date of the Committee's decision.**

Chairman

J. Tallon

Dated

26/09/03

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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.

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Rent Act 1977****Address of Premises**

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Ms J A Talbot MA Cantab  
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**Background**

1. The property which is the subject of this objection is a self-contained basement flat, let by Mr N Sheehan ("the landlord") to Mr P Clifton ("the tenant") on an unfurnished regulated tenancy governed by the Rent Act 1977 ("the Act"). The tenancy commenced in March 1967. Mr Sheehan is not the original landlord. He acquired the property within the last year.
2. Consequently the rent payable by the tenant is a fair rent as defined in Section 70 of the Act, and falls to be reviewed once in every two years. The fair rent that was previously payable was £3720.00 per annum (£296.15 per calendar month). It was registered on 10/01/1996 with effect from the same date. On 02/05/2003 the landlord applied to the rent officer for registration of a fair rent of £4464.00 per annum (£372.00 per calendar month) for the above property. As a result of this application, a new fair rent of £364.00 per calendar month was registered with effect from that date. By a letter dated 08/07/2003, the landlord objected to the rent determined by the Rent Officer and the matter was referred to the Rent Assessment Committee.

**The Statutory Provisions**

3. It may be helpful if we describe the legal background to the function we have to perform. We have paraphrased the provision of Section 70 below, in the hope of making them reasonably comprehensible. The actual terms of the Act are in some

ways 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.

4. The Court of Appeal has held [in the case of *Spath Holme Ltd v Chairman of the Greater Manchester etc. Committee* (1995) HLR 107 and *Curtis v London Rent Assessment Committee* (1999) QB 92] that Section 70 provides that a fair rent is the notional market rent for the subject property less what is often referred to as the “scarcity element” (if any). This element is further described in paragraph 7 below. The notional market rent is the rent that the landlord would be likely to obtain for the property, if it were let, at the date of the decision, on the same terms and conditions as at present. This figure is usually derived from the evidence of market rent levels in the area for similar properties (“comparables”) that are let on tenancies not governed by the fair rent regime of the Rent Act 1977. Those tenancies will usually be assured or shorthold tenancies that are governed instead by the Housing Act 1988.
5. That figure will then be adjusted to reflect any relevant differences between those properties and the subject property. Under Section 70 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. For example, the comparable lettings might be fully or partly furnished and the properties might have been modernised by the landlord. It follows that if the subject property is unmodernised by the landlord and let unfurnished, it is likely that the hypothetical market rent starting point will therefore be lower than that derived from the “comparable” properties. Another possible difference is the terms of the tenancy. An example is where the obligations placed by the terms of the tenancy on the tenant of the subject property are more onerous than those placed on tenants of the comparable lettings.
6. Section 70(2) requires us to consider the “scarcity” element (see above). We have to take into account 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 a property to rent is roughly the same as the number of similar properties available. If we believe that the number of people seeking to become tenants of similar properties in the locality substantially exceeds the number of such properties available for letting, and that the shortage has pushed up open market rents, we have to estimate the financial effect on open market rents of this “scarcity”, and make a further adjustment to the notional market rent figure.

7. Section 70(3) requires us to disregard certain other matters. We have to consider whether the notional market rent is to be adjusted to reflect any tenant’s improvements that have been made to the subject property (other than those required by the tenancy agreement). These are to be disregarded. In other words, we must ignore any effect that the improvements would otherwise have had on the rental value of the property. This is to prevent the landlord from benefiting from the improvements by way of a higher rent where those improvements have increased the rental value of the property. By contrast, any disrepair or defect that is attributable to a failure by the tenant to comply with the terms of the tenancy is to be disregarded. In other words, the property will be valued as if such disrepair or defect did not exist and the landlord will not be penalised by any consequent decrease in the rental value of the property.
8. The final figure obtained at the end of the determination will be the fair rent, subject to the rent capping rules. The capped rent is calculated in accordance with a formula set out in The Fair Rent (Maximum Fair Rent) Order 1999 (SI 1999 No.6). It is arrived at by increasing the amount of the existing fair rent by the percentage change in the retail price index since the date of that earlier registration and then adding a further 7.5% or 5% depending on the date of the last registration. This has the effect of limiting the amount that can be registered as the fair rent in the cases to which it applies.
9. It follows that in all cases where the capping rule applies we must first decide what the fair rent would be irrespective of the statutory limit. We then calculate the capped rent. If the former figure is above the latter, the capped rent will be



registered as the fair rent. If it is below the capped rent the lower figure will be registered and the cap will not apply.

### **Inspection**

10. We inspected the property on 18/09/2003 and found it to be in fair condition as described more particularly in the Rent Officer's survey sheet which had been copied to the parties.
11. The property comprises a basement flat in a large converted Victorian house in a residential area in the coast town of Hastings. Although the flat is in the basement it is not below ground level. It is accessed by several steps leading down through the front garden. The flat has 4 rooms, kitchen, bathroom and WC, all leading off a wide hallway used as a dining area. We noted sloping and settled flooring to the hallway and rear rooms. The flat does not have central heating. The heating provision consists of gas fires and an electric storage heater installed by the tenant. Hot water to the bathroom is provided by a wall-mounted boiler installed by the landlord. Hot water to the kitchen is provided by a water heater over the sink installed by the tenant, who also supplied hot water to the sink in the WC.
12. The kitchen fittings and new back door were installed by the tenant, who has also carried out some internal replastering and decoration. Externally, the tenant has cleared, renovated and maintained the rear garden to a high standard. There is evidence of defective rainwater goods, staining to the exterior wall and flooding by the back door caused by water overflowing from blocked guttering.

### **Hearing**

13. A hearing was held on 18/09/2003 in Bexhill, attended by the elderly tenant and his representative Mr Eldridge. The landlord was not present or represented. We had previously received written representations from the landlord and tenant and these had been copied to the parties prior to the hearing. 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.

## Representations

14. We first considered the question of what would be a reasonable rent for the property on the open market. We referred to a letter from the landlord dated 03/09/2003 in which he states that is his view the open market rent would be “in the region of £550 - £600 per calendar month.” He based this view on information he had obtained from Mr Daniel Turner of Andrews Letting and Management, Robertson Street, Hastings. A copy of the letter from Mr Turner, also dated 03/09/2003 was attached and states: “As discussed in the current market we would offer your property to let at a figure in the region of £550.00 to £600.00 pcm. This is based on the property being in good clean condition and furnished.”
15. Mr Eldridge, giving evidence on the tenant’s behalf, said that he had some concerns about Andrews’ valuation. As Mr Turner had not visited or inspected the property, Mr Eldridge could not accept that he could realistically put the flat on the market to let for such a high figure. Mr Eldridge contacted Mr Turner, and as a result Mr Turner did visit the property. According to Mr Eldridge, Mr Turner said that he had not realised what the flat was like, and would not have it on his books, certainly not at that figure and in that condition. In answer to our questions, Mr Eldridge said that even if the flat was in good condition and furnished, he did not think that £550.00 - £600.00 pcm was reasonable, but was too high. He thought £450.00 - £500.00 was a more accurate assessment. He referred to a recent local Friday Ad newspaper where 2 x 2 bedroom flats were on the market at £435.00 and £475.00 pcm, and a large 3 bedroom property with double glazing, garage and modern kitchen was on the market for £545.00 pcm.
16. Mr Eldridge then gave evidence on the disrepair at the property. He said that there was some damp, whether condensation or rising, and that there was no damp proof course. The floors were uneven and possibly unsafe. When the bath had been removed some years before, the new bath could not be fitted to the existing flooring as it was rotten and there was a void underneath. The tenant had repaired several holes in the floor and a former landlord had also replaced some flooring . The tenant was unable to decorate some of the internal walls because the old lathe

and plaster was perished and flaking. The tenant had carried out some replastering to stabilise the walls so that he could decorate. He was concerned that the electrical wiring was old with some exposed surface wiring, and had never been checked, but accepted that there was no actual current problem with such things as overheating or blown fuses. The windows rattled and were drafty, the tenant had repaired several sash cords so that most of the sashes were functional. He was also concerned about the lack of insulation and noise nuisance from the flat above, and the fact that there was original old lead pipe work.

17. Turning to the question of tenant's improvements, Mr Eldridge said that the tenant had carried out internal repairs to the walls and floors, replaced the back door, installed a new bath, installed a gas water heater to provide hot water to the kitchen, plumbed in hot water to the toilet, installed new kitchen fittings and unit over the sink, and cleared, renovated and maintained the garden over many years. There was no central heating. Rather than use open fires, the tenant had installed gas fires and an electric storage heater. He was hoping to have central heating installed using a government grant and insulation scheme available for the elderly on housing benefit, but Mr Eldridge said that the new landlord had failed to respond positively to the tenant's request for consent.

18. The landlord's written evidence stated that he had only recently taken over the property and had some plans for upgrading, depending on the rental income.

### **Consideration**

19. We explained at the hearing 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 the appropriate adjustments (as set out above) to establish the fair rent which applies to this regulated tenancy. We took into account the landlord's representations and the tenant's evidence. Using our expertise and judgment, we concluded that the landlord's figure of £550.00 - £600.00 pcm was on the high side, whereas the lower end of the tenant's estimate of £450.00 to £500.00 was probably too low. We noted the Rent Officer's view

that the open market rent would be £500.00 pcm and took the view that this was about right.

20. We therefore concluded that the rent for the property let on an assured shorthold tenancy in the open market, in good modern letting condition, would be £115.00 per week, which equates to £498.33 pcm. 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 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 would 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 an assured shorthold tenancies in that condition, we have to start from the evidence that such lettings provide.
21. The adjustments below take account of the differences between such a property and the one we are considering, and allow for the effect those differences would have on the rent it would fetch in the open market.
22. The property has no central heating. We concluded that a prospective tenant in the open market would expect to pay £10.00 per week less rent for this property than he would pay for an otherwise identical property that had central heating. We made an adjustment to reflect the fact.
23. When properties are let on the open market in this area, the landlord includes carpets and curtains and white goods. None are included in this letting. We made an adjustment of £5.00 per week to allow for the difference. That allowance, too, reflects the amount of reduction in the rent that we believe a prospective tenant would expect to negotiate on the open market because of their absence.
24. The property has very old electrical wiring with some exposed wires and limited power points. We concluded that a prospective tenant would expect to pay £1.00 per week less rent for this reason and made an adjustment accordingly.

25. Externally the property requires some redecoration and attention to defective guttering by the rear door, which causes flooding around the door. For these reasons the property externally is not of a standard that would normally be expected of a property in good letting condition. We similarly expected that a prospective tenant would expect to pay £4.00 per week less rent because of these points.
26. We also have to make an adjustment to reflect the different obligations about repairs and decorations, between a 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 normally responsible for them (apart from the statutory exceptions) so far as the inside of the property is concerned. A person taking a tenancy in the open market that imposed those additional obligations on him would be prepared to pay less rent than if the landlord was responsible for them. The reduction would usually reflect what it would cost to keep the inside of this home in good decorative order and repair. We have made an adjustment of £2.00 per week to deal with this point.
27. We further had to disregard the value of any improvements carried out by the tenant, as required by Section 70(3) [as explained in paragraph 7 above]. This means we have to make a further deduction in respect of these items. We accepted the tenant's evidence, supported by our observations during our inspection of the property, that he had carried out the improvements described in paragraph 17 above. We concluded that the following adjustments were appropriate to reflect the rental value of the improvements in this case: £5.00 for the hot water, £4.00 for the bathroom fittings, £4.00 for the kitchen fittings and £1.00 for the garden. All these figures are expressed in weekly terms.
28. Finally, we considered whether there should be any allowance for the effects of scarcity. We considered the market in the area of the coastal south east for this purpose. This seems to us to be the area in which conditions of supply and demand would be likely to affect the rent for the property. It also seems to us to be the sort of "really large" area that the Courts have described as being appropriate to this purpose. We took into account our collective knowledge and experience in

the market in this area. We bore in mind that we must consider the effect that scarcity might have on the net rent after the adjustments described above. We concluded that there is a broad balance of supply and demand in the locality we have described. Therefore no allowance for scarcity is appropriate and we have not made any further deduction for this purpose.

29. We therefore produced the following calculation on a weekly basis:

<u>Optimum market rent</u>		£115.00
<u>Less adjustments for:</u>		
Lack of white goods, carpets, curtains	£ 5.00	
External decorations	£ 2.00	
Electrical wiring	£ 1.00	
Guttering/rainwater goods	£ 2.00	
Lack of central heating	£10.00	
Tenant's decorating liability	<u>£ 2.00</u>	<u>£22.00</u>

Furthermore, to allow for the tenant's improvements (listed above) it was necessary to make a further deduction of £14.00 per week calculated as follows:

<u>Further allowances for:</u>		
Hot water	£ 5.00	
Kitchen fittings	£ 4.00	
Bathroom fittings	£ 4.00	
Garden renovation	<u>£ 1.00</u>	<u>£14.00</u>
<u>Total deductions</u>		<u>£36.00</u>

This leaves a net fair rent for the subject property of £79.00 per week, equating to £4,108.00 per annum, or £342.33 per calendar month.

## Capping

30. It was then necessary for us to determine whether the maximum fair rent calculated in accordance with the Fair Rent (Maximum Fair Rent) Order 1999 (SI 1999 No.6) [mentioned in paragraph 8 above] was greater or lesser than the fair rent of £342.33 calculated by the methods we have described. This was the first application for registration after the coming into effect of the Order.

31. The Order sets out a formula whose purpose is to determine the percentage change in the Retail Price Index ("RPI") since the date when the fair rent was previously registered. The maximum fair rent than can be registered is then the increase in the RPI in the terms it defines. A further sum is then added of either 7.5% on the first application for re-registration after the Order takes effect, or 5% in any other case. Thus the formula is:

$$\text{MFR} = \text{LR} \left[ 1 + \frac{(x-y)}{y} + P \right]$$

where:

MFR is the maximum fair rent that may be registered

LR is the existing fair rent

X is the level of the RPI published in the month immediately preceding the month in which the determination is being made

Y is the level of the Index published in the month in which the rent was last registered and

P is 0.075 in the case of the first application after the Order came into effect and is 0.05 in the case of the second and every subsequent application.

The Order provides that the resultant figure is to be rounded up to the nearest 50p, and that the figure so produced is the maximum fair rent that may be registered.

32. The calculation we carried out using that formula is shown on the annexed sheet. The amount of the capped rent is £4,769.50 per annum (£397.45 pcm). That is greater than the amount that we calculated to be the fair rent mentioned above. Therefore the fair rent determined by us is below the maximum fair rent permitted by the Order, and so that rent limit has no effect.

### **Decision**

**Accordingly the sum of £4,108.00 per annum (£342.33 per calendar month) will be registered as the fair rent with effect from 18/09/2003 being the date of the Committee's decision.**

Chairman

J Talbot

Dated

01/12/03

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This document contains a full Statement of the reasons for the Rent Assessment Committee's decision.