

MIDLANDS RENT ASSESSMENT PANEL

CASE NO: BIR/17UD/F77/2006/0090

RENT ACT 1977

**DETERMINATION BY
THE RENT ASSESSMENT COMMITTEE**

**Under Schedule 11, Rent Act 1977 to confirm or determine a fair
rent under Section 70 for:**

61 Devon Drive, Brimington, Chesterfield, Derbyshire S43 1DZ

Landlord: Northern Counties Housing Association

Tenant: Mr. and Mrs. S. Frost

Landlord's Objection dated: 8th June, 2006.

Inspection: 15th August, 2006.

Members of the Rent Assessment Committee:

**Mr. W. J. Martin (Chairman)
Mr. R. A. Kington F.R.I.C.S., MCI Arb
Mr. M. Ryder**

Date of Committee's Determination: 15th August, 2006.

Background

1. 61 Devon Drive, Brimington, Chesterfield, S43 1DZ (the “**Property**”) is let on a regulated tenancy under the Rent Act 1977 (the “**Act**”)
2. The **Landlord** is Northern Counties Housing Association. The **Tenants** are Mr. and Mrs. Frost.
3. On the 29th March, 2006 the Landlord applied to the Rent Officer for registration of a fair rent of £72 per week. The rent payable at the time of the application was £65 per week, following a registration by the Rent Officer on the 29th June, 2004 with effect from that date. On the 2nd May, 2006 the Rent Officer registered a fair rent of £70 per week effective from the 29th June, 2006. The Landlord objected by letter dated the 8th June, 2006.
4. We inspected the Property on the 15th August, 2006 in the presence of the Tenants
5. Our determination, given with summary reasons, was sent to the parties immediately after the determination of the 15th August, 2006. By its letter of the 17th August, 2006 the Landlord applies for our extended reasons, particularly “scarcity”.

The Property

6. Comprises a modern terraced house built of brick and tile. It is part of small modern development amongst older, mostly semi-detached properties. There are local amenities, and in addition, the large town of Chesterfield is near by. The accommodation comprises: on the ground floor – living room, dining room, kitchen, cloakroom; on the first floor – three bedrooms, bathroom with w.c. Space heating is from a gas fired boiler to radiators. There are gardens to the front and rear.
7. Tenant’s improvements comprise a shower and a garden shed.
8. There is no furniture and no services are provided.
9. The tenancy is subject to the statutory Landlord’s repairing obligations contained in Section 11, Landlord and Tenant Act 1985 and the Tenant is responsible for interior decoration.

Representations

10. The Landord by letter dated the 6th July, 2006 made representations which we summarise as follows:

- The Rent Officer has allowed an increase of 7.7% over the two years and is less than other increases received over the same period, and those obtained on the Associations' Assured Non-Shorthold lettings
- 59 Devon Drive is let on such a tenancy at £76.58 per week
- The Rent Officer's worksheet has a market rent starting figure of £90 per week with total deductions of £8 which seems to reflect lack of floor coverings and furniture and white goods, which is as the Association would expect
- However a further £12 deduction was made for scarcity, which is excessive. It is the experience of the Association that in the area of Derbyshire and South Yorkshire there is no scarcity of accommodation factor to be deducted. On that basis the Rent Officer's figure should be £82 per week minimum.
- A list of properties on offer from Beechwood Estate Agents was attached, which confirmed that £90 per week is not high.
- The eventual determination should be at the level of £76.58 currently charged for Assured Non-Shorthold lettings, even if this is capped by the Rent Acts (Maximum Fair Rent) Order 1999 (referred to hereafter as "**the Order**")

11. The Tenants made no representations

Meaning of a Fair Rent:

12. The Act does not define "a fair rent under a regulated tenancy of a dwelling house". Section 70 directs that in determining what is a fair rent, regard must be had to certain matters, including the age, character, locality and state of repair. Other matters must be disregarded, including any personal circumstances, tenant's voluntary improvements, disrepair or defects

attributable to a failure by the Tenant to comply with the terms of the tenancy. Section 70 also requires that any increase in the level of rents of similar dwelling-houses in the locality which is due to substantial scarcity of such dwelling-houses to let shall be disregarded.

13. The Court of Appeal judgments in *Spath Holme Ltd v Chairman of the Greater Manchester and Lancashire Rent Assessment Committee and Others* (1995) and *Curtis v The Chairwoman of the London Rent Assessment Committee* (1997) have decided that a fair rent is the market rent for the property in question disregarding the personal circumstances referred to in Section 70(1), the specific disregards referred to in Section 70(3) and discounted for any scarcity within Section 70(2). *Curtis* has further decided that the best evidence of the starting point for assessment of a fair rent is that of market rent comparables where they are available and that, if there is a significant difference between registered fair rent comparables and market rent comparables, accepted by a committee as providing current market rental evidence for the Property, the committee should not normally have regard to registered fair rent comparables at all.

Fair rent confirmation/determination:

14. Sub-paragraph (1)(a) and (b) of Paragraph 9, Schedule 11 of the Act is to the effect that if it appears to the committee that the rent registered by the Rent Officer is a fair rent, the committee shall confirm that rent, or if it does not appear to the committee that the rent is a fair rent, the committee shall determine a fair rent. However, a fair rent to be registered cannot exceed the maximum fair rent under the Order, to which we refer in paragraphs 3, 29 and 30. The effective date of our determination is the 15th August, 2006 “the **“Date”**”)

Decision

15. Judicial precedent on the interpretation of Section 70 of the Act (setting out what is a fair rent) requires us to determine a fair rent primarily by reference to the market rent adjusted for the provisions of Section 70 including an

adjustment for scarcity if found by us to be substantial. We then consider at paragraphs 29 and 30, the effect of the Order

16. As to the amount of the increase which the Association say is insufficient – we find and hold that the amount of the increase from the previously registered rent may be a guide but is one only of all the circumstances (other than personal circumstances) we are required to take into account. Accordingly it is not an overriding consideration. Adopting judicial precedent we decide that we should rely on the general level of market rents in the local area of the property.
17. We find that the Tenant's improvements (listed in paragraph 7) do not have any effect on the rental valued and accordingly make no deduction for them.
18. From our inspection, and taking into account the list of properties provided by the Landlord and our general knowledge of market rent levels in the area of Brimington/Chesterfield, we find the market rent for the property would be £96 per week. In this regard we find the Rent Officer's starting figure of £90 is too low.
19. We find that the rent of £96 per week would include floor coverings and white goods. We assess the deduction for these items at £10 per week, to arrive at an adjusted market rent of £86 per week.
20. The Association does not provide any detailed reasoning for its contention of no scarcity. It states "it is our experience that when properties in this area of Derbyshire and South Yorkshire are considered, there is no scarcity of accommodation factor to be deducted." It is not clear to us whether is "experience" relates to scarcity deductions made by the Rent Officer for other properties which are at variance with the current decision, or that it is the experience of the Landlord when letting similar properties that there is a balance of supply with demand, or an over supply.
21. The question of any adjustment to reflect Section 70(2) – generally accepted as scarcity/availability – is difficult to quantify in a precise way. Nevertheless it is a matter we must take into account. A fair rent is the market rent after the statutory disregards and discounted to remove any element of scarcity if substantial. The market rent is usually the best/highest rent obtainable.
22. The question is: Is the number of persons seeking to become tenants of similar dwelling houses in the locality on the terms *other than those relating*

to rent (our emphasis) of the regulated tenancy substantially greater than the number of such dwelling houses in the locality, meaning a really wide locality, which are available for letting on such terms? In answering the question the Act expressly requires us to exclude any considerations of “terms relating to rent”. So, summarising Section 70(2), we must look at: the demand side (persons genuinely seeking to become tenants) but take no account of rent terms; the supply side (availability); then decide whether there is a difference; and if so whether it is substantial.

23. In considering the demand side we include all those (including those on council waiting lists but only those inherently likely to be “genuine seekers”) who may reasonably be regarded as persons genuinely seeking to become tenants on the terms of the regulated tenancy (other than those relating to rent). Using our general knowledge and experience but not relying upon any special knowledge or statistical information, we find, as a matter of judgment on the balance of probability of what is more inherently likely, that there are, in the Derbyshire/South Yorkshire region as a really wide area, persons genuinely seeking to become tenants of similar dwellings (on the terms (other than those relating to rent) of the regulated tenancy).
24. As to the supply side (availability) we find that although there has been in recent years an increase in the availability of property to let – which we inevitably infer will be available at a market rent (not on the terms (other than those relating to rent) of the regulated tenancy) – this is not persuasive evidence of “genuine seekers” not being greater than availability as envisaged by Section 70(2): while it is evidence of increased availability it is not persuasive evidence that the availability of similar dwellings (for letting “on such terms”) is not substantially less than “the number of persons seeking...” We find the number of “genuine seekers” is substantially greater than the availability.
25. We must, therefore, make a discount to remove the element of scarcity. We find that the discount in this case is £9 (approximately 10%). We note that the Rent Officer considers the discount should be 15%. For the reasons of increased availability referred to above we find this discount is too high. The Fair Rent after adjustment is therefore £77 per week.

26. We find, that after discounting for scarcity and having regard to all the circumstances (other than personal circumstances), and in particular to the age, character, locality and state of repair of the property, and all other matters set out in Section 70 of the Act, that the rent which the Rent Officer would have determined in the absence of the Order is not a Fair Rent. For the reasons given we would have determined a Fair Rent at £77 per week.

Maximum Fair Rent

27. We find that the Order applies and that after making the calculation required by the Order the Fair Rent to be registered is £72.50 per week. Our calculations have been supplied to the parties.

Conclusion

28. We made our determination taking into account the representations made to us, our inspection, the provisions of Section 70 of the Act, common law and our use of our own general knowledge and experience but not relying on our special knowledge. Having regard to these matters the Committee determined a Fair Rent at £72.50 per week effective from the 15th August, 2006 as previously notified to the parties.

Date: 28 SEP 2006



W. J. MARTIN
(Chairman)