

# SOUTHERN RENT ASSESSMENT PANEL & TRIBUNAL

Statement of Reasons  
for the Decision by a Committee of the Panel upon an  
Inspection carried out on  
Wednesday 17 November 2004

**RENT ASSESSMENT COMMITTEE**  
**Mr Michael R Horton FRICS (Chairman)**  
**Mr Peter D Turner-Powell FRICS**

<i>Reference</i>	<i>Address</i>	<i>Tenant</i>	<i>Landlord</i>
CH1/24UE/ F77/2004/0198	Flat 10, Alders House 54 Redlands Lane Fareham Hants, PO14 1HA	Ms H M Sutherland	Mr Gurmail Singh Rai

## Summary

- 1.1 This was an objection by the Landlord against the registration by the Rent Officer of a Fair Rent for the property of £389.50 per calendar month (pcm) registered on 20 August 2004 and effective from, 29 September 2004. This rent had been subject to the *capping* legislation referred to below and the uncapped fair rent noted by the Rent Officer was £400.00 pcm.

The previous Fair Rent, registered on 16 August 2002, and effective from 29 September 2002, was £351.00 pcm. This rent had not resulted from the capping procedure.

- 1.2 The application to the Rent officer had been made by the Landlord requesting registration of a fair rent of £425.00 pcm.
- 1.3 Neither Landlord nor Tenant requested a Hearing but the landlord submitted a brief representation through his Solicitor.

## **The Statutory Provisions**

- 2.1 It may be helpful if we describe the legal background to the function we have to perform. We have paraphrased the provisions of section 70 of the Rent Act 1977 ("the Act") below, in the hope of making them reasonably comprehensible. The actual terms of the Act are in some ways rather 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.

- 2.2. Section 70 of the Act provides that in determining what rent is the fair rent for a property let under a regulated tenancy 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.
- 2.3 Section 70 (2) of the Act requires us to take account of 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 property to rent is roughly the same as the number of similar properties available. If there are, in our view, more tenants than properties, and if we consider that this has pushed up open market rents substantially, then we have to estimate the financial effect on open market rents of this "scarcity". In that case we must make an allowance for it when we fix the fair rent.
- 2.4 Section 70 (3) requires us to disregard certain other matters when we make our determination. First, we must disregard any disrepair or other defect because of a failure by the tenant under the regulated tenancy (or any of his predecessors under the same tenancy) to comply with any of its terms. Secondly, we must also disregard any improvement carried out by the tenant or any of his predecessors, except one that he was required to make by the terms of his tenancy. An "improvement" for these purposes usually includes the replacement of any fixture or fitting, but not a repair.
- 2.5 The Rent Act (Maximum Fair Rent) Order 1999 ("the Capping Order") came into effect on 1 February 1999. In January 2000, the Court of Appeal declared that it had been improperly made because the Act under which it had been purported to be made did not give Parliament power to bring in secondary legislation of this nature. That decision in turn was reversed by the House of Lords in December 2000, and so the provisions of the Order apply to our decision.

The effect is to limit the amount of any increase in the fair rent by the way that the Order sets out, and which we have described below.

### **Inspection**

- 3.1 On Wednesday 17 November the Committee, in the presence of the Tenant, inspected the property.
- 3.2 The Committee found the property to comprise a self contained ground floor flat in a purpose built four storey block of 16 similar apartments. The flats incorporated a communal entrance and staircase area.  
  
Of traditional construction for its age (circa 1965) the building has brick elevations under a flat roof. A single garage and parking area lie to the rear of the main building
- 3.3 Accommodation is arranged as follows: Ground Floor - Entrance Hall with cupboard and sealed off refuse chute. Living room with casement door to veranda. Bedroom with linen cupboard. Kitchen and Bathroom/w.c. Outside small store cupboard in communal area and single garage.
- 3.4 The Committee found the property to be in a generally satisfactory condition although it did suffer from the shortcomings frequently associated with buildings of this period and, in particular, mould on surfaces probably resulting from condensation was a significant problem.

- 3.5 Hot water is provided by a basic Fortic type tank with immersion heater and the only heating appliances provided by the landlord are wall-mounted units in the kitchen and bathroom.

The original obsolete kitchen units have been renewed or improved by the tenant who has also, but to a more limited extent, upgraded the bathroom.

The bedroom ceiling is clad with polystyrene tiles, which can be regarded as a fire hazard. Surface mould on walls, probably resulting from condensation, is a significant problem throughout the flat.

PVCu replacement windows have been fitted throughout.

- 3.6 The communal entrance foyer and stairwell is finished to a very base specification with the concrete floor having no tiled or carpeted finish.

These areas did not appear to be maintained to anything more than a basic standard.

- 3.7 The property is situated in a mixed residential neighbourhood readily accessible to Fareham town centre and most urban amenities.

### **The Representations**

- 4.1 **Only the landlord** submitted a representation and this was confined to a statement to the effect that no reason has been given as to why the increase of £38.50 is so low and that the registered rent is also lower than the current market rent that is obtainable for similar properties in the area.

No evidence was introduced in the way of lettings of comparable properties to support this claim.

### **Conclusions**

- 5.1 In coming to their decision the Committee are directed by the provisions of Section 70 of the Rent Act 1977 and, in particular, they have to ignore any improvements carried out by the Tenant, otherwise than in pursuance of the terms of the tenancy.

The Committee first considered the rent at which the property might let on the open market on the basis of an assured shorthold tenancy for a normal term of six to twelve months.

With no evidence of comparable lettings produced as evidence the Committee relied on their own knowledge and experience of the level of rentals for this type of property in this area.

They determined that a landlord could reasonably be expected to let a property of this type at a rental of £450 pcm.

- 5.2 However, at this rent a tenant would expect a well maintained property with full central heating, modern kitchen and bathroom and basic furnishings of a cooker and carpets and curtains.

It is also the experience of the Committee that, with the increased availability of property available to rent, tenants are becoming more discerning having regard to choice and the standard of accommodation provided.

Where there are shortcomings in respect of quality tenants expect to find due allowance has been made in the rent.

With the comparatively short-term nature of an assured shorthold tenancy (six to twelve months) the landlord would normally assume responsibility for internal decorations.

It is essential the Committee factor these differences into their valuation.

- 5.3 The Committee arrived at the following valuation

Base rental per calendar month, as above		£450.00
<u>Less adjustments</u>		
Tenant's responsibility for internal decorations	12.00	
No basic furnishings or white goods	12.00	
Basic kitchen,	9.00	
Obsolescence and disrepair	9.00	
No central heating system	22.00	
		<u>64.00</u>
<b>Net adjusted rent per calendar month</b>		<b><u>£386.00</u></b>

- 5.4 In para. 2.3 above we summarised section 70(2) of "the Act". Under this provision we have to consider whether or not scarcity of this type of property available for letting in the area is *substantial*. If we find this to be the case then we have to give consideration to making an appropriate deduction.

Appeal Court precedents dictate we have to consider the scarcity factor over a very broad area and this Committee considers that area to be satisfied by an area extending north from the south coast to the A272 in the north, Emsworth to the east and the Hamble River to the west.

On the basis of their knowledge and experience the Committee no longer consider scarcity to be *substantial* within this area, and within the meaning of "the Act", and no further deduction is necessary.

- 5.5 The rental value arrived at by the Committee is lower than the amount of £392.00 pcm, which is the maximum that can be registered under the provisions of "the Capping Order", and the Order does not take effect.

### Decision

- 6.1 The Rent Assessment Committee determine the Fair Rent of **Flat 10 Alders House, 54 Redlands lane, Fareham, Hants at Three Hundred and Eighty-six pounds (£386.00) per calendar month.**
- 6.2 In arriving at their decision the Committee considered their inspection of the premises, the information supplied and representations made to them. They have disregarded the personal circumstances of the parties, have applied their collective knowledge and experience of the locality and they have had regard, in particular, to the provisions of Section 70 of the Rent Act 1977.
- 6.3 This decision was made on Wednesday 17 November 2004 which becomes the effective date of the registration.

  
MICHAEL R HORTON (Chairman)  
Date 17 November 2004

10alders.doc