

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

Address of Premises

25 Middle Lane
Epsom
Surrey
KT17 1DP

The Committee members were

Mr E R W Dent MA
Mr M G Marshall FRICS
Mr T J Wakelin

1. Background

On 22 July 2003 the landlord applied to the rent officer for registration of a fair rent of £1180 per calendar month for the above property.

The rent payable at the time of the application was £91 per week.

The rent was previously registered on 25 September 2001 with effect from the same date at £91 per week following a determination by a rent assessment committee.

On 15 September 2003 the rent officer registered a fair rent of £99.50 per week with effect from 25 September 2003.

By a letter dated 18 September 2003 the tenant 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 19 November 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 following tenant's improvements had been made to the property.
Shower, kitchen fittings, fitted bedroom wardrobe, solid fuel fire.

3. Evidence

The Committee received written representations from the landlord and these were copied to the parties/ No written representations were received from the tenant.

A hearing was held on 19 November 2003 in Epsom Town Hall at which oral representations were made by 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 Epsom. Having done so it concluded that such a likely market rent would be £625 per calendar month.

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 £625 per calendar 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 £140 per calendar month.

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 £485 per calendar month.

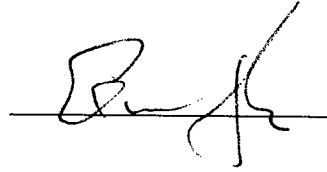
6. Decision

The fair rent initially determined by the Committee, for the purposes of section 70, was accordingly £485 per calendar month (£112 per week).

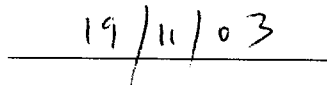
However, by virtue of the Rent Acts (Maximum Fair Rent) Order 1999 the maximum fair rent that can be registered in the present case is the lower sum of £100 per week (Details are provided on the back of the decision form).

Accordingly the sum of £100 per week will be registered as the fair rent with effect from 19 November 2003 being the date of the Committee's decision.

Chairman

A handwritten signature in black ink, appearing to be 'B. H.', written over a horizontal line.

Dated

A handwritten date '19/11/03' in black ink, written over a horizontal line.

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.

25, Middle Lane, Epsom
Re-registration of Fair Rent
Hearing 17th November 2003

Introduction

1. The property the subject of this objection is a semi-detached house that is let by Bickenhall Engineering Co. Ltd. ("the Landlord") to Mrs. G. Jackson ("the Tenant") on an unfurnished regulated tenancy governed by the Rent Act 1977 ("the Act"). Consequently the rent payable by the Tenant is a fair rent, as defined in section 70 of the Act, and it falls to be reviewed once in every two years. The rent that was previously payable was £91 per week. It was registered on 25th September 2001 with effect from the same date. As a result of the application to the Rent Officer, a new fair rent of £99.50 per week was registered with effect from 25th September 2003. The figure that the Rent Officer registered was the maximum fair rent, calculated in accordance with the provisions of the Rent Act (Maximum Fair Rent) Order ("the Capping Order"). He stated that the "uncapped" rent, by which he meant the amount that would have been registered as the fair rent had it not been for the provisions of the Capping Order, was £102 per week. The Landlord had applied for a rent of £1,180 per calendar month (£270.30 per week), but the Tenant had objected to the new registration, and so the matter came before the Committee.

The Statutory Provisions

2. It may be helpful if we describe the legal background to the function that we have to perform. We have paraphrased the provisions of Section 70 of 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.

3. Section 70 of the Act provides that, in determining 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 age, character, locality and state of repair of the property.

4. 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 properties 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.

5. 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.

Inspection

6. We inspected the property in the presence of the Tenant and her husband. It was built in about 1850 of brick construction, with an extension, built in 1979, containing the kitchen and bathroom/W.C. The original building was roughcast, with a slate roof, the extension had an interlocking tile roof. The windows were wooden sashes and casements. All main services were connected and the property had been rewired in the late 1970s.

7. There was a small front garden and only a yard at the side and rear, with buildings erected by the Tenant. The Tenant rented from the council a small piece of land at the rear, as protection from development of property behind. Middle Lane is a through road, heavily parked, of similar houses, a 10-minute walk from the town centre. There was a trading estate a good deal closer, including a large Sainsbury superstore.

8. The Tenant had paid for a number of improvements, including completely fitting out the kitchen, fixing a shower and tiling the bathroom, new front and back doors, a fitted wardrobe in one bedroom, a fireplace, additional power points, fencing, exterior lighting, a hard standing and a rear porch.

Hearing

9. The hearing, in Epsom Town Hall, was attended by the Tenant and her husband. A representative of the Landlord had telephoned the Panel Office earlier in the day to say that he/she had only just heard about the hearing from someone at the address where the papers had been sent some weeks earlier and would therefore be unable to attend or send representations.

Having met the Committee earlier, the Tenant began her representations without waiting for introductions. She produced a questionnaire sent by C.H.P. Management, apparently acting on behalf of the Landlord, which the Committee agreed she did not have to complete. She had written to the Landlord's agents, Hamways, on 21st May last year drawing attention to the very poor state of external decoration and various other defects. They had visited the property on 8th July and builders had promised to deal with the matter on 16th July, but did not turn up. They had eventually carried out certain repairs at the end of September, including sorting out a problem gutter, but no decoration was done. A faulty kitchen light had however been replaced by an electrician and a plumber had called to alleviate a noisy tap (it still whistled). Six windows, the porch and guttering badly

needed decorating. Any external decoration which had been done in recent years had been done by her and her husband. Parking was a problem. People parked across their drive, so they had to keep their car outside in the street.

Consideration

10. Recent cases make it clear 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 appropriate adjustments to establish the fair rent which applies to the regulated tenancy. In the absence of open market evidence provided by the parties, the Committee had to rely on its own researches into the local letting market.

11. After taking into account the central position of the property in relation to the town centre and other amenities, but allowing for the lack of a proper garden and the cramped and inconvenient accommodation, we concluded that the rent for the subject property, let on an assured tenancy in the open market, in good modern letting condition, would be £625 per calendar 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 inside and out. It would have central heating, hot water in the kitchen and bathroom and would have carpets and curtains. It might 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 assured shorthold tenancies in that condition, we have to start from the evidence that such lettings provide.

12. The adjustments below take account of the differences between such a property and the one that we are considering, and allow for the effect that those differences would have on the rent that it would fetch on the open market.

13. This property has no central heating. We concluded that a prospective tenant in the open market would expect to pay £25 per month less for this property by way of rent than he would pay for an otherwise identical property that had central heating. We made an adjustment of that amount to reflect the fact.

14. When properties are let in the open market in this area, the landlord includes carpets, curtains and white goods. None are included in this letting. We made an adjustment of £37 per month to allow for this difference. That allowance, too, reflects the amount of the reduction in rent that we believe a prospective tenant would expect to negotiate in the open market because of their absence.

15. In just the same way the kitchen (disregarding tenant's improvements) is not of the standard that would be expected of a property in good modern letting condition and open market tenants would expect shower units and tiling to be provided in the bathroom. We similarly considered that a prospective tenant for this property in the open market would expect to pay £28 per month less rent for the inferior state of these facilities.

16. We noted the poor state of the windows, not only the peeling paint, and considered that they needed replacing. We made an allowance of £25 for this item.

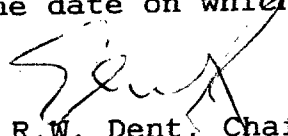
17. We also have to make an adjustment to reflect the different repairing and decorating obligations between the usual open market assured shorthold tenancy and a regulated tenancy. The assured shorthold tenant normally has no responsibility for such matters. A regulated tenant is usually responsible for them (subject to the statutory exceptions where they apply) so far as the inside of the property is concerned. Someone taking a tenancy in the open market that imposed those additional obligations upon him would be prepared to pay less by way of rent than he would pay if the landlord were responsible for them. The reduction would usually relate to what it would cost to keep the inside of his home in good decorative order and repair. Our adjustment reflects our view of the sort of reduction that would be likely to be made in the open market to deal with the point.

18. Finally, we considered whether there should be any allowance for the effects of scarcity. We considered the market in the Leatherhead/Epsom/Dorking triangle for this purpose. That seems to us to be the sort of "really large" area that the courts have described as being appropriate for this purpose. We took into account our collective knowledge and experience of the market in that area. We bore in mind that we must consider the effect that scarcity might have on the net rent after the adjustments. We have come to the conclusion that there is a broad balance of supply and demand in the locality described. Therefore no allowance for scarcity is appropriate.

20. We therefore produced the following calculation, on a monthly basis:-

Open market rent		£625
Less allowances for:-		
Central heating	£25	
Carpets, curtains, white goods	37	
Kitchen and bathroom	28	
Replacement windows	25	
Tenant's repairing and decorating liability	<u>25</u>	<u>140</u>
		£ 485

21. The fair rent for the subject property would therefore be £485 per calendar month, equivalent to £112 per week, subject to capping under the Capping Order. After the appropriate calculations by reference to the Retail Price Index since the date of the last relevant registration, it was found that £100 per week would be the maximum fair rent chargeable. This was therefore the correct rent, effective from 17th November 2003, the date on which we made our decision.


E.R.W. Dent, Chairman