

**SOUTHERN
RENT ASSESSMENT PANEL & TRIBUNAL**

Statement of Reasons
for the Decision by a Committee of the Panel upon an
Inspection carried out on
Friday 29th September 2006

RENT ASSESSMENT COMMITTEE
Mr Michael R Horton FRICS (Chairman)
Mr D Lintott FRICS

<i>Reference</i>	<i>Address</i>	<i>Tenant</i>	<i>Landlord</i>
CHI/00MR	7A Northern Buildings	Mr Peter Bailey	Mrs Janet Gordon.
F77/2006/0125	Northern Road Cosham, Portsmouth Hants PO6 3DL		

Summary

- 1.1 This was an objection by the Tenant against the registration by the Rent Officer of a Fair Rent for the property of £95.00 per week (p.w.) registered on 7 August 2006 and effective from that date.

The Landlord had requested a fair rent of £112.00 p.w.

The previous Fair Rent, registered on 24 April 1995, and effective from that date, was £48.00 p.w.

- 1.2 Both parties submitted lengthy written representations and the Landlord requested a Hearing.

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 Tuesday Friday 29 September 2006 the Committee, in the presence of the tenant and his daughter, Mrs D Walker, inspected the property. The Landlord attended at the property but was refused admission by the Tenant.
- 3.2 The Committee found the property to comprise a two storey apartment situated behind and above retail premises occupied as a Newsagent.

The building, for its age, is of reasonably traditional construction of brick under a tiled roof but with a mainly rendered front elevation where the roof is set behind a parapet.

7/7A comprises part of a parade of shops built around the junction of Medina Road and Northern Road.

The approach to the flat is narrow and lies between the rear of the shops and a block of garages/stores.

Northern Road is a busy highway and throughout the day carries a considerable volume of traffic.

In close proximity to the property there are fire and ambulance service stations while 7/7A immediately adjoins a petrol filling station.

The location can best be described as very noisy.

- 3.3 Accommodation is arranged as follows:

***Ground Floor** Entrance through small open **Kitchen** area leading to a **Living or Breakfast Room**, leading to **Inner Hall** with staircase to **First Floor** with **Living Room**, **Two Bedrooms** and very small **Bathroom/WC**. **Outside WC** (shared with shop) and small garden area.*

There is no garage or allocated parking area.

- 3.4 The Committee noted the property as having a generally neglected air with poor external paintwork, a very poor kitchen with replacement sink by the Tenant and walls which were not properly plastered.

There was no central heating and hot water was provided by a multi-point gas heater.

The apartment was generally fitted with PVCu replacement windows

4. The Hearing and Representations

- 4.1 The Hearing was attended by the Landlord. The Tenant did not appear and was not represented having previously submitted written representations.

The Chairman explained to the Landlord the basis on which the Committee are required to determine a Fair Rent and the effect of The Rent Acts (Maximum Fair Rent) Order 1999. The "capping" Order.

The Chairman also pointed out that while there appeared from the correspondence to be a somewhat acrimonious relationship between the parties and a history of past problems these, generally, were not matters relevant to the Committee's decision, other than where works might have been carried out since the previous registration.

The Committee have to determine the rent on the basis of the state of the property on the date of their inspection.

- 4.2 **Mrs Gordon** spoke generally to the points she had made in her written representations and explained the problems she had in obtaining access to carry out works.

She explained that a very high proportion of rental income had been expended on the premises over the years and this was detailed in her representations.

With regard to market rents she confirmed she owned other property in the parade and 1A, a one bedroom flat, was let on a Assured Shorthold Tenancy at a rent of £400.00 per month.

Mrs Gordon considered the Rent Officer had registered the rent at about the correct level

- 4.3 **Mr Bailey**, in his representations set out in considerable detail his objections to the rent registered by the Rent officer and was critical of information stated by the Landlord in the application.

With regard to the state of the property he observed that it was damp and draughty with poor insulation, overflowing gutters and poor mortar to the brickwork.

The flat is extremely noisy and, as a result, he uses a bedroom as a living room.

Mr Bailey's representations included a point relating to payment for sewer and water charges. It was his understanding that he was paying the charges for the shop as well as the apartment.

5. 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. They also have to disregard any failure by the Tenant to fulfill their repairing obligation e.g. internal decorating.

- 5.2 The Committee carefully considered their findings at the time of the inspection, the Rent Officer's inspection and registration notes and the representations, verbal and written, submitted by the parties.

Although these Reasons do not repeat in detail all that was stated in the written submissions all relevant points raised have been taken into account by the Committee in arriving at their Decision.

- 5.3 With regard to the general state of the property they found it to have been generally poorly maintained and it lacks the modern acceptable level of amenities most tenants would expect today.

In particular while there are modern fittings the bathroom is unusually small, the kitchen inadequate and there is a lack of proper space heating.

- 5.4 The Committee noted the application refers to the apartment as having three bedrooms. They do not consider this to be a realistic assessment of the situation.

If all the first floor rooms were to be used as bedrooms the ground floor living room would be inadequate and with the very small kitchen forming part of the entrance the reality is that the ground floor room would normally be used as an adjunct to the kitchen.

In reality the apartment provides two bedroom accommodation.

- 5.5 At the Hearing the Committee raised with Mrs Gordon the concern of Mr Bailey that he was paying water and sewage charges for the shop as well as the apartment. Mrs Gordon responded that while she had no specific information she would be surprised if this was the case.

In coming to their decision the Committee took the view that, whatever the situation, as the supply of water did not appear to be metered the matter could easily be resolved with the relevant companies and make no allowance for such possible over payment in the rent.

Post the Hearing and the Committee arriving at their decision Mrs Gordon telephoned the Panel office and advised the Clerk that she had checked the situation and Mr Bailey was not being charged for the shop.

- 5.6 The Committee agree with the Rent Officer that the approach which should be adopted in arriving at a Fair Rent is to take the rental value of a comparable apartment let on a Assured Shorthold tenancy and then adjust for the differences in the amenities usually provide and differing terms of a tenancy.

The Committee noted the Rent Officer took, as a starting point, a rent of £615 per month.

Having regard to the arrangement of the subject apartment, the very poor approach, the noisy location with the busy road and proximity to the emergency services and the takeaway food businesses within the block the Committee consider the Rent Officer to have adopted too high a starting figure.

While noting the rent Mrs Gordon receives for 1A the experience of the Committee of rental levels for a property of this type in such a location points to a base starting rent of £560 per month (say £130.00 p.w.)

However, at this rent a prospective tenant would expect to find a property in a good state of repair with modern amenities comprising central heating, modern kitchen and bathroom and basic furnishings which would include at least a cooker, carpets and curtains.

Further, the "unfurnished" open market assured shorthold tenancy letting would almost certainly be for a term of some six to twelve months and on this basis the landlord would normally be expected to assume responsibility for internal decorations

It is necessary for the Committee to adjust the rental of £130.00 per week in order to reflect these differences.

- 5.7 The Committee arrived at the following valuation:

Base open market rent:		£130.00 per week
<u>Less adjustments:</u>		
No basic furnishings.	£10.00 pw	
Tenants internal decorating responsibility	£8.00 pw	
No central heating	£10.00 pw	
Poor kitchen, small bathroom, disrepair and other obsolescence	£15.00 pw	
		<u>£43.00 per week</u>
Adjusted Rent		<u>£87.00 per week</u>

- 5.8 In 2.1 above these Reasons refer to the "capping" Order which, in this case, would have capped the Fair Rent at £68.00 p.w.

However, the Order provides that where repairs and improvements have been carried out to a property since the last registration and the works would have increased the previously registered rent by at least 15% the Order does not apply.

In this case the works would have to increase the previous rent by £7.20 per week.

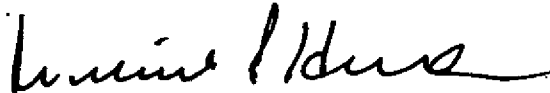
Having carefully considered the schedule of works carried out at the property, including the dates of the works, the Committee concluded that those works completed since 24 April 1995 would have added at least that amount to the previous rent and the capping Order does not, therefore, apply.

- 5.9 In para. 2.3 above we summarized section 70(2) of "the Act". Under this provision the Committee are required 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 decisions dictate we have to consider the scarcity factor over a wide area and this Committee considers there to be no longer any substantial scarcity of such property in the area, broadly, of South Hampshire and, accordingly, no further discount is applied.

6. Decision

- 6.1 The Rent Assessment Committee determine the Fair Rent of **7A Northern Buildings, Northern Road, Cosham, Hants at £87.00 per week.**
- 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 Friday 29th September 2006 which becomes the effective date of the registration.



MICHAEL R HORTON FRICS
(Chairman)

Dated 3rd October 2006