

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

Address of Premises

31 Devonshire Avenue
Wigston
Leicestershire
LE18 4LP

The Committee members were

Mr W Martin
Mr G Freckelton FRICS FSVA
Mr M Ryder

1. Background

On 30.06.03.....the ~~landlord/tenant~~ applied to the rent officer for registration of a fair rent of £ 59..... per WEEK...for the above property.

Note: The period of the rental payments under the tenancy (e.g. weekly, monthly) should be inserted expressly above and where appropriate below.

The rent payable at the time of the application was £ 53..... per WEEK

The rent was previously registered on 9.08.01.....with effect from 30.09.01.....~~the same date~~ at £ 53.....per WEEK... following a determination by ~~the rent officer/a rent assessment committee.~~

Note: (1) Insert effective date when different from that of registration. (2) The date of registration is useful for capping purposes when it is necessary to know the date of the previous registration. (3) The whole of the above sentence can be deleted in those rare cases of first registration.

On 04.08.03.....the rent officer registered a fair rent of £ 55.50..... per week / ~~including £.....in respect of services/(variable)~~ with effect from ~~that~~ date/ 30.09.03.....

Note: the alternative of a variable amount for services has been added.

By a letter dated 13.08.03.....the ~~landlord/tenant~~ objected to the rent determined by the Rent Officer and the matter was referred to the Rent Assessment Committee.

Note: this states how the matter has come before the RAC. If the letter of objection is not provided the reference to the letter of objection and date must obviously be omitted.

2. Inspection

The Committee inspected the property on...20.11.03...and found it to be in ~~good/fair~~/poor* condition/as described more particularly in the Rent Officer's survey sheet which had been copied to the parties.

~~[Brief description of state of repair here where no RO survey sheet provided].~~

~~The following tenant's improvements had been made to the property.~~

~~The Committee was unable to gain access at the appointed time in order to inspect the property internally and therefore made an external inspection only.~~

~~The registered rent includes a sum for the services as listed on the rent register.~~

3. Evidence

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

~~*Neither party requested a hearing at which oral representations could be made.*~~

~~*A hearing was held on in at which oral representations were made by/on behalf of the landlord and tenant. The landlord/tenant was not present or represented.*~~

The date and place of hearing respectively can be inserted.

~~*A hearing was arranged for on in but neither party attended.*~~

Note: the last option is a new alternative possibility

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 **LEICESTERSHIRE** Having done so it concluded that such a likely market rent would be £**80**... 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 £**80**... 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 £ **12**..... per **WEEK**...

~~Furthermore, to allow for the tenant's improvements (listed above) it was necessary to make a further deduction of £..... per.....~~

Note: the wording has been revised to deal with the common case where the parties do not provide market comparables and also to permit the specification of sums in respect of (a)

differences between the condition of the real or hypothetical comparable(s) and the subject property and (b) the rental value of tenant's improvements, to be specified.

~~The Committee decided that the relevant differences between the subject property and the comparable properties given in evidence were so great as to make it inappropriate to rely on the market rent less scarcity approach in this case. It therefore relied on its knowledge and experience to assess a fair rent of £..... per~~

The Committee did not consider that there was any substantial scarcity element and accordingly no further deduction was made for scarcity. The Committee found that there was substantial scarcity in the locality and therefore deducted a further sum of £...7.....from the market rent to reflect this element.

This leaves a fair rent for the subject property of
£...61.....per...WEEK...

~~This leaves an occupational element of a fair rent for the subject property of
£.....per to which the service element sum of £.....in respect of
services should be added, resulting in a fair rent of £.....per~~

6. Decision

The fair rent initially determined by the Committee, for the purposes of section 70, was accordingly £...61..... per WEEK inclusive of £.....per
.....in respect of services.

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 £...58.50 per WEEK /inclusive of services (Details are provided on the back of the decision form).

The section 70 fair rent determined by the Committee is below/at the same level as 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.

The fair rent to be registered/confirmed is not limited by the Rent Acts (Maximum Fair Rent) Order 1999 because there was not an existing registered fair rent at the time of the application.

The fair rent to be registered/confirmed is not limited by the Rent Acts (Maximum Fair Rent) Order 1999 because by virtue of landlord's repairs and/or improvements since the previous registration the rent determined/confirmed by the Committee exceeds by at least 15% the previous registered rent.

Accordingly the sum of £...58.50...per week.../inclusive of services of £.....per..... will be registered/confirmed as the fair rent with effect from...20.11.03... being the date of the Committee's decision.

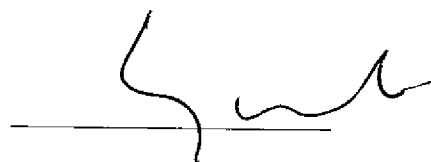
The registered rent is to be entered/confirmed as variable in accordance with the terms of the tenancy (Rent Act 1977, s.71(4)).

Note: the new version of this section is an attempt to separate out the fair rent assessed in accordance with the Act from, where applicable, the maximum fair rent provided for by the 1999 Order.

Thus the section begins with the rent determined in accordance with section 70. It then permits one of four alternative paragraphs to be chosen according to whether the cap applies or not.

Having selected one the others should be deleted before the paragraph in bold type specifying the rent to be registered/confirmed is selected in all cases. The final paragraph can be included where there is a variable service charge.

Chairman



Dated

20.11.03

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.

Ref: BIR/31UJ/ F77/2003/0138

REASONS FOR DECISION

**31 DEVONSHIRE AVENUE, WIGSTON,
LEICESTERSHIRE, LE18 4LP**

1. Background and Jurisdiction

This is a reference to a Rent Assessment Committee by the Landlord, J Walster Ltd. in response to a registration by the Rent Officer of a fair rent under the Rent Act, 1977 of £55.50 per week effective from the 3rd. September, 2003. The Tenant is Mr. Tokeley

2. The Property

The dwelling consists of a terraced 'non parlour' property in a street of similar houses in the sub-urban village of South Wigston, some four to five miles south of Leicester city centre. There are factories close to the property.

The accommodation, which is in very poor condition, comprises a living room and combined kitchen and dining room on the ground floor and two bedrooms and a bathroom on the first floor. There is a good size garden to the rear of the house, and a small garden to the front. There has been little modernisation by the Landlord or the Tenant.

3. Meaning of a Fair Rent

The Rent Act, 1977 ("the Act") does not define the expression "fair rent" but it directs that in determining it, regard must be had to certain matters including the age, locality, state of repair and character. Other matters must be disregarded, including any personal circumstances (Section 70(1)), tenant's voluntary improvements and disrepair or defects attributable to the tenant's failure to comply with the terms of the tenancy (Section 70(3)). Additionally by Section 70(2) of the Act there is to be an assumption that the number of persons seeking tenancies of like properties in the locality on similar terms, other than as to rent, is

not substantially greater than the number of such properties available for letting.

Various Court of Appeal judgments have given guidance as to how a fair rent should be determined. In essence a fair rent is the market rent for the property in question disregarding personal circumstances referred to in Section 70(3) discounted for any scarcity under Section 70(2). The Court has decided that the best evidence of a starting point for an assessment of a fair rent is that of a market rent comparable where such is available.

4. Written Representations

Only the Landlord made written submissions. The Landlord owns several properties in the area and quoted a registered rent for 31 Baldwin Avenue of £60 per week, and unregistered rents for 7 Jordan Avenue and 28 Landsdowne Grove at £65 per week. These properties are unimproved. When the properties owned by the Landlord become vacant they are partially improved by the installation of central heating, a basic kitchen and basic carpets. The cost of the refurbishment is £5000, and if an allowance on those costs of £12 per week is made this gives a net figure of £72 per week. There is no shortage of similar accommodation in South Wigston, where agents are trying to find tenants.

In a further letter, the Landlord repeats that there are many properties to let in South Wigston and that there is no scarcity. Unless the rent is competitive the house will remain empty. This is the best evidence one could have of a market being 'in balance' and certainly no scarcity. The Landlord also referred to a registration in November 2002 of 31 Baldwin Avenue which is also unimproved at £60 per week and feels therefore that the requested rent of £59 per week is reasonable. It also states that when partially modernised as referred to above and let on the open market, it can expect to receive rents of £365 per month, i.e. £84.23 per week.

Finally the Landlord refers to scarcity once more. It has been suggested by the Panel in other decisions that council house waiting lists are material. These are not necessarily comparable with the private market. People want to be on Council waiting lists for perhaps very different reasons from those wishing to be on private lists, credit reference problems being one of them. It is 'safer' to rely on the market place. If a tenant is credit worthy he has no difficulty finding a house immediately. If the panel do not agree with that contention the Landlord wants detailed evidence why it is not so. It is not sufficient to say that the

Panel's "general knowledge and experience" is different.

The Landlord also referred to a case reported in the Estates Gazette in October: 'R (on the application of Wolters (London) Ltd) v London Rent Assessment Committee and others'. The Landlord was heartened by this decision which it contended required more transparent and supportable reasons for decision than have appeared hitherto.

DETERMINATION

As a result of case law the Committee are required, as a starting point, to consider the market rent for the property in good condition. The overwhelming evidence of open market rental values is provided by lettings of all types and sizes of properties which benefit from central heating, double glazing and the provision of fitted carpets and curtains as standard amenities. It is the Rent Officer's practice to deduce comparability from this open market evidence, making adjustments in respect of any subject property to account for any standard amenities not provided and this Committee follows that practice. Consequently the market rent figure adopted below represents the Committee's opinion of the open market rent value of a property of similar size in a situation enjoying reasonable transport, shopping and social facilities, free from significant disrepair and benefiting from the above standard amenities. Adjustments are then made to reflect the lack of any of the standard amenities and for the situation, state of repair and the value of any tenant's improvements to arrive at an adjusted market rent.

In the present case the Committee were grateful to the landlord for the factual evidence supplied from its own portfolio, particularly the market rent figures for similar properties when modernised. Taking all factors into account, and in view of the local comparables and also using their knowledge and experience of market rents for similar flats in the locality, but not any special knowledge, determined that the market rent for the subject property is £80 per week. From this figure the Committee are required to make adjustments for the disregards contained in the subsections to Section 70 of the Act. There are no such deductions for age and character as this is reflected in the market rent. However, they deducted the sum of £12 per week to take account of the extremely poor state of repair of the property (but not any disrepair due to any default of the tenant) and the lack of standard amenities referred to above, giving an adjusted market rent of £68 per week.

The Committee were then required to consider the question of scarcity. They do this by considering whether there are more persons genuinely seeking to become tenants of similar properties in the locality of Leicestershire upon the same terms other than as to rent (our emphasis) is substantially greater than the availability of such dwellings as required by s.70(2) of the Rent Act 1977.

The Committee take note of the Landlord's arguments relating to scarcity. They find that many landlords dispute that scarcity can exist, because, as the Landlord in this case puts it, the market is 'in balance'. Tenants do not in all cases have difficulty finding accommodation because of this. However, this argument ignores the fact that it is the price mechanism which creates a balance in markets, and Section 70 (2) specifically excludes the price mechanism from the consideration of whether there are indeed more persons genuinely seeking to become tenants of similar properties than there are properties available. It is for this reason that evidence is sometimes cited from Council and Housing Association waiting lists, from general evidence of homelessness and even from government targets requiring more houses to be built because of population pressures. Such evidence is of course anecdotal in its nature when applied to the rental market, as that market may well show different trends at certain times and locations. It is also to be noted that although the rental market for assured shorthold lettings may show a balance, it is also true that many potential tenants are excluded from it because of a poor credit reference, because they are on housing benefit or because the prospective tenant is under 25.

It has been stressed by the courts (in *Curtis v London Rent Assessment Committee* (1999)QB92 and later in *Yeomans Row Management Ltd. v London Rent Assessment Committee* (2002) EWHC835 (admin)) that in assessing scarcity the committee's own knowledge and experience of the locality is of particular value, and that it is an inherently imprecise process that cannot be the subject of detailed analytical reasoning. However, other cases have stated that where a high discount figure (20% in the case of *Wolters* referred to in the Landlord's submission, 25% in the case of *Queensway Housing Association Ltd. v Chiltern, Thames and Eastern Rent Assessment Committee* (1999)31 HLR 945) has been adopted it is important to spell out the reasoning in terms that enable one to see that the correct approach has been adopted.

In the present case the committee are satisfied on balance that in the wider locality of Leicestershire there are substantially more persons genuinely seeking to become tenants of similar properties to the subject property than there are properties available if terms other than as to rent are excluded. They are required to consider a large local area rather than a narrow area which might have a particular amenity demand or,

indeed, lack of demand. Despite the Landlord's submission the committee are satisfied that there is a broad local shortage of housing, and that if considerations of rent are ignored there would be more people seeking rented accommodation of this type than the supply of it. They reached this conclusion having considered and weighed the various factors referred to above and using their general knowledge and experience.

Having come to this conclusion it is necessary for the committee to quantify this scarcity so that they can apply an appropriate discount to the adjusted market rent of £68 per week. They accept that this scarcity, although substantial (which they take to be 5% or more), is not of a really large magnitude, such as the percentages applied in Wolters and Queensway, but is nevertheless more than 5% which is the minimum discount they would apply. They perceive the level of scarcity in the area chosen as nearer the lower end of the scale and in all the circumstances they conclude that the appropriate figure is approximately 10 % which they round to £7 per week leaving a net rent of £61 per week.

CONCLUSION

The Committee therefore determined that the fair rent for the property is £61 per week. However, by virtue of the Rent Acts (Maximum Fair Rent) Order 1999 the maximum fair rent which can be registered in the present case is the lower sum of £58.50 per week which will be registered as the fair rent with effect from the 20th November 2003 being the date of the Committee's decision.

The Committee made their decision taking into account the representations made to them, their inspection, the provisions of the Rent Act 1977, the common law and their judgement as an expert tribunal using their general knowledge and experience but not relying on any special knowledge.


W.J.MARTIN
Chairman

Clerk to the Committee: Jane Hicken

Dated: 14. 01. 04