

Southern Rent Assessment Panel
No.

File Ref

CHI/24UD/F77/2006/0134

Rent Assessment Committee: Reasons for decision.

Rent Act 1977

Address of Premises

Flat 6 Netley Hill House
Netley Hill Estate
Southampton
SO19 6AN

Committee members

Mr. J H S Preston JP FRICS
Mr. P D Turner-Powell FRICS
Mr. H D Lederman

1. Background

The landlord, Mr. Simon O'Callaghan, applied to the Rent Officer for registration of a fair rent of £525.00 per month for the above property (of this sum £68.79 was attributed to services). The application was dated 12 April 2006. The rent payable at the time of the application was £428.00 per month.

The rent was previously registered on 29 December 1999, with effect from 22 December 1999, at £428.00 per month, with £44.28 per month being attributable to services. This was a decision of the Rent Assessment Committee.

On 14 August 2006 the Rent Officer registered a fair rent of £485.00 per month with effect from that date, with £65.81 per month being attributable to services. He stated that the registration was not exempt from Maximum Fair Rent, but did not disclose the amount of this.

The Rent Officer by letter dated 18 August 2006 agreed to extend the 28-day time limit "slightly" for the landlord to make an objection, as JCM Management Limited had only recently taken over management of the premises. On 11 September 2006 JCM wrote to the Rent Officer stating that they had only taken over management that month and asking for further information. By letter dated 21 September 2006, JCM Property Management Ltd, acting for the landlord, objected to the rent determined by the Rent Officer. The matter was accordingly referred to the Rent Assessment Committee.

The tenant, Mr. D M Sweeney, holds the tenancy by an Agreement dated 1 February 1984, originally for a term of three years.

2. Inspection

The Committee inspected the property on 1 November 2006, in the presence of the tenant, and Miss A Gee of Flat 9 and of Mrs J Mulholland of JCM Property Management Ltd.

The property is a self-contained first-floor converted flat in a large detached Victorian house constructed in about 1900. Access to the flat is via a communal staircase and landing. The accommodation comprises:

Small entrance hall; Living room; Kitchen; two Bedrooms; Bathroom / WC. Night-storage heaters (2) provide space heating. The tenant stated that he did not use them on cost grounds. A gas boiler provides hot water. There is a modern electrical installation. All main services are connected.

The tenancy includes a garage in a block close to the house. The tenant has access to a communal garden, which is maintained by the landlord, though not to a high standard.

The flat is in fair condition, and the following defects were noted: -

- External decorations in need of attention.
- Internal decorations were poor. These are accepted as the liability of the landlord, notwithstanding clause 2 (7) of the Tenancy Agreement.
- In the bathroom the sanitary ware is dated and there is a need for ventilation.

The tenant has not carried out any improvements.

The property is situated between the A27 and M27 and is subject to traffic noise.

The Committee also inspected Flats 1, 4 and 5 as comparables of market rents.

3. Evidence

The Committee received written representations from the landlord's agents in their letter of 17 October 2006. They drew attention to the current marketing of Flat 5 at £625 per month including water rates. The agents also stated that Flat 5 is smaller than Flat 6 and does not have central heating or a garage. The proposed rent of £525 for Flat 6 includes a garage and service charges but excludes water rates.

The representations from the tenant were set out in his statement dated 9 October 2006. He refers to the initial marketing of Flat 5 at £600 per month and makes reference to his relationship with the landlord and to his health. Rent increases since the last registration had been by agreement and no registration had been made since 1999 until the present one. He thought that the stated market rent of £650 was high. Further representations were made in Mr. Sweeney's letter dated 23 October 2006, commenting upon points made by the landlord, including the quality of the accommodation in Flat 5 and the history of the tenancy. The committee's bundle included a copy of the tenancy Agreement.

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

4. Consideration

The Committee determined that the Landlord should be allowed to proceed with his objection to the rent registered by the Rent Officer, even though the Rent Officer received that objection more than 28 days after the notification. They had regard to the factors mentioned in paragraphs 5, 5A and 6 of Schedule 11 to the Rent Act 1977 and to the circumstances in which that objection came to be made after expiry of the 28 day period.

When determining the fair rent the Committee, in accordance with the Rent Act 1977, section 70, had regard to all the circumstances (other than personal 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 the cases of *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.

The Committee considered that the rental evidence provided by the landlord was relevant and was indicative of the current market. The Committee took note of the schedule of services provided by the landlord within the terms of the tenancy and the costs attributed to them in 2006.

5. Decision

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 landlord and to the Committee's own general knowledge of market rent levels in the area of Southampton. Having done so it concluded that the market rent would be £725.00 per month, of which £65.81 would be attributable to services.

This rent would be for a property in good letting condition with central heating and modern kitchen and bathroom and some white goods and carpets. In view of their findings as to the deficiencies in the property, the Committee considered that it was appropriate to make deductions, totalling £190.00 per month from market rent to reflect the following; -

1. Lack of white goods and carpets
2. Lack of central-heating
3. Lack of a modern bathroom
4. Lack of modern double-glazing
5. Disrepair

The Committee did not consider that there was any substantial scarcity element affecting the level of market rents and accordingly no deduction was made for scarcity. The fair rent determined by the Committee is therefore £535.00 per month.

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 £533.50 per month. (Details are provided on the back of the decision form).

Accordingly the sum of **£533.50 per month (including £65.81 attributable to services)** will be registered as the fair rent with effect from **1 November 2006** being the date of the Committee's decision.

(signed)
Signed _____ J H S Preston (Chairman)

Dated 1 November 2006
