

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>
CH1/00MR/ F77/2004/0145	101 Knox Road Portsmouth Hants, PO2 8JJ	Mr & Mrs B H Port	Fennell Investments Ltd.

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 £81.50 per week (p.w) registered on 12 July 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 £86.00 p.w.

The previous Fair Rent, registered on 24 July 2002, and effective from 31 July 2002, was £73.00 p.w The uncapped fair rent at that time was recorded as £74.00 p.w.
- 1.2 The application to the Rent officer had been made by the Landlord requesting registration of a fair rent of £90.00 p.w.
- 1.3 Neither Landlord nor Tenant requested a Hearing but the Tenants submitted a written representation.

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 Tenants, inspected the property.
- 3.2 The Committee found the property to comprise a flat fronted two storey centre of terrace house constructed circa 1890. The building has brick elevations under a replacement interlocking concrete tiled roof. There is a more recent flat roofed single storey bathroom extension to the rear.
- 3.3 **Accommodation is arranged as follows:** ***Ground Floor – Front Living Room. Rear Living Room** with under-stairs cupboard and door to **Kitchen. Rear Lobby** with external door and **Bathroom/w.c.** off. **Outside** small garden to rear and shallow forecourt to front.*
- 3.4 Although the Committee found the property to be in a generally satisfactory condition it was evident this was largely due to the efforts of the tenants who, over many years, had carried out numerous improvements coupled with more general maintenance.

These improvements include incorporating the original entrance passage with the front living room, provision of electric off-peak electric storage heaters, installation of additional electrical outlets, new front and interior doors, a French door from the rear living room to the garden, a modern kitchen and extractor fan, electric shower in the

bathroom, alterations to the rear bedroom window and externally the removal of the air-raid shelter and the surfacing the small rear yard with concrete.

- 3.5 Hot water is provided by a basic Fortic type tank with immersion heater.
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.

A number of replacement PVCu windows have been fitted by the Landlord.

- 3.6 The property is situated in a predominantly older residential neighbourhood comprising mainly of similar style terraced houses. The location is convenient and accessible to most urban amenities.

The Representations

- 4.1 Only the Tenant submitted a written representation the main points being:
1. Both tenants are on pensions and, with other bills increasing, the additional rent will be hard to find.
 2. Over 43 years they have put hundreds of pounds into the property and as a result the landlord now has a very nice house.
 3. Roof repairs are all the landlord now undertakes.
 4. The tenants kitchen cabinets were ruined as they had to be taken out three times due to inferior workmanship.

No evidence was introduced in the way of lettings of comparable properties to support the claim that the rent might be too high.

Conclusions

- 5.1 The Committee carefully noted the content of the tenants representation and in particular the state of the property and the improvements they had carried out over the years. These matters have been reflected in the valuation set out below.

With regard to the financial position of the tenant, this is a personal circumstance and, as such, is a matter "The Act" specifically directs must not be reflected in the decision. (Section 70)

- 5.2 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 £550.00 per calendar month (say £127.00 per week)

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

The Committee have to factor these differences into their valuation.

- 5.4 The Committee arrived at the following valuation

Base rental per week, as above		£127.00
<u>Less adjustments (£ per week)</u>		
Tenant's responsibility for internal decorations	7.00	
No basic furnishings or white goods	7.00	
Tenants kitchen,	5.00	
Obsolescence, disrepair and other tenant's improvements	14.00	
No central heating system	7.00	40.00
Net adjusted rent per week		<u>£87.00</u>

- 5.5 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 decisions 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.

- 5.6 The rental value arrived at by the Committee is higher than the amount of £82.00 p.w, which is the maximum that can be registered under the provisions of "the Capping Order", and the Order does takes effect.

Decision

- 6.1.1 The Rent Assessment Committee determine the Fair Rent of **101 Knox Road, Portsmouth at £82.00 per week.**

The uncapped fair rent was £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 Wednesday 17 November 2004 which becomes the effective date of the registration.



MICHAEL R HORTON FRICS (Chairman)
Date 17 November 2004

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