

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**SOUTHERN RENT ASSESSMENT PANEL
AND LEASEHOLD VALUATION TRIBUNAL**

**STATEMENT OF REASONS FOR THE
DECISION BY A COMMITTEE OF THE PANEL
ON THE 5TH AUGUST 2003**

Case Number: CHI/45UD/F77/2003/0136

Rent Assessment Committee:-

**Mr D Agnew, LLB, (Chairman)
Mr B H R Simms, FRICS MCI Arb
Mr P Owen**

Property: 43 Orchard Avenue
Chichester

Landlord: Bankway Properties Ltd

Landlord's Agent: Bendalls
25A Brighton Road
South Croydon, Surrey

Tenant: Mr R J Rutland

1. Introduction

- 1.1 On the 6th February 2003 the Landlord applied to the Rent Officer for the registration of a fair rent of £475 per month for the property. The rent payable at the time of the application was £390 per calendar month.
- 1.2 The rent was previously registered on the 21st December 2001 with effect from the 12th December 2001 at £90 per week following a determination by the Rent Assessment Committee.
- 1.3 On the 4th June 2003 the Rent Officer registered a fair rent of £99 per week with effect from that date.
- 1.4 By a letter dated the 12th June 2003 the Landlord objected to the rent determined by the Rent Officer and the matter was referred to the Rent Assessment Committee.

2. Inspection

- 2.1 The Committee inspected the property on the 5th August 2003 in the presence of the Tenant.
- 2.2 The property is a three-bedroom end of terrace house constructed of brick and rendered at first floor level. The Landlord installed UPVC double-glazing throughout in January 2003.
- 2.3 The property was in good overall condition and the Tenant has decorated and maintained the interior to a good standard.
- 2.4 The property is situated in a pleasant residential road, close to the centre of the City of Chichester but it does not have the benefit of a garage or its own private driveway. Parking was available in the street outside the property for residents with permits.
- 2.5 A shared grassed driveway to the side of the property gives access to the rear but the garden is enclosed by fences installed by the Tenant. There is a good-sized garden, attractively cultivated and maintained by the Tenant who has also constructed an attractive patio area.

3. Evidence

- 3.1 Written representations were made by both the Landlord and the Tenant. Both had requested a hearing. Notwithstanding this, however, the Landlord's Agent had subsequently written to the Panel Office stating that the Landlord had chosen not to have representation at the hearing.

4. The Law

- 4.1 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:

- (i) any relevant tenant's improvements; and
- (ii) 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 Limited 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 (ie that element, if any, of the market rent that is attributable to their 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).
- 4.2 The Landlord's Agent also drew the Committee's attention to the case of BTE Limited v. The Merseyside and Cheshire Rent Assessment Committee and Mrs Kay Jones where the Rent Assessment Committee in that case had failed to take sufficiently into account evidence of comparable lettings.

5. The Hearing

- 5.1 The Tenant told the Committee that he was content with the Rent Officer's determination. He had no evidence of comparable lettings. He did not think that there was a scarcity of accommodation available to rent in Chichester. He thought that although it had cost the Landlord £6,000 to install double-glazing he would save on having to replace the rotten window frames and on having to paint the woodwork in the future. He was a pensioner and the increase sought by the Landlord seemed to him to be considerable.

6. Consideration

- 6.1 In the first instance the Committee determined what rent the Landlord could reasonably be expected to obtain for the property on the open market if it were let today in the condition that is considered usual for such an open market letting. The Committee regretted that the Landlord's Agent had not supplied them with any evidence of comparable lettings, notwithstanding the fact that the Agents had emphasised the need for the Committee to take into account comparable open market lettings when they referred to the case referred to in paragraph 4.2 above.
- 6.2 In the absence of any evidence of comparable lettings the Committee was constrained to rely on its own general knowledge of the market rent levels in the area of Chichester and, having done so, it concluded that such a likely market rent would be £165 per week.
- 6.3 However, the actual property is not in the condition considered usual for a modern letting at a market rent. It was therefore necessary to adjust the hypothetical open market rent of £165 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 £35.50 per week made up as follows:

Lack of white goods	£ 5.00 per week
No carpets/curtains	£ 5.00 per week
Provision of a basic kitchen only	£10.00 per week
Lack of central heating	£ 7.50 per week
Work done by Tenant to the garden (patio and fencing)	£ 3.00 per week

Sub total:	£30.50 per week
Adjustment for increase in Tenant's repairing obligation	£ 5.00 per week

Total:	£35.50 per week
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- 6.4 The Committee then considered whether there was any substantial scarcity element in the Chichester District Council area. It considered that there was a balance of supply and demand in this large area and decided that no deduction should be made for scarcity.
- 6.5 The Committee then had to consider whether the rent increase was required to be capped in accordance with the provision of the Rent Act (Maximum Fair Rent) Order 1999 as the capping provisions would not apply if there has been a change in the dwelling as a result of repairs or improvements so that the rent determined in accordance with an application for registration of a new rent exceeds the rent previously registered by at least 15%. In this case, the Landlord had fitted UPVC double-glazing throughout the property at a cost of £5,208 plus VAT in January 2003.

- 6.6 The Landlord's Agent did not produce any evidence to suggest that the installation of the double-glazing had caused the rent to be increased by more than 15% of the previously registered rent. 15% is £13.50 per week.
- 6.7 In 2001 a Rent Assessment Committee had deducted from the open market rent the sum of £6.00 per week as being attributable to the lack of double-glazing and the Committee decided that £10.00 per week at most could be attributed to the installation of double-glazing. As £10.00 is less than £13.50, the capping provisions would apply.
- 6.8 The Committee was not able to take into account under Section 70 the Tenant's financial circumstances nor the fact that by installing double-glazing the Landlord would be released from repairing woodwork and painting in the future.

7. The Decision

- 7.1 The uncapped fair rent determined by the Committee is accordingly £129.50 per week. However, that rent is capped by the Rent Act (Maximum Fair Rent) Order 1999 and the amount to be confirmed as the fair rent is accordingly limited to £99.00 per week. Details of the calculation are provided on the back of the Decision form.
- 7.2 The newly registered rent will be payable with effect from the 5th August 2003, being the date of the Committee's Decision.

Signed:
Chairman

Dated this 13th day of August 2003