

**SOUTHERN
RENT ASSESSMENT PANEL & TRIBUNAL**

Statement of Reasons
for the Decision by a Committee of the Panel upon an
Inspection carried out on
Friday 8 October 2004

RENT ASSESSMENT COMMITTEE
Mr Michael R Horton FRICS (Chairman)
Mrs C Newman JP

<i>Reference</i>	<i>Address</i>	<i>Tenant</i>	<i>Landlord</i>
CH1/24UN/ F77/2004/019	Pillar Box Cottage Toothill Romsey Hants, SO51 9LN	Mr M Walton	Mitchell Properties 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 £1,503.00 per quarter registered on, and effective from, 12 July 2004. This rent had been subject to the *capping* legislation referred to below and the uncapped fair rent noted by the Rent Officer was £1,558.00 p.q.

The previous Fair Rent, registered on 22 March 2002, and effective from that date, was £1,343.00 p.q. The uncapped rent recorded by the Rent Officer at that time was £1,430.00 p.q.

- 1.2 The application to the Rent officer had been made by the Landlord requesting registration of a fair rent of £1,544.00 p.q.
- 1.3 Neither Landlord or Tenant requested a Hearing but both submitted written representations.
- 1.4 **Disclosure of interest.** On receipt of the case papers the Chairman of the Committee became aware that he knew the tenant although there had been no contact for some 20 years.

The circumstances of their acquaintance was that the tenant had been employed in estate agency in Southampton where the Chairman practised as a Chartered Surveyor (not the same firm) and occasionally they had played cricket together in a local auctioneers and surveyors team.

This interest was disclosed to Mr David Mitchell, who represents the Landlord in a telephone call on 4 October.

He confirmed that in the circumstances of the case he had no objection to the Committee, as appointed, proceeding with the case.

Subsequent to speaking to Mr Mitchell the Chairman telephoned Mr Walton who also confirmed he did not wish to raise any objection.

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 Friday 8 October the Committee, in the presence of the Tenant and Mr David Mitchell, inspected the property.

- 3.2 The Committee found the property to comprise a mainly two storey detached house of predominantly brick construction under tiled and slated roofs. There was a lean to garage/store to the side.

The house appears to have been constructed over a wide period and while the case papers indicate it dates back to c.1600 much of the building appears to date from the 18th century. Indeed at one time it may have comprised two separate cottages

- 3.3 Accommodation is at present arranged as follows: **Ground Floor** - Entrance Hall with stairs to upper floor. Cloakroom. Lounge with fireplace extending into a dining area. Kitchen with breakfast area. First Floor - Landing. Principal Bedroom with dressing area incorporating shower and hand basin. Two further double bedrooms and small bedroom/box room over an integral external store. Bathroom/W.C. **Outside** - Integral storeroom and lean to garage/store. Good sized garden appropriate for the property. Septic tank drainage.
- 3.4 At the time of inspection the property was in course of being redecorated externally, by the landlord, and this work was virtually complete.
- 3.5 The Committee found the property to be in a generally satisfactory condition although a certain amount of disrepair was noted and the attached garage/store, in particular, was in poor condition.

The Committee did note, in particular, the very basic electric night-store central heating, the dated albeit satisfactory sanitary-ware, the fact that the very dated kitchen fittings and floor coverings supplied at the time of the original letting were in course of being replaced by the tenant and while the electrical system is understood to have been upgraded some of the circuits have been surface wired.

They also noted the general state of the mix of metal and timber framed windows and the unlined floor joists beneath the small bedroom over the outside store which the tenant pointed out allowed the carpet to lift in strong winds.

The Committee were left with the impression that the property would benefit from a significant upgrade to bring it into a state which most occupiers of this type of house would expect.

Although there was no evidence of the tenant having carried out any major improvements to the property, other than the kitchen, the Committee did note he had replaced some of the taps, made improvements or rearrangements to various cupboards, provided the stove to the lounge and replaced a number of doors with ones suited to the period features of the house.

- 3.6 Although situated in a rural locality the property enjoys a very convenient location within a few minutes drive of junction 3 of the M27 while Southampton and Romsey are not far distant.

The Representations

- 4.1 Both parties submitted written representations
- 4.2 **The Tenant**, in correspondence to the Rent Officer, pointed out the extent to which the electrical installation had been upgraded, and outstanding matters involving the

external paintwork, a leaking garage roof, the “cheap” 50’s/60’s kitchen. He expressed concern that certain aspects of the tenancy are not conducive to modern living and, therefore, current (*rent*) levels.

In a letter to the Rent Officer dated 16 July, objecting to the registered rent, the tenant queried why the registration on this occasion gave an increase of £43.00 p.m. and on the previous occasion £53.00 p.m.

As tenants there was a history of difficulty in getting the Landlords to keep the property in the condition, which demands these increases.

More up to date facilities are normally required and they had replaced doors, painted the exterior porch and were now having to refurbish the kitchen floor and units.

He was aggrieved that any increase had been proposed.

- 4.3 The **Landlord** in their representation stated that since acquiring the property in June 2003 the following matters had or were in course of being dealt with:

1. Works involving the wiring had been carried out at a cost of £2,634.00.
2. External decoration is in the process of being completed at a cost of £2,800.00.

As comparables basic details of three tenanted properties, Pickernals Farmhouse, West Wellow letting at £1,600 p.c.m, Church Cottage, Ovington, letting at £1,700 p.c.m. and Yew Tree Cottage, Ovington letting at £1,650 p.c.m., were provided.

The representation that a deduction of 30% should be made to reflect the lack of modernised facilities at Pillar Box Cottage.

He did not consider any deduction should be made for any scarcity element as there is “an open market in these properties as evidenced by the above comparable lettings between willing landlord and willing tenant.”

In the landlords opinion the fair rent should be £1,555 p.c.m. or £3,465 p.q.

- 4.4 At the inspection Mr Mitchell agreed that he did not consider the extent of the works carried out to the property were such that the capping provisions were no longer applicable to the rent.

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.

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.

- 5.2 They agree with the tenant’s representation to the effect that on such basis a tenant would expect to find a well maintained property with modern installations in the kitchen and bathroom and they would also anticipate a full central heating system and basic furnishings comprising fitted carpets and curtains and white goods probably

comprising a cooker, fridge and, for property of this type, a washing machine and dishwasher.

- 5.3 With the usually comparatively short term nature of this type of letting a landlord normally assumes responsibility for internal decorations, apart from when they are abused.
- 5.4 The Committee noted the comparables mentioned by the Landlord but did not consider those located at Ovington to be particularly helpful.

Although they were unable to make an internal inspection of Pickernals Farmhouse the Committee took a view of the property and concluded there was a degree of comparability in the locations but that it was arguably a somewhat better property in the letting market.

Using their own knowledge and experience the Committee concluded that on the terms and in the condition set out paras.5. & 5.3 above a Landlord might reasonably be expected to let Pillar Box Cottage at a rent of £1,350.00 p.c.m.

- 5.5 The Committee are required to consider the rent for the property at the time they inspect and, in this case, the property has been decorated externally since the Rent Officer made his determination. They are unable to reflect works which may be carried out by the landlord in the future.
- 5.6 While the Committee noted the representations made by the Tenant, with no details provided of the Rent Officer's valuation, they are unable to comment on the differential increase in the registered rents other than to point out that in 2002 the rent was capped and even if rental levels had remained constant the rent would have increased automatically in 2004 under the capping provisions.
- 5.7 However, it is necessary to adjust the base rent found in the last paragraph of 5.2 above to allow for the condition of Pillar Box Cottage, the lack of modern amenities, the lack of base furnishings and the tenants internal decorating covenant etc.

The Committee did not consider the Landlord's view that a straight 30% deduction provided the best approach and that each differential should be separately assessed.

The Committee emphasise that the allowances they make below reflect the amount of value a tenant would attribute the rent they would be prepared to pay and is not related to any capital cost of providing the relevant item.

5.8	Base rental per month		£1,350.00
	<u>Less adjustments</u>		
	Tenant's responsibility for internal decorations	95.00	
	No basic furnishings or white goods	160.00	
	Basic kitchen, condition of windows,	260.00	
	other obsolescence and disrepair		
	Basic central heating system	85.00	600.00
	Net adjusted rent per calendar month		<u>£750.00</u>
	<u>Equivalent to £2,250.00 per quarter.</u>		

- 5.9 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 precedents 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, Winchester and the A30, east to the Hamble River and west to the A338.

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.

- 5.10 The rental value arrived at by the Committee is higher than the amount of £1,509.50 per quarter, which is the maximum that can be registered under the provisions of "the Capping Order", and the Committee therefore had to decide whether or not the works carried out by the landlord since the last registration increased the rent registered at that time by more than 15%.

The Committee have to make their decision on the state in which they find the property today.

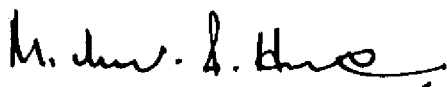
The Committee found, and note that the landlord agreed, that the works carried out some of which, for example painting, are a routine maintenance item would not, on their own, have increased the rent by the required percentage. The "Capping Order" therefore applies.

Decision

- 6.1 The Rent Assessment Committee determine the Fair Rent of **Pillar Box Cottage, Toot Hill, Romsey, Hampshire at One Thousand Five Hundred and Nine Pounds Fifty Pence per quarter** being the maximum rent they are permitted to fix under the provisions of "the Capping Order"

The uncapped Fair Rent is £2,250.00 per quarter.

- 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 8 October 2004 which becomes the effective date of the registration.



MICHAEL R HORTON (Chairman)
Date: 11 October 2004

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