

**THE RENT ASSESSMENT COMMITTEES
(ENGLAND & WALES) REGULATIONS 1971
CERTIFICATE OF CORRECTION**

I hereby certify that due to a clerical error the information contained in section one of the determination made by the Rent Assessment Committee which was signed by me on Tuesday 18th November 2003 in respect of The Cottage, Springfield Park, Shrewsbury Road, Market Drayton, Shropshire, TF9 3ET was incorrect.

The information that is listed below should not have been entered, and should be discarded from the original document.

- (1) 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.**

**MR W.J. Martin
Chairman**



Date: 18 NOV 2003

Rent Assessment Committee: Summary reasons for decision.
Rent Act 1977**Address of Premises**

The Cottage
Springfield Park
Shrewsbury Road
Market Drayton
Shropshire
TF9 3ET

The Committee members were

W.J. Martin
R.H.S. Cooper FRICS
N.Jukes

1. Background

On 21.07.03 the ~~landlord~~^{tenant} applied to the rent officer for registration of a fair rent of £ 350 per month 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 £ 250 per month

~~The rent was previously registered on with effect from/the same date at £ per 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 01.01.03 the rent officer registered a fair rent of £ 258 per month ~~including £ in respect of services/(variable)~~ with effect from ~~that date/.....~~

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

By a letter dated 10.9.03 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 18.11.03.....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 onin.....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 foron.....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 ~~SURREY~~ ^{SURREY & ADJOINING COUNTIES} OF ENGLAND & WALES. Having done so it concluded that such a likely market rent would be £225.. per ~~month~~ ^{month}.

~~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 £..... per..... 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 £..... per~~

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 £...27... ~~(£27,000)~~ from the market rent to reflect this element.

This leaves a net market rent for the subject property of
£ 258 per month /to which the sum of £ in respect of
~~services should be added.~~

6. Decision

The fair rent initially determined by the Committee, for the purposes of section 70,
was accordingly £ 258 per month ~~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 £
per /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 £ 258 per month /inclusive of services of
£ per will be registered/confirmed as the fair rent with effect
from 19.11.03 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

18.11.03

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/39UC/ F77/2003/0156

REASONS FOR DECISION

THE COTTAGE, SPRINGFIELD PARK, SHREWSBURY ROAD, MARKET DRAYTON, SHROPSHIRE, TF9 3ET

1. Background and Jurisdiction

This is a reference to a Rent Assessment Committee by the Landlord, Mr. L. Chhokar in response to a registration by the Rent Officer of a fair rent under the Rent Act, 1977 of £258 per month effective from the 1st. September, 2003. The Tenant is Mr. K. Taylor.

2. The Property

The dwelling consists of a detached bungalow constructed in about 1920 of part brick and part asbestos cladding within what is now a mobile home park. It is reasonably close to Market Drayton town centre.

The accommodation, which is in good condition, comprises a living room, kitchen, showeroom/wc and two bedrooms with a small private garden and a shed. The house is double glazed and has gas central heating.

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 has made various improvements over the last few years, namely the felt roof on one side was replaced 8 years ago at a cost of £2000, new upvc windows installed four years ago at a cost of £1400, the tiled roof waterproofed 3 years ago at a cost of £400, a new concrete shed and base constructed four years ago at cost of £800, gas central heating installed seven years ago at a cost of £900, new kitchen cabinets and worktops three months ago at a cost of £500 and water pipes currently being upgraded at a cost of £990 per home. With regard to this latter item the Landlord feels it is wrong that other residents on the park have to pay this cost, while Mr. Taylor is not being charged. Mr. Chhokar states that he is not a hawkish landlord, but in fairness the rent should be at least £70 per week to give him an incentive to maintain the property in good order.

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 took note of the fact that the bungalow is in good order and enjoys central heating and double glazing. It is an unusual property as it is of unconventional construction and is a fixed property within a mobile home park. However, there are good local amenities and it is reasonably close to the town centre. Despite the lack of any directly comparable market rents, the committee concluded that if offered for rent on the open market on an assured shorthold letting the property would achieve a rent of £285 per month. The Committee reached this conclusion using their general knowledge and experience of market rents in the wider local area of Shropshire and the adjoining counties of England and Wales, but not any special or secret knowledge.

From this figure the Committee are required to make adjustments for the disregards contained in the sub-sections to Section 70 of the Act. There are no such deductions for age and character as this is reflected in the market rent. They did not make any deductions in this case either for wants of repair and lack of standard amenities, as this property is in good condition with double glazing and central heating. They did not consider that the lack of curtains and carpets required any adjustment in this case as it would be readily lettable at the figure of £285 per month without them. Further, there are no tenant's improvements requiring a deduction under S.70 (1) of the Act.

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 wider local area referred to above 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.

It is sometimes asserted that scarcity cannot exist, because the market for assured lettings 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) for assured lettings 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 sector, as that sector 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 for various reasons including having a poor credit reference, because they are on housing benefit or because the prospective tenant is under 25 (because if such a tenant does need to claim housing benefit, it is paid at a lower rate).

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 of say 20% or more has been applied it is important to spell out the reasoning in terms that enable one to see that the correct approach has been adopted. Committees are also required to consider a large local area rather than a narrow area which might have a particular amenity demand.

In the present case the committee are satisfied on balance that in the wider locality of Shropshire and the adjoining counties of England and Wales there are substantially more persons genuinely seeking to become tenants of similar properties to the subject property than there are properties available if terms as to rent are excluded. They reached this conclusion having considered and weighed the various factors referred to above using their general knowledge and experience.

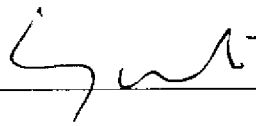
Having come to this conclusion it is necessary for the committee to quantify this scarcity so that they can apply an appropriate discount to the market rent of £285 per month. They accept that this scarcity, although substantial (which they take to be 5% or more) is not of a really large magnitude, but 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 £27 per month leaving a net rent of £258 per month.

CONCLUSION

The Committee therefore determined that the fair rent for the property is £258 per month. This rent is not affected by the Rent Acts (Maximum

Fair Rent) Order 1999 as there was not an existing registered fair rent at the time of the Landlord's application. Accordingly the rent of £258 per month will be confirmed as the fair rent with effect from the 18th. 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: Mark Deakin
Dated: 20 JAN 2004