

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

23 Middle Lane
Epsom
Surrey
KT17 1 DP

The Committee members were

Mr I R Mohabir
Mr R A Potter FRICS
Miss J Dalal

1. Background

On 11th June 2004 the landlord applied to the Rent Officer for registration of a fair rent of £1260.00 per calendar month for the above property.

The rent payable at the time of the application was £97.00 per week.

The rent was previously registered on 31st July 2002 with effect from the same date at £97.00 per week following a determination by the Rent Officer.

On 12th July 2004 the Rent Officer registered a fair rent of £108.00 per week with effect from 31st July 2004.

By a letter dated 21st July 2004, the landlord objected to the rent determined by the Rent Officer and the matter was referred to the Rent Assessment Committee.

2. Inspection

The Committee inspected the property on 15th October 2004 and found it to be in a poor condition externally, but modernized and well maintained by the tenant.

The following tenant's improvements had been made to the property.

- 1) Installation of central heating.
- 2) Refurbished kitchen.

- 6) Installation of shower.
- 7) Tiling to bathroom.

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| 3) Gas supply and gas fire to living room. | 8) Replacement of dining room window. |
| 4) Internal doors to first floor. | 9) Additional power points. |
| 5) Fitted wardrobes. | 10) Car standing to front of property. |

3. Evidence

A hearing was held on 15th October 2004 in Bourne Hall at which oral representations were made by the tenant. The landlord was not present or represented.

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 Committee's own general knowledge of market rent levels in the area of Epsom. Having done so it concluded that such a likely market rent would be £170.00 per week.

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 £170.00 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 £68.00 per week to include the tenant's improvements.

The Committee did not consider that there was any substantial scarcity element and accordingly no further deduction was made for scarcity.

This leaves a net market rent for the subject property of £102.00 per week.

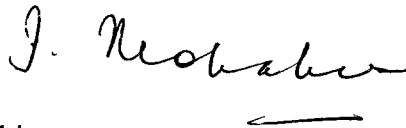
6. Decision

The fair rent initially determined by the Committee, for the purposes of section 70, was accordingly £102.00 per week.

The section 70 fair rent determined by the Committee is below 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.

Accordingly the sum of £102.00 per week will be registered as the fair rent with effect from 15th October 2004, being the date of the Committee's decision.

Signed



Mr I R Mohabir
Chairman

Dated 15th October 2004

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.

IN THE SOUTHERN RENT ASSESSMENT COMMITTEE

CHI/43UC/F77/2004/0148

PROPERTY: 23 MIDDLE LANE, EPSOM, SURREY, KT17 1DP

BETWEEN:

MRS M IVERMEE

Tenant

-and-

BICKENHALL ENGINEERING COMPANY LIMITED

Landlord

THE COMMITTEE'S REASONS

1. BACKGROUND

- 1.1 On 11 June 2004 the landlord, Bickenhall Engineering Company Limited, applied to a rent officer for the registration of a fair rent of £1,260 per calendar month for the subject property, which is held on a regulated tenancy.
- 1.2 The rent was previously registered on 31 July 2002 with effect from that date at £97 per week following a determination by a rent officer.

1.3 On 12 July 2004, a rent officer registered a fair rent of £108 per week exclusive of council tax and water rates.

1.4 By a letter dated 21 July 2004 the landlord objected to the rent determined by the rent officer and the matter was referred to a Rent Assessment Committee.

2. INSPECTION

2.1 The Committee inspected the property on 15 October 2004.

2.2 The property was a semi-detached house c.1850 comprising two rooms, a kitchen, a bathroom/WC on the ground floor and two bedrooms on the first floor. There was direct access into the front living room. Parking space for two cars had been created by the tenant. The rear extension artificial slate roof covering had been replaced with a tiled roof. The replaced timber windows were in poor condition with extensive rot to the exterior timberwork. Penetrating dampness was noted to the flank wall.

2.3 Internally, the tenant's improvements included gas central heating, a refurbished kitchen, additional power points, replacement dining room window, some replastering, fitted cupboards, shower and tiling to the bathroom.

3. LAW

3.1 The Committee is required to determine the fair rent in this referral in accordance with the statutory provisions of section 70 of the Rent Act 1977 ('the Act'). This provides that:

(1) In determining, for the purposes of this Part of this Act, what rent is or would be a fair rent under a regulated tenancy of a dwelling house, regard shall be had to all the circumstances (other than personal circumstances) and in particular to-

(a) that age, character, locality and state of repair of the dwelling house, and

(b) if any furniture is provided for use under the tenancy, the quantity, quality and condition of the furniture.

(2) For the purposes of the determination it shall be assumed that the number of persons seeking to become tenants of similar dwelling houses in the locality on the terms (other than those relating to rent) of the regulated tenancy is not substantially greater than the number of such dwelling houses in the locality which are available for letting on such terms.

Any determination by a Rent Assessment Committee is subject to the statutory disregards set out in section 70 (3). Thereafter, the provisions of the Rent Acts (Maximum Fair Rent) Order 1999 have to be considered.

3.2 Judicial interpretation and guidance regarding the application of section 70 of the Rent Act 1977 has been given in the cases of Spath Holme Ltd v Chairman of the Greater Manchester Committee (1995) 28 HLR 107 and Curtis v London Rent Assessment Committee (1999) QB 92. In those cases 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 differences between those comparables and the subject property).

4. DETERMINATION

4.1 The hearing in this matter took place on 15 October 2004. The tenant, Mrs Ivermee, appeared in person. The landlord did not appear nor was it represented.

4.2 Mrs Ivermee's evidence was taken very shortly. She stated that she was generally happy with the Rent Officer's determination. When asked by the Committee why she had requested a hearing, she said that she wanted to voice the concerns about the subject property she had set out in her letter to the Rent Officer dated stamped 28 June 2004. She wanted the Committee to note in particular the improvements she had made to the subject property and the fact that despite the landlord being on notice as to the outstanding external disrepairs, nothing had been done to effect those repairs. When asked by the Committee what she considered the appropriate market rent for the subject property was, she stated that one of the terraced houses opposite, a larger and more modern property, had recently been let at a rent of £800 per calendar month. However, she qualified this by saying that the property had been completely refurbished and had the benefit of carpets, curtains, central heating, white goods and was in good repair generally. She also stated that there was difficulty in renting properties in the area. No comparable evidence of market rents for the subject property had been provided by the landlord. Indeed, no evidence at all had been adduced by the landlord.

4.3 The Committee firstly considered the open market rent for the subject property. The only comparable evidence of market rents in the locality before the Committee was the anecdotal evidence from Mrs Ivermee that one of the properties opposite had recently been let for £800 per calendar

month. The Committee, therefore, had to rely on its own expert knowledge and experience in determining the market rent. The Committee determined that if the subject property were fully modernised and let on an assured shorthold tenancy, it would achieve an open market rent of £750 per calendar month or £170 per week. However, upon inspection, and based on the evidence the Committee did not find the subject property had originally been let in such a condition. Relevant considerations included the absence of white goods, carpets, curtains, no central heating, poor external condition of the windows generally, broken glazing to the rear bedroom window, that the tenant had an internal decorating obligation, an unmodernised kitchen and bathroom and the presence of extensive damp to the flank wall of the lounge and dining room. The Committee took the view that this warranted a reduction of 25% or £42.50 per week giving an adjusted market rent of £127.50 per week.

- 4.4 The Committee also had to consider the issue of whether the improvements in which claimed by the tenant amounted to an improvement with the meaning of 70(3)(b) of the Act and whether these should be disregarded when determining the appropriate market rent. The significant improvements claimed by the tenant were the complete refurbishment of the kitchen, the installation of two gas heaters, a shower unit, central heating, electrical power points and the replacement of the dining room window and front door. These improvements were noted by

the Committee when it inspected the subject property and were not contested by the landlord. There was no evidence of disrepair or defect attributable to a failure by the tenant to comply with the terms of the tenancy. The Committee, therefore, found that the improvements noted were attributable to the tenant came within section 70(3)(b) and should be further disregarded when determining the fair rent. The Committee was of the view that the improvements in total amounted to 15% of the market rent determined above in the sum of £25.50 per week. The total deductions, therefore, amounted to 40% of the market rent or £68 per week giving an adjusted fair rent of £102 per week.

4.5 The Committee then considered the issue of scarcity. Again, there was a paucity of evidence from the parties. The only informal evidence on this matter came from Mrs Ivermee. She stated that there were a great deal of properties in the locality available to rent. The Committee, relying on its own expert knowledge and experience, concurred with Mrs Ivermee and found that there was no significant scarcity and no further deduction should be made from the fair rent.

4.6 The Committee then considered whether the fair rent to be registered was limited by the Rent Acts (Maximum Fair Rent) Order 1999 ("the Order") as this application concerned an existing registration of a fair rent. By operation of the Order, the "capped" rent at the time of the hearing was

£108.50 per week. However, the Committee had determined the fair rent at £102 per week, which was below the capped rent and therefore the Order did not apply in this instance. Accordingly, the fair rent determined by the Committee for the subject property is £102 per week.

CHAIRMAN.....*J. Monahan*.....

DATE.....*5/1/05*.....