

SOUTHERN RENT ASSESSMENT PANEL & TRIBUNAL

Statement of Reasons
for the Decision by a Committee of the Panel upon an
Inspection and Hearing Carried out on
Thursday 25 September 2003

RENT ASSESSMENT COMMITTEE
Mr Michael R Horton FRICS (Chairman)
Mr P Turner-Powell FRICS
Mr D Wills

<i>Reference</i>	<i>Address</i>	<i>Tenant</i>	<i>Landlord</i>
CH1/24UB/ F77/2003/0168	28 Fielden Court Swan Street Kingsclere Nr Newbury	Mrs M Clarke	James Butcher Housing Association Limited

Summary

- 1.1 This was an objection by the Tenant against the registration by the Rent Officer, made on an application by the tenant dated 14 April 2003, of a Fair Rent for the property of £79.50 per week (inclusive of service charge of £12.91) registered on, and effective from, 17 July 2003. The tenant had requested a fair rent of £63.21 per week including service charge to be registered. This rent had been subject to the *capping* legislation referred to below and the uncapped fair rent noted by the Rent Officer was £80.00 per week

The previous Fair Rent, registered on 6 April 2001, and effective from that date, was £72.00 per week and was assessed by a Rent Assessment Committee.

- 1.2 The Tenant had requested a Hearing and both the Landlord and the Tenant had submitted written representations, although the landlord had advised they would not be represented at the Hearing

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 (1) 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. (Section 75 (1)).
- 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 Thursday 25 September 2003 the Committee, in the presence of the Tenant and a neighbour, Mr Hayden, inspected the property.
- 3.2 The Committee found the property to comprise a single storey terraced bungalow with mainly brick elevations and tiled roofs. The bungalow forms part of a sheltered housing development comprising a mix of bungalows and apartments which we believe to have been constructed about 1983.

The complex also incorporates wardens accommodation, a meeting room with kitchen and toilet and laundry room with coin operated washing machine and dryer.

The grounds and landscaped areas are attractively arranged and the location itself is convenient to the village centre. Parking facilities are limited.

- 3.3 Accommodation is as follows:- *Entrance Hall* with cupboard and night storage heater. *Living Room* with night storage heater and casement door to garden. *Bedroom* (at present used as a study or office) with night storage heater. *Kitchen* with linen cupboard fitted with hot water cylinder and immersion heater. Range of fitted units to which these reasons will refer later. *Bathroom/Wc* with enclosed bath, wash handbasin, low flush wc and wall mounted electric fan heater

It is classified as a two person unit.

- 3.4 The Committee noted the generally satisfactory state of repair of the bungalow, grounds and communal facilities but also the fact that the property lacked some of the amenities which would be incorporated were the building being constructed under more recent regulations.

In this respect the Committee noted the lack of mechanical ventilation to the kitchen and bathroom, the basic type of central heating and the draughty single glazed timber casement windows. While draught excluder had been fitted to the window frames this generally was in poor condition.

The Committee particularly noted a high level of moisture beneath the hot water cylinder but whether this was an actual leak or condensation they were unable to determine, although they did note the washing machine beneath.

The Committee noted the fire alarm had been disconnected and Mrs Clarke explained she had done this as it was too sensitive. She had apparently fitted an alternative arrangement

- 3.5 The Committee recorded the following significant tenant's improvements:-
1. New fitted kitchen units replacing those originally provided by the landlord which had been in poor condition.
 2. Extensive wall tiling in the kitchen and bathroom.

The Hearing & Representations

- 4.1 Prior to the arrival of the Committee Mrs Clarke had prepared a pro-forma document which she requested members of the Committee sign. The Chairman explained they were in no position to sign such a document but that all correspondence, representations and other documents provided to the Committee prior to the Hearing along with those made or submitted at the hearing would be carefully considered by the Committee in coming to their decision.

In view of the fact that the landlord had confirmed they would not be attending the Hearing and to save the tenant travelling to the prearranged venue in Basingstoke it was acceptable to Mrs Clarke that the Hearing be held at the property.

- 4.2 The Chairman opened the Hearing by referring to earlier requests from Mrs Clarke, which he had rejected, that the inspection and hearing be deferred until the outcome of

Court proceedings which, it is understood, have been instigated by Mrs Clarke against the landlord, are known.

The Chairman explained that on considering the information supplied there seemed no likelihood that the outcome of the court action would affect the basis on which the Committee were required to determine a fair rent under the provisions of the Rent Act 1977 and, in particular, section 70.

Further, that if any evidence came to light at the hearing, making adjournment desirable, such decision could more appropriately be taken at that time.

- 4.3 In view of the content of correspondence received prior to the hearing alleging neglect, poor management and other shortcomings by the landlord and the fact that Mrs Clarke's concerns had not been properly addressed by the Rent Officer, or a previous Rent Assessment Committee, the Chairman pointed out that the Committee had no powers which they might use, or impose, to require the landlord to carry out certain functions or works, although where there are current defects these would be reflected in the rent the Committee would determine.

The Chairman explained to those present the procedural arrangements, the basis on which a Fair Rent is fixed and the basis on which it may have to be capped under the provisions of the Rent Acts (Maximum Fair Rent) Order 1999.

He also explained that the content of much of the documentation which had been submitted prior to the hearing appeared to relate to matters which were beyond the jurisdiction of this Committee and that there might be other forums where these could be aired and resolved.

He explained that the Committee were required to determine a Fair Rent on the basis of the condition of the property today and not what it might have been at some stage in the past or might be at some time in the future.

Nevertheless the Committee had to establish the extent of tenants improvements in order that they were disregarded in accordance with section 70(3)(b) of the Act.

- 4.4 In order to assist Mrs Clarke in establishing the necessary facts the Committee requested confirmation of a number of points:
- i. It was noted that in coming to their decision at the previous registration the Committee had made an allowance for the tenants internal decorating obligation while the Rent Officer had not made a similar allowance on this occasion.
- Mrs Clarke confirmed that the landlord was responsible for internal redecoration and this was further confirmed by an inspection of the original tenancy agreement.
- ii. It was noted that neither the Rent Officer or the previous Rent Assessment Committee had regarded the service charge as being variable, although the tenancy agreement provided for such an arrangement.

From the information provided by Mrs Clarke it became apparent that the Landlord now applied a global fixed rent, inclusive of a fixed service charge, and this was confirmed in the Rent Officer's *Valuation Notes* dated 17 July 2003.

- 4.5 The main thrust of Mrs Clarke's verbal and written representations was the poor level of management of the complex, the delay in carrying out essential repairs when required and the general lack of consideration.

There had been a major failure to carry out repairs and improvements to the kitchen and as a result she had expended some £2,539.44 in refitting with new units.

- 4.6 **On behalf of James Butcher Housing Association** Ms Julie Clark, finance operations manager, submitted a short representation which stated the Association was in agreement with the rent that had been registered and the rent currently being charged is lower than the previous registered fair rent and is kept in line with equivalent assured units.

Ms Clark further stated it was not the intention of the Association to immediately implement the new registered rent.

- 4.7 The Committee has not set out in full the representations of the parties many of which were repeated on numerous occasions in a lengthy series of correspondence. Most were not substantively material to the matter under consideration.

The members of the Committee did, however, consider all the correspondence and representations which had been copied to the parties and, where appropriate, these have been reflected in the decision.

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.
- 5.2 At the time of the inspection the committee found the property to be in a generally satisfactory condition albeit that internal decorations were at a stage where they would benefit from renewal.

Nevertheless the property did not benefit from some of the amenities which those of more recent construction would enjoy and this particularly applied to the windows and central heating.

The position regarding kitchen fittings is well documented in the case papers and the last Committee noted those supplied by the landlord as being *dated*. Prior to this registration they had been renewed by the tenant. The rent which might otherwise have been determined has to be reduced accordingly.

The windows are also somewhat substandard and again suitable allowance has to be made.

Generally the communal facilities are adequate and generally well presented.

Although parking spaces are limited they are probably no fewer than are provided at most sheltered type projects due to the planning principle that more limited parking facilities are acceptable in such schemes due to the age of the occupiers.

- 5.3 Turning to the matter of rental value the Committee from its experience did not consider the level of rental adopted by the last Committee of £110.00 per week to have significantly changed and any increase they might have adopted as a starting point has been offset by the natural ageing process of the flat itself.

However, at this figure a tenant taking an assured shorthold tenancy for an initial term of six to twelve months would expect the property to be in sound condition with modern amenities including full central heating, satisfactory windows, modern kitchen and bathroom and furnishings comprising at the least carpets, curtains and a cooker.

To allow for these differences it is necessary for the Committee to make an adjustment to the base rent adopted.

- 5.4 The committee noted that the decision of the Committee at the last registration made a deduction for a tenants repairing liability in respect of an assumed tenants internal decorating liability.

It was apparent from the evidence provided at the hearing and from an inspection of the tenancy agreement that the landlord undertakes this work on something like a five year cycle.

The Committee make no deduction on this occasion although the condition of the decorations has been reflected in the rent that the Committee consider could be reasonably obtained from a tenant in the open market.

- 5.5 Following case law the Committee found no grounds for making an allowance for voids and management. They did not consider most landlords letting property on assured shorthold tenancies would feature this factor in setting the rent and evidence is rare that landlords reduce the rent to secure a longer letting term.

- 5.6 The Committee considered the matter of the service charge element contained in the overall rent. This comprised an amount £12.91 per week.

The Committee do not consider this to be an unrealistic figure for a property of this type, having due regard to the size of the complex, the nature of the grounds and facilities provided.

Although the tenancy agreement allows for a variable service charge it seems, on the evidence, that a fixed charge is now accepted. This is endorsed by the fact that the landlord's representation stated...*We are in agreement with the rent that has been registered....*

- 5.7 In considering whether or not to make a deduction for scarcity under the provisions of section 70(2) of the Act the Committee, following legal precedent, are required to consider the concept of scarcity over a broad area.

The Committee considered this in the context of an area which covered the area extending through Basingstoke, Newbury and areas south of the M4 down towards Winchester.

In the opinion of this Committee although there is no longer the substantial shortage of many types of rented accommodation in this area envisaged by section 70(2) of the Act such scarcity remains for the type of property under consideration. They concluded an appropriate allowance for this factor would be £8.00 per week.

- 5.8 The Committee arrived at the following rental valuation:-

<u>Open market rental value</u>	£110.00
<u>Less for adjustments</u>	
No white goods, carpets and curtains	6.00
Very basic heating system	3.50
Basic kitchen and bathroom (allowing for tenants improvements)	5.00
Condition of windows, other obsolescence and minor disrepair	6.00
	<u>£20.50</u>
Market Rent	£89.50 per week
Less allowance for substantial scarcity (section 70(2))	<u>£8.00</u>
Fair Rent	£81.50 per week (inclusive of service charge of £12.91 per week)

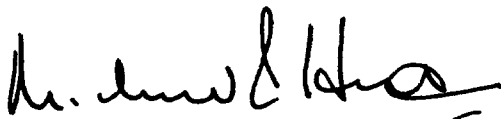
- 5.9 The rental value arrived at by the Committee is higher than the amount of £79.50, which is the maximum that can be registered under the provisions of “the Capping Order”, and with no evidence of works having been carried out by the landlord which would have improved the previous registered rent by at least 15% the capped rent will be the registered fair rent.

Decision

- 6.1 The Rent Assessment Committee determine the Fair Rent of **28 Fielden Court, Swan Street, Kingsclere at £79.50 per week (inclusive of fixed service charge of £12.91 per week)** being the maximum rent they are permitted to fix under the provisions of “the Capping Order”

The uncapped Fair Rent is £81.50 per week (inclusive of fixed service charge of £12.91 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 Thursday 25 September 2003 which becomes the effective date of the registration.



MICHAEL R HORTON
(Chairman)

24 September 2003