



**FIRST - TIER TRIBUNAL  
PROPERTY CHAMBER  
RESIDENTIAL PROPERTY)**

**Case Reference** : **CAM/00MB/F77/2021/0036**

**Property** : **3 Porchester Farm Cottages, Crux Easton,  
Newbury, Berkshire RG20 9QE**

**Applicant (Tenant)** : **Mrs Sandra Stokes**

**Respondent (Landlord):  
Representative** : **The Trustees of the Carnarvon Farmland Trust  
Savills UK**

**Type of Application** : **Determination of a fair rent under section  
70 of the Rent Act 1977**

**Tribunal Members** : **Judge JR Morris  
Mrs M Wilcox BSc MRICS**

**Date of Decision** : **7<sup>th</sup> February 2022**

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**DECISION**

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**DECISION**

1. The Fair Rent for the Property is determined to be £720.00 per calendar month as from 7<sup>th</sup> February 2022 which is a first registration of rent and so is exempt from being capped under the Rent Acts (Maximum Fair Rent) Order 1999.

**REASONS**

**INTRODUCTION**

2. On 16<sup>th</sup> November 2021 the Tenant objected to the rent registered by the Rent Officer for the Property and the matter was referred to the Tribunal. Directions dated 26<sup>th</sup> November 2021 were issued informing the parties that the Tribunal did not intend to inspect the Property internally although it may use internet mapping and may make an external inspection or hold an oral hearing unless a request was made by 17<sup>th</sup> December 2021. The Tenant requested a hearing and inspection. The Tenant provided written representations and both parties completed the Reply Form attached to the Directions mentioned above together with brief comments.

## THE PROPERTY

3. The Property is a two-storey semi-detached house with brick elevations under a clay tile roof probably constructed in the 1950s. Originally all the windows were single glazed with Crittal style frames, although six of the eleven windows have been replaced with double glazed units in upvc frames. The rainwater goods are probably asbestos cement. There are gardens to front and rear with a garden shed, dog kennels and garage constructed by the Tenant. There is off-road parking.

### Accommodation

4. The Property comprises on the ground floor a sitting room [15' x 12' (5 x 4m)], dining room [12' x 12' (4 x 4m)], kitchen [9' x 6' (3 x 2m)], utility room [9' x 6' (3 x 2m)], w.c. without wash hand basin and bathroom with wash hand basin and w.c. [9' x 6' (3 x 2m)]. On the first floor there are three bedrooms [13' x 12' (4 x 4m); 11' x 12' (4 x 4m); 10' x 10' (3 x 3m)] (Measurements are rounded and approximate).

### Services

5. Space and water heating is by an oil-fired combination central heating system. The Property has mains electricity and water. Drainage is by shared septic tank/cess pit. Cooking is by Calor gas.

### Furnishing

6. The Property is let unfurnished. Carpets, curtains and white goods are not provided except for a carpet that the landlord has replaced due to the installation of the new central heating system.

### Location

7. The Property is situated in a rural location about 8 miles from Newbury and 10 miles from Andover where there is a range of shopping and other facilities.

## CONDITION

8. The Property was inspected by the Tribunal on 7<sup>th</sup> February 2022. The Tribunal and the parties carried out a risk assessment prior to the inspection.
9. Externally overall the Property is in fair condition. The timber surrounds of the frames of the windows that have not been replaced are in poor condition and the metal frames themselves are a poor conductor of heat. The roof has had some repairs and is quite mossy but is in fair condition. There is new fencing to one side of the garden installed by the Landlord.
10. Internally, the kitchen is small and but for the Tenant's improvements would be basic and dated. The bathroom is serviceable but relatively dated. The shower over the bath was installed by the Tenant. There is a good quantity of cupboard space.
11. It was noted that historically the Tenant has been responsible for internal decoration. The carpet in the dining room was fitted by the Landlord. All the other carpets were fitted by the Tenant. White goods are not provided.

## THE TENANCY

12. From the Tenant's representations and the Agricultural Tenancy Questionnaire provided dated 14<sup>th</sup> September 2021 it appears the Tenant had lived in the Property with her husband since 25<sup>th</sup> June 1966. Her husband occupied the Property by reason of his employment as an agricultural worker without payment of rent. Prior to the enactment of the Rent (Agriculture) Act 1976 ("the 1976 Act") agricultural workers had very little protection from eviction. The 1976 Act sought to remedy this by providing agricultural workers with much the same protection as was afforded by the Rent Acts of that time and which is now contained in the Rent Act 1977. To benefit from that protection the worker had to satisfy the criteria set out in Section 2 of the 1976 Act. This states that where a person is a "qualifying worker" as defined in Part 1 of Schedule 3 of the 1976 Act and holds a dwelling house under a "relevant licence or tenancy" as defined in Schedule 2 of the 1976 Act he will be a "protected occupier" notwithstanding that no rent is payable. The Rent Act 1977 is not effective in these cases because it does not apply to tenancies at a low or no rent. Details as to the definitions of "qualifying worker", "relevant licence or tenancy", and "protected to occupier" are not given here as it was agreed between the parties that the Tenant's husband was a "protected occupier".
13. The Tenant's husband's full-time employment ceased on 30<sup>th</sup> September 2008 on which date he ceased to be a "protected occupier" and occupied the Property as a "statutory tenant" under section 4(1) of the 1976 Act. When the Tenant's husband died in August 2014, under section 4(3) of the 1976 Act, the Tenant, as a surviving partner who was residing in the dwelling house immediately before the original occupier's death, became a statutory tenant by succession and shall remain so if and so long as she occupies the dwelling house as her residence. Again, this appears to be agreed by the parties.
14. At the hearing there was some discussion as to whether the Tenant's husband was still a "qualifying worker" and so a "protected occupier" after 30<sup>th</sup> September 2008 as he continued to work for the Estate. The Tribunal found that, if he were, it did not affect the current situation but it appeared that notwithstanding the number of hours he worked he was not a full-time employee of the Estate.
15. Under section 11(1) of the 1976 Act the landlord and the statutory tenant may by agreement fix the rent payable or may agree that no rent shall be payable. Under section 11(2) an agreement may be made at any time, including when a rent is registered for the dwelling-house although the rent under the agreement must not exceed the amount of the registered rent. Under section 11(6) and (7), unless the contrary intention appears from the agreement, it shall be terminable by the landlord or the tenant by notice in writing served on the other. The notice shall specify the date from which the agreement is terminated, which shall be not earlier than four weeks after service of the notice. The 1976 Act specifies that the notice of termination must be in writing but does not specify the form of the rent agreement.
16. Following termination of any agreement a notice of increase of rent may then be served under section 12 or 14 of the 1976 Act. Under section 13 of the 1976 Act an application may be made to register a rent, which the Landlord has done and the Landlord's application is the subject of these proceedings.

17. There appears to be a dispute between the parties with regard to whether there was an agreement under section 11(1) of the 1976 Act that no rent shall be payable under the statutory tenancy and whether or not under section 11(6) there was an intention that it shall not be terminable.
18. The Tenant stated in her written representations that she had never been asked to pay rent until now. She said that following her husband's death she was visited by Lord and Lady Carnavon and was informed that she could remain in the Property rent free until her death. This assurance was repeated by the then Estate Manager, Mr James Phillips who stated that she would be able to remain in the Property rent free for the remainder of her days.
19. The Tribunal has no jurisdiction to determine whether or not there was an agreement or if there was whether or not it was terminable, or whether or not it has been terminated.
20. The Tribunal's only jurisdiction is to determine a rent to be registered under the Rent Act 1977. Such determination is separate from any decision regarding the existence and terms of a rent agreement under section 11 of the 1976 Act, which is a matter for the County Court if the parties cannot reach a settlement.
21. Under section 13 of the 1976 Act a Tribunal may determine a rent to be registered in much the same manner as it would under the Rent Act 1977 irrespective of any agreed rent under section 11 of the 1976 Act. The registered rent does not displace the agreement to pay a rent or no rent except that under section 12(8) of the 1976 Act, if an agreed rent is higher than the registered rent the amount by which the agreed rent exceeds the registered rent shall be irrecoverable.
22. The Tenant referred in her representations to comments that had been made to her which led her to believe that her son, Mr Terry Stokes, may have succeeded to the statutory tenancy rather than her. After some discussion at the hearing the Tribunal found that the tenancy passes to the Tenant, as the original occupier's spouse, and not to her son. Section 4(3) of the 1976 Act states that "where the original occupier died leaving a surviving partner who was residing in the dwelling house" ... "the surviving partner shall be the statutory tenant". Under section 4(4), the ability of another member of the original occupier's family succeeding to the tenancy only applies "where the original occupier was not a person who died leaving a surviving partner who was residing in the dwelling house immediately before the original occupier's death".
23. There was nothing said by either party to suggest that the Tenant had surrendered her tenancy and that her son had been granted a new tenancy in 2008 which would come under the Housing Act 1988. The Landlord's Agent confirmed that so far as their records showed Mrs Stokes, the Tenant, was the statutory tenant by succession.
24. The Tribunal explained the above to the parties at the hearing and advised the Tenant to obtain legal advice about the oral agreement she said was made and its validity. The Landlord's Agent said they had received legal advice to ensure they were acting lawfully and would continue to obtain and act on such advice.

## **THE REFERRAL**

25. The Landlord by a notice in the prescribed form received by the Rent Officer on 25<sup>th</sup> November 2021 proposed a new rent of £720.00 per calendar month. On 20<sup>th</sup> October 2021 the Rent Officer registered a rent effective from that date of £735.00 per calendar month, which was an uncapped rent because as a first registration the rent is exempt from the provisions of the Rent Acts (Maximum Fair Rent) Order 1999. On 16<sup>th</sup> November 2021 the Tenant referred the Rent Officer's assessment to the Tribunal. The referral was by way of written representations and a hearing held on 7<sup>th</sup> February 2022.

## **THE LAW**

26. The relevant Law relating to these reasons is contained in section 13 of the Rent (Agriculture) Act 1976 and section 70 of the Rent Act 1977.

## **REPRESENTATIONS**

### ***Tenant's Written Representations***

27. The Tenant made written representations regarding a rent agreement which are referred to above. With regard to the amount of the rent to be registered the Tenant made the following representations:
- She said that throughout the Tenancy she and her husband had carried out and paid for all the internal decorations. This included filling a large gap around the living room ceiling.
  - She said that originally the Property only had a butler sink in the kitchen therefore she and her husband had installed a kitchen when they moved in.
  - The Landlord had installed an oil-fired central heating system in 2021, rewired the Property and replaced 6 of the 11 timber windows with double glazed units in upvc frames.
28. In addition, the Tenant said that she appreciated the Landlord's Highclere Estate is a business, however, the registered rent of £735.00 per calendar month assessed by the Rent Officer would be a considerable drain on her finances. She said she felt aggrieved as she had kept the Property to a high standard and was being penalised for doing so. She thought that the reason for the high rent was to cover the Landlord's costs of installing an expensive heating system.
29. She said that she had recently suffered a heart attack and had found these proceedings very stressful.

### ***Landlord's Written Representations***

30. The Landlord's Agent made written representations which are summarised as follows:
- The Landlord has replaced the solid fuel Rayburn by oil fired central heating system costing £11,564.34.
  - New carpet has been laid and fitted cupboards installed.
  - The emptying of the shared septic tank is paid for by the Landlord

- New consumer unit fitted in 2019
- Plumbing works including replacement of taps.
- Gas safety check on Tenant's Calor gas cooker paid for by Landlord.

31. The Landlord's Agent said that the Landlord had offered to step the registered rent by charging £500.00 per calendar month for one year and the increasing the rent to the full registered fair rent thereafter.

## **HEARING**

32. A domiciliary hearing was held after the inspection of the property on 7<sup>th</sup> February 2022 which was attended by the Tenant, Mrs Stokes, and her son Mr Brian Stokes and Ms Gemma Chandler and Mr James Hunter for the Landlord's Agent.

### ***Tenant's Oral Representations***

33. At the hearing the matters raised in the written representations regarding the Tenancy were discussed and the Tribunal's jurisdiction was explained as recorded in the above section headed "Tenancy".

34. The Tenant assisted by her son confirmed the points made in her written statement. She added that it had taken a long time to have the new central heating system installed and the house had been very cold during that period. Mr Brian Stokes said that his mother and father had worked hard to maintain the house over the years. He said, internally, they were now on their third kitchen and had decorated throughout numerous times and continued to do so. He said that, externally, his father had always maintained the property from replacing washers to fixing guttering and tiles.

35. The Tribunal explained the basis on which the registered rent was assessed as set out below.

36. Mr Brian Stokes said that it seemed very unfair that a rent should be set based on market rents set by private landlords for properties in towns and villages without reference to the very particular circumstances of houses let and occupied by agricultural workers, who were on a low wage, and their dependants. He said that his father had loved his job and worked for the Estate all his life. Living in the house meant he was always on hand whenever he was needed and looking after the house was all part of it. His mother would have to spend her savings to find the registered rent if charged and would not be able to receive any assistance until she had done so. He found it very upsetting.

### ***Landlord's Oral Representations***

37. The Landlord's Agents confirmed that it was their understanding that the Tenant was the statutory tenant under the 1976 Act as stated above. They noted what had been said regarding the alleged rent agreement and would take legal advice as they had done previously.

38. It was accepted that historically, the Tenant had replaced the kitchen and put up the kennels, garden shed and garage.

39. In answer to the Tribunal's questions both parties agreed that the Property was not served by public transport.

## **ASSESSMENT OF A FAIR RENT**

40. The Tribunal assessed the rent for the Property pursuant to section 70(1) Rent Act 1977 (having regard in particular to the age, character, locality, state of repair of the property and all the circumstances other than personal circumstances). The Tribunal took account of the relevant cases and legislation including *Spatha Holme Ltd v Greater Manchester Rent Assessment Committee* (1996) 28 HLR 107, *Curtis v The London Rent Assessment Committee* [1997] 4 All ER 842 and *BTE Ltd v Merseyside and Cheshire Rent Assessment Committee* 24<sup>th</sup> May 1991.
41. The Tribunal, like the Rent Officer, is required under the legislation and case law to assess a rent for the Property by reference to comparable properties in the open market taking into account the matters referred to above. It then considers whether or not a deduction for scarcity should be made, which varies depending on the market within a locality from time to time.
42. The Tribunal is not able to take the personal circumstances of either party into account. The Tribunal is not insensitive to the feelings of the Tenant and her family but must assess a rent in accordance with the law. Therefore, in this case it cannot take into account the financial circumstances of the Tenant or her health or the stress that the proceedings are causing her. It also cannot take into account the motivation for the Landlord demanding a rent or seeking an increase in the rent.
43. The Tribunal assesses a rent based upon the condition of the Property at the time of the determination. It cannot take into account the period of time which a property might have been in disrepair prior to work being carried out by the Landlord. Equally it cannot take into account work that is said to be intended or scheduled to take place in the future.
44. A new central heating system had been installed and the cost had been referred to. However, the Tribunal consider a facility such as space heating in terms of its rental value not its capital cost. Following the removal of the old Rayburn as part of the installation of the central heating system, the dining room fireplace needs to be made good.
45. Neither party provided rental values of comparable properties. The Tribunal therefore used the knowledge and experience of its members. The Tribunal firstly determines a market rent for a property by reference to rental values generally and to the rental values for comparable properties in the locality in particular. It then adjusts these to take account of the condition of the Property compared with that of comparable properties.
46. The Tribunal found that comparable properties of similar age and character that had recently been let were in the range of £1,350.00 to £850.00 per calendar month. They all are in good condition, fully double glazed, with central heating, modern kitchen and bathroom (including a shower) are let with floor coverings (some also have blinds/shutters) and white goods and off-road parking. Those at the upper end have additional features such as a study, downstairs cloakroom or ensuite. A number of landlords now take on the responsibility of decoration, often to preserve neutral colours.

47. The Tribunal was of the opinion that the Property would be at the lower end with its ground floor bathroom. The shed and garage are disregarded as tenant's improvements and the absence of these would detract from the Property's rental value. The rural location would be attractive to some prospective tenants and not others, although nearly all tenants would seek the presence of public transport links where basic amenities are not in the proximity and this would have a detrimental effect on the rent. The Tribunal was of the opinion that if the Property was in the same condition with the same facilities as the comparable properties it would achieve a rent of £1,000.00 per calendar month.
48. There is a new central heating system and 6 new double-glazed windows. However, the Property is not in the same condition with the same facilities as other properties which are comparable. The Tribunal therefore made a global deduction £280.00 per calendar month. This takes account of what would be a dated and basic kitchen but for the Tenant's improvements, the basic bathroom (particularly the lack of shower except as provided by the Tenant), the lack of floorcoverings being provided (the dining room carpet excepted), curtains and white goods and the poor condition of the 5 single glazed windows.
49. It should be noted that this figure cannot be a simple arithmetical calculation and is not based specifically upon capital cost but is the Tribunal's estimate of the amount by which the rent would have to be reduced to attract a tenant.

## SCARCITY

50. Assessing a scarcity percentage cannot be a precise arithmetical calculation because there is no way of knowing either the exact number of people looking for properties similar to the subject property in the private sector or the exact number of such properties available. It can only be a judgement based on the years of experience of members of the Tribunal together with a consideration of the properties advertised as being to let as at the time of the assessment.
51. That experience and consideration leads the Tribunal to the view that at the time of the determination demand for "... similar dwelling houses in the locality..." that are available for letting was not *significantly* greater than supply. "Locality" in this case being West Berkshire and North West Hampshire. Therefore, no deduction was made to take account of scarcity.

## TRIBUNAL'S CALCULATIONS

52.	Open Market Rent:	£1,000.00 per calendar month
	Less global deduction	<u>£280.00</u>
	Fair Rent	£720.00

53. The provisions of the Rent Acts (Maximum Fair Rent) Order 1999 do not apply as this is a first registration. The Fair Rent is the maximum that the Landlord can charge although a lower rent may be charged.

**FAIR RENT = £720.00 per calendar month as from 7<sup>th</sup> February 2022.**

**Judge JR Morris**



## **ANNEX - RIGHTS OF APPEAL**

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e., give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.