



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

Case Reference : **CHI/00ML/F77/2018/0066**

Property : **Flat 111, Eaton Manor, The Drive, Hove
BN3 3QD**

Landlord : **Eaton Manor Hove Ltd.**

Represented by : **Allsop Letting and Management**

Tenant : **Mrs. H. Labelter**

Type of Application : **Rent Act 1977 (“the Act”) Determination
by a First Tier Tribunal of the fair rent
of a property following an objection to
the rent registered by the Rent Officer.**

Tribunal Members : **Mr. R.A. Wilkey FRICS (Chairman)
Mr. N. I. Robinson FRICS
(Valuer Member)**

Date of Inspection : **Tuesday 8th January 2019
Hearing at Brighton SCS Tribunal, City
Gate House, 185 Dyke Road, Brighton
BN3 1TL**

Date of Decision : **Tuesday 8th January 2019**

DECISION AND REASONS

Background

1. On 11th June 2018 the landlord applied to the Rent Officer for registration of a fair rent of £14,040 per annum plus variable service charge for the property. The Application states that the additional sum of £2,060.03 per annum is payable in respect of services.
2. On the 25th July 2018, the Rent Officer registered a fair rent of £12,000 per year, effective from 26th August 2018. This rent includes the sum of £1,867.13 per annum attributable to services and is registered as variable in accordance with the terms of the agreement.
3. The previous registration by the Rent Officer on 26th August 2016 was £11,700 per year effective from the same date. This rent includes the sum of £1,666.68 per annum attributable to services and is registered as variable in accordance with the terms of the agreement.
4. The landlord objected to the rent determined by the Rent Officer and the matter was referred to the First Tier Tribunal (Property Chamber) Residential Property.
5. Directions for the conduct of the case were issued on 16th November 2018

Inspection

6. The Tribunal Members inspected the property on Tuesday, 8th January 2019 in the company of Mrs. Labelter, the tenant. The landlord had been informed of the inspection but was not present or represented.
7. The property is a self-contained, purpose built flat located on the ground floor of a substantial 6-8 storey corner block of similar units which was built in about 1968. It is part of an established, predominantly residential area and Eaton Manor has frontage to local traffic routes. The main entrance to the part of Eaton Manor which contains this flat is on the west side. Town centre shops and amenities, including main line railway station and the sea front, are within easy reach. The tenancy does not include a garage or reserved parking but does include the right to park in an unallocated space on site if available. On street parking in nearby roads is restricted and

regulated.

8. The roof is of flat design and the elevations are mainly brick. Windows in the flat are replacement uPVC double glazed casement type. The communal entrance lobby has recently been refurbished and presents an attractive appearance.
9. The accommodation comprises entrance hall, two bedrooms, living room, kitchen, bathroom/WC and separate shower/WC. Space heating and hot water are provided by a central boiler which supplies heating to radiators during the Winter.
10. Carpets, curtains and white goods have been supplied by the tenant. The kitchen units are the original and are now in need of replacement. The bathroom, shower and WC fittings are also mainly original and most need replacement. We have not been informed of any improvements carried out by the tenant.
11. Overall, the flat needs upgrading, refurbishment and redecoration.
12. The Tribunal has not been provided with a copy of the Tenancy Agreement. but the Application to the Rent Officer states that the tenancy began “pre 15 January 1989” and that the landlord is responsible for repairs and external decorations whilst the tenant is responsible for internal decorations – subject to Section 11 Landlord and Tenant Act. The Rent Register confirms that this is the apportionment of responsibility for repairs and decorations. Other than mentioned above, neither party has made any observations on the repairing and decorating liabilities.

Representations

Tenant

13. The tenant wrote a note to the Tribunal prior to the Hearing. It stated:
 - (a) I have lived here since April 1978
 - (b) Kitchen still the same no washing machine
 - (c) When new windows were put in a few years ago I had to spend over

£1,000 on all new curtains

- (d) Some years ago, the hallway (I live on the ground floor) was re-designed and my front door was taken off and never put back properly

Landlord

- 14. The landlord's managing agent submitted a "pro forma" supporting statement with the application which may be summarised:
 - (i) "We manage over 8,000 tenancies...and assist some of our clients with their contribution to the IPD index"
 - (ii) "One of our largest clients has noted a growth in rental levels of 7.5% for Assured Shorthold Tenancies over the past year with even greater increases achieved on Assured Tenancies. The trend shows every sign of continuing for the foreseeable future"
 - (iii) "Fair rents continue to lag substantially behind market rents, more so than the deductions made with reference Section 70(1) warrant. We believe that there is little if any element of scarcity in the private rented sector and this is borne out by the longer void periods that landlords have been experiencing over the past year"
 - (iv) "It is our opinion that the Maximum Fair Rent continues to represent a substantial discount from the open market rent after adjustments"
- 15. The landlord also provided with the application a copy of the annual accounts for the block in respect of the year ending 25 December 2017
- 16. In support of its objection to the registered rent, the landlord's agents wrote a letter dated 26th November 2018 to the Tribunal Office and the following points are extracted therefrom:
 - (1) "Market Rent

The flat benefits from a bathroom and separate shower room, communal heating and hot water, lift access, communal parking with one residents permit provided per flat and the availability of

renting an addition [sic] underground space or garage. There is also a residential [sic] caretaker who assists residents with minor repairs and an entry phone system. As you will see from the evidence, comparable properties of the same size in the same block are achieving between £13,917.36 (£14,445.36 including heating and hot water) and £27,216 (£27,744 including heating and hot water) per annum.

Brief details of 2-bedroom flats in Eaton Manor each let on an AST are set out as follows:

Flat	Annual rent	Annual rent including hot water and heating
108	£13,917.36	£14,445.36
116	£15,324	£15,852
146	£16,320	£16,848
101	£16,716	£17,244
142	£17,364	£17,892
107	£27,216	£27,744

In view of the above, we consider the market rent for the subject property to be £17,809.56 (£18,337.56 including heating and hot water) per annum, if let on an Assured Shorthold tenancy with carpets and white goods.

(2) Scarcity

The First Tier Tribunal recently assessed during the appeal of another Eaton Manor property, that there is a good supply of rental property in the area and made an allowance of 5% for scarcity. We however consider that presently there should be no deduction for scarcity as the current demand for rented property does not outstrip supply. At present there are six other vacant 2-bedroom flats in Eaton Manor and over 327 2-bedroom properties available to rent

in the wider area.

(3) Condition

We are not aware of any failure by the landlord to fulfil their statutory and contractual obligations as defined in the tenancy agreement. In the event that the tenant has failed to report any disrepair to the managing agents, we do not feel it appropriate or in accordance with Rent Act 1977, section 70, to make deductions under such circumstances.

(4) Location

The property is in a prime and sort [sic] after location...

(5) Conclusion

We conclude, therefore, that an appropriate fair rent is properly assessed at a minimum of £17,138.86 per annum (£15,271.73 + £1,867.13 variable service charge) allowing for the age, condition and locality of the property and that it is unfurnished. We have calculated the adjusted market rent in line with allowances previously determined by the Tribunal during the appeal process on other flats within the development of Eaton Manor.

Market Rent excl CHHW		£17,809.56
Carpets/white goods	-3.75%	
Unmodernised kitchen	-3.75%	
Unmodernised shower/bathroom	-3.75%	
Tenants repair and redecoration obligations	-3%	
Scarcity	-0%	
Fair Rent	£15,271.73 + Variable Service Charge of £1,867.13 = £17,138.86	

Maximum Fair Rent

RPI at the last registration = 264.4, this registration = 281.7. Percentage increase = 6.54% plus 5% enhancement = 11.54%. £11,700 (£10,033.32 + old variable service charge of £1,666.68) + 11.54% = £13,050.18 (£10,132.87 + new variable service charge of £1,867.13) rounded to £13,050 per annum (£10,132.87 + new variable service charge of £1,867.13)

In view of the above, as the Maximum Fair Rent calculation is the lower of the above two results, we submit that the rent of £13,050 per annum (£10,132.87 + new variable service charge of £1,867.13) should be set as the new fair rent and the rent should be registered at this level.”

17. The above is a comprehensive summary of the points made by the parties and the Tribunal has considered the whole of the contents of the above documents in making its decision.

Hearing

18. A hearing took place at Brighton SSCS Tribunal, City Gate House, 185 Dyke Road, Brighton BN3 1TL commencing at 11:30 on the day of the inspection. The tenant did not attend and was not represented. The landlord was represented by Isabel Vieira and Charlotte Keith on behalf of Allsops, Managing Agents for the landlord. Both representatives mentioned above contributed to the discussion during the hearing and for simplicity are referred to as “Allsops” in these reasons.
19. The Chairman opened by informing Allsops of what had taken place at the inspection as they had not attended and confirmed that no representations from the tenant had been allowed.
20. Allsops were then invited to present their case.

21. They referred to their written submission and made the following specific points: [heading numbers reflect the original submission]

1. Market Rent

- (a) They find it useful to split out hot water and central heating as this only applies to ASTs. Adjustments have been made based on previous Tribunal decisions following appeals in respect of other flats in Eaton Manor.
- (b) The first page of their written submissions referred to six lettings of two-bedroom flats in Eaton Manor. They helpfully provided the additional information that all rents had been fixed in 2018 and that, with the exception of Flat 107 which was a new letting, all the quoted rents were the renewal of an existing tenancy. Furthermore, all six flats are in the same part of Eaton Manor. Flat 108 is on the ground floor and Flat 107 is at basement level. They had no information regarding the other flats.
- (c) In order to arrive at the rental figure which follows the above, they have taken the average of the rents in the right-hand column on page 1 of their submission (annual rent including hot water and central heating) Flats within each part of the block have a slightly different layout
- (d) The Tribunal mentioned that there were 7 flats currently advertised to rent on the internet at Eaton Manor and that the asking rent of two of these flats had been reduced. Allsops confirmed that the rental market is currently sluggish and that there are currently 9 two-bedroom flats available to rent but they had been instructed to hold back two for the present. They also stated that there are 200 two-bedroom flats available within a one-mile radius but provided no further information.

- (e) Discussion ensued and it was pointed out that some of the flats currently available had only been partly refurbished. Turning to the examples provided by Allsops, the Tribunal noted that the rent achieved for Flat 107 (£27,744 pa) was out of line and would distort the average figure. Allsops confirmed that the additional contribution in respect of central heating and hot water was fixed at £44 per month. The Tribunal noted that one flat showed heating and hot water advertised at £66 per month and another at £22 per month. Allsops stated that the three-bedroom flat heating charge was £66 and the one-bedroom flats £22 so the advertising for these two flats was wrong. They are two-bedroom units and the heating charges should have been shown as £44 per month, not as advertised. Allsops also confirmed that the flats on the higher floors fetch higher rental values.

2. Scarcity

- (f) Allsops confirm their belief that there is currently no scarcity in this case.

5. Conclusion

- (g) Since preparing their original submissions, they had decided on an alternative method of calculating the rent which was more appropriate and favourable to the tenant. On this basis, the starting rent, using their comparables and including H&HW would be £18,337.56. The service charge element of the subject flat is 0.67122% which, if removed from the figure of £18,337.56, produces a figure of £18,214.14 representing the rent element only. The deductions of 14.25% would be based on the same percentages as in their original submission to produce a net rent of £15,618.92. It is then necessary to add the variable service charge of £1,867.13 resulting in a fair rent of £17,486.05

- (h) Allsops accept that, even if this alternative basis of calculating the fair rent is adopted, it may still be higher than the Maximum Fair Rent

The law

- 22. When determining a fair rent, the Committee, in accordance with section 79 of the Rent Act 1977, had regard to all the circumstances including the age, location and state of repair of the property. The Committee also disregarded the effect of (a) any relevant tenant's improvements and (b) 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
- 23. (a) 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) 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)
- 24. The Rent Acts (Maximum Fair rent) Order 1999 applies to all applications for registration of a fair rent (other than a first application for registration) made to the Rent Officer on or after 1 February 1999. Its effect is to place a "cap" on the permissible amount of the increase of a fair rent between one registration and the next by reference to the amount of the increase in the retail price index between the date of the two registrations plus 7.5% in the case of a first re-registration and 5% thereafter. The Committee must first determine a fair rent ("the uncapped rent") and then consider whether the Order applies so as to limit the increase in the rent ("the capped rent")
- 25. There are two principle exceptions. This is not the first registration so the relevant exception is contained in Art.2(7) of the 1999 Order and is as follows:

“This article does not apply in respect of a dwelling-house if because of a change in the condition of the dwelling-house or the common parts as a result of repairs or improvements (including the replacement of any fixture or fitting) carried out by the landlord or a superior landlord, the rent that is determined in response to an application for registration of a new rent under Part IV exceeds by at least 15% the previous rent registered or confirmed.”

The Tribunal has not been made aware of any relevant works carried out to the property by the landlord since the last registration and this is confirmed by the answer to question 13 on the Application.

Valuation

26. The Tribunal carefully considered the original submissions made by the landlord and the observations and additional information they had provided during the hearing.
27. With regard to the six lettings referred to on the first page of Allsop’s written submissions, the information is sparse and of limited value. The letting of Flat 107 at £27,744 p.a., although it is the only open market letting, is out of line with the other rents agreed and there may be special circumstances. If it is included, it will have the effect of increasing the average rent considerably.
28. The floor level of the flat affects the rental value with flats above the second floor being more valuable than those lower down. The Tribunal generally prefers the evidence of two-bedroom flats available to let as they reflect current market conditions, especially as two flats have been on the market for some months. The evidence of two-bedroom flats in the west section of Eaton Manor was considered and in the absence of more information the most interesting and relevant flat appeared to be Flat 108, a ground floor flat which had had a rent review (not re-letting) in March 2018 to the sum of £14,445.36 including heating. In March, it is understood that there were fewer flats available to rent.

29. Two of the advertised flats on the first and second floors at £13,848 and £14,028 per annum respectively, exclusive of a heating and hot water charge of £44 per month each, give a useful indication of rental value and it is possible to extrapolate a rent of £14,500 for a two-bedroom flat on the ground floor with the heating charges annualised and added in to be comparable to the other quoted rental figures.
30. Having regard to all the above, the Tribunal adopts £14,500 p.a. as an appropriate rental level for a 2-bedroom flat on the ground floor in the current market.
31. However, this starting rent is on the basis of a letting in good, modernised condition. In this case, adjustment must be made to reflect the need for work of modernisation and repair as the rental bid in present condition would differ from the rent if the property were in good, modernised condition. The Tribunal is satisfied that the tenants are responsible for internal decorations. In order to reflect all the relevant considerations, the Tribunal has made the following deductions from the starting point of £14,500 per annum:

Carpets and curtains provided by the tenant	£ 600
White goods provided by the tenant	£ 240
Unmodernised kitchen	£ 600
Generally dating and insanitary bathroom fittings	£ 600
Tenant responsible for internal decorations	<u>£ 500</u>
TOTAL DEDUCTIONS	£ 2,540 p.a.
Adjusted rent	£ 11,960 p.a.

32. We then considered the question of scarcity as referred to in paragraph 23(a) above. The Tribunal did not consider that there was any substantial scarcity element in the area of Greater Brighton and Hove and accordingly no further deduction was made for scarcity.
33. We therefore determined that the uncapped Fair Rent is £11,960 p.a. (including a variable service charge of £ 1,867.13 p.a.) exclusive of council tax and water rates.

34. The Tribunal finds that by virtue of the Rent Acts (Maximum Fair Rent) Order 1999 the maximum fair rent that could have been registered in the present case is the sum of £13,169.13 p.a.
35. As the adjusted rent is below the rent calculated in accordance with the Maximum Fair Rent Order, we determine that the lower sum of £11,960 p.a. is registered as the fair rent with effect from Tuesday 8th January 2019
36. For information only, details of the rent calculated in accordance with the Maximum Fair Rent Order details are shown on the rear of the Decision

Accordingly, the sum of £11,960 p.a (including a variable service charge of £ 1,867.13 p.a) will be registered as the fair rent with effect from Tuesday, 8th January 2019, being the date of the Tribunal's decision.

Chairman: R. A. Wilkey

Dated: Tuesday, 8th January 2019

Appeals

37. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
38. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
39. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend the time limit, or not to allow the application for permission to appeal to proceed.
40. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.
41. If the First-tier Tribunal refuses permission to appeal, in accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007, and Rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the Applicant/Respondent may make a further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission.