



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

Case Reference : **CHI/00ML/F77/2018/0051**

Property : **Flat 106 Eaton Manor
Eaton Gardens
Hove
BN3 3QB**

Type of Application : **Determination of a fair rent:
Rent Act 1977**

Date and venue of Hearings : **09 October, 2018,
10 December 2018
Mecure Brighton Seafront Hotel, Brighton**

Date of Decision : **31 January 2019**

Tribunal Members : **Mr Brandon Simms FRICS (Chairman)
Miss C D Barton MRICS (Valuer Member)**

REASONS FOR THE DECISION

Background

1. On 01 June 2018 the Landlord's agent made an application to register the rent of the property at £12,686.40 + variable service charge per annum. The rent was previously registered on 26 August 2016 at £12,240 per annum including £1,666.68 for services with effect from the same date. On 12 July 2018 the Rent Officer held a consultation at the property attended by the Tenant. The Landlord was not present.
2. On 13 July 2018 the Rent Officer registered the rent at £12,600.00 per annum including £1,867.13 for services with effect from 26 August 2018. By letter dated 31 July 2018 the Landlord's agent objected to the rent registered and on 31 July 2018 the matter was referred to the First-tier Tribunal (Property Chamber).
3. In response to the preliminary correspondence with the Tribunal the Landlord's agent requested an oral hearing. Directions for the conduct of the case were issued on 09 August 2018. A hearing took place at the Mecure Seafront Hotel, Brighton, after the inspection on 09 October 2018. At the hearing the Tenant wished to introduce documents which had not been provided to the Landlord or to the Tribunal. The Landlord's agent objected to these documents being admitted contrary to the Directions. Having considered the matter the Tribunal adjourned the hearing to allow the circulation of documents. On 11 October 2018 Further Directions were issued for the further conduct of the case. Additional documents were received and circulated to both parties.
4. A resumed hearing took place on 10 December 2018 but Mr Mallett was unwell and could not attend but he had already provided his written statement and was content for the hearing to proceed without him. Later he supplied a copy of his lease.

Inspection

5. On 09 October 2018 the Tribunal members inspected the property accompanied by the Tenant. The Landlord was not present or represented.
6. The property comprises a self-contained flat on the sixth floor of a purpose built block located in a popular residential area. There are well maintained gardens and common ways with two lifts and staircases to all floors. There is a private car park to the side of the building.
7. Eaton Manor comprises four conjoined residential blocks fronting The Drive, Cromwell Road and Eaton Gardens each with its own separate entrance and common ways. Several of the entrances and common areas have been refurbished but the subject property is accessed from Cromwell Road and this common area is now somewhat tired and outdated by comparison.
8. The accommodation comprises: Entrance Hall; Kitchen with worktops, cupboards and drawers; Living Room; Two Bedrooms; Shower-room (wet room) with shower, washbasin and low-level W.C.; small balcony. There is no allocated parking space but the occupier has a permit to park. The flat has an awkward layout.
9. The flat was found to be generally in a satisfactory condition.

The Law

10. When determining a fair rent the Tribunal, in accordance with S. 70 of the Rent Act 1977, ('the Act') must have regard to all the circumstances including the age, location and state of repair of the property. It must also disregard 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.
11. 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)
12. For the purpose 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).
13. S. 71(1) of the Act provides that the amount to be registered as the rent ... shall include any sums payable by the tenant to the landlord ... for services, whether or not those sums are sums payable for occupation ... or are payable under separate agreements.
14. The Rent Acts (Maximum Fair Rents) Order 1999¹ ("MFR") introduced statutory maximum (capping) limits to fair rents calculated using a formula based upon the previously registered rent, a standard addition and an inflation factor.

Representations & Hearings

15. The oral hearings took place at Mecure Seafront Hotel in Brighton. Mr Mallett represented himself and Allsopp Letting and Management acted on behalf of the Landlord. Both parties provided written representations and comments and these had been circulated. The Tribunal proceeded to determine the case based on the documents received, evidence presented at the hearings and its inspection of the property.
16. In opening the Chairman outlined what had been found at the inspection as the Landlord had not been present.
17. As Mr Mallett had raised questions regarding the service charges. The Chairman explained the jurisdiction of the Tribunal which is appointed to hear objections to the rent fixed by the Rent Officer and to establish the correct Fair Rent. This rent includes a variable charge for services. The occupational lease includes a provision for the tenant to pay for services provided by the Landlord commonly known as service charges. The Tribunal constituted to determine the rent does not have jurisdiction to consider the service charges payable under the lease or tenancy agreement.
18. Another Tribunal may have this jurisdiction if an application is made objecting to the service charges but not at these hearings.

¹ The Rent Acts (Maximum Fair Rent) Order 1999 SI 1999 No. 6

19. At the hearing Mr Mallett did not challenge the amount for services included by the Rent Officer in the registered rent.
20. Mr Mallett's written evidence was detailed and clearly presented. He understood that MFR applied although much of the increase in the rent registered was due to an increase in the cost of services. There is confusion in that the Landlord insists on charging the full service charge rather than the lower rate for services set by the Rent Officer. Mr Mallett believes that this error would result in him paying a rent higher than that allowed by MFR.
21. Of the 146 flats in Eaton Manor 58 are two bedroom of various sizes and facilities. His flat is one of the smallest of the two bedroom flats and has a small kitchen and a living room of an awkward shape. The bedrooms are north facing on to the busy Cromwell Road.
22. Comparing a rent for his flat to other rents for nearby properties is difficult because of the services element included in the rents. He took the Landlord's proposed rent and deducted the services element to produce a net rent of £14,461.78 and allowing for the same deductions he gets a net rent of £10,472.73 to which he adds services of £1,867.13 to produce £12,339.86 compared to the Rent Officer's figure of £12,600.
23. Mr Mallett considers that the deductions made to allow for white goods and repairs are insufficient to compare ASTs to the situation with his regulated tenancy.
24. He quotes the tribunal decisions for Flat 20 Eaton Manor at £12,360 and 115 at £11,700. He also quotes 104 Eaton Manor at £15,456 but for a much larger flat with south facing terraces let in January 2018.
25. Taking flat 104 with a services adjustment the net rent is £13,588.87 adjusted in a similar way produces a rent of £9,643.47 plus services of £1,867.13 producing a rent of £11,510.60.
26. He points to two, three bedroom refurbished flats in Eaton Manor offered to rent at £16,500 but following substantial refurbishment.
27. Mr Mallett lists the improvement he has carried out including refitting the kitchen, repairing the kitchen floor, installing wardrobes, improving the number of electric sockets and upgrading the bathroom. The replacement windows are not a success and are draughty and not soundproof.
28. The tenant's responsibilities under the lease are onerous particularly as the flat was let unmodernised and unfurnished. He is responsible for decorations and plumbing repairs.
29. In conclusion he objects to the Landlord's proposal to increase his rent by a further £1,400 per annum.

30. In its initial written representations the Landlord's agent submitted a detailed calculation showing a market rent based on comparables at £16,328.91, deductions of: £1,632.98 for floor coverings, curtains & white goods; the same for improvements to the kitchen and bathroom; and £816.44 for scarcity at 5% producing a figure of £12,246.52. They then applied an [erroneous] MFR to produce a rent of £12,132.00 + service charge as its proposed Fair Rent.
31. In a written response to Mr Mallett's written submission and orally at the second hearing the Landlord's agent revised its proposal. They spoke to the same Market rent figure which had been obtained by taking an average of its comparables but revised the deductions. Having studied previous Tribunal decisions average percentage deductions had been calculated arriving at a total of 16.94%. This is made up of 7.87% for floor coverings and white goods; 5.45% for improvement to the kitchen, 1.25% for improvement to the bathroom and 2.42% for the onerous repairing obligations [*at the hearing the Tribunal members queried the mathematics as the total is 16.99%. The Landlord's agent agreed to proceed using their original erroneous calculation as their notes had been prepared on this basis*]. Applying this 16.94% deduction to a rent, net of services, of £14,441.29 produced a new proposal of £11,994.94 plus services of £1,887.62 a total of £13,882.56. As there were currently 8 vacant 2 bedroom flats there was considered to be no scarcity so the Landlord's agent made no deduction.
32. In passing it was confirmed that the tenancy of flat 104, quoted by Mr Mallett, had come to an end and the flat was vacant.
33. The Landlord's agent did not dispute any of Mr Mallett's other comments.
34. The Landlord's agent and the Tenant had been asked to produce a copy of the lease at the first and second hearings but none was forthcoming. The landlord could not produce one but indicated that they thought Mr Mallett had one. The Tribunal proposed asking him for a copy.

The Lease

35. Following the second hearing Mr Mallett provided a copy of his lease. It is dated 23 July 1980 for a term of seven years and two quarters from 24 June 1980. The Tenant is holding over under the terms of this lease which are binding on him insofar as the repairing obligations are concerned. There is a service charge covering the provision of heating and hot water, decoration of exterior and the usual services of cleaning common ways and windows, gardening, lifts, fire extinguishers etc. The Tenant's obligation is however more onerous than would be expected, under the usual repairing covenants, for modern assured tenancies used as comparables by the parties.
36. The Tenant is required throughout the term to keep the interior, both sides of the doors, window frames & glass, internal pipes (including damage caused by bursting or overflowing pipes), electric wiring, taps, water cocks, all fixtures and fittings in good and substantial repair. In addition he must redecorate the interior if required.

37. Sec 11 of the 1985 Act² would usually limit the Tenant's obligations in many of these respects but as the original tenancy is for more than seven years this tenant does not have that protection.

Consideration and Valuation

38. In the first instance the Tribunal determined what rent the landlord could reasonably be expected to obtain for the property in the open market if it were let today on the terms and in the condition that is considered usual for such an open market letting.

39. The Rent Register concludes that the Landlord is responsible for repairs and external decorations subject to S. 11 Landlord & Tenant Act 1985 and the Tenant for internal decorations. This is not correct and has been amended following the hearings. We set out at Paras 35 & 36 the correct tenancy terms.

40. The Landlord's agent supplied the Rent Service with details of the service charge calculation. The amount attributable to services in the registered rent has been assessed by the Rent Officer at £1,867.13 per annum. This includes hot water and central heating provided from a central system. At the hearings the Landlord's agent queried why this figure was lower than the amount chargeable for services under the lease. The Chairman explained that the amount fixed by the Rent Officer omitted those matters such as insurance which were not considered of benefit to the Tenant.

41. The Tribunal found the evidence of the Landlord's agent of assistance but found their conclusions confusing. However full details of the comparables quoted relating to room sizes, the floor location, layout, tenancy terms etc. were not provided and it is unclear whether the opinions were formed after a personal inspection and, as such, can only be general in nature. The Tenant explained the shortcomings of the evidence and the clear differences between his flat and the comparables.

42. The comparable rents quoted include services although the amount of these have not been quantified in each case. We take the view that the amount included in the AST rents for services would be similar to the charge at the Property although in some cases in other blocks an addition to rent is charged for heating and hot water. Without specific express information we were unable to make any significant adjustments and Allsops did not address this issue.

43. In order to arrive at the Fair Rent the Tribunal follows the Court of Appeal's guidance³ that ordinarily a fair rent is the market rent for the property discounted for 'scarcity' and 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).

² The Landlord and Tenant Act 1985

³ *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.

44. Accordingly in the first instance the Tribunal determined what rent the landlord could reasonably be expected to obtain for the property in the open market if it were let today on the terms and in the condition that is considered usual for such an open market letting. The Landlord's comparable rents from 2017 to 2018 average £16,328.91 per annum on a new let and refurbished basis. Without details of the level of refurbishment it is difficult for the Tribunal to analyse these figures. Allsops made no adjustment for time. Mr Mallett provided his own evidence and contrasted the differences between the flats. His flat suffers from draughty windows and a difficult layout.
45. Taking this evidence into account and considering our own inspection we determine that flat 106 is one of the smaller flats approached by an entrance that has not been refurbished located on the noisier Cromwell Road frontage. Using the rental evidence and our own knowledge and experience of general rent levels for this type of property in a wide geographical locality we determined that the starting point should be £14,400.00 per annum excluding services.
46. However, the rent referred to in paragraph 45 is on the basis of a modern open market letting. In this case the tenant has improved the kitchen, bathroom and generally throughout the Property. The Landlord's agent made careful comparisons to the deductions made in other Tribunal decisions in order to produce average percentage deductions. The flaw in this approach is, firstly that this Tribunal is not bound by earlier First-tier Tribunal Decisions and, secondly the adjustments made in the decisions are specific to each property and the circumstances of each case. Using our own knowledge and experience of the adjustments that would be made by a hypothetical tenant we deduct £1,440.00 p.a. to allow for the Tenant's improvements. The Landlord has not supplied white goods or floor coverings so similarly we make an allowance of £1,440.00 p.a. In a modern letting the tenant would only be expected to maintain the interior in as good a condition as at the start of the tenancy. In the subject case the Tenant has to carry out internal decoration, plumbing and other repairs so we deduct £725.00 p.a. to allow for this greater obligation. These adjustments represents our assessment of the reduced bid that a hypothetical tenant would make for the premises when compared to the bid that would be made for similar premises without the deficiencies or onerous responsibility.
47. This leaves an adjusted market rent of £10,795.00 p.a. (£14,400 less £3,605).
48. We then considered the question of scarcity. From our own knowledge and experience these flats are in strong demand but there is currently an over-supply and concluded, in agreement with the Landlord's agent, that no further adjustment should be made.
49. We therefore determined that the uncapped Fair Rent is £10,795.00 per year to which should be added services, as determined by the Rent Officer, (variable) of £1,867.13 a total of £12,662.13.
50. The amount in the rent register attributable to services is not necessarily the amount shown in an end of year service charge account.

51. The Rent Officer and the Tribunal has to assess an amount that is: *“something beyond the basic provision of the accommodation on the basis that if the service was not undertaken by the landlord it would otherwise have to be done by the tenant or at least paid to someone else to do it on the tenant’s behalf.”*⁴ In this case the Rent Officer has made the judgement that some items in the year end service charges account should be excluded. There is no statutory definition to help the Tribunal, but case law has established this basis. The Tribunal agrees with this approach, no evidence was offered to the contrary and the Tribunal confirms the Rent Officer’s figure.
52. The Maximum Fair Rent Order applies and is calculated by first stripping out the amount attributable to services at the last registration and adding back the current amount for services. The maximum figure is, however, higher than the uncapped Fair Rent so no further adjustment is required. (Details of the calculation are shown on the reverse of the decision form).
53. We determine that the sum of **£12,662.13 per year (including £1,867.13 for variable services)** is the Fair Rent with effect from 31 January 2019, the date of the decision, as detailed on the decision form. Our Determination was delayed as the parties were allowed to make additional written representations after the date of the hearing.
54. It should be noted that on the form completed applying for the registration of a fair rent, (form RR1), shows a passing rent of £12,686.40 net of service charges. The previously registered rent of £12,240 per annum (effective from 26 August 2016) includes the amount allocated to services of £1,666.68 and is the maximum rent chargeable at the effective date. Service charges should not be added. For the avoidance of doubt the Fair Rent registered by this decision includes the amount allocated to services and is the maximum figure chargeable at the effective date of registration.

Brandon H R Simms (chairman)

31 January 2019

⁴ Precis from Guidance to Rent Officers

PERMISSION TO APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) on a point of law 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.
2. 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.
3. 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 time or not to allow the application for permission to appeal to proceed.
4. 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.