



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

Case Reference : **CHI/00ML/F77/2018/0063**

Property : **Flat 48, Eaton Manor, The Drive, Hove
BN3 3PT**

Landlord : **Eaton Manor Hove Ltd.**

Represented by : **Allsop Letting and Management**

Tenant : **Mr. H. Davis**

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 : **Monday 10th December 2018
Hearing at Mercure Brighton Hotel.**

Date of Decision : **Monday 10th December 2018**

DECISION AND REASONS

Background

1. On 29th August 2018 the landlord applied to the Rent Officer for registration of a fair rent of £13,634.40 plus variable service charge for the property. The Application states that the additional sum of £2,739.77 per annum is payable in respect of services.
2. On the 9th October 2018, the Rent Officer registered a fair rent of £13,800 per year, effective from 31st October 2018. This rent includes the sum of £2,258.35 per annum attributable to services and is registered as variable in accordance with the terms of the agreement.
3. The last registration by the Rent Officer on 26th August 2016 was £12,900 per year effective from the same date. This rent includes the sum of £2,015.89 per annum attributable to services and is registered as variable in accordance with the terms of the agreement. The rent was subsequently amended by the First Tier Tribunal following an appeal by the Landlord to £13,377.89 per year including the sum of £2,015.89 per year attributable to services (variable) effective from 31 October 2016
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 7th November 2018

Inspection

6. The Tribunal Members inspected the property on Monday, 10th December 2018 in the company of Mr. Davis, the Tenant, and his brother. 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 second 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. 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.
9. The accommodation comprises entrance hall, three bedrooms, living room with external door to balcony overlooking an inner courtyard, 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 are in need of 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. A letter from the Tenant written to the Tribunal two years ago states “I am responsible for internal decorating”. Other than mentioned above, neither party has made any observations on the repairing and decorating liabilities.

Representations

Tenant

13. The tenant wrote a letter dated 13th September 2018 to the Valuation Office and amongst other things, refers to the following:
 - (a) I find it impossible to understand the managing agents request for a

20% increase in rent. There must be a limit and cap to rentals going up every two years.

- (b) Please take into consideration fair rents as against market rents. ...with market rents all flats are completely re-designed with open plan kitchen. They are carpeted with curtains plus all new appliances are supplied... These include cooker, microwave, fridge freezer, washing machine
 - (c) My flat still has the same kitchen units, bath, shower that were installed when the block was built in 1968 and every rent review they are two years older.
15. The tenant wrote a further letter dated 12th November 2018 to the Tribunal Office but it did not add anything material to the above.

Landlord

14. The landlord's managing agent submitted a "pro forma" supporting statement with the application which may be summarised:
- (i) "We manage over 5,000 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 14th November 2018 to the Tribunal Office and the following points are extracted therefrom:

(1) Market Rent

The flat benefits from a private balcony, 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 £15,165.72 (£15,957.75 including heating and hot water) and £24,384.00 (£25,384.00 including heating and hot water) per annum.

Brief details of 3-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
46	£15,165.72	£15,957.75
42	£19,692.00	£20,484.00
35	£20,592.00	£21,384.00
53	£20,592.00	£21,384.00
47	£21,072.00	£21,864.00
73	£24,384.00	£25,384.00

In view of the above, we consider the market rent for the subject property to be £20,249.62 (£21,041.62 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 two other vacant 3-bedroom flats in Eaton Manor and over 350 3-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. However, we acknowledge that it would be necessary to adjust the rent to allow for the differences between the condition considered usual for an open market letting and the condition of the actual property.

(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 £19,622.40 per annum (£17,364.05 + £2,258.35 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 and enclose a copy of the appeal reasons showing this

Market Rent excl HHHW		£20,249.62
Carpets/white goods	-3.75%	
Unmodernised kitchen	-3.75%	
Unmodernised shower/bathroom	-3.75%	
Tenants repair and redecoration obligations	-3%	
Scarcity	-0%	

Fair Rent £17,364.05 + Variable Service Charge of £2,258.35 = £19,622.40

Maximum Fair Rent

RPI at the last registration = 264.8, RPI this registration = 284.1.
Percentage increase = 7.29% plus 5% enhancement = 12.29%. £13,377.89
(£11,362 + old variable service charge of £2,015.89) + 12.29% =
£15,022.03 (£12,763.68 + new variable service charge of £2,258.35)
rounded to £15,022.00 per annum (£12,763.68 + new variable service
charge of £2,258.35)

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 £15,022.00 per annum (£12,763.68 + new variable service charge of £2,258.35) 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 Mercure Brighton Seafront Hotel commencing at 15:30 on the day of the inspection. The tenant was unable to attend but the Landlord was represented by Rachel Shaw 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. He also explained that the Tribunal today has been constituted to determine the rent and does not have jurisdiction to consider the service charges under the tenancy agreement.
20. Allsops were then invited to present their case and began by confirming that they manage all the flats at Eaton Manor and know all the rents that have been achieved. They also confirmed that all the flats in Eaton Manor are let and none have been sold on long lease.
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 three-bedroom flats in Eaton Manor.
 - (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)

- (d) The tribunal mentioned that there were three flats currently advertised to rent on the internet at Eaton Manor and that the asking rent of all three had been reduced. Allsops confirmed that the rental market is currently sluggish and that there are currently 8 two bedroom and 1 three-bedroom flats available to rent but they had been instructed to hold some back for the present. They also stated that there are 44 three-bedroom flats available within a one-mile radius but provided no further information.
- (e) The three 2-bedroom flats currently being advertised range between £13,824.00 for a lower ground floor flat in the building, £15,204 for a 6th floor flat and £16,020 for a 7th (top) floor flat, all appearing in good marketable order. The tribunal was told 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. In response to a question from the Tribunal that, some two months earlier, they had expressed the opinion that scarcity should be fixed at 5% in respect of a similar flat in Eaton Manor, they stated that the letting situation had changed to reflect the time of year and changes in availability of flats of this type.

5. Conclusion

- (g) Since preparing their original submissions, they had decided on an alternative method of calculating the rent which was more favourable to the tenant. On this basis, the starting rent, excluding H&HW would be £18,783.27 (21,042.62 – 2,258.35) Deductions would be based on the same percentages as in their original submission producing total deductions of £2,676.62. This leaves a net rent of £16,106.65

plus a variable service charge of £2,258.35 resulting in a fair rent of £18,365.00

- (h) They accept that, even if this alternative basis of calculating the fair rent is adopted, it will 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 changes they had made during the hearing.
27. With regard to the six lettings referred to on the first page of their written submissions, the information is sparse and of limited value. One flat, the lowest rental at £15,957.75, was an old letting and another, at £20,484.00 had recently been agreed following a rent increase. Unfortunately, no detail was provided and Allsops were unable to assist the tribunal at the hearing. The fact that one flat was shown at a rent of £25,384.00 and another at £15,957.75 potentially skewed the figures when calculating an average rent.
28. The three 2-bedroom flats currently being advertised range between £13,824.00 for a lower ground floor flat in the building, £15,204 for a 6th floor flat and £16,020 for a 7th (top) floor flat, all appearing to be in good marketable order. These figures are exclusive of a heating and hot water charge of £44 pcm for the lower ground floor flat and £66 pcm for each of the other two flats. These amounts need to be annualised and added in to

be comparable to the other quoted rental figures. The annual rentals therefore become £14,352, £15,996 and £16,812 per annum respectively

29. The tribunal was told that the flats on the higher floors fetch higher rental values. The tribunal did ask the applicants how much the difference in rental value might be between a two-bedroom flat and a three bedroom one and they were unable to assist. In the absence of detail, the tribunal used its own knowledge and experience and adopted £15,500.00 as the starting point for a two bedroom flat around second floor level and adding £2,500 for the benefit of a third bedroom resulting in £18,000 per annum as an appropriate rental for a three bedroom flat on the second floor in the current market.
29. 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 £18,000 per annum:

Carpets and curtains provided by the tenant	£ 720
White goods provided by the tenant	£ 240
Unmodernised kitchen	£ 600
Generally dating and insanitary bathroom fittings	£ 600
Tenant responsible for internal decorations	<u>£ 600</u>
TOTAL DEDUCTIONS	£ 2,760 p.a.
Adjusted rent	£ 15,240 p.a.

30. 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.
31. We therefore determined that the uncapped Fair Rent is £ 15,240 p.a.

(including a variable service charge of £ 2,258.35 p.a.) exclusive of council tax and water rates.

32. 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 £15,033.85 p.a.
33. As the adjusted rent is above the rent calculated in accordance with the Maximum Fair Rent Order, we determine that the lower sum of £15,033.85 p.a is registered as the fair rent with effect from Monday, 10th December 2018
34. 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 £15,033.85 p.a (including a variable service charge of £2,258.35 p.a) will be registered as the fair rent with effect from Monday, 10th December 2018, being the date of the Tribunal's decision.

Chairman: R. A. Wilkey

Dated: Monday, 10th December 2018

Appeals

35. 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.
36. 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.
37. 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.
38. 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.
39. 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.