



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

Case Reference : **CHI/00ML/F77/2019/0031**

Property : **Flat 137, Eaton Manor, The Drive, Hove
BN3 3QD**

Landlord : **Eaton Manor Hove Ltd.**

Represented by : **Allsop Letting and Management**

Tenant : **Mrs. C. Hodge**

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. K. Ridgeway MRICS
(Valuer Member)**

Date of Inspection : **Monday 22nd July 2019
Hearing at Mercure Brighton Seafront
Hotel, 149 Kings Road, Brighton**

Date of Decision : **Monday 22nd July 2019**

DECISION AND REASONS

Background

1. On 5th March 2019 the landlord applied to the Rent Officer for registration of a fair rent of £13,850.40 per annum plus variable service charge for the property. The Application states that the additional sum of £2,283.14 per annum is payable in respect of services.
2. On the 26th April 2019, the Rent Officer registered a fair rent of £14,942.85 per year, effective from 31st May 2019. 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 previous registration by the Rent Officer on 20th February 2017 was £13,240 per year effective from the same date. This rent includes the sum of £2,015.90 per annum attributable to services and is registered as variable in accordance with the terms of the agreement. Following an appeal, the First Tier Tribunal determined on 31st May 2017 that the fair rent should be £13,557.90 per annum. This rent includes the sum of £2,015.90 per annum attributable to services and registered as variable.
4. The tenant objected to the rent determined by the Rent Officer on 26th April 2019 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 11th June 2019. Neither party complied with the Directions.

Inspection

6. The Tribunal Members inspected the property on Monday 22nd July 2019 in the company of Mrs. Hodge, 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 fifth floor of a substantial 6-8 storey 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. The flat was completely refurbished by the landlord immediately before the tenant took occupation four years ago. It is in good decorative order. White goods, carpets and window blinds have been supplied by the landlord.
11. Notwithstanding the Directions, the Tribunal has not been provided with a copy of the Tenancy Agreement. The Application to the Rent Officer states that the tenancy began 17th March 2015 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

12. No written representations have been received from the tenant

Landlord

13. 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”

14. 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

15. In support of its objection to the registered rent, the landlord’s agents wrote a letter dated 24th June 2019 to the Tribunal Office and the following points are extracted therefrom:

(1) “Market Rent

A self-contained and purpose built 2 bed flat. The flat benefits from 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 and entry phone system. As you will see from the evidence, comparable properties of the same size in the same block/area are achieving between £16,800 and £18,600 per annum.

Brief details of flats in Eaton Manor and nearby blocks, each with 2 rooms, kitchen, bathroom/wc and let on an AST are set out as follows:

<u>Address</u>	<u>Annual rent</u>
Southdown House	£18,600
Livingstone Road	£17,400
Goldstone Crescent	£16,800
52 Eaton Manor	£17,616
70 Eaton Manor	£17,316
110 Eaton Manor	£17,316

In view of the above, we consider the market rent for the subject property to be £17,508 per annum, if let on an Assured Shorthold tenancy with carpets and white goods.

(2) Scarcity

We consider that presently there should be no deduction for scarcity as the current demand for rented property in the area does not outstrip supply.

(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 £16,008 per annum as per the open market rent, allowing for the age, condition and locality of the property and that it is unfurnished, calculated as follows:

Market Rent	£17,508
Carpets/decorating	£ 1,500
Fair rent	£16,008

There are minimal adjustments required to the market rent as the property was in a good and modernised condition throughout when the tenant moved into the property in 2015. The kitchen, bathroom and WC are all finished to a modernised specification with integrated appliances and the work was carried out by the landlord. Therefore in this instance, the regulated tenancy benefits from a modernised property and the market rent should not be discounted for this.

Maximum Fair Rent

RPI at the last registration = 271.7, this registration = 288.2. Percentage increase = 6.07% plus 5% enhancement = 11.07% increase. £13,577.9 + 11.07% = £15,058.75 rounded to £15,059 per annum

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 £15,058.75 per annum should be set as the new fair rent and the rent should be registered at this level.”

Variable Service Charge

Please note that as Mrs. C. Hodge’s tenancy at Eaton Manor commenced in 2015, it is not on the same lease agreement as the other regulated tenants at Eaton Manor and services are not charged to her separately. There is no allowance for variable service charge.

16. 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

17. A hearing took place at Mercure Brighton Seafront Hotel, 149 Kings Road, Brighton commencing at 13:00 on the day of the inspection. The tenant attended and was accompanied by her son, Mr. Mark Stellar. The landlord was represented by Isabel Vieira on behalf of Allsops, Managing Agents for the landlord. (Referred to as “Allsops” below for simplicity)
18. 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.
19. Before the matter proceeded, it was necessary to clarify the basis of the tenancy. The Tribunal have not been supplied with a copy of the agreement. The application refers to a proposed rent plus a variable service charge. The registered rent includes an amount for services and such amount is stated to be variable. However, the submissions from Allsops state “There is no allowance for variable service charge”
20. Allsops addressed the tribunal on this matter and stated that the basis of the application and the information supplied was incorrect. The tenant pays no service charge contribution.
21. This presented the Tribunal with a significant dilemma. The discussions that took place and the manner in which the application was dealt with are set out below.
22. Allsops confirmed that the entire basis of the application was incorrect, in that the basis of this tenancy does not include a service charge element.
23. Furthermore, previous applications have been made on the same (incorrect) basis. Registered rents, information on the rent register and the earlier determination by the First Tier Tribunal were also incorrect

as they had been based on wrong information provided by Allsops. No copy of the tenancy agreement has been provided to the tribunal.

24. A further complication arises in respect of the calculation of the Maximum Fair Rent which requires the removal of the variable service charge element from the registered rent, applying the appropriate increase and then adding back the variable service charge. Since there is no service charge, there is nothing to add back and thus the Maximum Fair Rent will be significantly lower than it would otherwise have been.
25. The situation was further complicated by the fact that the tenant, who was not professionally represented, had misunderstood the basis on which she had made the objection to the registered rent. For many years she had been a regulated tenant of a flat in Tavistock Square, London which was owned by the same landlord as Eaton Manor. The landlord had offered her a “good deal” to move from the flat in London to the flat in Eaton Manor. The arrangement was that the new flat would be completely refurbished and she would pay the fair rent but make no contribution towards service charges.
26. When she made the objection, she was concerned that the landlord had not complied with the terms of the agreement to move. The tribunal has not seen a copy of this agreement to move and, in any event, has no authority to make any comment on the terms agreed in that respect. The tenant was not objecting to the amount of the registered rent and had not come today with a reasoned case, supporting evidence etc.
27. It seemed to the tribunal that there are various options. One possibility is that the tenant could withdraw the objection but in that event, the registered rent would remain in place which would be incorrect.
28. All the above was openly discussed with the parties as, notwithstanding the accumulation of errors that had occurred, the tribunal needed to

take the opportunity to regularise the situation so that it will not recur. Clearly, the tribunal cannot make a determination of a fair rent on a basis which it now knows to be wrong.

29. At the conclusion of these initial discussions, the Tribunal invited the parties to retire so that all could consider the best way forward.
30. Once the parties had returned, the matter proceeded as follows:
31. The tenant had made the application and was invited to present her case. She offered no evidence and said that she was content with the rent determined by the rent officer provided it did not include an amount for a service charge contribution.
32. Allsops admitted that much of the information provided in connection with this and previous applications for registration of a fair rent was on an erroneous basis and apologised to the Tribunal and the tenant. They accepted the implications, with particular regard to the effect upon the Maximum Fair Rent calculations.
33. Further open discussion ensued and the landlord stated that she would be willing to agree a fair rent of £12,684.50 with no reference to a service charge contribution. This figure is arrived at by removing the (incorrect) service charge element from the recently registered rent. The proposal was acceptable to the tenant and, in the view of the Tribunal, is at a correct level.
34. As far as the MFR calculations are concerned, the landlord accepts that one of the consequences of their errors is that the MFR will be significantly lower than it would otherwise have been since the variable service charge would be deducted from the previous registered rent but not added back as it was a mistake.
36. In view of the agreement of the parties and the Tribunal on these matters, it was not considered necessary for the landlord to prove their

case by expanding on the information given in written submissions.

The law

37. 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
38. (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)
39. 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")
40. 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.

Valuation

41. The Tribunal carefully considered the original submissions made by the landlord and the discussions that had taken place during the hearing.
42. The parties have agreed that a fair rent of £12,684.50 per annum is appropriate and the Tribunal is satisfied that this is at the correct level. Both parties agreed at the hearing that the tenant is responsible for internal decorations which is not usually the case with flats let on an AST. The rent Officer has made a deduction to reflect this and no further adjustment is required.
43. We then considered the question of scarcity as referred to in paragraph 38(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.
44. We therefore determined that the uncapped Fair Rent is £12,684.50 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 £12,863 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 £12,684.50 p.a is registered as the fair rent with effect from Monday 22nd July 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 £12,684.50 per annum will be registered as the fair rent with effect from Monday 22nd July 2019, being the date of the Tribunal's decision.

Chairman: R. A. Wilkey

Dated: Monday 22nd July 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.