



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference	:	CHI/29UG/F77/2019/0035
Property	:	69 Lapis Close, Gravesend, Kent DA12 4UE
Landlord	:	Grays Thurrock Properties Ltd.
Tenant	:	Mr. Tom Langran
Application	:	To determine a fair rent for the property pursuant to Section 77 of the Rent Act 1977
The Tribunal	:	Bruce Edgington (lawyer chair) Peter Gammon MBE BA

DECISION

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1. The fair rent for the property is £6,972.26 per annum i.e. £581.02 per calendar month (pcm) including £88.76 per annum variable service charges.

Reasons

The Premises

2. The Tribunal inspected the property in the presence of the tenant. It is a self contained purpose built flat on the second floor of a 1960's building of brick construction under a flat roof in a quiet residential area. The flat consists of a hallway off which is a bathroom, a kitchen with space for a small dining table, a lounge and 2 double bedrooms. It has the benefit of all mains services save for gas. The nearest corner shop is said to be a mile away with Gravesend town centre about 2 miles away by bus.
3. There is very limited on and off street parking. The condition of the property is reasonable with some minor signs of penetrating damp. Just inside the front door, there is an area of substantial damage to the ceiling said to have been caused by a leak from the water tank some time ago. There are no white goods, carpets or curtains supplied by the landlord. There is also no heating system supplied by the landlord. Hot water is by an immersion heater in the kitchen.

The Tenancy

4. The tenancy began as a contractual tenancy on 11th March 1985 but now is assumed by the parties and the Rent Officer to be a statutory regulated tenancy. According to the rent register, the landlord's liability for repair is as set out in section 11 of the Landlord and Tenant Act 1985. No furniture is included in the letting. There is a service charge which is recorded in the register but there is no challenge of such charge and the Tribunal has therefore not made any assessment of whether it is reasonable. As it would appear to be made up from the actual charges for such services each year, it is assumed to be variable although the rent register does not make this clear.

The Referral

5. The Rent Officer registered a rent of £6,279.00 per year as a capped rent on the 5th June 2017 to become effective from the 10th July. A rent of £6,960.00 per year, again as a capped rent, was registered on 4th June 2019 effective from 10th July 2019. On the 25th June 2019 the tenant wrote to the Rent Officer objecting to the new registered rent. Neither party requested a hearing.

The Tenant's case

6. The letter of objection says, in effect, that the registered rent is simply too high. The tenant says that it is too high "*on a common sense level*" and he prays in aid the fact that there is no detailed breakdown of the figures.
7. In further submissions made in writing on the 8th August 2019, he refers to submissions made on the 29th July and corrects some errors therein. The Tribunal members have seen both documents. In essence, the tenant says:-
 - The Rent Officer's decisions have consistently lacked detail in how the fair rents have been calculated over the years
 - The property has not been modernised since it was built
 - The flat is exposed to the elements so that it is adversely affected by both excessive heat and excessive cold in the weather with the inference that other comparable flats are not so exposed. It is said that the tenant's refrigerator regularly cuts out when the weather is hot.
 - There are more children and families living in the block than before leading to a lot more noise
8. It should be said that whilst the exposure to the elements may be true, this is countered by the fact that the flat has extensive views over countryside and the River Thames. To the credit of the tenant, he does not allege that the landlord is being unreasonable. He also says that he has not considered open market rents but does suggest that the landlord's request for a rent of £6,504.00 per annum in the application for the registration of a fair rent "*would seem more appropriate*".

The Landlord's case

9. The landlord has been represented by Seven B Lettings but neither they nor the landlord have made any representations. Neither attending the

inspection either.

The law

10. Attached to this Statement of Reasons is a resumé of the law as applied by the Tribunal. It forms an integral part of these Reasons.

The Decision

11. The assessment of a Fair Rent starts with an assessment of the open market rent. Most rents published by landlords proposing to let flats are stated to be monthly. The tenant will understand that calculating an open market rent is not a scientific formula. One must just look at the market and come to a conclusion as to what (in this case) a 2 bedroom flat in this locality would let for on the open market.
12. It is, perhaps, worth mentioning that if the rent officer had just explained the calculations used as dictated by the Rent Act 1977, this referral could well have been avoided. It is clear to the Tribunal that the tenant simply did not understand how the rent officer calculated the registered rent.
13. Access to the internet gives a great deal of information as to what rents are being asked for flats in the Gravesend area. The rent officer concluded that £800 pcm should be the starting point. Such officer has supplied some evidence of open market rents but no addresses are given. Using its members' own knowledge and experience, it is the Tribunal's view that the open market value of this property with modern kitchen and bathroom, central heating, carpets, and some white goods is £750 pcm or £9,000 per annum. The rent officer has not, in the Tribunal's view, taken sufficient regard for the fact that this flat is a long way from amenities, has little parking availability and is in a rather basic, albeit purpose built, block.
14. The subject property has to be valued without benefits which virtually all flats let on the open market will have, such as central heating, white goods, carpets, curtains etc. The Tribunal decided to make the deductions set out in the summary below to reflect those matters. It should be noted that none of these figures can be simple arithmetical calculations but 20% is the Tribunal's estimate of the amount by which the rent would have to be reduced to attract a tenant.
15. As to scarcity, the Tribunal decided that there is not a substantial scarcity of "... similar dwelling-houses in the locality..." available for letting and a deduction would not be made to reflect scarcity.

Summary

Open market rent for flat of this size in good condition with modern facilities

£750 pcm

Less:- deduction for lack of heating, white goods etc. £150 pcm

Thus, open market rent for subject property

£600 pcm
or £7,200 per annum

16. **The Rent Acts (Maximum Fair Rent) Order 1999** applies to this decision and the 'capped' rent calculated in accordance with the formula set out in the Regulations is £6,883.50 per annum i.e. less than the Tribunal's figure. The calculation is set out on the reverse of the Decision Document.
17. It will be noted that the Tribunal has excluded the service charge from the capping calculation. This can only happen when the service charge is deemed to be variable. In this case, it is possible, to say the least, that the Rent Officer has treated the service charge as not being variable because the capped rents, including service charges, appear to have been rounded up to the nearest 50p. as allowed for in the Regulations.
18. There is nothing in the register to indicate whether the rent officer has determined that such service charges are actually variable i.e. such sums vary according to the cost from time to time of the services provided. As neither party has asked for a hearing the Tribunal has not received any representations on the point and therefore had to come to a decision about this. As the amount involved is quite small, the Tribunal trusts that the parties will not object.
19. The first thing to consider is whether the tenancy allows the landlord the right to charge service charges and, if so, the terms. The Tribunal has seen the written agreement dated 11th March 1985 which does not allow the landlord to claim service charges. The actual tenancy now existing is a statutory tenancy but it is well established that a statutory tenancy succeeding a contractual arrangement contains the same terms as to payment of rent etc.
20. Presumably the landlord has persuaded the rent officer that service charges are payable. The tenant appears to have accepted this and his clearly paid service charges for some years i.e. it has become a term of the tenancy. The papers would indicate that the amount claimed is precisely the amount spent on the communal electricity and aerial (£537.97), gardening (£1,650), general maintenance (£442) and hire of refuse containers (£299) in the last year. The total is £2,928.97 which, divided between the 33 flats comes to £88.76 i.e. the amount allowed by the Rent Officer. The previous registered rent in 2017 had a figure of £95.60.
21. The 2 basic factors which have to be taken into account when looking at whether a service charge is variable are (a) whether it is the amount actually spent on providing the service and (b) as some support for that, whether there are service charge accounts each year which set out the amounts payable which can, if necessary, allow for refunds and further demands. In this case, as has been said, the amount claimed is based on a statement of account setting out the service costs which appear to have actually been incurred.
22. A fair rent generally lasts for a minimum of 2 years. In this case, there is no attempt by the landlord to claim anything to allow for any increase in service charges for next year. Indeed, it is significant that (a) the figure claimed is clearly less than the amount claimed in 2017, (b) there is no debit or credit

amount claimed for 2018 and (c) Mr. Langran does not dispute the amounts claimed. If he were being overcharged, it seems logical to this Tribunal that he would do so. Indeed, if it were being undercharged, the landlord would be likely to claim an increase in the claim over and above the actual costs incurred to cover the past deficit.

23. In all the circumstances, and based mainly on the fact that the amount claimed is precisely the amount said to have been actually incurred in the relevant year, the Tribunal concludes that the terms of the tenancy implied by law include the ability of the landlord to change the amount claimed for service charges each year based purely on the costs incurred and, thus, that there must be annual accounts. Without any contrary statement in the tenancy agreement, the service charge is therefore variable.
24. It must also be remembered that this is, technically, not an 'appeal'. It is for the Tribunal to make its own assessment of the rent and, for the purposes of the capping provisions, it must make its own determination as to whether the service charges are variable. Whether the parties have asked for a determination on this issue or what the rent officer has determined are to be considered but are not determinative.
25. Thus, with the addition of the undisputed variable service charges, the Tribunal's decision is that the fair rent for this property is £6,972.26 per annum.



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Judge Edgington
Chairman
30th September 2019

Caution: For the purpose of reaching a decision the Committee inspected the subject property. Such inspection is not a structural survey and only takes a few minutes. Any comments about the condition of the property in this Statement of Reasons are made as a result of casual observation rather than a detailed inspection. Please do not rely upon such comments as a guide to the structural condition of the property.

ANNEX - RIGHTS OF APPEAL

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.