



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

Case Reference : **FL/LON/00AF/F77/2019/0091**

Property : **First floor flat, 48-50 Anerley Hill,
London SE19 2AE**

Applicant : **Mr E Calderbank**

Representative : **In person**

Respondent : **Mr R Gardener**

Representative : **In person**

Type of Application : **Determination of a fair rent under
section 70 of the Rent Act 1977**

Tribunal Members : **Mr Charles Norman FRICS (Valuer
Chairman)
Mrs Jacqueline Hawkins**

Date of Decision : **23 August 2019**

Date of Reasons : **4 January 2020**

REASONS

Background and Procedural Matters

1. On 22 October 2018 the landlord applied to the Rent Officer for registration of a fair rent of £800 per month for the above property.
2. The rent payable at the time of the application was £665 per month.
3. On 6 December 2018 the Rent Officer registered a fair rent of £765 per calendar month with effect from the same date.
4. A consultation took place at the property on 5 December 2018 with the Rent Officer and the applicant. The landlord was not represented. A copy of the consultation notes was supplied to the Tribunal.
5. By a letter received by the Rent Officer on 30 April 2019 the landlord objected to the rent determined by the Rent Officer and the matter was referred to the Tribunal. That objection was out of time and was therefore referred by the Rent Officer to the Tribunal for a direction under paragraph 6 (1)(b) of schedule 11 to the Rent Act 1977 as to whether the Rent Officer should accept the late objection. By an Order dated 30 May 2019 the Tribunal directed the Rent Officer to refer the objection to the Tribunal.
6. On 26 June 2019 the Tribunal issued directions setting the matter down for determination by written representations, unless either party requested a hearing, which neither did. The landlord was directed to serve any documents or evidence upon which it sought to rely by 22 July and the tenant by 5 August 2019. The landlord was permitted to provide a brief response by 12 August 2019. The Directions stated that the Tribunal would determine the matter on 23 August 2019 and inspect the property on the same day at some time after 10 am.
7. The Tribunal made its determination on 23 August 2019 and a Notice of Decision issued shortly thereafter, with the Tribunal's guidance notes. These stated that any request for Reasons must be made within 28 days. However, a statement of the parties' appeal rights was not included.
8. Rule 36(4) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("hereinafter "the rules") states "where a party is notified under paragraph (2)(b) of the right to request written reasons any such request must be made not later than 1 month from the date the Tribunal sends to the party the decision notice and notification of any right of appeal."
9. On 4, 13 and 15 November 2019 the Tribunal received correspondence from the landlord. There was no request for Reasons, but rather what was described as an objection to the decision. The Tribunal considers that this is an application for permission to appeal. In addition, the

landlord forwarded fresh evidence. The Tribunal declines to consider such new evidence as it should have been submitted in accordance with the Directions of 26 June 2019 and the Tribunal made its determination on 23 August 2019.

10. As the parties were not informed of their appeal rights when the decision was issued, and as the landlord has indicated an intention to appeal, the Tribunal considers that it is necessary and proportionate to prepare Reasons. Rule 52 provides for a 28 day appeal period which will apply as set out in the Annex to these Reasons (see below).

Inspection

11. The Tribunal inspected the property on 23 August 2019 in the presence of the tenant. The landlord did not attend and was not represented. The property comprises a converted first floor flat situated over two shops in a tertiary shopping parade dating from around 1850. The flat is situated over travel agents and a café. However, number 46 is occupied by a domestic appliance shop with white goods stored on the pavement. The overall appearance of the parade is scruffy. The building directly fronts Anerley Hill, the A214 which is a busy main road. Crystal Palace station is very close by. Access to the flat is provided by a staircase within the building frontage to Anerley Hill. Internally the flat comprises a good sized living room and kitchen, two double bedrooms and a bathroom with WC and wash hand basin. There is central heating provided by a Worcester boiler, located in the kitchen. There is double glazing. The electrics are surface mounted. The Tribunal noted evidence of water leaks to the wallpaper in the rear bedroom. The property suffers from an awkward internal arrangement with the bathroom accessed down several steps. In addition, there is an additional staircase leading from the 1st to 2nd floors which has no function to the tenant. The Tribunal noted structural disrepair of a door frame coming away from a wall.

Evidence

12. Unfortunately, there continue to be ongoing disputes between the parties. The Tribunal is only concerned with the assessment of a fair rent under the Rent Act 1977. Such assessment must disregard the personal circumstances of both the landlord and the tenant. Therefore, although a considerable quantity of historic correspondence has been provided, the Tribunal only refers to evidence provided which is directly relevant to its function.

The Landlord's Case

13. The landlord's case was that he had, in about 2016, refurbished the whole flat to include new kitchen new bath, new toilet, new double glazed windows and decoration. The landlord did not refer to any

comparables in his submission in response to the Directions.

The Tenant's case

14. The whole flat had not been refurbished. The work was carried out 8 years ago [in 2010] not 2 years ago. Works in the kitchen comprised a worktop, three cupboards and sink. Central heating did not extend to the bathroom. The tenant complained that an unauthorised alteration to the top floor flat by installation of a bathroom had caused a nuisance as had tenants of that flat. In his letter to the Rent Officer of 18 December 2018 the tenant referred to other fair rents in SE19. The tenant had repaired the bedroom ceiling, mended a water leak, repaired damage behind the water cistern and to the toilet skirting. He had replaced mixer taps. The tenant did not refer to any market comparables.

The Law

15. When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, had regard to all the circumstances (other than personal circumstances) including the age, location and state of repair of the property.
16. In *Spath Holme Ltd v Chairman of the Greater Manchester etc. Tribunal* (1995) 28 HLR 107 and *Curtis v London Rent Assessment Tribunal* [1999] QB 92 the Court of Appeal emphasised that 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 that 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). Other rent registrations are not relevant comparables.

Valuation

17. Where there is a conflict in evidence as to the timing and nature of works carried out, the Tribunal prefers the evidence of the tenant as this was consistent with the Tribunal's inspection. The Tribunal did not consider that issues of noise from the flat above would affect rent. The Tribunal has disregarded the personal circumstances of both parties, as required by law.
18. The Tribunal noted that the Rent Officer had considered that the market rent had the property been in a condition usual in the open market was £1,200 per calendar month. From its own knowledge and

experience, the Tribunal found that this should be £1,250 per calendar month.

19. However, the property was not in that condition. The Tribunal considered that the condition of the kitchen, bathroom, the awkward internal arrangement, the effect of tenants' repairs and the more onerous terms and conditions compared to an assured shorthold tenancy required an adjustment of 25% or £312.50 per calendar month.
20. This left an adjusted market rent for the subject property of £937.50 per calendar month.
21. The Tribunal found that there was substantial scarcity in the locality of Greater London and therefore made a deduction of 20% (£187.50 per calendar month) from the adjusted market rent to reflect this element.
22. It follows that the Tribunal found that the fair rent was £937.50 less £187.50 per month, or £750 per month.
23. The amount of the fair rent to be registered is not limited by the Rent Acts (Maximum Fair Rent) Order 1999 as the rent falls below that level, the calculations for which were supplied with the Notice of the Tribunal's Decision.
24. Accordingly, the sum of £750 per month was determined as the fair rent with effect from 23 August 2019 being the date of the Tribunal's decision.
25. Either party wishing to pursue an appeal must make an application which fully complies with rule 36 (see the Annex below) and in particular states ground(s) of appeal and gives the result he is seeking. The Tribunal will then make its decision in relation to any appeal application.

Mr Charles Norman FRICS

4 January 2020

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against 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.
- 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.

- 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.
- 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.