



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

Case Reference : **LON/00AX/F777/2019/0099**

Property : **First Floor Flat 91 Endwell Road
Brockley London SE4 2NF**

Applicant : **Mr and Mrs Bridges
Tenants**

Representative : **None**

Respondent : **BPT (Bradford Property Trust) Ltd.
Landlord**

Representative : **Grainger plc**

Type of Application : **S.70 Rent Act 1977 –
Determination of a new fair rent**

Tribunal Members : **Mr N. Martindale FRICS
Mr J. Francis**

Date of Inspection : **16 December 2019**

Date of Decision : **16 December 2019**

REASONS FOR DECISION

Background

- 1 By an application dated 23 August 2019 the landlord applied to the Rent Officer for registration of a fair rent of £156 per week(pw) for the Property. There landlord stated that the existing rent was £130 pw.
- 2 On 4 October 2019, the Rent Officer registered a fair rent of £270 pw with effect from 29 November 2019. It appears that the Rent Officer determined that recent works of improvement increased the weekly value of the property by at least 15%. Consequently, the Maximum Fair

Rent provisions which would have normally capped the increase, did apply. There were no amounts for services recorded.

- 3 The previous registered rent as at 5 October 2017 effective from 29 November 2017, was £130 pw. There were no amounts for services recorded.
- 4 By an email dated 21 October 2019 to the Rent Officer but redirected to the Tribunal the tenants appealed the new registered rent. The matter was referred to the Tribunal for a fresh determination of the rent.
- 5 Directions dated 28 October 2019 for the progression of the case were issued. Neither party requested a hearing.
- 6 The landlord supplied details of works carried out and invoiced, on: 4 and 20 April 2018, 6 June and 14 August 2018 by Young and Harris Building Contractors. The sums were £2184, £4512, £7884 and £8856 including VAT.
- 7 Most of the works were repairs or replacements of existing features, but the supply and installation of a new a gas fired central heating system was an improvement.
- 8 No representations were received by the Tribunal from the tenants.

Inspection

- 9 The Tribunal inspected the property on 16 December 2019. The building is of a traditional construction brick and modern single lap concrete tiled roof three storey standard late Victorian end terraced house, with back addition. It appeared to the Tribunal that the house had been converted into two self-contained flats, one on ground and one on first and second floors. The latter was the Property.
- 10 Access to the Property is off a small ground floor shared entrance hallway. The flat has the front garden/ yard but there is no off street parking. There is a controlled parking on the road. Endwell Road is a busy suburban street and bus route. The building is located on a sharp bend and there is a vehicle crash barrier in front.
- 11 The Property has a large first floor front living room, and large separate kitchen to the rear, a bath/WC and a laundry room in a mid storey back addition. On the upper floor were two double bedrooms and a single bedroom. There are built in cupboards.
- 12 Although the Property is in a generally fair state of repair and decoration, the interior is relatively basic and largely unimproved from earlier in the twentieth century.

- 13 The flat has full gas fired central heating with the combination boiler in the laundry room and full UPVC doubled glazed windows. The internal fittings to kitchen, bathroom and electrical distribution were functional but, very basic. There were no landlord's white goods or carpets.

Law

- 14 When determining a fair rent the Committee, in accordance with the Rent Act 1977, section 70, had regard to all the circumstances including the age, location and state of repair of the property. It also disregarded 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.
- 15 In *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 the Court of Appeal emphasized
- (a) 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
 - (b) 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).

Decision

- 16 Where the condition of a property is so much poorer than that of comparable properties, so that the rents of those comparables are towards twice that proposed rent for the subject property, it calls into question whether or not those transactions are truly comparable. Would prospective tenants of modernized properties in good order consider taking a tenancy of an unmodernised house in poor repair and with only basic facilities or are they in entirely separate lettings markets? The problem for the Tribunal is that the only evidence of value levels available to us is of modernised properties. We therefore have to use this but make appropriate discounts for the differences, rather than ignore it and determine a rent entirely based on our own knowledge and experience, whenever we can.
- 17 On the evidence of the comparable market lettings from the parties and our own general knowledge of market rent levels in Brockley, we accept that the subject property if modernized and in good order would let on normal Assured Shorthold Tenancy (AST) terms, for £420 per week.

This then, is the appropriate starting point from which to determine the rent of the property as it falls to be valued.

- 18 A normal open market letting would include curtains and “white goods”, but they are absent here. To reflect this and the following, we make allowances for the facts that: The Property has only a basic bathroom/WC, basic kitchen, basic electrical installation, and no white goods. These deductions total £100 per week.
- 19 From a starting market rent of £420 per week, we therefore make total deductions of £100 per calendar month, leaving the adjusted market rent at £320 per week.
- 20 The Tribunal also has to consider the element of scarcity and whether demand exceeded supply. The Tribunal found that there was a substantial scarcity in the locality of Greater London and therefore makes a deduction of 20% from the adjusted market rent to reflect this element. This leaves £256 pw. The uncapped fair rent to be registered would therefore be £256 pw.
- 21 However the Tribunal is also required to calculate the Maximum Fair Rent Cap. This is determined by a formula under statutory regulation, which whilst allowing for an element of inflation may serve to prevent excessive increases. The Cap as the date of the Tribunal’s determination is £144 per week.
- 22 The Tribunal has to consider whether or not the landlord’s works since the last registration would raise the value of the Property by more than 15%. The Tribunal concludes that the majority of the work is simply the repair or replacement of worn out elements which maintain the basic value of the Property preventing it from falling. By contrast the gas fired central heating is clearly an improvement and it does raise the rental value, but the Tribunal determines that such increase is below 15%. Consequently, the Market Fair Rent Cap still applies.
- 23 As this Cap is lower than the uncapped rent, it applies and the fair rent determined by the Tribunal for the purposes of S.70, is £144 pw. This new rent will take effect from and including the date of determination, 16 December 2019.

Name: Neil Martindale Date: 16 December 2019

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).