



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

**Case reference** : **CAM/34UF/F77/2020/0013**

**HMCTS code** : **A:BTMMREMOTE**

**Property** : **First floor flat, 16 Alexandra  
Terrace, Kingsthorpe,  
Northampton NN2 7SJ**

**Applicant (landlord)** : **Rubicon Services Limited**

**Respondent (tenant)** : **Ms Rebecca L Percival**

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

**Tribunal members** : **Judge David Wyatt  
Mary Hardman FRICS IRRV(Hons)**

**Date of decision** : **15 September 2020**

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**DECISION**

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**Covid-19 pandemic: description of hearing**

This has been a remote audio hearing. The form of remote hearing was A:BTMMREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that we were referred to are in a bundle comprising copies of the documents and written submissions filed and served by both parties. We have noted the contents.

## **Decision**

The tribunal determined a fair rent of £496 per month, which is the capped rent under the Rent Acts (Maximum Fair Rent) Order 1999.

## **Reasons**

### **The property**

1. No inspection was necessary because the parties provided good photographs and the other information referred to below. The following summary is based on the details provided by the rent officer and the parties, and the previous decision dated 12 April 2018 of a tribunal in this jurisdiction (CAM/34UF/F77/2018/0002).
2. The Property is a three-bedroomed flat on the first (top) floor of 16 Alexandra Terrace. The previous decision (which was made after an inspection) said that the building is brick under a slate roof with flat roofed additions to the rear, the front part of the building is Victorian and the rear additions were probably made in the 1950s.
3. There is a bathroom, kitchen and sitting room. The Property has a roof terrace and a brick outbuilding for storage (the landlord explained that there was no specific right in the tenancy agreement to use this outbuilding, but the parties confirmed they wanted us to assess the rent on the basis that the tenant has this right, since the tenant has used this outbuilding throughout and the electricity meter has been moved into it). The landlord provided replacement double-glazed windows except for a small number of single-glazed windows in the kitchen, with about 12 windows in total.
4. The Property is above commercial premises (currently occupied by a betting shop which has long opening hours, said to be 8am to 10pm Monday to Saturday and 9am to 8pm on Sundays/public holidays). The ground floors of the properties on either side are a charity shop and a dry-cleaner.
5. It is on a large road. The access is at the rear, through a door on the lower ground floor (below the main street level) to an entrance lobby shared with the occupiers of the commercial premises, who may use it as an emergency exit. There are concrete stairs to the first-floor landing, with small areas for storage.
6. The Property has mains electricity, water and drainage. It was let with two open fires. It has no central heating and no garage or off-street parking. It was let unfurnished; the tenant provided heating appliances, carpets, tiling, curtains, the cooker and other white goods, kitchen units and extensive bathroom installations together with general interior works which vary between repairs and potential minor improvements.
7. The location, on the High Street, has local shopping and amenities.

## **The tenancy**

8. The tenancy began in about April 1987. The tenant (Ms Percival) has occupied throughout. The landlord has produced a figure for their insurance costs, but no council tax, service or other charges are collected in addition to the rent.
9. The parties said that the tenant was responsible for repairing the interior and the landlord the exterior, although the landlord has the repairing obligations which are implied by section 11 of the Landlord and Tenant Act 1985.

## **Last registration**

10. Pursuant to Part IV of the Rent Act 1977 (the “**1977 Act**”), a fair rent of £450 per month was determined by the previous tribunal with effect from 12 April 2018. That tribunal accepted that the Rent Acts (Maximum Fair Rent) Order 1999 (the “**MFR Order**”) did not apply (and so did not cap the rent at a lower figure) on that occasion, because works carried out by the landlord since the previous registration had caused the rent to exceed by at least 15% the previous registered rent.

## **The referral**

11. In February 2020, the landlord applied to the rent officer for re-registration of a fair rent of £650 per month. On 21 April 2020, a rent of £475 per month, which was below the capped rent under the MFR Order at that time, was assessed by the rent officer based on:
  - a. an open market rent of £725 per month;
  - b. a deduction of £200 for the tenant’s repair/decoration liability, lack of floor coverings/curtains, no central heating and the tenant’s improvements; and
  - c. a deduction of about £52.50 (10% of the adjusted market rent) for scarcity.
12. The landlord objected to this assessment and, pursuant to Schedule 11 to the 1977 Act, the rent officer referred the matter to the tribunal.
13. The tribunal issued directions on 15 June 2020, informing the parties that it did not intend to inspect the Property and inviting them to submit any further representations (including any photographs and details of rentals for similar properties) they wished the tribunal to consider. Reply forms, photographs, further details and submissions were provided by the parties.
14. A hearing was requested and conducted by telephone on 8 September 2020. Ms Davis attended and represented the landlord as director. Ms Percival attended and represented herself.

## **The law**

15. The relevant law is set out in section 70 of the 1977 Act and the MFR Order. We are to have regard to all the circumstances (other than personal circumstances) and in particular to the age, character, locality and state of repair of the Property. We are to disregard the effect on the rental value of any improvements carried out by the tenant (other than in pursuance of the terms of the tenancy). We are also required (by s.70(2)) to assume that the demand for similar rented properties in the locality does not significantly exceed the supply of such properties for rent; in effect, if such scarcity exists, we are to adjust the rental figure so that the fair rent is not affected by it.
16. 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 confirmed that for the purposes of determining the market rent (before making any necessary adjustments), open market assured tenancy rents are usually appropriate comparables.
17. By section 72 of the 1977 Act, if the rent is determined by the tribunal, the registration of the rent takes effect from the date we make our decision. We referred to this at the outset of the hearing, explaining that if the landlord wished to pursue this appeal we could not back-date the rent we determined. Ms Davis confirmed she understood this.

## **Representations**

18. The parties produced a volume of material and made detailed submissions on paper and at the hearing. We have considered them carefully, but we do not attempt to summarise all of them here. This decision document simply outlines the key points.
19. The landlord had referred in the papers to repairs/improvements made in 2016 and 2017 at a cost of over £2,000. She said that she had sent details of these costs to the previous tribunal late, so they may not have been considered together with the costs of over £11,000 referred to by the previous tribunal (when it decided that those improvements increased the rent by 15% or more, so the MFR Order did not apply on that occasion). We confirmed that, like the previous tribunal, we are assessing the Property in its current condition, which would include these repairs/improvements. Ms Davis had produced details of some maintenance costs since 2018, but confirmed that she was not contending that any improvements had been carried out since 12 April 2018 which would increase the rent by 15% or more.
20. Ms Davis submitted (based on the comparables and letter from the landlord's agents) that the open market rent would be £850 but this would reduce to about £750/£800 because of the commercial premises underneath. She pointed out that the average of the rent officer's comparables would be about £804. Ms Davis argued that in

Northampton there was not much variation between different areas. She said that there were residential streets opposite the Property; this was not just a commercial area, but had home owners as well.

21. Ms Percival disputed that, saying that there were substantial differences in areas and this was a largely commercial area which was less attractive than other areas in Northampton. She described the operation of the betting shop underneath the Property, saying that this had previously been a different betting shop and before that a grocery store. She referred to the charity shop to the left and the dry cleaner to the right, saying that these involved vans and drop offs and had a noisy lift, with noise a factor from the area as well. She said that there were problems with fly tipping and the undesirability of homes above busy commercial premises. She referred to many registered rents, saying that she was paying the highest registered rent in Kingsthorpe. We warned that unfortunately these other registered rents were of no real assistance because of the unknown variables, including the effect of the MFR Order in each case; we needed to assess the starting point based on open market rental comparables. Ms Percival said that she would adopt the open market rent assessed by the rent officer based on the comparables they had taken into account (although we bear in mind that Ms Percival thought that the rent officer had assessed this at £650 rather than their actual assessment of £725 per month).
22. Ms Davis accepted there was no allocated parking, but thought that the local authority normally issued parking permits for residents at very modest cost. Ms Percival said that was wrong, there were no council-issued parking permits available and nowhere nearby to park, with the Property about three miles from the railway station. Ms Davis argued that there were car parks in the area.
23. Ms Davis submitted that the Property has an area of over 1,000 sq. ft., has three good-sized bedrooms, is exceptionally light with the replaced windows, has the large roof terrace and has the benefit of the brick outbuilding for storage. Ms Percival gave the actual room dimensions in her reply form. She said that the outbuilding was an old coal shed, about 8ft by 4ft or a little larger as set out in her reply form, adjacent to the door, and that she had always had access to it since 1987. She said that nothing (other than the maintenance item referred to by the landlord in their submissions) had been done by the landlord to the Property since 2018; there had been no improvement to justify any increase in the rent.
24. Ms Percival gave details of the significant repairs and improvements she had carried out during her time at the Property, pointing out that her improvements to the bathroom were more recent. Ms Davis did not dispute that the relevant improvements had been carried out by the tenant and that the tenant had not been obliged by the tenancy agreement to carry them out.

25. Ms Percival referred to the 4G telecommunications mast, saying that based on her conversations with workmen they were preparing to upgrade this to 5G equipment. Either way, she said, this would discourage prospective tenants because it was less than 14 metres from the Property. Ms Davis said that based on her initial investigation she did not believe that 5G would be coming to this road and that, either way, the better communications from the proximity of the mast may be a benefit for some prospective tenants.

### **Determination**

26. First, we need to determine the rent which the landlord could reasonably expect to obtain for the Property in the open market if it were let today in the condition and on the terms now usual for open market lettings.
27. The comparable properties produced by the landlord do suggest a current general starting point for Northampton of £750 to £800 per month. However, given the specific location on the large road with the betting shop underneath and the nearby commercial premises, and the general location, the lack of off-street/allocated parking and the shared access from the loading area at the rear, we would need to adjust this. Even when partially offset by the roof terrace and the other positive features described above which may be better than some comparables, we assess the open market rental level at £700 per month. That is a little lower than the open market rent assessed by the rent officer, but we are satisfied that it is the appropriate starting point.
28. We then need to adjust this open market rent to disregard the improvements made by the tenant and to allow for her internal repairing obligations. We can see from the photographs that the tenant's improvements are the main reason the interior of the Property looks appealing. Without the alternative heating provision, floor coverings, kitchen units, bathroom installations, white goods, curtains and general repair by the tenant we consider, based on all that we have heard from the parties, that the open market rent would have to be reduced to £500 to let the Property within a reasonable time or at all. We note in passing that the rent officer and the previous tribunal in 2018 made the same deduction of £200 for these matters, but we make this deduction based on our own assessment.

### **Scarcity**

29. Ms Percival submitted that there was a high demand for rental properties in Northampton and the scarcity of properties to let pushed up the rents. Ms Davis did not feel able to comment on this. It appears that the rent officer made a deduction of 10% for scarcity, but no evidence has been produced to justify this. Ms Percival and perhaps the rent officer may have focussed on Northampton rather than Northamptonshire. In Yeoman's Row Management Ltd v London Rent

Assessment Committee [2002] All ER (D) 148, Ousley J held that scarcity must be considered over a wider area than a particular locality.

30. In the absence of any real evidence from the parties, assessment of whether there is scarcity is based on the knowledge of the members of the tribunal. We can speculate that there might be relatively few three-bedroomed flats in the wider area, but there is no indication that there are not enough three-bedroomed properties for prospective tenants looking for them. Based on our general knowledge at the time of this decision, demand for similar dwelling houses in the appropriate locality (Northamptonshire) is not significantly greater than supply. Accordingly, we do not make any deduction for scarcity.

### **MFR Order**

31. Under the MFR Order, the maximum fair rent is £496, as set out in the calculation which accompanies this decision. Since that is less than the assessed rent of £500 (£700 less £200), the fair rent to be registered is £496 per month.

**Name:** Judge David Wyatt

**Date:** 15 September 2020

### **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).