



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

Case Reference : **CHI/00ML/F77/2021/0015**

Property : **Flat 48 Eaton Manor, The Drive, Hove,
East Sussex BN3 3PT**

Landlord : **Eaton Manor Hove Limited**
Representative : **Allsop Letting & Management
Limited**

Tenant : **Mr H Davis**
Representative : **None**

Type of Application : **Rent Act 1977 – Section 70
Appeal of Registered Rent**

Tribunal Members : **R T Athow FRICS MIRPM (Chairman)
N Robinson FRICS
C Davies FRICS ACI Arb**

Date of Inspection : **22 March 2021**

Date of Decision : **22 March 2021**

DECISION

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BACKGROUND

- 1) On 4th November 2020 the Landlord made an application to register the rent of the property at £18,040.62 per annum plus variable service charge.
- 2) The rent payable at the time of the application was £15,033.85 per annum plus variable service charge.
- 3) The rent was previously registered by the First tier Tribunal (Property chamber) [“the Tribunal”] on the 10th December 2018 at £15,033.85 per annum including variable service charge with effect from that date. The Register notes a fuel charge of £472.18 per annum which is not included in the rent allowance. It also noted an amount of £2,258.35 was attributable to services.
- 4) On the 17th December 2020 the Rent Officer registered a Fair Rent of £15,000.00 per annum, and noted the fuel charge as £507.00 per annum and the services of £1,925.84 per annum, exclusive of rates with effect from that date. This was the Maximum Fair Rent payable. The uncapped rent was not stated.
- 5) On the 12th January 2021 the Landlord objected, and the matter was referred to the First-Tier Tribunal (Property Chamber).
- 6) On the 5th February 2021 the Tribunal made Directions informing the parties that in view of the Government’s advice with respect to the Covid 19 outbreak an inspection would not take place. The parties were given the opportunity to provide supporting photographs of the property and if desired make representations to have the case stayed until an inspection was possible.
- 7) The Directions required the Landlord to send a statement to the Tenant and to the Tribunal supporting the application for an increase in rent. The Tenant was also required to send a statement to the Landlord and to the Tribunal in support of his objection.
- 8) Neither party requested a Hearing.
- 9) The Tribunal met on 22nd March 2021 to consider the application.
- 10) The matter was dealt with as a paper determination without hearing. In the current circumstances it has not been possible to inspect the property and the Tribunal relied on submissions from the Landlord and Tenant in correspondence, publicly available housing data online and its own expert knowledge. All three members of the Tribunal have sat in earlier determinations of rent at the block.

EVIDENCE

- 11) The Tribunal received written representations from the Landlord and the Tenant and these were copied to the parties. The Rent Office supplied some records and copies of correspondence they had had with the parties.

12) Eaton Manor is a large block of about 145 units built in the mid 1960's in a residential district of Hove fronting onto three different roads. All local facilities are within easy reach.

13) The self-contained flat is situated on the first floor and has 3 bedrooms, bathroom/WC, living room, kitchen. There is communal central heating and hot water, and double glazing. In the grounds are communal car parking spaces, and there is a right to park in one of the unallocated spaces if vacant.

14) No tenancy agreement was provided. The Rent Register notes the start date as 25th March 1968, and the parties' responsibilities are as per S11 of the Landlord & Tenant Act 1985.

15) Prior to the consideration the Tribunal obtained details from Allsop Letting and Management of the floor area they had within their records for the flat. Their records state it is 108 square metres.

Landlord's Submissions

16) The Tribunal copies below the Landlord's submissions including floor areas which The Tribunal has added for ease of reference:

1. *Market rent – A property description purpose built flat comprising 3 rooms, kitchen and bathroom/WC. Floor area 108 sqm. The flat benefits from the provision of heating and hot water, residents parking and onsite resident manager. As you will see from the evidence, comparable properties of the same size in the same block are achieving between £21,180 and £22,920 per annum.*

<i>Property Address</i>	<i>Tenure Type</i>	<i>Size</i>	<i>Annual Rent</i>
<i>53 Eaton Manor</i>	<i>AST</i>	<i>108sqm 3 Room1Kitchen Bathroom</i>	<i>£21,180</i>
<i>47 Eaton Manor</i>	<i>AST</i>	<i>110sqm 3 Room1Kitchen Bathroom</i>	<i>£21,672</i>
<i>31 Eaton Manor</i>	<i>AST</i>	<i>108sqm 3 Room1Kitchen Bathroom</i>	<i>£21,996</i>
<i>74 Eaton Manor</i>	<i>AST</i>	<i>104sqm 3 Room1Kitchen Bathroom</i>	<i>£22,920</i>

In view of the above we consider the market rent for the subject property to be £21,942 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. At present there are over 20 comparable properties available to rent within a ½ mile radius of the property, so scarcity of supply is not inflating rental prices in the area.*
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 The location (sic) is a short walk from local shops, amenities and Hove train station with fast connections to London Victoria and southern towns.*
5. *Conclusion – We conclude, therefore, that an appropriate Fair Rent is properly assessed at a minimum of £17,442 per annum allowing for the age, condition and locality of the property and that it is unfurnished, calculated as follows:*

Market Rent:	£21,942
Carpets/White Goods	£1500
Updated Kitchen/bathroom	£3000
Heating	£0
Scarcity @ 5%:	£0
Fair Rent:	<u>£17,442</u>

Maximum Fair Rent

RPI at the last registration = 283.0, this registration =294.6. Percentage increase = 11.6% plus 5% enhancement = 16.6% increase. £12,776 + Variable service charge + 16.6 % = £14,896.81 rounded to £14,897 rounded up to nearest 50 pence 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 £14,896.81 per annum should be set as the new fair rent and the rent should be registered at this level.

17) To assist the Tribunal additional information was sought from Allsop and they gave the floor on which each of their comparables were situated, the floor areas, EPC ratings and details of when each flat had been refurbished. They also confirmed that 3 other three bedroomed flats were currently vacant and being refurbished. They were requested, but failed to provide layout plans, state which road frontage the looked onto, or give details of any other flats available or recently let in the block.

Tenant's Submissions

18) The Tenant accepts the Registered Rent set by the Rent Office. He does not accept the Landlord's submissions.

19) He had done his own research on local rental values of 3 bedroomed flats in Hove and gave the following details of properties which were recorded on Rightmove as "let agreed" and all been newly refurbished.

Woodland Court Dyke Rd Ave	£15,000 p.a.
Vanburgh, Eaton Gardens	£16,800 p.a.
Deanside, The Drive	£17,400 p.a. (garage included)
New Church Rd - fifth floor	£16,500 p.a.

THE LAW

20) When determining a Fair Rent the Tribunal, in accordance with the Rent Act 1977, section 70, must have regard to all the circumstances including the age, location and state of repair of the property. It must also disregard 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. That section also required the Tribunal not to take into account the personal financial and other circumstances of the Tenant.

21) 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 emphasised that section 70 means that:

- a) Ordinarily a Fair Rent is the market rent for the subject property discounted for 'scarcity' 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 these comparables and the subject property).

22) The Rent Act (Maximum Fair Rent) Order 1999 limits the increase from the previous registered rent. It is worked out by a formula based on the change in Retail Prices Index since the last registration plus a fixed percentage increase set by law. If the Rent Officer or the Tribunal decides the property is worth more than the maximum fair rent, the maximum fair rent becomes the registered rent. If the valuation is lower than the maximum fair rent, that valuation becomes the registered rent.

23) There are two occasions when the maximum fair rent will not apply: -
If there is no existing registered rent, and
If the Landlord has improved or repaired the property and the Rent Officer and/or the Tribunal considers the improvement or repair has made the rent at least 15% more than the existing registered rent.

VALUATION

The Market Rent

24) The Tribunal firstly determined what rent the Landlord could reasonably be expected to obtain for the property in the open market if it were let today in the condition that is considered usual for such an open market letting exclusive of water rates and council tax.

25) In the competitive letting market that now exists, properties need to be in first class structural and decorative order and be equipped with all amenities such as full modern central heating, double glazing and other energy-saving facilities along with white goods, carpets and curtains to ensure the property attains its full rental income potential. Where such items and facilities are missing the rent is found to be correspondingly lower.

26) The comparables submitted by the Landlord gave no logical guidance to the Tribunal. Flat 74 was the highest rent payable, yet it was unmodernized and on the 6th floor. Flat 31 was in the basement, had been partially modernised, but was £924 per annum lower in rent. The two flats that had been modernised in

2017 (53 and 47), had rents of £1,740 and £1,248 per annum respectively, less than Flat 74.

27) Upon checking the EPC register the Tribunal found significant differences in the floor areas against those given by Allsop. They show the following:

Flat	EPC Rating	Floor area sq m
48	79C	87
53	74C	86
47	76C	139
31	75C	94
74	52E	89

28) The Tenant's comparables included 2 properties that were some distance away from the subject flat and in less desirable areas, and so the Tribunal felt they were not truly comparable. This left two which were considered to be comparable. The flat in Deanside had a garage, so some allowance needed to be made for this facility, but the Tenant offered no allowance computation. The flat in Vanburgh is almost opposite the subject block but appears to be somewhat outdated.

29) The Tribunal noted there were three other flats advertised as available in the block, one at £1,537 per month (£18,444 p.a.). It concluded that an appropriate open market rent for the property, let on a modern open market letting of an Assured Shorthold Tenancy, where the Landlord supplies white goods, carpets and curtains and the Tenant has no liability to carry out repairs or decorations, would be £18,000 per annum, including £1,925.84 Variable Service Charge.

30) However, the Tribunal noted from the representations made, together with the notes from the Rent Officer, that the actual property is not in the condition considered usual for a modern letting at a market rent, and it was necessary to adjust that hypothetical rent of £18,000 per annum to allow for the differences between the condition considered usual for such a letting and the condition of the actual property.

31) Firstly, it removed the Variable Service Charge from the hypothetical rent to enable adjustments to be made to the net rental element. This equates to £16,074.16.

32) The Tribunal lists below several items that impact upon the rental value and requires an appropriate adjustment to be made:

- (a) Tenant's repairing and decorating liabilities.
- (b) Tenant supplying white goods.
- (c) Tenant supplying carpets and curtains.
- (d) Old kitchen and bathroom.

33) There is no laid down formula for assessing each individual item's impact on the rental value. The Tribunal has used its own knowledge and

experience in assessing the overall impact these items would have when taken into account by a hypothetical Tenant who would then require an appropriate reduction in rent to take these into account.

34) The Tribunal considered these factors and decided that a deduction of 20% should be made, which gives a rent of £12,859.33 per annum, rounded up to the next 50p (in line with the MFR calculations method) giving £12,859.50. The Variable Service Charge of £1,925.84 is then added back on which gives a fair rent of £14,785.34 per annum.

Scarcity

35) The Tribunal did not consider that there was any substantial scarcity element for this type of property in this area and accordingly no further deduction was made for scarcity.

Other matters

36) The Landlord's submissions on the Maximum Fair Rent are noted, but the current calculations are shown on the Tribunal's Fair Rent Decision Notice.

THE DECISION

37) We therefore determined that the uncapped Fair Rent is £12,859.50 per annum to which the sum of £1,925.84 in respect of services should be added, giving a total Fair Rent of £14,785.34 per annum.

38) As this amount is below the rent calculated in accordance with the Rent Acts (Maximum Fair Rent) Order 1999 details of which are shown on the rear of the Decision Notice, we determine that the lower sum of £14,785.34 per annum is registered as the Fair Rent with effect from 22nd March 2021.

39) The registered rent is to be confirmed as variable in accordance with the terms of the tenancy (Rent Act 1977, s.71(4)).

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber), which may be on a point of law only, 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.

2. 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.

3. 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 time or not, to allow the application for permission to appeal to proceed.

4. 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.