



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

Case Reference : **LON/OOAY/F77/2021/D153**

Property : **57 Churston Close , Tulse Hill, SW2 3BX**

Tenant : **Mrs P Patel & Mr s Patel**

Landlord : **Grainger**

Type of Application : **Determination of a Fair Rent under section 70 of the Rent Act 1977 New Registration**

Tribunal : **Mr R Waterhouse MA LLM FRICS**

HMCTS Code (paper, video, audio) : **P-Paper**

Date of Decision : **16 August 2021**

Decision

Background

The Landlord made an Application to the Rent Officer for a Registration of a Fair Rent on 15th July 2020.

The property comprises a two bedroom, one living room, bathroom, and kitchen, centrally heated and double glazed flat. The tenant having responsibility for internal decoration.

The Tenant had accepted the subject property as suitable alternative accommodation from their previous property. The registered rent in the previous property was £476.50 per month and this was the rent that was the rent being paid initially under the new tenancy in the new property.

The Landlord's application requested a rent of £571.80 per month. The Rent Officer registered a rent of £691 per calendar month from 30th December 2020.

The tenant notified the Rent Officer of their intention to appeal on the 5th January 2021.

The Tribunal viewed evidence submitted by the Tenant, Friday 11th December 2020 by email, to the Rent Officer of photographs of the property.

The evidence noted several areas of concern;

the property experiences draughts through brick vents, window vents and around the doors

four radiators and seven window frames remain undecorated

window handles in living room window keep falling off.

the windows are part glazed so noise pollution from the main road directly outside is loud, especially at sleeping times.

Directions were issued by the Tribunal on the 1st April 2021. In those Directions, the parties were informed that in accordance with Public Health England's advice to avoid unnecessary travel and social interaction for the time being, the Tribunal would not hold an oral hearing, unless so requested by either or both the parties, or would it inspect the property. Neither party has requested a hearing.

Thereafter, the Directions made provision for the filing with the Tribunal of the parties' respective written submissions and, in particular, for the completion of a reply form giving details of the Property and including any further comments the parties wished the Tribunal to take into account in making its determination. In due course, the Landlord and the Tenant filed their written submissions.

The tenancy is a statutory (protected) periodic tenancy. The tenancy (not being for a fixed tenancy of 7 years or more) is subject to section 11 of the Landlord and Tenant

Act 1985 which sets out the landlords statutory repairing obligations; the tenant is responsible for internal decorations.

Following the issue of the Tribunals decision which was based on the written and visual evidence submitted by the parties that was germane to the determination of a fair rent, the landlord sought extended reasons for the Tribunal's decision.

Relevant Law

Provisions in respect of the jurisdiction of the Tribunal and the determination of a fair rent are found in Schedule 11, Part 1, paragraph 9(1) to the Rent Act 1977, as amended by paragraph 34 of the Transfer of Tribunal Functions Order 2013, and section 70 of the Rent Act 1977.

Rent Act 1977

Schedule 11, Part 1, paragraph 9 (as amended)

“Outcome of determination of fair rent by appropriate tribunal

9.-(1) The appropriate tribunal shall-

(a) if it appears to them that the rent registered or confirmed by the rent officer is a fair rent, confirm that rent;

(b) if it does not appear to them that that rent is a fair rent, determine a fair rent for the dwelling house.”

Section 70: Determination of fair rent (as amended)

“(1) In determining, for the purposes of the Part of this Act, what rent is or would be a fair rent under a regulated tenancy of a dwelling house, regard shall be had to all the circumstances (other than personal circumstances) and in particular to-

(a) the age, character, locality and state of repair of the dwelling-house, ...

(b) if any furniture is provided for the use under the tenancy, the quantity, quality and condition of the furniture [, and

(c) any premium, or sum in the nature of a premium, which has been or may be lawfully required or received on the grant, renewal, continuance or assignment of the tenancy.]

(2) For the purposes of the determination it shall be assumed that the number of persons seeking to become tenants of similar dwelling-houses in locality on the terms (other than those relating to rent) of the regulated tenancy is not substantially greater than the number of such dwelling-houses in the locality which are available for letting on such terms.

(3) There shall be disregarded-

(a) any disrepair or other defect attributable to a failure by the tenant under the regulated tenancy or any predecessor in title of his to comply with any terms thereof;

(b) any improvement carried out, otherwise than in pursuance of the terms of the tenancy, by the tenant under the regulated tenancy or any predecessor in title of his;

(c), (d) ...[repealed]

(e) if any furniture is provided for use under the regulated tenancy, any improvement to the furniture by the tenant under the regulated tenancy or any predecessor of his or, as the case may be, any deterioration in the condition of the furniture due to any ill-treatment by the tenant, any person residing or lodging with him, or any sub-tenant of his.”

Consequently, when determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, has regard to all the circumstances including the age, location and state of repair of the Property. It also disregards the effect of (a) any relevant Tenant’s improvements and (b) the effect of any disrepair or defect attributed to the Tenant of any predecessor in title under the regulated tenancy, on the rental value of the Property.

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:

- (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 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. (The rents may have to be adjusted where necessary to reflect any differences between the comparables and the subject property).

In considering scarcity under section 70 (2), the Tribunal recognises that:

(a) there are considerable variations in the level of a scarcity in different parts of the country and that there is no general guidance or “rule of thumb” to indicate what adjustments should be made; the Tribunal, therefore, considers the case on its merits;

(b) terms relating to rents are to be excluded. A lack of demand at a particular rent is not necessarily evidence of scarcity; it may be evidence that the prospective tenants are not prepared to pay that particular rent.

Fair rents are subject to a capping procedure under the Rent Acts (Maximum Fair Rent) Order 1999 which limits increases by a formula based on the proportional increase in the Retail Price Index since last registration.

The only exception to this restriction on a fair rent is provided under paragraph 7 of the Order where a landlord carries out repairs or improvements which increase the rent by 15% or more of the previous registered rent.

Submissions

Landlord

None received

Tenant

The tenant notes in a letter dated 11th December 2020 their submissions.

Reasons for Decision

Initially the Tribunal 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. In the absence of any material evidence as to the market, the Tribunal acting in its capacity as an expert tribunal and using its general knowledge of market levels in the area, concluded that such a likely market rent, if a market rent is adopted would be £1400 per month.

However, the Property is not in the condition considered usual for a modern letting at a market rent. Therefore, it is necessary to adjust the above hypothetical rent of £1400 per month, a deduction of 20% is made. The adjusted rent is £1120 per month.

In addition, the Tribunal determined that there should be a further deduction of 10% to reflect the difference in letting terms between a modern assured shorthold tenancy and a protected tenancy. The rent after this adjustment is £1008 per month.

Thereafter the Tribunal considered the question of scarcity in section 70 (2) of the Rent Act 1977. A figure of 20% was adopted. The rent after this final adjustment was £806 per month.

Rent Acts (Maximum Fair Rent) Order 1999

The rent is a first registration and so the Rent Acts (Maximum Fair Rent Order) 1999 does not apply.

Accordingly, the sum of £806 per week will be registered as the fair rent with effect from 16 August 2021 being the date of the Tribunal's decision.

Valuer Chair: Richard Waterhouse FRICS

Date: 16 August 2021

Appeal to the Upper Tribunal

A person wishing to appeal this decision to the Upper Tribunal (Property Chamber) on a point of law must seek permission to do so by making a written application to the First-tier Tribunal at the Regional Office which has been dealing with the case which application must:

- a. be received by the said office within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
- b. 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.

If the application is not received within the 28 –day time limit, it must include a request for an extension of time and the reason for it 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.