



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

**Case Reference** : **LON/OOAU/F77/2021/0037**

**Property** : **Flat C , 32 Barnsbury Road , London N1  
oHB**

**Tenant** : **Mr Michael Jacobs**

**Landlord** : **BTP (Bradford Property Trust)**

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

**Tribunal** : **Mr R Waterhouse FRICS**

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

**Date of Decision** : **28 September 2021**

**Date of Statement of Reasons : 27 October 2021**

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**Statement of Reasons**

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

This has been a remote hearing on the papers, which has been not objected to by the parties. The form of remote determination was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined on paper.

### **1. Background**

The Tribunal gave formal notice of its decision by a Notice dated 28 September 2021 of £ 145.50 pw with effect from the same.

On the 3 June 2020 the Landlord of the property applied to the Rent Officer for re registration of a fair rent of £640.35 per month (147.77 per week), the rent having been previously registered on 30 August 2018 at £128.50 per week.

On the 7 October 2020, the Rent Officer registered a fair rent of £140.50 per week with effect from 7 October 2020.

In a letter dated 30 October 2020 the Tenant Mr Michael Jacobs objected to the rent determined by the Rent Officer and the matter was referred to the First –tier Tribunal (Property Chamber) (Residential Property).

Directions were issued by the Tribunal on the 28 June 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.

### **2. The Property**

The property is a two bedroom, one living room flat, with kitchen and bathroom located on the second floor.

### 3. 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.

## **4. Submissions**

### **Landlord**

None received

### **Tenant**

Notes from a meeting between the Rent Officer and Tenant of 6<sup>th</sup> October show that the Tenant was concerned that the whole building deteriorating, the roof was leaking and the agent is taking the freeholder to court due to this issue.

The tenant also pointed out that he is unable to open the window in the living room and windows are single glazed and draughty.

Additionally the tenant noted a block gutter which he has been unable to get unblocked, citing the landlord not fulfilling their responsibility.

Externally the tenant also point out that the tree in the garden need attention as cause problem for the tenant and he has to cut the branches to be able to open his window.

Finally the Tenant noted a wall crumbling in the flat close to the stair case.

A number of photographs were submitted by the Tenant to support their submissions;

- A partially open window, in poor condition.
- Of yellow London stock bricks stacked next to bags of what appears to be builders waste.
- Showing what appears to show water penetration in one corner of a ceiling and black plastic sheeting below.
- The partial removal of bricks from the corner of a low wall around the base of a mature tree.
- A window frame in poor condition.
- Stacked bricks and waste sacks external to the building adjoining the pavement.
- Photograph, somewhat indistinct, potentially showing leaves in parapet gutter
- A crack in ceiling with evidence of damp.

The Tenant noted in their objection letter of the 30<sup>th</sup> October 2020 that the freeholder and landlord have failed to carry out urgent and essential repairs to the property and are in clear breach of the Landlord and Tenant Act.

The tenant noted the following:

“The chimney stack is in a dangerous condition. The windows don't open because they are rotten. The gutter is almost full of leaves because the tree has not been pollarded”

“Last autumn we had water pouring into the bedroom because the gutter was full. We will have to force the windows open soon to clear the gutter or this will happen again and could result in the ceiling collapsing. However, we might be unable to close the windows after forcing them open.”

“There is a leak in the sitting room. The outside wall was in a state of disrepair for approx 2 years. It has now been taken down, but the area at the front of the house is now a terrible mess and is full of bags of rubble and old bricks. It has been like that for a month. There is no stair carpet in the common parts of the building. The outside of the house has not been painted for over 30 years. I've attached some photos of the problems mentioned above.”

## 5. 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 £450.00 per week.

However, the Property is not in the condition considered usual for a modern letting at a market rent as evidenced by the submitted photographs. Therefore, it is necessary to adjust the above hypothetical rent of £450.00 per week, a deduction of 20% is made. The adjusted rent is £360 per week.

In addition, the Tribunal determined that there should be a further deduction of 10% to reflect the fact the Tenant provided the floor coverings, curtains and white goods and is responsible for internal decorating. The rent after this adjustment is £324.00 per week.

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 £259.20 per week.

Market rent	£
	450 per week
Less	
Condition 20%	£90.00 per week
Carpets, curtains, white goods 10%	£36.00 per week
	_____
Less	
Scarcity – 20%	<u>£64.80 per week</u>

£ 259.20 per week

## **6. Rent Acts (Maximum Fair Rent) Order 1999**

The rent to be registered is limited to the lower of either the rent determined in accordance with the Rent Acts (Maximum Fair Rent Order) 1999 which is £145.50 per week or the uncapped figure determined in accordance with section 70.

## **7. Decision**

The uncapped fair rent determined by the Tribunal, for the purposes of section 70 , was £259.20 per week. The rent determined in accordance with the Rent Acts (Maximum Fair rent ) Order 1999 was £145.50 per week.

**Accordingly, the sum of £145.50 per week will be registered as the fair rent with effect from 28<sup>th</sup> September 2021 being the date of the Tribunal's decision.**

**Valuer Chair: Richard Waterhouse FRICS**

**Date: 27<sup>th</sup> October 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.