



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

Case Reference	:	JM/LON/00AZ/F77/2021/0300
Property	:	13A Montpelier Vale, Lewisham, London SE3 0TA
Applicant	:	Charles Dixey Ltd (Landlord)
Representative	:	Simon Palmer (Director)
Respondent	:	Pamela Gifford (Tenant)
Representative	:	In person
Type of Application	:	S.70 Rent Act 1977 – Determination of a new fair rent
Tribunal Members	:	Mr N Martindale FRICS Mr C Piarroux
Date and venue of Meeting	:	21 February 2022 10 Alfred Place, London WC1E 7LR
Date of Decision	:	22 February 2022

REASONS FOR DECISION

Background

- 1 The landlord applied to the Rent Office for registration of a fair rent of £666 pcm for the Property. The rent payable at the time of the application was £600 pcm with effect from 20 September 2019 as determined by the First Tier Tribunal on a previous occasion.
- 2 On 1 November 2021, the Rent Officer registered a fair rent of £666.50 pcm with effect from 11 November 2021. By a letter dated 10 January 2022 to the VOA Durham and redirected to the First Tier Tribunal, the landlord Charles Dixey Ltd objected to the rent determined by the Rent

Officer on the matter was referred to the First Tier Tribunal Property Chamber for a fresh determination of the rent.

Inspection

- 3 In accord with current Tribunal practice, it did not inspect the Property but relied on information from the VOA and from the two parties.
- 4 Montpelier Vale is known as the B212 a busy one way two lane road. There are parking and waiting restrictions to this road outside and nearby. The road is however a minute's walk from Blackheath open space itself.
- 5 The Property is a first floor flat. It is located above a ground floor shop and below a second floor flat. These form part of a terrace of commercial premises and flats or storage over dating originally from the late C19th. The upper parts have in most cases been separated out from the ground floor space, are accessed from the rear service road, yard and external stairs to first floor and have been formed into self contained residential accommodation for many years. The Tribunal viewed and had regard to the public domain Google Maps Street View picture posted October 2020.
- 6 The Property is arranged as a self contained one bedroom flat. A shared rear access leads to a shared rear yard and thence to a rear external staircase leading to the first floor external landing leading inside. These are shared with the flat to the second floor. The Property is arranged with a living room and bedroom to the front, a shower room WC and basin and separate kitchen behind.
- 7 There was earlier reference in the Rent Register to a separate self contained first floor store but, this no longer forms part of the accommodation and was returned to the landlord some years ago. The second floor also owned by the landlord is a one bed flat is of a similar size and layout to the Property and is let on an AST. There are no areas outside which are in the inclusive use of the tenant.
- 8 Although the property was said to be in a fair state of repair and decoration, we had been informed by the tenant at the hearing that this down to her work.
- 9 Windows there were no thermally double glazed window units only old timber double hung sash to the front. These were supplemented with the tenant's secondary glazing sliding units designed to reduce noise from the road. There was no central or other fixed heating. The kitchen and the shower room were said to be functional but basic installed some 18 years prior.
- 10 The tenant did not report any other improvements which she had carried out. There were no white goods, curtains or carpets provided by the landlord.

Evidence

- 11 Directions for case progression were issued. The tenant requested and attended a hearing online. The landlord also attended representations. Both parties made written submissions. Account was taken of all written material and that additionally provided at the hearing.
- 12 The landlord representations included reference to the one bedroom second floor flat above the Property, similarly arranged, although in better order than the Property, and let out at £1050 pcm from a year or so earlier when rents had fallen. In his view it was now worth £1200 pcm on the market which should be starting point in assessing the fair rent of the Property. The landlord felt that it had been unfair for the Tribunal at the last hearing and for the Rent Officer at this time to keep the rent of the Property much lower than market rent levels.
- 13 The tenant's representations included reference to the new rent of £666 pcm set by the Rent Officer particularly as the landlord had not made any repairs or improvements to the flat and therefore that a 15% increase in rent was not justified. The tenant drew the Tribunal's attention to the historic loss of the former bathroom on the first floor and its conversion by the landlord into a self contained store for his own use. She also referred to the landlord building an office in the common yard to the rear on the ground floor though confirmed that she still had pedestrian access to her flat through it. Rents in the road were also suppressed by the road noise and pollution and it should stay lower than the RO's new rent. The tenant did not submit evidence regarding market rental levels in the locality.

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.
- 14 On the evidence of the comparable lettings and our own general knowledge of market rent levels in Lewisham, we accept that the Property if modernized and in good order would let on normal Assured Shorthold Tenancy (AST) terms, for £1200 per calendar month. This then, is the appropriate starting point from which to determine the rent of the Property as it falls to be valued.
- 15 A normal open market letting would include carpets, 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 no double glazed window units, no central heating, has only a basic kitchen; has only a basic bathroom and WC; These deductions total £360 pcm.
- 16 From a starting market rent of £1200 per calendar month, we therefore make total deductions of £360, leaving the adjusted market rent at £860 per calendar month.
- 17 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 further deduction of 20% from the adjusted market rent to reflect this element. This is £168. The fair rent to be registered is £672 per calendar month.
- 18 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 £688.50 pcm.

- 19 As this cap exceeds the fair rent determined by the Tribunal for the purposes of S.70, the new fair rent remains unaffected, at £672 pcm. This new rent will take effect from and including the date of determination, 22 February 2022.

Chairman N Martindale

Date 22 February 2022