



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

Case reference : **CHI/43UB/F77/2022/0011**

Property : **125 Wellington Close, Walton-on-Thames,
Surrey, KT12 1BG**

Applicant : **Ms C Dixon**

Representative : **None**

Respondent : **Ms S Jordan**

Representative : **None**

Type of application : **Determination of the registered rent
Under Section 70 Rent Act 1977**

Tribunal member(s) : **Mrs J Coupe FRICS
Mr M. J. F. Donaldson FRICS MCI Arb MAE
Mr M Woodrow MRICS**

Date of decision : **13 June 2022**

DECISION

Covid-19 pandemic: Description of determination

This has been a remote determination on the papers which has been consented to by the parties. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote determination on papers. The documents that the Tribunal were referred to are in an electronic bundle, the contents of which have been noted. The order made is described below.

Decision of the Tribunal

On 13 June 2022 the Tribunal determined that a sum of £1,000 per calendar month, (to include a variable service charge of £96.15), will be registered as the fair rent, with effect from the same date.

Background

1. On 13 December 2021, received 20 December 2021, the Landlord applied to the Rent Officer for registration of a fair rent of £1,135.00 per month, to include variable service charges of £107.13 per month, for the above property.
2. The registered rent at the date of the application was £950.00 per month including a variable service charge of £69.03 per month.
3. On 10 March 2022 the Landlord objected to the registered rent.
4. The tenancy appears to be a statutory protected periodic tenancy dating from 1971. No copy of the tenancy agreement was provided however the Tribunal were advised that the tenant has covenanted to internally decorate the property.
5. On 4 April 2022 the Tribunal issued Directions advising the parties that it considered the matter suitable for determination on papers unless either party objected, in writing, within 7 days. The parties were also advised that no inspection would be undertaken. No such objections were received.
6. The Directions required the Landlord and Tenant to submit their completed statements by 18 April 2022 (Landlord) and 2 May 2022 (Tenant) with copies also to be sent to the other party.
7. The Tribunal reviewed the parties' submissions and determined that it could fairly and reasonably proceed to a decision on the papers.
8. The matter was determined having regard to the evidence contained in the submissions and application.

Law

9. When determining a fair rent the Tribunal, in accordance with section 70 of the Rent Act 1977, must have regard to all the circumstances including the age, location and state of repair of the property. It also must disregard the effect if any of any relevant tenant's improvements and the effect of any disrepair or any other defect attributable to the tenant or any predecessor in title under the regulated tenancy, on the rental value of the property.
10. In *Spath Holme Ltd v Chairman of the Greater Manchester etc Committee* (1995) 28HLR 107 and *Curtis v London Rent Assessment Committee* (1999) QB 92 the Court of Appeal emphasised:

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 to that of a regulated tenancy, and

That for the purposes of determining the market rent, assured tenancy market rents are usually appropriate comparables; adjusted as necessary to reflect any relevant differences between the comparables and the subject property.

11. The Rent Acts (Maximum Fair Rent) Order 1999 restricts the amount by which the rent, less variable service charge, may be increased to a maximum 5.00% plus Retail Price Index since the last registration.
12. Under paragraph 7 of the Order an exemption to this restriction applies where the Landlord proves that repairs or improvements undertaken have increased the rent by at least 15% of the previous registered rent.

The Property

13. As stated, and in accord with current Tribunal policy, the Tribunal did not inspect the property, instead relying on the parties' evidence and viewing the property via online portals.
14. The property is a self-contained flat situated on the eighth floor of a ten storey purpose built block, served by a lift. The property is located within the town centre and close to local amenities and public transport links.
15. The accommodation comprises a kitchen, living room/diner with access to a balcony; two bedrooms, bathroom with separate wc. Externally, the property has one designated parking space, use of visitors parking, shared cycle shed and communal gardens.
16. The property has modern double glazing and electric heating.
17. White goods, carpets and curtains are supplied by the Tenant.

Submissions – Landlord (summarised)

18. In her written submissions, Ms Dixon described the flat as “very spacious” and “benefitting from panoramic views”. She advised the Tribunal that the kitchen and bathroom are in excess of 15 years old.
19. Ms Dixon stated that refurbishment of the development is ongoing however, to date, works completed include the replacement of external cladding with modern cladding and insulation, and the replacement of single glazed sliding windows with modern double glazed units. She commented that these works have cost each lessee in excess of £75,000 and that they have “vastly improved the general comfort for all occupants and considerably reduced their fuel consumption”.
20. Ms Dixon commented that further works are planned, which include refurbishment of the landings and entrance lobbies; the installation of security cameras to each floor; replacement front doors to individual flats; landscaping works; provision of additional parking spaces; and replacement perimeter fencing.
21. Ms Dixon opined that, as a result of both completed and planned works, and the associated improvements to living conditions, the Maximum Fair Rent Order should not apply.
22. In support of a rent of £1,135 to include services, Ms Dixon provided three comparables:
 - a. 53 Wellington Close: first floor flat, let at £1,325 per month from October 2020;
 - b. Wellington Close: two bedroom flat; advertised at £1,250 per month;
 - c. Wellington Close: two bedroom flat; advertised at £1,200 per month.
23. In support of the variable service charge, Ms Dixon relied on the audited income and expenditure accounts for the year ending 29 September 2019. She advised that accounts for the year ending 29 September 2020 were yet to be completed and audited. The headings for the amounts claimed included:
 - a. Caretaker costs
 - b. Landscape maintenance
 - c. Window cleaning
 - d. Electricity
 - e. General repairs & maintenance
 - f. Lift maintenance
 - g. CCTV maintenance
 - h. Door entry costs
 - i. Drainage maintenance
 - j. Fire safety
 - k. Reactive refuse removal
 - l. General expenses
 - m. Health & safety fees

Submissions - Tenant

24. None.

Determination

25. In the first instance 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. The Tribunal considered the rental evidence supplied by the Landlord, supported by its own general knowledge of rental values locally and concluded that the likely market rent for the property would be £1,250 per month.
26. However, it was first necessary to adjust the hypothetical rent of £1,250 per month to allow for the differences between the terms and condition considered usual for such a letting and the condition of the actual property at the valuation date, ignoring any tenant's improvements.
27. The Tribunal noted that properties available on the open market were modern or modernised, centrally heated and with white goods, floor and window coverings. In contrast, the kitchen and bathroom of the subject property are over 15 years old, whilst the white goods, carpets and curtains are provided by the Tenant. The Tenant is also responsible for internal decoration. Accordingly, the Tribunal make the following deductions:
- | | |
|------------------------------------|----|
| a. Dated kitchen and bathroom | 5% |
| b. Lack of carpets and curtains | 5% |
| c. White goods provided by Tenant | 5% |
| d. Internal redecoration liability | 5% |

Deducting a total of 20% the Tribunal arrived at an adjusted rent of £1,000 per calendar month.

28. Ms Dixon, in calculating the variable service charge, included heads of expenditure which represented a cost to the Landlord, as opposed to a value to the Tenant, for example, and amongst others, 'Health and safety fees' and 'General expenses'. The Tribunal has not taken into account such items in its consideration of the service charge to the Tenant.
29. In support of her service charge calculations, Ms Dixon has relied on accounts for the year ending September 2019. The Tribunal were somewhat surprised that accounts for neither years ending September 2020 nor 2021 were provided. In consideration of current service charges, accounts in excess of two years old were of little to no assistance to the Tribunal. Accordingly, the Tribunal adopted the Rent Officer's figure of £96.15 per month. No determination was made as to the reasonableness of the service charge which, if so required, could be the subject of an application for determination under the Landlord and

Tenant Act 1985.

30. The Tribunal then considered the question of scarcity as referred to in paragraph 10 above and, in arriving at its decision, took into account the following:
- a. The Tribunal interpreted the 'locality' for scarcity purposes as being the whole area of Surrey (i.e. a sufficiently large area to eliminate the effect of any localised amenity which would, in itself, tend to increase or decrease rent);
 - b. Availability of property to rent;
 - c. Local Authority and Housing Association waiting lists;
 - d. House prices which could be an indicator of increased availability of housing and a reduction in scarcity;
 - e. Submissions of the parties;
 - f. The members of the Tribunal have between them many years of experience of the residential letting market and that experience, coupled with the above, leads them to the view that there is currently no shortage of similar flats to let in the locality defined above.
31. Accordingly, the Tribunal made no deduction for scarcity.

Maximum Fair Rent

32. This is the rent calculated in accordance with the Maximum Fair Rent Order details of which are shown on the rear of the Decision Notice.
33. The Rent Acts (Maximum Fair Rent Order) 1999 restricts the amount by which the rent, less the variable service charge, may be increased to a maximum 5% plus RPI since the last registration.
34. The only exception to this restriction 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.
35. The Tribunal considered the Landlord's argument that the rent should fall outside of the Maximum Fair Rent on account of improvements completed and those scheduled.
36. The Tribunal concluded that little or no modernisation to the interior of the flat had been undertaken and that the only identifiable benefits to the Tenant were limited to the improved insulation and glazing, and the enhanced common parts and external environment. As a matter of judgement, the Tribunal concluded that the effect of those improvements (without significant improvement to the interior) would not increase the rent by 15% or more and therefore the Maximum Fair Rent Order would apply.

37. However, the rent to be registered is not limited by the Fair Rent Acts' (Maximum Fair Rent Order) 1999 because it is below the maximum fair rent that can be registered of £1,154.56 per calendar month prescribed by the Order.
38. The Tribunal accordingly determines that the lower sum of £1,000.00 per calendar month including £96.15 for services is registered as the fair rent with effect from 13 June 2022, that being the date of the Tribunal's decision. The rent, including service charge, is to be registered as variable.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk 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.