



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

Case reference : **CHI/43UB/F77/2022/0013**

Property : **13 Old Manor House, Station Road,
Thames Ditton, Surrey, KT7 0NU**

Applicant : **Mrs P Appleton-Burton**

Representative : **None**

Respondent : **Northumberland & Durham Property Trust
Ltd**

Representative : **Grainger Plc**

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

Tribunal member(s) : **Mrs J Coupe FRICS
Mr M Ayres FRICS
Mr P Smith FRICS**

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 £906.25 per calendar month, to include a fixed service charges of £94.22 will be registered as the fair rent, with effect from the same date.

Background

1. On 8 March 2021 the Landlord applied to the Rent Officer for registration of a fair rent of £1021.75 per month, inclusive of service charges of £94.22 for the above property, in place of the existing rent of £900.00 per month including £93.45 service charge.
2. The registered rent at the date of the application was £986.50 per month, inclusive of £94.22 service charges, registered on 30 April 2021, with effect from 30 April 2021.
3. On 12 May 2021 the Tenant objected to the registered rent.
4. The tenancy appears to be a statutory protected periodic tenancy. No copy of the tenancy agreement was provided however the Tribunal is advised that the tenancy commenced on 1 March 1970. The tenancy (not being for a fixed periodic tenancy of 7 years or more) is subject to Section 11 of the Landlord and Tenant Act 1985 (the landlord's statutory repairing obligations).
5. On 5 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 19 April 2022 (Landlord) and 3 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 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 ground floor flat within a Grade II Listed building dating back to the early 18th century. The building has been extended and converted into self-contained flats and is set within extensive communal grounds. Construction includes solid brick and rendered elevations beneath a variety of roof structures.
15. The accommodation comprises an entrance hall, reception room, kitchen, bedroom, and bathroom. No parking facilities are included within the demised premises.
16. All mains services are assumed to be connected. The property is double glazed. The Rent Officer records that central heating was installed by the Tenant.
17. White goods, floor coverings and curtains are supplied by the Tenant.

Submissions – Tenant

18. The Tenant made the following representations (summarised):
- a. Property is a 1 bedroom flat; not 2 bedroom as claimed by the Landlord;
 - b. Tenant has been in occupation for approximately 51 years;
 - c. Property does not meet modern standards of letting;
 - d. Tenant installed the kitchen 12 years ago;
 - e. Tenant replaced the bath & basin; Landlord's only contribution to the bathroom is a toilet, which is unstable;
 - f. Tenant installed central heating;
 - g. Photographic evidence of internal dampness and surface mould;
 - h. Internal decoration liability;
 - i. Poor external maintenance & cleaning on behalf of the Landlord; photographic evidence of timber decay and peeling paintwork;
 - j. Services are not provided to a reasonable standard;
 - k. No comparable evidence as similar 1 bedroom flats are modernised.

Submissions – Landlord

19. The Landlord's agent made no representations.

Determination

20. The Tribunal considered the application with the benefit of the submissions of the parties. The Tribunal does not take into account the personal circumstances of the Tenant or Landlord in making its determination. Nor does the Tribunal have regard to any dispute between the parties which does not materially affect the rental value.
21. The Tribunal consulted the National Energy Performance Register and noted that the property has an Energy Performance Certificate (EPC) rating of Grade D. The minimum standard for offering a property to let on the open market is Grade E.
22. 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. Neither party provided any comparable letting evidence and the Tribunal, acting as an expert Tribunal, relied upon its own experience and knowledge of the local letting market. Having done so, it concluded that a likely market rent for a similar property in fair condition with central heating, modern bathroom and kitchen facilities, floor coverings, curtains would be £1,250.00 per month.
23. However, it was first necessary to adjust the hypothetical rent of £1,250.00 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, and, in doing so, to ignore any tenant's improvements and have regard to the tenant's liability to maintain decorations, as opposed

to decorate.

24. 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, as provided by the Tenant, is over 15 years old and was provided by the Tenant, central heating was also installed by the Tenant, 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. Poor kitchen & bathroom	7.5%
b. Tenant's central heating installation	5%
c. Tenant's floor coverings & curtains	5%
d. Tenant's white goods	5%
e. General disrepair & Internal redecoration liability	5%

25. Deducting a total of 27.5% the Tribunal arrived at an adjusted rent of £906.25 per month.

26. In consideration of the service charge, the Tribunal was provided with the Landlord's service charge schedule relating to the subject property. Within said schedule, the Landlord, correctly, omitted from their calculations such sums not recoverable from the tenant under the service charge. The total of sums due is £94.22 per month, as subsequently adopted by the Rent Officer.

27. The Tribunal finds that the service charge of £94.22 is fixed and, accordingly, falls to be included in the rent set by the Rent Officer or determined by the Tribunal. This means that the Tribunal assesses the rent on the basis that the 'service is included' in the rent and does not vary between registrations.

28. 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 Thames Ditton and the immediate wider area (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.

29. Accordingly, the Tribunal made no deduction for scarcity.

Maximum Fair Rent

30. 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.
31. The Rent Acts (Maximum Fair Rent Order) 1999 restricts the amount by which the rent may be increased to a maximum 5% plus RPI since the last registration.
32. 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. Neither of these circumstances apply in this instance.
33. 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 £1109.50 per calendar month prescribed by the Order.
34. The Tribunal accordingly determines that the lower sum of £906.25 per calendar month, including a service charge of £94.22 is registered as the fair rent with effect from 13 June 2022, that being the date of the Tribunal's decision.

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.