



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

Case reference : **CHI/00HA/F77/2022/0019**

Property : **42 St. James's Square, Bath, BA1 2TU**

Applicant Tenant : **Ms L Jefferson**

Representative : **None**

Respondent Landlord : **Mr Willats' Charity**

Representative : **None**

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

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

Date of decision : **26 July 2022**

DECISION

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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 26 July 2022 the Tribunal determined that a sum of £1,019.50 per calendar month will be registered as the fair rent, with effect from the same date.

Background

1. On 31 January 2022 the landlord applied to the Rent Officer for registration of a fair rent of £950.00 per month for the above property.
2. On 10 March 2022 the Rent Officer registered a rent of £940.00 per month, effective the same date.
3. On 19 April 2022 the tenant objected to the registered rent.
4. The tenancy appears to be a statutory protected periodic tenancy commencing 23 November 1982. No copy of the tenancy agreement was provided however the Rent Register records that, subject to Section 11 Landlord and Tenant Act 1985, the landlord is responsible for repairs and external decoration and the tenant is responsible for internal decoration.
5. On 29 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 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 to the Tribunal by 13 May 2022 and 27 May 2022 respectively, with copies to be sent to the other party.
7. In compliance with the Directions the tenant provided submissions. The landlord chose not to file submissions however, upon receipt of the tenant's submissions, applied to the Tribunal for permission to respond to factual evidence submitted by the tenant.
8. Having considered the matter the Tribunal decided that in view of the number of issues raised, it was in the interests of justice to admit the landlord's late submissions. The tenant was afforded an opportunity to make a brief response to the submissions but chose not to do so.
9. The Tribunal reviewed the parties' submissions and determined that it could fairly and reasonably proceed to a decision on the papers.

10. The matter was determined having regard to the evidence contained in the submissions and application.

Law

11. 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.

12. 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.

13. 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.
14. 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

15. 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. The chairman of the Tribunal, acting as a valuer member at the time, had however inspected the property on 3 August 2016, in relation to a previous Tribunal application by the same tenant under the Rent Act 1977 and was therefore familiar with the layout.
16. The property is a self-contained ground floor apartment with basement, situated within a Georgian Grade I listed terraced building with accommodation over five floors. The building, built c.1790-1793, is constructed with a limestone ashlar frontage, beneath a double, parapeted, mansard roof. The address is considered one of the most prestigious in Bath.
17. The property is positioned within a short walk of the city centre, which provides an extensive range of amenities and is close to public transport

links. Bath railway station is approximately one-and-a-half-mile distance.

18. The accommodation, accessed via a private entrance, comprises a kitchen; two reception rooms; two bedrooms; a bathroom with bath and wash hand basin; a separate WC at ground level. Internal stairs provide access to the basement which provides storage rooms and a WC. Additional external access is also provided to the basement.
19. The ground floor gross area is quoted by the landlord as 118m² and the basement area 58m². Demised to the property are two small courtyard gardens. The tenant indicated that no access is provided to the communal gardens however the landlord refuted this statement. There are no private parking provisions or garaging. Permit parking is available.
20. The property has gas fired central heating provided by the landlord. Windows are single glazed.
21. White goods, furniture, carpets and curtains are supplied by the tenant.
22. No service charge or charges for utilities are levied.

Submissions – Tenant (summarised)

23. In written submissions the tenant advised that:
 - a. The bathroom and kitchen fittings have not been updated by the landlord within the last 40 years;
 - b. No shower in the bathroom;
 - c. No wash hand basin in the separate WC room;
 - d. Plumbing and electrical installations require upgrading;
 - e. Lack of maintenance to the front of the basement area and access steps;
 - f. Cracking to internal walls;
 - g. Cellar dampness creates an unsuitable environment for storage;
 - h. The basement WC was not useable and dried out;
 - i. Noise disturbance due to poor accommodation configuration and use of adjoining property as a house in multiple occupation ('HMO');
 - j. Poor and inadequate waste management facilities for multiple occupiers;
 - k. Lack of access to the fire safety control board, located within 41 St James's Square;
 - l. The landlord rejected a goodwill rent reduction during the Covid19 pandemic lockdown.
24. The tenant proposed a rent of £825.00 per month. No comparable evidence was submitted.

Submissions – Landlord (summarised)

25. Responding, with the Tribunal's permission, to the tenants' submissions the landlord advised the following:

- a. The tenant has access to the communal gardens;
 - b. The steps and area to the front of the basement are swept monthly and washed down twice-yearly;
 - c. The cellar lavatory can either be filled with water or, alternatively, removed by the landlord;
 - d. The landlord acknowledges the condition of the bathroom;
 - e. NICEIC electrical and gas safety certificates are available;
 - f. The landlord acknowledges the irregular configuration of accommodation within the building, but contends that the walls are the original, are approximately 150mm thick and are covered with heavy lath and plaster;
 - g. The first and second floor tenants in both 41 and 43 St James's Square are family units; the only floor occupied as a HMO is the top floor of each building;
 - h. It would be impractical, and potentially unsafe, to relocate the fire safety control board to a location where the tenant could over-ride it for convenience.
26. The landlord provided no evidence in support of their application rent of £950.00 per month or to substantiate the Rent Officer's assessment of £940.00 per month.

Determination

27. 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.
28. Neither party furnished the Tribunal with any rental evidence, so the Tribunal relied on its expertise and own general knowledge of rental values locally. Accordingly, the Tribunal concluded that the likely market rent for the property, having specific regard to the location, would be £1,700.00 per month.
29. Once the hypothetical rent, in good condition, was established, it was necessary for the Tribunal to adjust the figure 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 tenants' improvements.
30. The Tribunal noted that properties available on the open market were generally modern or modernised, central heated, and with white goods, floor and window coverings. In contrast, the kitchen and bathroom of the subject property are dated; some general maintenance requirements are evident; there is no double glazing; and the white goods, carpets and curtains are provided by the Tenant. Accordingly, and reflecting such differences, the Tribunal makes a deduction of 22.5% from the hypothetical open market rent.
31. Furthermore, the tenant is responsible for the internal decoration of the property, a burden the Tribunal considers to be greater than the normal responsibility for an assured shorthold tenant to keep the landlords'

decorations in good order. Accordingly, the Tribunal allows an additional deduction of 5%.

32. Deducting a total of 27.5%, the Tribunal arrived at an adjusted rent of £1,232.50 per month.
33. The Tribunal then considered the question of scarcity, as referenced in paragraph 12 above and, in arriving at its decision on the point, took into account the following:
 - a. The Tribunal interpreted the 'locality' for scarcity purposes as being the whole area of Bath (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 and rental 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.
34. Accordingly, the Tribunal made no deduction for scarcity.

Maximum Fair Rent

35. 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.
36. The Rent Acts (Maximum Fair Rent Order) 1999 restricts the amount by which the rent, less any variable service charge, may be increased, to a maximum 5% plus RPI since the last registration.
37. 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. The Tribunal determined that such exception does not apply in this instance.
38. The rent to be registered in this application is limited by the Fair Rent Acts' (Maximum Fair Rent Order) 1999 because it is above the maximum fair rent that can be registered of £1,019.50 per calendar month prescribed by the Order.
39. The Tribunal accordingly determines that the lower sum of £1,019.50 per month is registered as the fair rent with effect from 26 July 2022, that being the date of the Tribunal's decision. The rent is to be registered as fixed.

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.