



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

Case reference : **CAM/56UB/F77/2022/0007**

HMCTS code : **P:PAPERREMOTE**

Property : **63 Macers Lane, Broxbourne,
Hertfordshire, EN10 6EQ**

Applicant (Tenant) : **Mr S G Radisa**

Respondent (Landlord) : **Pye Properties Limited C/O
Callaway & Co**

Type of application : **Determination of a fair rent under
section 70 of the Rent Act 1977**

Tribunal members : **Peter Roberts FRICS CEnv**

**Date and Venue of
Determination** : **11 July 2022**

DECISION

Description of hearing

This has been a remote determination on the papers which the parties are taken to have consented to, as explained below. The form of determination was a paper determination described above as P:PAPERREMOTE. The documents that the Tribunal was referred to are in bundles from the Applicant and the Respondent. The Tribunal has noted the contents and the decision is below.

Decision

The Tribunal determined a fair rent of £207.70 per week.

Reasons

Background

1. On 3 February 2022 the Landlord made an application to register the rent of the Property at £225.40 per week
2. The Rent Officer registered a Fair Rent of £225 per week on 22 March 2022 effective from 17 April 2022. This was in lieu of the previous registered rent of £198 per week which was registered on 1 April 2020 and effective from 17 April 2020.
3. The Tenant objected by way of a letter which was received by the Rent Officer on 20 April 2022, and the matter was referred to the First Tier Tribunal, Property Chamber.
4. The Tribunal issued directions on 11 May 2022, inviting the parties to submit any further representations (including any photographs and details of rentals for similar properties) they wished the Tribunal to consider. Neither Party has completed and returned the Reply Form nor provided further information.

The Property

5. The Tribunal inspected the Property on 15 July 2022.
6. The Property comprises a period end terraced property of brick and tile construction providing accommodation at ground and first floor level together with an enclosed garden to the rear and an open area to the front. There is no garage or allocated car parking.
7. The ground floor comprises a small hallway leading to a lounge to the front of the property and a further living room to the right which leads directly into the kitchen area and then, via a small lobby with a door leading into the rear garden, into the WC and bathroom.
8. There is clear evidence of extensive and serious water damage to the wall and ceiling of the front lounge. The Tenant advised that the water comes through on every occasion that there is a heavy downpour. In this context, the Tribunal noted a vertical crack in the exterior brick work which indicates that there is a potential structural defect allowing water penetration. The Tribunal was informed that this crack has arisen in the last 12 to 18 months.

9. The kitchen is very basic and, whilst the units are stated as belonging to the landlord, they are beyond economic repair and are not fit for purpose. The cooker was stated to belong to the Tenant.
10. The Bathroom fittings are also very basic and comprise a bath with a shower attachment and sink. There is a separate toilet. There is no extractor fan to either the Bathroom or WC.
11. Whilst it is clear that the Tenant wipes the walls and ceilings down there is extensive mildew and mould staining and the interior paint is peeling from the walls. It is most probable that this is caused, at least in part, by condensation through use of the kitchen and bathroom but exacerbated by damp coming through the front wall. In this regard, there is no heating in the house other than an electric bar fire belonging to the Tenant, and it appears that the moisture from the lounge condenses in the Bathroom and WC areas which are the coldest parts of the house and lack mechanical ventilation.
12. The first floor provides a bedroom at the front of the house and a bedroom at the rear which provides through access to a further box room. There is evidence of water leaks within the rear bedroom, but the Tribunal was informed by the Tenant that the Landlord had mended some tiles on the roof since which time there had been no further leaks.
13. In addition to there being no heating in the house, there are also no carpets or floor coverings.
14. The Tribunal was informed, and observed, that the access from the garden tends to be blocked by cars belonging to residents of the neighbouring flats such that access is generally only available from the ground floor rear lobby.
15. The Tribunal was very concerned with the dilapidated state of the Property. There is a clear defect in the front wall which has potentially resulted in extensive damage to the inside of the Property and significant evidence of mould and mildew. The Tribunal appreciates that there are occasions where such issues may arise due to Tenant misuse but bearing in mind the complete lack of any heating provision, inadequate mechanical ventilation and water leakage into the structure of the Property, the Tribunal does not believe that to be the case here.
16. In simple terms, considerable work over and above the tenant's obligations is required.
17. The Tribunal has been provided with a copy of the Rent Officer's assessment and noted that adjustments had been made on account of the following matters:
 - a. White Goods belong to the Tenant
 - b. The kitchen is unmodernised
 - c. The Tenant owns the carpets and curtains

18. The Tenant advised the Tribunal that the Rent Officer had not inspected the Property and is therefore assumed to have been unaware of the building defects and internal damage on the basis that this has only arisen since the last registration of rent in April 2020.
19. In addition, the Tribunal noted that the Rent Officer has assumed that the Property has a garage. There is no garage or allocated car parking.
20. The Property is entered in the Council Tax List as Band C.
21. The Tribunal were unable to find any evidence that the Property benefits from an EPC.

The Law

22. The relevant law is set out in section 70 of the Rent Act 1977 (the Act) and The Rent Acts (Maximum Fair Rent) Order 1999 (the Order).
23. Section 70 (1) of The Act provides that in assessing the rent:
“regard shall be had to all the circumstances (other than personal circumstances) and in particular to—
 - i. the age, character, locality and state of repair of the dwelling-house,
 - ii. if any furniture is provided for use under the tenancy, the quantity, quality and condition of the furniture and
 - iii. 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.”
24. Section 70 (2) of the Act provides that
“...there shall be disregarded
 - i. 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;
 - ii. 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
 - iii. 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 in title 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.”
25. In addition, section 70 (2) of The Act requires the Tribunal to assume:

“that the number of persons seeking to become tenants of similar dwelling-houses in the 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.”

26. This latter provision requires the Tribunal to assume that the demand for similar rented properties in the locality does not significantly exceed the supply of such properties for rent; in effect, if such scarcity exists, the Tribunal is to adjust the rental figure so that the fair rent is not affected by it.
27. Relevant case law comprises *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, in which the Court of Appeal confirmed that for the purposes of determining the market rent (before making any necessary adjustments), open market assured tenancy rents are usually appropriate comparables.
28. Section 72 of The Act provides that, where the rent is determined by the Tribunal, the registration of that rent takes effect from the date the Tribunal makes their decision.
29. The Order provides that the registered rent may not exceed the capped rent. The formula for the calculation of the capped rent is set out at section 2 of the Order.

Representations – Tenant

30. The Tenant’s objection states.
 - a. The increase is “...£27 per week or just over 13% which is well over the rise in inflation”
 - b. “I am currently in Band C and I am led to believe that this would value the property in Band D”
 - c. “...I have never had any central heating in the property...”
 - d. “...have never fallen behind with my rental payments...”
 - e. “I find this increase grossly unfair.”

Representations – Landlord

31. The Landlord has not made any representations.

Determination

32. The first step is to determine the rent which a landlord could reasonably expect to obtain for the Property in the open market if it were let today in the condition and on the terms now usual for open market lettings.

33. In this regard, the Tribunal has considered the Tenant's grounds of objection and sets out the position as follows.
- a. Rental values are set by the Market and hence, whilst inflation may have some impact on the ability of prospective tenants to bid for properties, it does not follow that there is a direct correlation between inflation and rental growth. As such, changes in inflation are of limited assistance in determining rental movements.
 - b. In simple terms, properties are placed into the relevant Council Tax band according to the market price they might have achieved had they been on the market in 1991. There is no correlation between the rent achievable in 2022 and the 1991 market value of the same property not least as some capital and rental values have not increased uniformly since 1991. Council Tax assessments have little, if any relevance to the assessment of market rents.
 - c. The Tribunal has had regard to the absence of central heating in determining the rent.
 - d. The personal circumstances of the Tenant and/or Landlord are not matters that the Tribunal can take into account.
 - e. The level to which the rent can increase is the lesser of the determined rent or the capped rent as determined in accordance with the Act.
34. Neither of the Parties have provided any evidence of asking or achieved rents. It is therefore necessary for the Tribunal to make its own enquires and exercise its judgement.
35. In this regard, on the assumption that the Property was fully refurbished and fitted to modern standards/requirements including full heating, curtains, carpets, mechanical ventilation, insulation, new kitchen and bathroom fixtures, all building defects addressed and redecorated throughout, the rental value could be in the region of £1,350 pcm.
36. However, the lack of carpets, curtains, modern fittings, insulation, white goods, bathroom and kitchen fittings and general lack of modern facilities is such that the Property would only appeal to a very limited number of prospective occupiers such that a significant discount in rent would be required to secure a tenant in the absence of a complete refurbishment.
37. In addition, an incoming Tenant would note the internal state of the walls and ceiling in the front lounge and the existence of the external crack such that they would be aware that the Property is unlikely to be watertight.
38. In light of this, the Tribunal has assessed an adjusted rent of £1,000 per calendar month.

39. The Tribunal has then considered whether there should be an adjustment for “scarcity” and decided that a 10% allowance is warranted.
40. The “uncapped” Fair Rent is therefore £900 pcm which equates to £207.70 pw.
41. The provisions of the Rent Acts (Maximum Fair Rent) Order 1999 require that the registered rent is either the capped Fair Rent, details of which are attached to the decision notice, or the Fair Rent decided by the Tribunal whichever is the lower.
42. The capped rent is £240 per week. This is higher than the Fair Rent assessed by the Tribunal.
43. Therefore, the Fair Rent assessed by the tribunal of **£207.70 per week** is to be registered.

Name: Peter Roberts FRICS CEnv

Date: 29 July 2022

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).