



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

Case Reference : **CHI/00HB/F77/2022/0032**

Property : **First Floor Flat
1A Elton Road
Tyndalls Park
Bristol
BS8 1SJ**

Landlord : **Bristol Grammar School**

Representative : **Temple Homes**

Tenant : **Mr M Cooper**

Representative : **None**

Type of Application : **Rent Act 1977 (“the Act”) Determination
by the First-Tier Tribunal of the fair rent
of a property following an objection to
the rent registered by the Rent Officer.**

Tribunal Members : **Mr I R Perry BSc FRICS
Mr M J Ayres FRICS
Mr P E Smith BSc FRICS**

Date of Inspection : **None. Determined on the papers**

Date of Decision : **3rd August 2022**

DECISION

Summary of Decision

On 3rd August 2022 the Tribunal determined a fair rent of £1,170 per month with effect from 3rd August 2022.

Background

1. On 15th February 2022 the Landlord's Agent applied to the Rent Officer for registration of a fair rent of £2,100 per month for the above property.
2. The rent was previously registered on the 12th August 2016 at £925 per month following a determination by the Rent Officer.
3. The rent was registered by the Rent Officer on the 12th April 2022 at a figure of £1,166.50 per month with effect from the same date. This was the maximum rent permissible at that date under the Maximum Fair Rent Order. The rent assessed would otherwise have been £1,209 per month.
4. By an email dated 20th May 2022 the Tenant objected to the rent determined by the Rent Officer and the matter was referred to the First Tier Tribunal Property Chamber (Residential Property) formerly a Rent Assessment Committee.
5. The Coronavirus pandemic and considerations of health have caused a suspension of inspections and of Tribunal hearings in person until further notice.
6. The Tribunal issued Directions on 4th July 2022 informing the parties that the Tribunal intended to determine the rent on the basis of written representations subject to the parties requesting an oral hearing. No request was made by the parties for a hearing.
7. The Tribunal office informed the parties that the Tribunal might also consider information about the property available on the internet.
8. The parties were invited to include photographs and video within their representations if they so wished. Representations were made by both parties which had been copied to both parties.

The Property

9. From the information available the Property comprises a first floor flat within a three-storey converted house situated in a popular residential area opposite Bristol Grammar School, close to the centre of Bristol.
10. The accommodation includes a Living Room, Kitchen, Utility, Bathroom and three Bedrooms. The third bedroom is variously described as a bedroom or office. There is off-street parking for at least 2 vehicles, a carport and gardens.

11. The accommodation has central heating but no double glazing. The Energy Performance Rating is 'D'.

Evidence and Representations

12. Within the Application form the Landlord states that hard floor coverings are provided but no white goods, and that the Property is well maintained excepting for some sash windows which may not be fully operational.
13. The Tenancy commenced as a 'Protected Tenancy Agreement' on 21st April 2011. The Landlord's Agent says that the internal decorations have been improved by the Tenant
14. The Landlord's Agent refers to the rents charged for comparable properties in the general area quoting rents from £1,200 to £1,800 and states that the Fair Rent Order should apply.
15. The Tribunal was provided with a number of helpful photographs which show the Property internally to be reasonably well maintained and cared for. The Agent refers to some historic problems with the flow of wastewater from the kitchen sink and complaints from the Tenant about foul smells from the drains which are not present when contractors have visited the Property.
16. The submission from both parties included evidence of comparable properties in the general area which were being marketed or are let through letting agents in that area.
17. The Tenant's submission was received one day later than the date specified in the Directions. The Tenant explained he had difficulty in emailing his original submission as the electronic file was too large. The Tribunal decided that in the support of natural justice it should accept this late filing.
18. The Tenant states that the garden has been refurbished by him, including the laying of a patio, and that no carpets are provided. The Landlord states that the floors are hard covered.
19. The Tenant further states that some top sash windows are painted shut and that he has made some improvements to the Property including fitted wardrobes within the main bedroom. He has also redecorated various rooms as acknowledged by the Landlord, but there are remain some decorative cracks apparent in the supporting photographs.
20. The Tenant also describes noise issues late at night and provided the Tribunal with a log of alarm calls. He also refers particularly a continuous problem with the drain from the kitchen which he is responsible for clearing under a specific term within the lease. The Tenant also states that there are some outstanding repair issues externally, the foul-smelling drain and states that the Landlord is slow to remedy repair issues.

21. The Tribunal must assess the rent for the Property as evidenced at the date of its decision and cannot penalise either party for previous behaviour. The Tribunal had regard to the observations and comments by the parties, including many helpful photographs, and also relied on its own knowledge and experience of local rental values in determining the rent.

The Law

22. When determining a fair rent the Tribunal, 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.
23. 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 emphasised
 - (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).
24. The Tribunal also has to have regard to the Rent Acts (Maximum Fair Rent) Order 1999 where applicable. Most objections and determinations of registered rents are now subject to the Order, which limits the amount of rent that can be charged by linking increases to the Retail Price Index. It is the duty of the Property Tribunal to arrive at a fair rent under section 70 of the Act but in addition to calculate the maximum fair rent which can be registered according to the rules of the Order. If that maximum rent is below the fair rent calculated as above, then that (maximum) sum must be registered as the fair rent for the subject property.

Valuation

25. The Tribunal first considered whether it felt able to reasonably and fairly decide this case based on the papers submitted only, with no oral hearing. Having read and considered the papers it decided that it could do so.
26. In the first instance the Tribunal determined what rent the Landlord could reasonably be expected to obtain for the property in the open market in this popular part of Bristol, if it were let today in the condition that is

considered usual for such an open market letting. It did this by having regard to the evidence supplied by the parties and the Tribunal's own general knowledge of market rent levels in this area of Bristol where late night noise disturbance is not uncommon. Having done so it concluded that such a likely market rent would be £1,300 per calendar month.

27. However, the property was not let in a condition considered usual for a modern letting at a market rent. Therefore, it was first necessary to adjust that hypothetical rent of £1,300 per calendar month particularly to reflect the fact that white goods were all provided by the Tenants who is also responsible for internal decoration which would not be the case for an open market assured shorthold tenancy.
28. The Tribunal therefore considered that this required a total deduction of £130 per month made up as follows:

Tenant's provision of white goods	£30
Tenant's liability for internal decoration	£25
Continuous problems with kitchen wastepipe	£20
Tenant's improvements including wardrobe	£25
Defective window seals	£20
Rotten fence posts and access to shed	£10
TOTAL per month	<u>£130</u>

29. The Tribunal did not consider that there was any substantial scarcity element in Bristol.

Decision

30. Having made the adjustments indicated above the fair rent initially determined by the Tribunal for the purpose of section 70 of the Rent Act 1977 was accordingly £1,170 per calendar month.
31. The Section 70 Fair Rent determined by the Committee is below the maximum fair rent permitted by the Rent Acts (Maximum Fair Rent) Order 1999 details of which are shown on the rear of the Decision Notice and accordingly that limit has no effect and the sum of £1,170 per month is registered as the Fair Rent with effect from 3rd August 2022.

Accordingly, the sum of £1,170 per month will be registered as the fair rent with effect from the 3rd August 2022 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.