



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

Case reference : **CAM/26UF/F77/2022/0013**

HMCTS code : **P:PAPERREMOTE**

Property : **3 Church Lane, Barkway, Royston,
SG8 8EJ**

Applicant (Landlord) : **Dorrington Housing Limited C/O
Savills (UK)Ltd**

Respondent (Tenant) : **Miss R Holbrow**

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

Tribunal members : **Peter Roberts FRICS CEnv**

Date of Determination : **25 August 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 hearing 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 £774 per month with effect from 25 August 2022.

Reasons

Background

1. The Landlord made an application to register the rent of the Property at £10,448 per annum on 29 April 2022.
2. The Rent Officer registered a Fair Rent of £9,180 per annum on 27 May 2022 effective from 27 May 2022. This was in lieu of the previously registered rent of £9,050 per annum which was registered on 27 July 2020 and effective from 27 July 2020.
3. The Landlord's agent objected by way of a letter dated 1 June 2022, and the matter was referred to the First Tier Tribunal, Property Chamber.
4. The Tribunal issued directions on 20 June 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.

The Property

5. The Tribunal inspected the Property on 15 August 2022. The inspection was attended by the Tenant. Neither the Landlord nor their representative attended the inspection.
6. The Property comprises a mid-terraced period property of timber, brick and tile construction providing accommodation at ground and first floor level.
7. There is a lounge, living room and kitchen on the ground floor together with two bedrooms and a bathroom on the first floor. There is central heating throughout which was provided by the Landlord together with the cooker in the kitchen. The Tenant has provided the additional white goods, curtains and carpets/rugs/lino. The windows are single-glazed and timber-framed.
8. The Tenant advised that the thermostat on the boiler does not work correctly such that there is insufficient heating in the colder months. In this regard, there is no heating to the front bedroom. The Tribunal also noted that there is no fan to the kitchen or bathroom such that it is necessary to open windows in order to allow steam to escape.
9. There is evidence of rising/penetrating damp along the frontage of the Property and the kitchen external wall.
10. The Property benefits from a garden area to the side of 5 Barkway which is subject to access rights in favour of 1 and 5 Barkway.

11. There is no garage or allocated car parking.
12. The Property is entered in the Council Tax List as Band D.
13. The Tribunal notes that the Property benefits from an Energy Performance Certificate dated 15 April 2018. This certificate states a total floor area of 73 sqm and assesses the energy rating as E. Properties can be let if they achieve a rating of E or above. It is therefore the case that the Property meets the minimum standards.

The Law

14. 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).
15. 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.”*
16. 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.”*
17. 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.”

18. 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.
19. 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).”*
20. In considering scarcity under section 70 (2) the Tribunal recognised that:
 - (a) *“there are considerable variations in the level of scarcity in different parts of the country and that there is no general guidance or “rule of thumb” to indicate what adjustment should be made; the Tribunal therefore considers the case on its merits; (b)*
 - (b) *terms relating to rent are to be excluded. A lack of demand at a particular rent is not necessarily evidence of no scarcity; it may be evidence that the prospective tenants are not prepared to pay that particular rent.”*
21. Section 71 (1) of the Act provides that the registration of the rent takes effect from the date that the Tribunal makes its decision.
22. Fair rents are subject to a capping procedure under the Rent Acts (Maximum Fair Rent) Order 1999 which limits increases by a formula based on the changes in the Retail Price Index since the previous registration.

Representations – Tenant

23. The Tenant attended the inspection.
24. The Tenant has not made any written representations.

Representations – Landlord

25. Neither the Landlord nor their agent attended the inspection.

26. The Landlord's agent wrote to the Rent Officer on 1 June 2022 raising the following points:
- *“The Property benefits from full central heating which the Landlord maintains and services.*
 - *The rental market is very strong at the moment, 2-bedroom terraced properties within 3 miles of this postcode appear to be starting at around £1,050 per month, which, even with the reasonable adjustments, is considerably more than the proposed monthly rent of £765.”*
27. No further representations have been received from the Landlord or their agent and no details have been provided by Savills as to the properties referred to in their letter.
28. It is therefore the case that, whilst the Landlord objected to the registered rent and thereby triggered these proceedings, the Tribunal has only the letter dated 1 June 2022 to consider in understanding the reasoning for the objection.

Determination

29. 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. The rent currently paid is not relevant to this exercise.
30. The Tribunal is required to assume that both the Tenant and the Landlord have fulfilled their responsibilities in respect of repair, decoration and maintenance for the purposes of assessing the rental value.
31. However, the Tribunal is able to take account of outstanding defects and other matters that have not arisen as a result of a lack of repair. In this regard, the rising damp would clearly be of concern to an incoming tenant as would the risk of condensation in the absence of adequate heating and mechanical ventilation.
32. 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, it would be attractive in the market. However, the Property requires significant modernisation and refurbishment. In addition, the carpets, curtains and white goods belong to the Tenant.
33. An incoming Tenant would note the existence of damp in the property which appears to be the result of a building defect rather than disrepair and therefore is to be taken into account.

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 enquiries and exercise its judgement.
35. The Tribunal notes that there is currently only one property advertised for rent within a three mile radius which comprises a three-bedroom modern bungalow in Barley. This is not comparable and of limited assistance.
36. Further afield, there is a two-bedroom period end of terraced house available in Mill Road Royston at £1,150 pm and a two-bedroom period terraced house available in Union Terrace Buntingford for £1,350 pm. There is also a three-bedroom mid-terraced period house available at North Hall Farm, Heydon for £1,350 pm.
37. However, all these properties have been modernised and fully fitted to a high standard such that they are considerably more attractive than the Property. In this regard, a prospective tenant would bid more for a period property that benefits from modern bathroom and kitchen fittings, full carpets, double/secondary glazing and fully functional heating than a property that does not have these features.
38. Taking all these points into account, the Tribunal considers that the rental value of the Property as it exists after accounting for the assumptions set out within the Act and discounting on account of the Tenant's improvements but prior to any allowance for scarcity is £860 pm.
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 £774 pm.
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. Once RPI is applied to the current passing rent in accordance with the provisions of the Order, the capped rent is £917.50 pm. This is higher than the Fair Rent assessed by the Tribunal.
43. Therefore, the Fair Rent assessed by the Tribunal of **£774.00 per month** is to be registered.

Name: Peter Roberts FRICS CEnv

Date: 25 August 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).