



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

**Case reference** : **CAM/00KF/F77/2022/0023**

**HMCTS code** : **P:PAPERREMOTE**

**Property** : **46A South Avenue, Southend-on-Sea, Essex, SS2 5JB**

**Applicant (Landlord)** : **Mr N R Prevost & Mrs S B O'Mahony**

**Respondent (Tenant)** : **Mr James Thomas Pitt**

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

**Tribunal members** : **Mary Hardman FRICS IRRV(Hons)**

**Date of decision** : **2 November 2022**

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**DECISION**

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**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 documents that I was referred to are as submitted by the Applicant and the Respondent. I have noted the contents and my decision is below.

## **Decision**

**The tribunal determined a fair rent of £126 per week**

## **Reasons**

### **Background**

1. On 15 March 2022 the landlord made an application to register the rent of the property at £174 per week.
2. On 27 July 2022 the Rent Officer registered a Fair Rent of £136 per week with effect from 10 September 2022. This was the same as the previous registered rent of £136 per week from 10 September 2020.
3. The Landlord objected, and the matter was referred to the First Tier Tribunal, Property Chamber.
4. The Tribunal issued directions on 7 September 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 26 September 2022. The tenant, Mr Thomas and his wife, Mrs Thomas were present at the inspection.
6. The Property is a first floor flat in a converted pre-war terraced house. It is of brick construction with a tiled roof. Access to the front is shared with the ground floor flat.
7. The property is in good condition and provides pleasant accommodation which comprises a living room, kitchen, bathroom and bedroom to the first floor. The property has gas central heating and UPVC double glazing, both of which were provided by the landlord.
8. The tenant has replaced all kitchen units and provided all the white goods.
9. All carpet and curtains were provided by the tenant as was the fire and fire surround in the living room. The tenant installed fitted wardrobes.
10. The tenant also installed the balcony area to the rear of the property and supplied the garage.
11. There is access to the garage via an alleyway to the rear of the property, and a garden to the rear of the property which is for the exclusive use of the tenant of the first floor flat.

## **The law**

12. The relevant law is set out in section 70 of the 1977 Act and the MFR Order. We are to have regard to all the circumstances (other than personal circumstances) and in particular to the age, character, locality and state of repair of the Property. We are to disregard the effect on the rental value of any improvements carried out by the tenant (other than in pursuance of the terms of the tenancy). We are also required (by s.70(2)) 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, we are to adjust the rental figure so that the fair rent is not affected by it.
13. 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 confirmed that for the purposes of determining the market rent (before making any necessary adjustments), open market assured tenancy rents are usually appropriate comparables.
14. By section 72 of the 1977 Act, if the rent is determined by the tribunal, the registration of the rent takes effect from the date we make our decision.

### **Representations – landlord**

15. In the written submission on behalf of the landlord, Hair and Son said that the property offered well planned accommodation in a convenient area with the benefits of full central heating and a share of the garden.
16. They said the rooms were of a good size with the living room measuring 14' x 15'. The landlord had installed the double glazing.
17. They believed that if the property were to be offered under an assured shorthold tenancy, they would achieve a rent in the region of £700/£725 per month and felt that a fair rent under a regulated tenancy should not be less than £150 per week (£650 per month).
18. They did not provide any evidence of comparable properties.

### **Representations – tenant**

19. The tenant did not provide any written representations nor any evidence of comparable properties.

## Determination

20. First, we need to determine the rent which the 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.
21. Neither party supplied comparables. Hair and Co. on behalf of the landlords suggest that they would achieve a rent of £700/£725 per month on an assured shorthold tenancy for this property. They do not explain the assumptions behind this – for instance, whether they have discounted this rent for tenant's improvement, nor how they then arrived at the regulated rent of £650 per month. The tribunal has assumed that the rent of £700/£725 per month is on the basis on the property 'as is' inclusive of the tenant's improvements.
22. The tribunal, attributing some weight to the agents view and using its knowledge and expertise, determines that the open market rent of the property is £175 per week (£750 per month) .
23. We then need to adjust this open market rent to disregard the improvements made by the tenant and to allow for their internal repairing obligations.
24. The property has modern UPVC double glazing and central heating and appears to be well maintained, although much of the historic maintenance has been carried out by the tenant.
25. The kitchen was replaced by the tenant. The tenant has supplied the white goods, all of the floor covering and curtains as well as other items as noted above.
26. They have also refitted the bathroom; installed fitted wardrobes; a fire and fire surround in the lounge; balcony to the rear; and a garage.
27. For this the tribunal has made an adjustment of £35 to arrive at a rent before consideration of scarcity of £140.
28. We then considered whether there should be an adjustment for "scarcity" as referred to in paragraph 13 and decided that, in the current market there should be an adjustment of 10%. This results in a rent of £126 per week.
29. 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.
30. The capped rent is £168 per week. This is higher than the rent assessed by the Tribunal as set out above and therefore, the rent determined by the tribunal of **£126 per week** is to be registered.

**Name:** Mary Hardman FRICS IRRV(Hons)      **Date:** 2 November 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).