



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

Case Reference : **LON/OOAG/F77/2022/0164**

Property : **Flat 3, 1 Chalcot Gardens NW3 4YB**

Tenant : **Mary Skyvalou**

Landlord : **David Vorhaus**

Type of Application : **Determination of a Fair Rent under section 70 of the Rent Act 1977**

Tribunal : **Mr R Waterhouse MA LLM FRICS**

HMCTS Code (paper, video, audio) : **P-Paper**

Date of Decision : **21st November 2022**

Date of Statement of Reasons: 21st November 2022

Statement of Reasons

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Background

The Tribunal gave formal notice of its decision by a Notice dated 21st November 2022 of the determined Fair Rent of £388 per week with effect from the same.

By way of application to the Rent Officer dated 28th February 2022 the landlord of the property applied for re registration of a fair rent of £3000 per month, the rent having been previously registered on the 28th April 2003 of £281 per week.

The Rent Officer registered a fair rent of £380 per week effective from 20th April 2022.

In an email dated 7th May 2022; the landlord David Vorhaus objected to the registered rent on two grounds.

The first, that the maximum fair rent calculation should be based on a figure of £281 per week not £210 per week.

The second ground that an outside balcony of around 10m² carried out as an improvement by the landlord should be included in the assessment of the rent.

Directions were issued by the Tribunal on the 20th September 2022. In those Directions, the parties were informed that in accordance with Public Health England's advice to avoid unnecessary travel and social interaction for the time being, the Tribunal would not hold an oral hearing, unless so requested by either or both the parties, or would it inspect the property. Neither party has requested a hearing.

Thereafter, the Directions made provision for the filing with the Tribunal of the parties' respective written submissions and, in particular, for the completion of a reply form giving details of the Property and including any further comments the parties wished the Tribunal to take into account in making its determination. In due course, the Landlord and the Tenant filed their written submissions.

The tenancy is a statutory (protected) periodic tenancy. The tenancy (not being for a fixed tenancy of 7 years or more) is subject to section 11 of the Landlord and Tenant Act 1985 which sets out the landlords statutory repairing obligations; the tenant is responsible for internal decorations.

Following the issue of the Tribunal's decision which was based on the written and visual evidence submitted by the parties that was germane to the determination of a fair rent, the landlord sought extended reasons for the Tribunal's decision.

The Property

The property comprises a self-contained flat, with three rooms, one kitchen a bathroom / WC and a roof terrace. The property has central heating.

Relevant Law

Provisions in respect of the jurisdiction of the Tribunal and the determination of a fair rent are found in Schedule 11, Part 1, paragraph 9(1) to the Rent Act 1977, as amended by paragraph 34 of the Transfer of Tribunal Functions Order 2013, and section 70 of the Rent Act 1977.

Rent Act 1977

Schedule 11, Part 1, paragraph 9 (as amended)

“Outcome of determination of fair rent by appropriate tribunal

9.-(1) The appropriate tribunal shall-

(a) if it appears to them that the rent registered or confirmed by the rent officer is a fair rent, confirm that rent;

(b) if it does not appear to them that that rent is a fair rent, determine a fair rent for the dwelling house.”

Section 70: Determination of fair rent (as amended)

“(1) In determining, for the purposes of the Part of this Act, what rent is or would be a fair rent under a regulated tenancy of a dwelling house, regard shall be had to all the circumstances (other than personal circumstances) and in particular to-

(a) the age, character, locality and state of repair of the dwelling-house, ...

(b) if any furniture is provided for the use under the tenancy, the quantity, quality and condition of the furniture [, and

(c) 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.]

(2) For the purposes of the determination it shall be assumed that the number of persons seeking to become tenants of similar dwelling-houses in 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.

(3) There shall be disregarded-

(a) 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;

(b) 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;

(c), (d) ...[repealed]

(e) 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 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.”

Consequently, when determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, has regard to all the circumstances including the age, location and state of repair of the Property. It also disregards the effect of (a) any relevant Tenant's improvements and (b) the effect of any disrepair or defect attributed to the Tenant of any predecessor in title under the regulated tenancy, on the rental value of the Property.

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 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. (The rents may have to be adjusted where necessary to reflect any differences between the comparables and the subject property).

In considering scarcity under section 70 (2), the Tribunal recognises that:

(a) there are considerable variations in the level of a scarcity in different parts of the country and that there is no general guidance or "rule of thumb" to indicate what adjustments should be made; the Tribunal, therefore, considers the case on its merits;

(b) terms relating to rents are to be excluded. A lack of demand at a particular rent is not necessarily evidence of scarcity; it may be evidence that the prospective tenants are not prepared to pay that particular rent.

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 proportional increase in the Retail Price Index since last registration.

The only exception to this restriction on a fair rent 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.

Submissions

Landlord

The landlord completed a reply form undated. The form noted the landlord had supplied central heating, carpets and curtains and white goods. The landlord also noted their belief that the Rent Officer had based the maximum fair rent calculation a figure of £210 per week, rather than the registered rent of £ 281 per week.

Tenant

All relevant submissions were considered. The tenant noted in their reply form that “the second bedroom had been refurbished in early 2021,

Under despairs and defects the tenant noted; damp on walls and missing plaster in sitting room under windows.

The tenant takes issue with the landlord over date of the installation of the roof terrace the tenant submits this was in 1992 the landlord later in 2002.

Reasons for Decision

The tribunal considered all relevant material submitted including reference to previous decisions which are not binding on the tribunal but were considered for wider context.

Initially 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. Considering evidence submitted and the Tribunal acting in its capacity as an expert tribunal and using its general knowledge of market levels in the area, concluded that such a likely market rent, if a market rent is adopted would be £2800 per month.

However, the Property is not in the condition considered usual for a modern letting at a market rent. Therefore, it is necessary to adjust the above hypothetical rent, a deduction of 10% is made.

In addition, the Tribunal determined that there should be a further deduction of 10% to reflect the fact the terms and conditions and goods supplied under the tenancy would differ from those of a contemporary assured shorthold tenancy, from which the rental comparables are derived.

Thereafter the Tribunal considered the question of scarcity in section 70 (2) of the Rent Act 1977. A figure of 20% was adopted.

Market derived rental level - £2800.00 pcm

Less 10% condition

Less 10% for terms

Less 20% for scarcity.

The rent after this final adjustment was £ 1680.00 per month or £387.69 per week rounded up to nearest 50 pence to £388.00 per week.

Rent Acts (Maximum Fair Rent) Order 1999

The rent to be registered is not limited by the Rent Acts (Maximum Fair Rent Order) 1999. The rent calculated in accordance with the Order is £553.50 per week . This

figure is more than the figure calculated by reference to the market rent with adjustments of £388.00 per week.

Accordingly, the sum of £388.00 per week will be registered as the fair rent with effect from 21st November 2022 , being the date of the Tribunal's decision.

Valuer Chair: Richard Waterhouse FRICS

Decision Date: 21st November 2022

Extended reasons : 21st November 2022.

Appeal to the Upper Tribunal

A person wishing to appeal this decision to the Upper Tribunal (Property Chamber) on a point of law must seek permission to do so by making a written application to the First-tier Tribunal at the Regional Office which has been dealing with the case which application must:

- a. be received by the said office within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
- b. 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.

If the application is not received within the 28 –day time limit, it must include a request for an extension of time and the reason for it 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.