



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

Case reference : **CAM/00MB/F77/2022/0029**

HMCTS code : **P:PAPERREMOTE**

Property : **2 Gap Way, Woodcote, Reading,
Berkshire, RG8 0RU**

Applicant (Landlord) : **Mrs Katerina Baker**

Respondent (Tenant) : **Mrs Priest**

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 : **10 January 2023**

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 £855 per month effective from 10 January 2023.

Reasons

Background

1. On 20 July 2022 the Landlord made an application to register the rent of the Property at £900 per month.
2. The Rent Officer registered a Fair Rent of £778 per month on 12 September 2022 effective from 13 October 2022. This was in lieu of the previous registered rent of £740 per month which was registered on 13 October 2020 and effective from 13 October 2020.
3. The Landlord objected by way of an email dated 28 September 2022 and the matter was referred to the First Tier Tribunal, Property Chamber.
4. The Tribunal issued directions on 17 October 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 12 December 2022. The inspection was attended by the Tenant. Neither the Landlord nor a representative was in attendance.
6. The Property comprises a semi-detached two-storey period house of rendered brick and tile construction together with a garden at the side and accessed by means of a cul-de-sac.
7. The ground floor comprises two lounges, a kitchen area and a shower room together with a porch leading out to the garden. There are three good sized bedrooms at first floor level.
8. The property is fitted with central heating via a Worcester gas fired boiler. The windows are timber single glazed sash windows. There is no garage or private car parking.
9. The Property is in excellent condition with a number of period features.
10. The Property is entered in the Council Tax List in Band D.
11. The Tribunal has been unable to find a valid EPC for the Property. It may be the case that the Property is exempt from the requirements for an EPC (i.e., it may be listed) but the Tribunal has no information in this regard.

The Law

12. 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).

13. 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.”*

14. 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.”*

15. 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.”

16. 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.

17. 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).”*

18. 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) *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.”*

19. Section 71 (1) of the Act provides that the registration of the rent takes effect from the date that the Tribunal makes its decision.

20. 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 increase in the Retail Price Index since the previous registration.

21. Section 72 (1) (b) of the Act provides that the registration of a rent takes effect:

“...if the rent is determined by the appropriate tribunal, from the date when the tribunal make their decision”

Representations – Tenant

22. The Tenant advised the Tribunal that:

“During the entire duration of my tenancy at this property since 1969

a. All white goods have been bought and maintained by myself

b. All carpets and curtains have been bought and fitted by myself

c. All furnishings... ..have been paid for by myself

d. All electrical goods... ..have been paid for by myself

- e. *Shed, fencing, gates supplied by myself and paid for*
- f. *The only contents provided by the landlord are the central heating system and boiler.”*

23. The Tenant confirmed to the Tribunal during the inspection that, contrary to her previous comments, the loft insulation had been installed and paid for by the landlord albeit the Tenant paid for the loft boarding. The Tenant also confirmed that the Landlord had installed the shower room.
24. The Tenant also advised that *“I can confirm my husband and I took residence of the property in 1969 and have never sublet it. There was a bed (horse hair mattress) a cooker with one ring working, table and cupboard. We have subsequently replaced at our own cost. Linoleum flooring – no carpets.”*

Representations – Landlord

25. The Landlord, as set out above, had requested a registered rent of £900 pcm.
26. The Landlord’s objection centred on two main points:
- a. The extent to which particular items comprised Tenant’s improvements such that they are to be disregarded in determining the rent payable, and
 - b. The adjustments to market rent on account of the identified tenant’s improvements.
27. It was noted by the Landlord that the Rent Officer had adopted a market rent, on the assumption of an Assured Shorthold Tenancy of £1,450 pcm from which a deduction of £631 pcm was made due to:
- a. No carpets/curtains or white goods
 - b. The Tenant’s assumed internal decorating responsibility.
28. The Rent Officer had then deducted 5% on account of scarcity.
29. The Landlord explained that *“...you can see from my evidence provided [that] work undertaken was largely at a (sic) landlord’s cost, not the tenant (sic), including full decoration, plastering, flooring, fire alarms (specially (sic) after the fire), kitchen, bathroom, loft insulation, fencing, pest control, windows repair and replacement, 3 x new boiler installation and maintenance over the years. Sometimes this was paid for by the tenant but later reimbursed, therefore landlord’s cost.”*
30. The Landlord also stated *“From the evidence before me, the property was originally furnished, I cannot say where exactly was linoleum and where carpets or what curtains, however the tenant has replaced what they felt like to their tastes over the years.”*

31. The Landlord also provided copies of various invoices in respect of work carried out at the Property. These are summarised below.
- The 1990 invoices concern the replacement of the sash windows and hanging of new kitchen and front door. In addition, the Tribunal notes a quote for the installation of central heating but is unclear as to whether this was actioned.
 - The 1991 estimate refers to the repair of the woodwork and rendering.
 - There is a quote dated December 2002 in respect of the fitting of a new MIRA shower but no information as to whether this was implemented.
 - In 2011, the Tenant commissioned the supply and erection of boundary fencing which was charged back to the Landlord.
 - The 2012 invoices relate extensive repair work that the Tribunal understands was carried out as a direct result of a severe fire at the Property.
 - The 2014 invoice relates to plumbing and window repairs together with the fitting of security locks.
 - The 2016 invoices concern the supply and fitting of new hand basin taps and a Worcester boiler.
32. It is clear that the Landlord has either carried out or reimbursed the costs of significant work to the Property. With the exception of the 2012 works and the fitting of the shower and boiler, they largely appear to comprise repairs either to the exterior of the Property or to the heating/plumbing which was installed by the Landlord and, to that extent, relate to matters which are assumed, in any event, to be the responsibility of the Landlord.

Determination

33. As set out in the Spath case as referred to above, 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 and/or registered is not relevant to this exercise.
34. The Tribunal is unable to take into account the personal circumstances of the Parties. As such, the assessment of rent has no regard to the personal financial or health circumstances of either party both of whom are considered to be hypothetical.
35. Neither Party submitted any evidence for consideration by the Tribunal nor challenged the Rent Officer's assessment of £1,450 pcm.

36. It is necessary to go as far afield as Stoke Row, Reading, Lower Basildon, Goring on Thames and Checkendon to find any properties available for letting. There is therefore no directly comparable market evidence of a similar property. The Tribunal has therefore relied upon its own expertise.
37. In this regard, the Property is relatively small which would impact on demand from, for example, families. In addition, the closest train station is located at Pangbourne albeit there is a regular 30 minute bus service connection to Reading. Taking these points into account, the Tribunal does not disagree with the Rent Officer that a hypothetical market rent would be in the region of £1,450 pcm.
38. It is then necessary to have regard to the Property as it would have existed disregarding all improvements undertaken by the Tenant and assuming that the Landlord had complied with its repair covenants.
39. The Tribunal understands that the extensive works undertaken in 2012 were required as a result of a fire at the Property and it is therefore reasonable to assume that the costs thereof were covered by the insurance. To that extent, at least an element of those works would have been required to reinstate or repair damage to work that had previously been undertaken by the Tenant.
40. It is therefore not correct to have regard to work undertaken (and funded by insurance) following the fire to the extent that such reinstatement was in respect of work previously undertaken by the Tenant that had been damaged by the fire.
41. The Tribunal has therefore formed the view that the work carried out by the Landlord that can be taken into account as benefitting the Tenant is:
 - a. Installation and maintenance of the central heating and boiler
 - b. Installation of the shower room
 - c. Supply and laying of insulation in the roof.
42. The Tribunal has also formed the view that the Tenant's improvements which are to be disregarded include:
 - a. Installation of white goods
 - b. Carpets and curtains
 - c. Restoration/updating of internal fixtures and fittings
43. The potential or actual cost of carrying out improvements is not relevant to the assessment of rent. In this regard, the market does not compare two otherwise identical properties and adjust for the differences between them solely on the basis of the cost of the works required to put them into an identical state.

44. It should not therefore be assumed that, as suggested by the Landlord, the benefit of Tenant's improvements should be based upon the cost of those works spread out over their expected lifespan.
45. In this context, whilst it is possible, for example, to rent white goods, the rental thereof typically comprises the capital cost averaged over a relatively short period rather than over the full life span.
46. There is also the added factor that the Tribunal is required to have regard to the terms of the rent payable under a market rent whereby the Tenant would not have the rental security that exists under a protected lease. In this scenario, the Tenant would not have any guarantee that, if they were to purchase particular items, they would have the benefit of the property for the lifespan of those items. Similarly, there would be no certainty that they would be able to gain benefit from those purchases in another property if they were forced to vacate.
47. Notwithstanding this point, the level of rent will ultimately be determined by demand for property which, in turn, is influenced by the expectations of competing tenants. The market will therefore pay disproportionately more for the convenience of a property where the prospective tenant can move straight in and take beneficial occupation comparative to properties where they have to organise the fitting of white goods and arrange for either the rental or purchase of white goods which is an added cost to the Tenant.
48. Having taken these points into account, the Tribunal considers that prospective tenants would require a deduction of £500 pcm to be incentivised to enter into a lease of the Property on the assumption that another similar property was available that already provided these benefits.
49. As noted above, there are no similar properties available on the market such that the supply of property relative to demand is limited which would have the result of inflating the rent prior to the deductions on account of Tenant's improvements. The Tribunal is therefore satisfied that a 10% scarcity allowance is also warranted.
50. The Tribunal therefore considers the "uncapped" Fair Rent to be £855 pcm.
51. 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 this Decision, or the Fair Rent decided by the Tribunal, whichever is the lower.
52. The capped rent is £938 pcm. This is higher than the Fair Rent assessed by the Tribunal.
53. Therefore, the Fair Rent assessed by the Tribunal of **£855 per month** is to be registered.

Name: Peter Roberts FRICS CEnv

Date: 10 January 2023

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).

Notice of the Tribunal Decision

Rent Act 1977 Schedule 11

Address of Premises

2 Gap Way, Woodcote, RG8 0RU

The Tribunal members were

Peter Roberts

Landlord

Mrs Katerina Baker

Tenant

Mrs Priest

1. The fair rent is

855

Per

Month

(excluding water rates and council tax but including any amounts in paras 3&4)

2. The effective date is

10 January 2023

3. The amount for services included in the rent is

Nil

Per

N/A

4. The amount for fuel charges (excluding heating and lighting of common parts) not counting for rent allowance is

Nil

Per

N/A

not applicable

5. The rent is not to be registered as variable.

6. The capping provisions of the Rent Acts (Maximum Fair Rent) Order 1999 apply

7. Details (other than rent) where different from Rent Register entry

The Property comprises a semi-detached two-storey period house of rendered brick and tile together with a garden at the side. The accommodation comprises two lounges and kitchen together with shower room on the ground floor and three bedrooms on the first floor

8. For information only:

(a) The fair rent to be registered is less than the maximum fair rent as prescribed by the Rent Acts (Maximum Fair Rent) Order 1999. The rent that would otherwise have been registered was £938 pcm.

Chairman

Peter Roberts FRICS
CEnv

Date of decision

10 January 2023

MAXIMUM FAIR RENT CALCULATION

Address of premises

2 Gap Way, Woodcote RG8 0RU

LATEST RPI FIGURE x 358.3

PREVIOUS RPI FIGURE y 294.3

x 358.3 minus y 294.3 = (A) 64

(A) 64 divided by y 294.3 = (B) 0.21746517

First application for re-registration since 1 February 1999 No

If yes (B) plus 1.075 = (C) N/A

If no (B) plus 1.05 = (C) 1.26746517

Last registered rent* 740 Multiplied by (C) = 937.924
*(exclusive of any variable service charge)

Rounded up to the nearest 50 pence = 938

Variable service charge (Yes/No) No

If YES add amount for services = N/A

MAXIMUM FAIR RENT = 938 per Month

Explanatory Note

1. The calculation of the maximum fair rent, in accordance with the formula contained in the Order, is set out above.
2. In summary, the formula provides for the maximum fair rent to be calculated by:
 - a) increasing the previous registered rent by the percentage change in the retail price index (the RPI) since the date of that earlier registration and
 - b) adding a further 7.5% (if the present application was the first since 1 February 1999) or 5% (if it is a second or subsequent application since that date).

A 7.5% increase is represented, in the calculation set out above, by the addition of 1.075 to (B) and an increase of 5% is represented by the addition of 1.05 to (B)

The result is rounded up to the nearest 50 pence

3. For the purposes of the calculation the latest RPI figure (x) is that published in the calendar month immediately before the month in which the Committee's fair rent determination was made.
4. The process differs where the tenancy agreement contains a variable service charge and the rent is to be registered as variable under section 71(4) of the Rent Act 1977. In such a case the variable service charge is removed before applying the formula. When the amount determined by the application of the formula is ascertained the service charge is then added to that sum in order to produce the maximum fair rent.