



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

Case reference : **CAM/11UB/F77/2022/0028**

HMCTS code : **A:BTMMREMOTE**

Property : **104 Broughton Avenue, Aylesbury,
Buckinghamshire, HP20 1QB**

Applicant (Landlord) : **JP Cavill and Son Ltd**

Respondent (Tenant) : **Mrs N Shindo**

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 telephone hearing described above as A:BTMMREMOTE. 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 £807.50 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 £768 per month on 12 September 2022 effective from 12 September 2022. This was in lieu of the previous registered rent of £740 per month which was registered on 15 October 2019 and effective from 15 October 2019.
3. The Landlord objected by way of a letter dated 21 September 2022 and the matter was referred to the First Tier Tribunal, Property Chamber.
4. The Tribunal issued directions on 14 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 and Mr Shindo as her representative. Neither the Landlord nor a representative were in attendance.
6. The Property comprises a ground and first floor maisonette within a four-storey flat-roofed block of similar apartments constructed circa late 1970s as part of a local centre that includes retail units and garage blocks.
7. The ground floor comprises a lounge at the front and kitchen area at the rear leading out to a garden area that is for the exclusive use of the Tenant.
8. The concrete frame of the block is clearly visible internally and there is extensive cracking throughout. In addition, there is a large crack to the immediate right hand side of the lounge window which indicates potential building movement.
9. There are three bedrooms and a bathroom on the first-floor level. Again there is cracking and signs of potential water ingress that requires attention.
10. The garden is laid to lawn with a pathway and fencing. The path is uneven, and the gate is broken.
11. The Tribunal understands that that the following items comprise improvements carried out by the Tenant:

- 1) Internal decoration including carpets and curtains
- 2) All kitchen units and white goods (cooker, fridge freezer and washing machine)
12. The Tenant advised that the Landlord had installed the UPVC double glazing and the central heating together with the boiler.
13. In general, the Property is in a reasonable state of decoration albeit would benefit from modernisation.
14. The Property is entered in the Council Tax List in Band B.
15. The Tribunal notes that the EPC rating of the Property is D, as assessed on 17 June 2014, and that the stated floor area is 74 sqm.

The Law

16. 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).
17. 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.”*

18. 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.”*

19. 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.”
20. 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.
21. 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).”*
22. 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.”*
23. Section 71 (1) of the Act provides that the registration of the rent takes effect from the date that the Tribunal makes its decision.
24. 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.
25. 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

26. Mr Shindo pointed out the existence of cracking within the Property. Much of the cracking appeared to be superficial but the crack down the right-hand side of the front lounge window was much wider and, subject to further investigation, may be indicative of structural issues. He advised that the block had previously suffered from major structural issues necessitating significant rectification work.
27. He was also concerned with the potential for flooding and water damage due to the existence of a pipe draining rainwater from the upper floors down the rear elevation and into the garden. In addition, the Tribunal's attention was drawn to the disrepair to the fencing and rear gate.
28. Various other matters of disrepair were raised during the Hearing by Mr Shindo for the Landlord's attention.
29. Mr Shindo agreed that the Property benefitted from central heating which had been installed by the Landlord.

Representations – Landlord

30. The Landlord, as set out above, had requested a registered rent of £900 pcm.
31. The Landlord's written objection to the registered rent raised two points as follows:

“...it states on your register that the property has no central heating. Mrs Shindo [sic] property has full central heating, radiators in each room and a working boiler.

I also find the rent of £768 too low. The other properties next door are currently renting for £1,200 pcm. I can only assume that the low rent is due to the register having it down as no central heating?”
32. The Landlord was represented at the Hearing by Mr Collins who confirmed that the next door flat had been let on a 6 month Assured Shorthold Tenancy from September 2022 at £1,200 pcm. He further confirmed that the upper flats are let for £1,050 pcm but pointed out that they are smaller and do not benefit from any garden space.
33. Under questioning from the Tribunal, Mr Collins confirmed that these rents were on the basis of unfurnished lets excluding white goods with the exception of fitted kitchen hobs.

Determination

34. 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.

35. 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, age or health circumstances of either party both of whom are considered to be hypothetical. In effect, the Tribunal is required to regard the Property as vacant and available to let.
36. The Tribunal took account of Mr Collin's evidence of rents within the immediate block and the letting of the next door flat. In addition, the Tribunal was aware that 102 Broughton Avenue has recently been placed on the market at an asking rent of £1,050 pcm.
37. It is apparent from the letting details that this property is located on the upper floor within the same block as the Property and provides similar accommodation albeit within a floor plate of 74 sqm which compares to the Property which extends to 88 sqm.
38. This property is accessed by an external staircase and does not benefit from any external amenity space. However, it appears, from the internal photographs available on Rightmove, that it is in a better state of repair and decoration than the Property and also provides a fitted oven and hob.
39. According to Rightmove, the only other apartments within a 1-mile radius that are available to let comprise a ground floor studio flat at Selwyn Court, Long Meadow which is available for £725 pcm and a ground floor studio apartment at Ash Close which is advertised at £700 pcm. Neither of these properties are of any assistance to the Tribunal.
40. The Tribunal is therefore of the opinion that the rental value for the Property on an open market letting basis disregarding building defects and assuming full modernisation/decoration, would be in the region of £1,200 pcm.
41. However, it is necessary to discount this rent to account for the fact that, even on the assumption that the Property was in full repair, the market would take account of the lack of modernisation, the need to provide a washing machine and the potential building defects indicated by the cracking and evidence of water ingress.
42. In addition, the Tribunal is satisfied that a 5% scarcity allowance is warranted having regard to the lack of availability of alternative properties providing similar accommodation to the Property.
43. Having taken all these matters into account, the Tribunal considers the "uncapped" Fair Rent to be £807.50 pcm.
44. 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.

45. The capped rent is £950.50 pcm. This is higher than the Fair Rent assessed by the Tribunal.
46. Therefore, the Fair Rent assessed by the Tribunal of **£807.50 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

104 Broughton Avenue, Aylesbury, HP20
1QB

The Tribunal members were

Peter Roberts FRICS CEnv

Landlord

JP Cavill and Son Ltd

Tenant

Mrs N Shindo

1. The fair rent is

807.50

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 is a ground and first floor maisonette within a 4-storey block of apartments constructed circa 1970's as part of a neighbourhood parade of shops and blocks of garages. The accommodation comprises lounge and kitchen at GF and three bedrooms with a bathroom on FF together with a garden to the rear.

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 £950.50

Chairman

Peter Roberts

Date of decision

10 January 2023

MAXIMUM FAIR RENT CALCULATION

Address of premises

104 Broughton Avenue, Aylesbury, HP20 1QB

LATEST RPI FIGURE x 358.3

PREVIOUS RPI FIGURE y 290.4

x 358.3 minus y 290.4 = (A) 67.9

(A) 67.9 divided by y 290.4 = (B) 0.23381543

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) 1.28381543

Last registered rent* 740 Multiplied by (C) = 950.023
*(exclusive of any variable service charge)

Rounded up to the nearest 50 pence = 950.50

Variable service charge (Yes/No) No

If YES add amount for services = N/A

MAXIMUM FAIR RENT = 950.50 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.