



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

Case Reference : **JM/LON/OOAN/F77/2022/0143**

Property : **GFF 52 Castleton Road London W14 9HG**

Tenant : **Hussein Rezaeipoor**

Landlord : **Pareevsh Halvi**

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

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

**HMCTS Code
(paper, video, audio)** : **Hearing**

Date of Decision : **24th January 2023**

Date of Statement of Reasons: **24th January 2023**

Statement of Reasons

Background

The Tribunal gave formal notice of its decision by a Notice dated 24th January 2023 of the determined Fair Rent of £1000 per month with effect from same date.

By way of application, undated, made by the landlord of the property, applied for re registration of a fair rent of £1500.00 per month. Previously the Rent Officer had registered a rent of £1010.00 per month on 20th July 2019.

The Rent Officer registered a fair rent of £975.00 per month, effective from 20th July 2021.

In an email dated 3rd August 2021 the landlord Pareevash Halvai objected to the rent registered and the matter was referred to the First –tier Tribunal (Property Chamber) (Residential Property).

Directions were issued by the Tribunal on the 25th August 2022 and amended on 23rd September 2022.

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.

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.

The Property

The tribunal inspected the property on 24th January 2023.

The property is a flat within a Victorian house converted to four flats. The flat is a raised ground floor flat accessed by three long steps from the pavement level. These are covered by bitumastic and in places have sagged. At the time of the inspection the front of the building had been newly painted.

The flat itself comprised, a living room with open plan kitchen at the rear of the property, a main bedroom, and bathroom with bath and WC.

There was also a storage area which was formed out of the historic access, now closed off, to the lower ground floor.

It was noted that the appliance contained in the storage area had been moved forward due to new boarding being installed in the recess where it previously was placed. It was also noted that a hatch in the ceiling of the corridor within the flat was open, plaster board could be seen above and this was damaged.

The flat had central heating, the kitchen was dated and the bathroom similar. Within the front room there was considerable water stain around the window area. Additionally, some plaster damage was noted.

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.

Pre hearing Submissions

Landlord

The Application by the Landlord included a copy of an email from the Rent Officer to the Landlord dated 20th July 2022. The contents referred to the background to the rent registration of 20th July 2021. The Rent Officer noted they had made a 25% deduction for “tenants' decoration and repairing liability, lack of white goods, floor coverings and curtains and an unmodernised kitchen.”

Additionally, the Rent Officer stated the “landlords repairs and decoration liability has always been noted on the rent register dating back to our earliest records in 1994.”

Also included in the documents accompanying the Application, was an e mail from the Landlord dated 16th July 2021 stating;

“the rent increase was supposed to take place every two years, did not happen in this case for 19 years which I feel is an important factor”.

“I do not agree with the with the repairs and decoration liability “

Additionally noting;

“I feel any valuation reflecting how the market has behaved due to the pandemic should not affect the rent for the next two years, since the rent increase is not determined annually which I believe it should be.”

Also included in the bundle of e mails is 21st June 2021 between the Landlord and the Rent Officer. It describes difficulty in gaining access to flat by landlord citing the tenant changing locks and not providing a spare key. It notes that the annual inspection for the gas safety certificate has been carried out regularly and automatically as part of the “home care package that was purchased for the flat for many years.”

Also, that gas pipes had been renewed and a new gas meter installed before the pandemic.

An email from the Rent Officer to the Tenant dated 13th July 2021 noted the approach taken by the Rent Officer at that time. The open market rent of the flat was determined as £1400 per month, deduction of £350 for difference in tenancy terms and decoration and repairing liability with a further deduction of £75 for scarcity taking the calculated fair rent to £975.

Tenant

The tribunal was also in receipt of a number of pieces of evidence of correspondence between the tenant Mr Eezaeipoor and the Rent Officer;

An email of 13th June 2021 contained the following photographs.

A 57 second video of the outside of the building showing the front including a plastic chair by the steps. There is no date on the video but it shows the building in a condition needing painting. Video file dated 5th May 2021.

A still photograph of the front door and surrounding brickwork in same condition as video. Photo file dated 5th May 2021.

A still photograph of the front door taken from the inside, undated but showing damp and peeling paintwork above the door. File dated 28th March 2021.

A still photograph showing interior front room, water staining to left of window to full height of the wall. File dated 23rd March 2021.

A still photograph showing a close up of the staining to the wall at the lower section of window to front room. File dated 23rd March 2021.

A still photograph showing the internal left-hand side of the front room showing water staining a mid-height. File dated 23rd March 2021.

An email dated 7th June 2021 from The Tenant Hossain Rezaipoor noted “we rented the flat from Mr Arab Halvaei on 1st August 1988, and this was transferred to Ms Halvai on 6th January 2006. The repair and interior decoration are her responsibility”.

A still photograph of the outside of the building showing the wooden windows and the exterior masonry paint needing repainting.

A still photograph of the outside of the porch area showing cracked or damp ceiling of porch.

A still photograph showing appearing to show water emerging from around the door.

A still photograph showing external underside of porch with damp.

A still photograph showing external porch with damp emerging from inside the property.

A still photograph showing full external of front of building. The property shows flaking.

A still photograph showing external front of porch.

A still photograph lower basement external indicating flaking external paint.

A still photograph showing inside ceiling location unspecified.

A still photograph, showing internal door mat with Edwardian tiling no obvious defect shown.

A still photograph, showing the other side of the internal porch area damaged Edwardian tiles with several missing at corner.

A still photograph, showing upper section of building with external masonry flaking.

The Hearing

Landlord

The landlord said they were an accidental landlord and were not familiar with the tribunal process. Nonetheless they presented their submissions thoroughly and in detail.

The Landlord noted that there had been some difficulty with making the application to the Rent Officer. Noting that an earlier attempt to register an application for a new registered rent had not been successful. The objection the subject of today's hearing is the product of the later successful application.

The Landlord's submission to the tribunal focused on two main areas the rent and the condition of the property.

First the Rent. The Landlord contended that the market rent for the flat should be £3000 per month, and with adjustments for condition and in accordance with the Act the fair rent to be registered should be £2000 per month. The Landlord sought to include comparable evidence of recent properties in the area which were currently to let. These had not been shared with the Respondent and so the tribunal decided that they should not be submitted.

The second area of the submission related to the condition of the property, which sought to comment upon the evidence the Respondents had made within the correspondence concerning the registration of the rent.

Overall, the landlord felt the flat was in a good condition.

The points covered were;

The landlord had taken over the building in 2006 and was of the belief that the white goods in the kitchen had been supplied by the previous landlord.

The external steps to the external front door which were coated in bitumastic were in good order.

The entrance hall with the original Edwardian tiles, a few were missing in the inside corner by the door the missing tiles. This area had been filled with cement and made good.

That there had been no issue with mice within the building in any of the flats, notwithstanding this, a hole within the electrical cupboard in the hall way has been filled.

That any staining in the front room of the property was minimal and of cosmetic only.

That access to the flat by the landlord or their agents was inhibited by the tenant, with the door lock being changed and no key provided. This had prevented the landlord from carrying out repairing and decorating liability.

The gas boiler was under a British Gas maintenance contract and that a valid gas safety certificate was in place.

That there had been water leakage from the flat above but minimal impact.

The bathroom fan had been replaced a few years back.

The exterior of the building was painted in 2022.

The second and third floors were being converted to an HMO property and so enhanced fire alarm and lighting has been installed into the common parts.

That the flat above the subject property had new laminate flooring and that there was sound proof underlay plus sound restricting material attached to the underside of the laminate floor. Thereby preventing any sound impacting on the tenants of the subject property.

The water pressure in the gas boiler should be addressed by tenant in normal operation of the boiler.

Tenant

The tenant was represented by Ms Rosie Grewal of Fosters Law

There submissions fell into two main areas, rent and condition of property.

In terms of the rent, a figure of £1400 per month was considered a market rent for the property and that with adjustments for the Act a figure of £975 per month was fair. The Tenants representative wanted to introduce comparable evidence but this had not been shared with the Applicant and so was not permitted.

The deduction for scarcity was supported by the assertion that within the Borough there were 2680 people on list housing and 634 actually housed in the last year.

The second part of the submissions related to the condition of the property.

It was recognised that the property had a current gas safety certificate, although it was stated that this had not been the case in some previous years.

Mice had accessed the flat through a gap in the front door, the gap being the outcome of the landlord s contractor previously adjusting the door.

That the landlord had in refurbishing the flat above caused flooring to be changed which produced more sound transmission.

Ongoing refurbishment of the basement flat caused an ongoing nuisance.

Recognised that the landlord had changed the bathroom light and fan, the fan worked intermittently.

The building had been extensively scaffolded in the last year to enable repairs and decoration of the whole building. The windows were painted and difficult opening them.

There is no written tenancy agreement.

Building materials had been stored in the open space on the ground at the rear of the property whilst outside the subject property this material detracted from the quiet enjoyment of the property.

That the property was let unfurnished and the carpets, curtains and white goods are the property of the tenant.

Ms Grewal stated the tenants have decorated the property and cleaned and repaired boarding and attended to mould since occupation. The Tenants have also purchased two dehumidifiers.

There is no electricity certificate.

There were problems with water pressure in the gas boiler which required British Gas to attend.

There is no CO detector in the property.

There is a bookcase/ shelf in hallway which is acting to impede the use of the hallway as a fire escape.

Reasons for Decision

It is regrettable that relations and trust between the parties had broken down.

The submissions indicate that no Applications were made for a substantial period of time, 19 years, for registration of a fair rent. This the landlord notes this has led to the level of fair rent being substantially below where it might have been. This is not a matter which the Statutory provisions permit the tribunal to take into account. The Fair Rent registered in 20th July 2019 needs to form the basis of the maximum Fair Rent Calculator.

In setting the rent the obligations of the landlord and the tenant need to be identified. This informs the level of the rent a tenant would pay for the occupation and their liability.

The evidence on this issue is contradictory. The Rent Officer notes indicate from an entry dated 1994 that the tenant was responsible for internal repairs. The general expected practice for regulated tenancies in their view of the tribunal is that the tenant would be responsible. The landlord claims they have responsibility but have been prevented from fulfilling them. The tenant states that the landlord is responsible. There is no written agreement produced. Although there is no record of decoration actually having taken place, there is specific performance by the tenant in repairing floor boards and attending to mould and making good. On balance the tribunal determines that the tenant has responsibility for internal decoration.

Likewise, the issue of supply of white goods is contested, on balance it is found that the tenant has responsibility for these.

The condition of the building and the subject flat have been the subject of detailed submissions. The tribunal has also inspected. The rent to be determined must reflect the condition found on the date of the hearing. On this date the external works to the building appear concluded, works to the other flats in the block are understood to be continuing and thus disturbance anticipated.

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.

The process for determining a fair rent is the application of Rent Act 1977 section 70 on the subject property and then comparison with the maximum rent permitted under the Maximum Fair Rent Order 1999. This means that comparison with other properties the subject of Fair Rent is not material.

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 £ 2000 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 20% 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 - £2000 per month

Less 20% condition and external disturbance

Less 10% for terms and supplied goods inc white goods

Less 20% for scarcity.

The rent after this final adjustment was £1000 per month.

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 £ 1301.00 per month. This

figure is greater than the figure calculated by reference to the market rent with adjustments, of £1000.00 per month.

Accordingly, the sum of £1000.00 per month will be registered as the fair rent with effect from 24th January 2023, being the date of the Tribunal's decision.

Valuer Chair: Richard Waterhouse FRICS

Decision Date: 24th January 2023

Extended reasons: 24th January 2023

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.