



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

Case Reference : **CAM/38UC/F77/2022/0031**

Property : **27 Iffley Road, Oxford OX4 1EA**

Applicant (Landlord) : **The Doris Field Charity**
Representative (Agent): **Carter Jonas**

Respondent (Tenant) : **Mr John Bagwell**

Type of Application : **Determination of a fair rent under
Section 70 of the Rent Act 1977**

Tribunal Members : **Judge JR Morris**
Mrs M Wilcox BSc MRIICS

Date of Decision : **16th January 2023**

DECISION

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DECISION

1. The Fair Rent for the Property is determined to be £875.00 per calendar month, which is below the capped rent of £917.50 per calendar month under the Rent Acts (Maximum Fair Rent) Order 1999.
2. The effective date is 16th January 2023.

SUMMARY REASONS

THE PROPERTY

3. The Property is a ground floor flat in a two-storey Victorian mid terrace house of brick under a slate roof. There is a small garden to the front and a garden to the rear. Parking in the area is restricted. The Property was refurbished in the early 1990s. At the rear of the garden there is door to a two-storey building currently empty. There is an access to this building from the road behind the Property. The Tenant has no right of access to the building and the Tenancy gives no right of access across the Property to any occupant of that building.

Accommodation

The front door opens into a common hallway at the end of which are two doors one to the first floor flat and the other to the ground floor Property. The Property comprises a hall, off which is a living room (14' x 11'9") and bedroom (11'x 10'). There are three steps down to the kitchen-diner (11'6" x 10') and bathroom (7' x7') beyond. There is a door from the kitchen to the rear garden. There is a cellar under the living room which is used as a store and workshop.

Services

Space and water heating is by a gas fired central heating system. The Property has mains gas, electricity, water and drainage.

Furnishing

The Property is let unfurnished. The curtains and floor coverings are provided by the Landlord. White goods are provided by the Tenant.

Location

The Property is on the edge of Oxford City centre.

THE TENANCY

4. The Tenancy, which commenced in April 1986, is a statutory monthly periodic regulated tenancy under the Rent Act 1977. No council tax, service or other charges are collected in addition to the rent. It is understood that the Tenant was responsible for repairing the interior and the Landlord the exterior. Section 11 of the Landlord and Tenant Act 1985 applies in respect of Landlord's repairing obligations.

THE REFERRAL

5. The existing rent registered on 29th November 2017 and effective from that date is £800.00 per calendar month which was below the capped rent under the Rent Acts (Maximum Fair Rent) Order 1999. The Landlord by a notice in the prescribed form received by the Rent Office on 12th August 2022 proposed a new rent of £1,200.00 per calendar month. On 6th October 2022, the Rent Officer registered a rent effective from that date of £838.00 per calendar month, which was below the capped rent under the Rent Acts (Maximum Fair Rent) Order 1999. The rent was assessed by the Rent Officer based on:
 - a. an open market rent of £1,025.00 per month;
 - b. a deduction of £143.00 for the tenant's repair/decoration liability, lack of floor coverings/curtains, no white goods unmodernised kitchen, giving a rent of £882.00; and
 - c. a deduction of about £44.10 (5% of the adjusted market rent) for scarcity.
6. By a letter received on 26th October 2022 the Landlord objected to this assessment and, pursuant to Schedule 11 to the 1977 Act, the rent officer referred the matter to the Tribunal. The Tribunal issued directions on 8th November 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. Reply

forms, photographs, further details and submissions were provided by the parties. The parties requested an inspection but not a hearing.

THE INSPECTION

7. The Tribunal inspected the Property in the presence of the Tenant.
8. Externally the Property is in fair condition. There is a upvc sliding sash bay window to the front and upvc rainwater goods. The windows to the rear are timber and single glazed and are in fair condition.
9. Internally, there is a modern fitted kitchen and a bathroom, although there is no shower over the bath. White goods are provided by the Tenant.
10. Works that have been undertaken since the last rent registration included the relaying of the floor in the kitchen and bathroom over a damp proof membrane and a chemical injection damp proof course in the kitchen and bathroom walls. Unfortunately, the section of the damp proof course between the back door and the kitchen window appears to have failed or been applied unsuccessfully and a fresh application seems to be needed.

THE LAW

11. The Law relating to these reasons is contained in section 70 Rent Act 1977. It provides that, when determining a fair rent, the Tribunal should:
 - Have regard to all the circumstances (other than personal circumstances of the landlord or tenant) including the age, location and state of repair of the Property.
 - Disregard the effect on the rental value of the property of any relevant tenant improvements, and of any disrepair or other defect attributable to the tenant or any predecessor in title under the regulated tenancy
 - Assume that, whatever might be the case, the demand for similar rents properties in the locality does not significantly exceed the supply of such properties for rent, in other words the effect of any such scarcity on rental values is not to be reflected in the fair rent of the subject property.

REPRESENTATIONS

12. The Landlord's Agent made no written representations
13. The Tenant made written representations as follows:
 - a) By 2017 the injected damp proof course in the kitchen and bathroom extension had failed causing rising damp on all three sides. The plaster on the extension walls was stripped back to bare brick and the floor dug up in February 2018. A new concrete floor with waterproof membrane was laid and waterproof render applied to the walls. New kitchen units and bathroom appliances were installed. The work was commissioned by the Landlord.
 - b) Since the last review the single glazed French windows but not the frame was replaced by the Landlord due to the timber rotting.

- c) In the last 18 months evidence of rising damp in a section of wall between the kitchen windows and the rear door has begun to appear. This has grown markedly in the last couple of months. The Landlord's Agent has been informed (Photograph provided).
14. The notes from a consultation held between the Rent Officer and the Tenant at which the Landlord did not attend stated that the flat above the bathroom of the Property had flooded and the water had come through the ceiling light in the kitchen of the Property. The Tenant had informed the Landlord.

DETERMINATION

15. The Tribunal assessed the rent for the Subject Property as at the day of the inspection pursuant to section 70(1) Rent Act 1977 (having regard in particular to the age, character, locality, state of repair of the Property and all the circumstances other than personal circumstances). The Tribunal then considers whether or not a deduction for scarcity should be made, which varies depending on the market within a locality from time to time.
16. The Tribunal took account of the relevant cases and legislation including *Spath Holme Ltd v Greater Manchester Rent Assessment Committee* (1996) 28 HLR 107, *Curtis v The London Rent Assessment Committee* [1997] 4 All ER 842 and *BTE Ltd v Merseyside and Cheshire Rent Assessment Committee* 24th May 1991. These cases confirm that for the purposes of determining the market rent (before making any necessary adjustments), open market assured tenancy rents are usually rental values of comparable properties. Registered rents of comparable properties are not considered to be appropriate because it is not known what open market rent was adopted, what deductions were made for condition or any improvements and what the effect of the application of Rent Acts (Maximum Fair Rent) Order 1999 had. The Tribunal determines a market rent for a property by reference to rental values generally and to the rental values for comparable properties in the locality in particular. The Tribunal does not take into account the present rent and the period of time for which that rent has been charged nor does it take into account the percentage increase which the proposed rent represents to the existing rent.
17. Having determined a market rent the Tribunal then makes an adjustment, if necessary, for the condition of the Property at the time of the determination. It cannot take into account the period of time which a property might have been in disrepair prior to work being carried out by the Landlord. Equally it cannot take into account work that is said to be intended or scheduled to take place in the future.
18. 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 the decision is made.
19. Firstly, the Tribunal considered the open market rent. Neither party provided evidence of rental values for comparable properties therefore the Tribunal used its own knowledge and experience to determine a market rent. The Tribunal found that a market rent for a similar property with sole use of a garden, offered in good condition with central heating, double glazing, modern kitchen and bathroom and with white goods, floor coverings and curtains or blinds would be £1,000.00 per calendar month. The Tribunal notes that this is the same as that determined in 2017. It would appear that the 2017 rent was assessed at a high point in the market.

As stated above the present assessment is based upon market rents for similar properties, i.e., one-bedroom flats with gardens, in the locality, either recently let or currently on the market.

20. Secondly, the Tribunal considered whether any adjustments needed to be made to the market rent considering the Property. As mentioned above the Tribunal noted from its inspection and the Tenant's representations that the Landlord had sought to remedy the damp referred to in its previous decision dated 29th November 2017. The works had been successful with regard to the damp rising from the floor and much of the wall but is re-emerging on the wall between the back door and kitchen window and it appeared a fresh chemical injection was required. Unlike the comparable properties, the Property was not let with white goods, carpets or curtains or blinds and the French doors are single glazed. An adjustment was therefore made for these matters of £125.00 per calendar month.
21. It should be noted that this amount cannot be a simple arithmetical calculation and is not based specifically upon capital cost but is the Tribunal's estimate of the amount by which the rent would have to be reduced to attract a tenant.

SCARCITY

22. The Tribunal is 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, an adjustment is to be made to the rental figure so that the fair rent is not affected by it. Neither party submitted evidence of scarcity. It appears that the rent officer made a deduction of 10% for scarcity, but no evidence has been produced to justify this.
23. Assessing a scarcity percentage cannot be a precise arithmetical calculation because there is no way of knowing either the exact number of people looking for properties similar to the subject property in the private sector or the exact number of such properties available. It can only be a judgement based on the years of experience of members of the Tribunal together with a consideration of the properties advertised as being to let as at the time of the assessment.
24. In the absence of any representations from the parties, the Tribunal relied upon its own knowledge and experience of the market for rented properties. It found at the time of the determination demand for similar dwelling houses did not substantially exceed supply in the locality. The locality in this case is Oxfordshire, which is a sufficiently large area to eliminate the effect of any localised amenity which would, in itself, tend to increase or decrease rent. Therefore, no deduction is made to reflect scarcity.

TRIBUNAL'S CALCULATIONS

- | | |
|-----------------------|------------------------------|
| 25. Market Rent: | £1,000.00 per calendar month |
| Less global deduction | <u>£125.00</u> |
| Adjusted Market Rent | £875.00 |

Uncapped Fair Rent is £875.00 per calendar month

26. The provisions of the Rent Acts (Maximum Fair Rent) Order 1999 require that the registered rent is either the capped Fair Rent or the Fair Rent decided by the

Committee whichever is the lower. The capped Fair Rent is calculated in accordance with a statutory formula using the existing rent as a base and specified data from the Retail Price Index.

27. The capped rent is £1,079.50 per calendar month, as set out in the calculation which accompanies this decision, which is higher than the rent assessed by the Tribunal. As the assessed rent is below the capped rent, the Tribunal did not apply the exemption under paragraph 2(7) of the Order which provides that capping does not apply if as a result of repairs or improvements a new rent exceeds the previous rent registered by at least 15%. Therefore, the rent assessed by the Tribunal is to be registered.

FAIR RENT = £875.00 per calendar month

Judge JR Morris

Caution: The Tribunal inspected the subject property for the purposes of reaching this decision. The inspection was not a structural survey and any comments about the condition of the property in this statement must not be relied upon as a guide to the structural or other condition of the property.

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.

1. 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.
2. 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.
3. 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.
4. 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.
5. If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).