



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

Case Reference : **JM/LON/OOAW/F77/2022/0257**

Property : **21A Norland Square London W11 4PU**

Tenant : **Miss M Lotery**

Landlord : **The Powell Family Foundation C/O Amherst
Asset Management**

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

Tribunal : **Mr R Waterhouse MA LLM FRICS
Mr Clifford Piarroux JP**

HMCTS Code : **On Papers**
(paper, video, audio)

Date of Decision : **22nd February 2023**

Date of Statement of Reasons: 22nd February 2023

Statement of Reasons

Background

The Tribunal gave formal notice of its decision by a Notice dated 22nd February 2023 of the determined Fair Rent of £1080.00 per month with effect from same date.

By way of application, received by the Rent Officer on 28th September 2022, made by the landlord of the property, applied for re registration of a fair rent of £ 925.00 per month. Previously the Rent Officer had registered a rent of £850 per month with effect from 26th November 2020.

The Rent Officer registered a fair rent of £980 per month with effect from 26th November 2022.

In an email dated 8th November 2022 Katrina de Massy on behalf of the tenant Miss Lotery 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 **22nd February 2023**.

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 22nd February 2023.

The property is a self-contained conversion flat dating around 1890 comprising two rooms, a kitchen, a bathroom, WC and a shared garden. The property has central heating.

The inspection found the flat to be good condition, there was horizontal cracking along the ceiling area of one-party wall. Additionally, there was damp penetrating from external on the other party wall corner.

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

No submissions from landlord other than initial application to register a fair rent and the objection notice.

Tenant

The email objection dated 7th November 2022 noted;

“It is my opinion that figures seem to be unnaturally skewed due to floods in the area in July 2021....These floods put an unnatural local demand on rented properties in the area.

In addition to the trauma of being trapped in her flat with rising flood waters up to her knees, destroying a lot of her property and then being evacuated to a tiny hotel room with no cooking facilities for over a month and then the disruption of being moved to a temporary flat – she now additionally has her rent raised by what I felt is a disproportionate 19%.

The Hearing

No hearing was requested by the parties, nor one felt proportionate, so the matter was addressed on papers.

Reasons for Decision

The tribunal has also inspected. The rent to be determined must reflect the condition found on the date of the hearing disregarding all tenants' improvements.

The process for determining a fair rent is the application of the 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 £ 2400 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 - £2400.00 per month

Less 20% condition

Less 10% for terms and supplied goods inc white goods

Less 20% for scarcity.

The rent after this final adjustment was £1080.00 per month .

Rent Acts (Maximum Fair Rent) Order 1999

The rent to be registered is limited by the Rent Acts (Maximum Fair Rent Order) 1999. The rent calculated in accordance with the Order is £ 1080 per month. This figure is lower than the figure calculated by reference to the market rent with adjustments, of £ 1080.00 per month.

Accordingly, the sum of £1080.00 per month will be registered as the fair rent with effect from 22nd February 2022, being the date of the Tribunal's decision.

Valuer Chair: Richard Waterhouse FRICS

Decision Date: 22nd February 2023

Extended reasons: 22nd February 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.