



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

Case Reference : **JM/LON/OOBK/F77/2022/0243**

Property : **50 Gloucester Place Mews London W1 8BD**

Tenant : **Miss Georgina Moon**

Landlord : **The Portman Estate Nominees (One) Ltd &
The Portman Estate Nominees (Two) Ltd C/O Martyna Kay**

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 £11,900.00 per year with effect from same date.

By way of application, dated, 14th June 2022 made by the landlord of the property, applied for re registration of a fair rent of £11,500 per year. Previously the Rent Officer had registered a rent of £10,826.00 per year with £27.82 a year attributed to services with effect from 28th March 2019.

The Rent Officer registered a fair rent of £13574 per year with £62.16 per year attributed to services with effect from 1st September 2022.

In a letter dated 22nd September 2022 received by the Rent Officer 28th September 2022 the tenant Ms Moon 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 16th November 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 property is a first floor flat, comprising two bedrooms, a living room with kitchen and bathroom. The flat has its own access from the ground floor external.

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

Tenant

The tribunal has a copy of “Consultation and Considerations “from the Rent Officer, dated 25th August 2022 noting a meeting at the property, where the tenant was present. At the meeting, the tenant raised the following points’

“Tenancy commenced 29th September 1958

Concerned about the proposed increase of rent

Upgraded electrics to living room. Lagged and soundproofed room

Installed bathroom suite which originally had no basin

Installed kitchen units and white goods

Fitted the wardrobes in main bedroom

No central heating.”

The tenant's representative completed and returned the Reply form, received 13th December 2022 at the tribunal.

The reply form noted that a hearing was required but not an inspection.

The form noted,

There is no central heating, nor double glazing, curtain and carpets are provided by the tenant as are the white goods.

The tribunal has a written submission by the tenant dated 10th December 2022.

It states;

“When my parents moved into the little flat above two commercial garages in 1958 it was totally unmodernised. The bathroom had a ceiling high cistern with pull chain. The only heating was an open coal fire in one room, and the hot water was provided by a larger boiler in the sink to a stone sink. This also fed water to the bath, but there was no washbasin. To wash, a basin had to be suspended across the bath

In the past sixty-four years the only improvements in the flat, including a fitted kitchen, wash basin, modern loo and fitted cupboards have been made by us at our expense and not by the landlord. The one exception is the wiring. By the year 2000 the wiring had become such a fire hazard that the switches were too hot to touch.I had the wall plugs upgraded at my expense and to ensure safety asked Portman to check the plugs and rewire the light switches. This was done by their contractors. But the wiring was left proud across the ceiling.

...I hired an electrician to properly chase the wiring in. The work was confined to one room with a fire. It was then found there was absolutely no insulation under the tiles. In an effort to conserve what little heat there is, the ceiling was taken down, proper insulation installed and ceiling replaced. Once again all at my expense. “

Addition written submission by Francois Landry dated 10th December 2022 which supports Ms Moon submission of 10th December 2022.

Landlord

The application noted the property is a two-bedroom flat with living room, kitchen and bathroom/WC located in a mews house.

Services are provided to the tenant by the landlord at box 8 these are stated to be window cleaning, “H&S”, Building repairs and maintenance, management. At box 9, it is said these services amount to £686.5 per year.

At box 11 under repairs, it is noted the landlord is responsible for external and internal “S11 does not apply”

An email dated 4th January 2023 from Juliette Golding of Portman Estate noting they would not be attending.

The Hearing

The tenant Miss Moon attended the hearing with her representative, Francis Landry.

The landlord did not attend.

The tenant and her representative, outlined the specification of the flat as let prior to any improvements. The bathroom had no heating, only a plastic tub attached to the floor and a stoneware sink. It was fed hot and cold water from a boiler. The kitchen likewise had a sink and little else. The living room had a open heath. Bedroom 1 can contain a double bed, bedroom 2 only for a single bed. The original wiring which was limited was breaded cord. The ceilings were lath and plaster and there was no insulation above it. The roof has recently had leaking which has been attended to be the landlord.

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 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 £x34,000.00 per year

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 - £34,000.00 per year

Less 35% condition

Less 10% for terms and supplied goods inc white goods

Less 20% for scarcity.

The rent after this final adjustment was £11,900 per year.

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 £14,227 per year with £62.16 per year attributable for services. This figure is higher than the figure calculated by reference to the market rent with adjustments, of £11.900 per year with £62.16 per year attributed for services.

Accordingly, the sum of £11,900 per year with £62.16 per year attributed to service will be registered as the fair rent with effect from 22nd February 2023, 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.