



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

Case Reference : **LON/00AS/F77/2022/0175**

Property : **33, Elmbridge Drive, Ruislip,
Middlesex. HA4 7UU**

Applicant : **Mrs. P. Hickman**

Representative : **Not represented**

Respondent : **A2 Dominion Group**

Representative : **Not represented**

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

Tribunal Members : **Tribunal Judge S.J. Walker
Tribunal Member Mr. S. Johnson
MRICS**

Date of Decision : **8 December 2022**

Date of reasons : **20 January 2023**

REASONS

Background

1. On 18 February 2022 the landlord applied to the rent officer for registration of a fair rent of £623.37 per month for the property. A capped fair rent of £618.50 per month had previously been registered on 6 December 2019. It should be noted that at that time the rent

officer determined that, the uncapped rent was £1,225 per calendar month.

2. The rent payable at the time of the application was £542.06 per month.
3. A consultation took place at the property on 17 June 2022 when the tenant and her representative, her daughter Ms. S. Hickman, and the rent officer were present.
4. On 15 July 2022 the rent officer determined a capped fair rent of £745.50 per calendar month with effect from the same date. At that time the rent officer determined that the uncapped rent was £1,100 per calendar month
5. Under the terms of the lease no charges are made for services or furniture and the liability for repairs is as agreed between the parties subject to section 11 of the Landlord and Tenant Act 1985.
6. Subsequently, the tenant objected to the rent determined by the Rent Officer and the matter was referred to the Tribunal.
7. On 22 September 2022 the Tribunal issued directions. These made it clear that the Tribunal would decide the fair rent for the property on the basis of written submissions unless either party requested a hearing. The directions also invited the parties to indicate whether or not they wished an inspection to take place. The tenant responded stating that a hearing was not required but requesting an inspection. This was also the response of the landlord. The Tribunal therefore decided that it was appropriate for the rent to be determined on the basis of the written submissions alone and an inspection was carried out on 8 December 2022.
8. Written submissions were received from the tenant, but not from the landlord. A copy of the tenancy agreement was not provided to the Tribunal.

Submissions

The Landlord's Case

9. No submissions were received from the landlord.

The Tenant's Case

10. The tenant's case, as put forward by her daughter Ms. Hickman, included the following points.
 - (i) there were complaints about the landlord's failure to carry out remedial works to the property and/or to carry out works to a reasonable standard;
 - (ii) the use of two rooms – the dining room on the ground floor and the bedroom above - is compromised by the presence of a lift

- which had been installed for the use of the tenant's late husband and which is beyond repair;
- (iii) a brick shed in the back garden is in poor condition and damp
 - (iv) the kitchen is dated and has not been replaced in 25 years
 - (v) the patio is cracked and dangerous;
 - (vi) the only toilet on the ground floor is outside;
 - (vii) the garden fence is in need of repair;
 - (viii) the front door is draughty;
 - (ix) the paintwork on the porch is peeling;
 - (x) the loft, which was previously usable for storage space, can no longer be used because insulation has been inserted with no floor above;
 - (xi) there are insufficient electrical sockets
 - (xii) there is no bath in the bathroom;
 - (xiii) the increased rent is not affordable;
 - (xiv) no white goods, carpeting or furniture is provided by the landlord;
 - (xv) the tenant provided the original central heating system - though this has since been replaced - and a wooden shed in the garden;
 - (xvi) the deduction from the market rent for scarcity (10%) is too small;
 - (xvii) the nearest station is over a mile away and it is a 10 minute walk to catch a bus

The Inspection

11. The Tribunal inspected the property on 8 December 2022 in the presence of the tenant and her daughter alone.
12. The property comprises a three-bedroom detached house with both front and rear gardens. It is situated in a quiet residential street. It is of brick construction – circa 1950s. The windows are all double-glazed. The external condition is generally good, though there is a crack in a down-pipe at the right-hand corner of the rear elevation which is causing some dampness. The garden is well maintained, though the patio is cracked. There is an outside brick shed which is damp, and in the rear elevation there is a small external WC.
13. Internally the general condition was good, with a good standard of decoration provided by the tenant. A large part of the ground floor room to the right of the entrance is occupied by a non-functioning lift mechanism which rises to the bedroom above. This makes much of the room unusable. The kitchen is dated and white goods were provided by the tenant. Upstairs there is a wet room which includes a WC, which was created to accommodate the tenant's disabled late husband. Although there is no bath, it is perfectly serviceable as a bathroom. The bedroom directly above the lift referred to above has a movable area of floor which covers the hole to the floor below. This part of the room is still, therefore, usable to some extent, though the use of the room is nevertheless impacted by the continued presence of the lift. There is a loft space across the whole of the property but this is no longer usable

for storage as there is no longer a usable floor since insulation has been provided.

The Law

14. When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, had regard to all the circumstances (other than personal circumstances) including the age, location and state of repair of the property.
15. In *Spath Holme Ltd v Chairman of the Greater Manchester etc. Tribunal* (1995) 28 HLR 107 and *Curtis v London Rent Assessment Tribunal* [1999] QB 92 the Court of Appeal emphasised 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 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).

Valuation

16. No comparables were provided by either party, though the figures provided by the rent officer show market rentals for similar properties ranging from £1,525 to £3,400 per month. The rent officer's starting point for calculating the market rent was £1,750 per month. The Tribunal, having regard to its expertise, considered this a reasonable starting point for a property of the same size, character and location as this.
17. However, the Tribunal considered that a considerable deduction – £600 per month - was justified on the basis of the factors identified by the tenant above. The Tribunal gave particular weight to the absence of white goods, the un-modernised kitchen, the tenant's repair and decoration liability, the fact that 2 rooms are compromised by the lift, the fact that the loft is unusable, the scarcity of power sockets, and the cracked downpipe. This resulted in the adjusted market rent being £1,150, a reduction of over 34.25%.
18. The Tribunal also considered that a deduction of 10% for scarcity was inadequate, preferring, on the basis of its knowledge and experience, a figure of 20%. This resulted in a further deduction of £230, making the uncapped fair rent £920 per month.

The Capped Fair Rent

19. It is clear from the submissions made on behalf of the tenant by Ms. Hickman that much of her criticism is directed at the decision taken by the rent officer with regard to the amount of the capped fair rent. It

would be helpful to set out the process of determining such a rent in detail and the approach taken by the Tribunal in this case.

20. The determination of the capped fair rent is governed by the provisions of the Rent Acts (Maximum Fair Rent) Order 1999. This provides a statutory formula for the determination of the capped rent. That formula is set out in the letter from the rent officer dated 28 July 2022. The key elements of that formula are (a) the previous registered rent and (b) the change in the retail price index (“RPI”) between the date of the previous registration and the date of the current determination. When there is an appeal against a rent officer’s rent determination the Tribunal makes its own decision afresh, which means making a fresh calculation of the increase in RPI. It follows that it is likely that the change in the RPI at the date of the Tribunal’s determination is likely to be greater than that when the rent officer made their determination, resulting in a higher capped rent. It also follows that at times when inflation is relatively high, as has been the case throughout the second half of last year, the capped rent will rise more quickly than at other times.
21. In this case the key elements were as follows. The previously registered rent was £618.50 per month. This was registered on 6 December 2019. The RPI figure in that month was 291.9. The latest available RPI figure at the time the Tribunal’s decision was made was for October 2022, which was 356.2. The difference between those is 64.3.
22. The Tribunal applied the statutory formula as set out in the maximum fair rent calculation sheet provided with its determination. This maximum fair rent, determined in accordance with the formula, was £786. This was higher than the capped rent determined by the rent officer in July 2022 because of the effects of inflation in the interim.
23. As this figure is less than the uncapped fair rent determined in paragraph 18 above, it is this rent which the Tribunal determines as the fair rent.

Commencement of the New Rent

24. The Tribunal finds that the new rent commenced on 8 December 2022, for the reasons below.
25. The learned editors of *Woodfall: Landlord and Tenant* (2022) at Paragraph 23.172, state:

“Date of effectiveness of rent registration

The registration of a rent for a dwellinghouse takes effect (if the rent is determined by the rent officer) from the date when it is registered, or, (if the rent is determined by a Tribunal) from the date when the Tribunal make their decision. [Rent Act 1977 s.72(1), as substituted by Housing Act 1980 s.61(1).] Similarly, if the rent currently registered

is confirmed, rather than being altered, the confirmation takes effect either from the date of registration (if determined by the rent officer) or from the date on which the Tribunal make their decision. [Rent Act 1977 s.72(2)]. [...]"

26. The Tribunal respectfully agrees. It follows that, as a matter of law, the new rent took effect from 8 December 2022, being the date of the Tribunal's Decision.

Name: Tribunal Judge S.J.
Walker

Date: 20 January 2023

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against 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.