

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

**Case Reference** : LON/00AH/F77/2022/0135

**Hearing Type** : In Person By Way of Written Representations

**Property** : Ground Floor Flat, 47 Friends Road, Croydon,  
Surrey, CR0 1ED

**Applicant** : Northumberland Durham Property Trust Ltd

**Respondent** : Mr John Kidwell

**Type of Application** : Referral of a Registration of Fair Rent Under the  
Rent Act 1977

**Tribunal Member** : Mr John A Naylor MRICS, FIRPM  
Valuer Chairman

**Date of Reasons** : 16.03.23

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**REASONS**

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### **Background**

1. On 22<sup>nd</sup> March the landlord sent an RR1 application for rent re-registration of a fair rent to the rent officer.. The previous rent was determined by the rent officer on 17<sup>th</sup> June 2020 at £525.00 per month.
2. On 4<sup>th</sup> May 2022 the rent officer registered a fair rent of £546.00 per Month with effect from 17<sup>th</sup> June 2022.
3. By an email dated 24 May 2022, the landlord objected to that rent. No reasons were given.
4. On 10 August 2022, the Tribunal issued Directions to the parties requiring them to produce any evidence on which they wished to rely in support of their respective cases, including by use of a reply form. The matter was set down for a Determination on the papers unless either party requested a hearing, which neither did. The landlord was directed to return the reply form with any other documents upon which it wished to rely by 24 August 2022. The tenant was directed to do likewise by 7 September 2022 with the landlord given the opportunity to respond by 14 September 2022. Neither party complied with the Directions. However, as this is an Appeal by the landlord, it is for the landlord to provide evidence to support their case.
5. On 31 October 2022, on the basis of papers and without a hearing, the Tribunal determined the fair rent of the above property at £598 per month. Subsequently, the landlord requested reasons.

### **The Law**

6. 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. Section 70 is set out in the Appendix below.
7. In *Spath Holme Limited -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 purpose 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).

### **The Property**

8. From Google Maps and information included on the Rent Register, the Tribunal found as follows:

The property comprises a self-contained flat within a converted house believed to have been built c. 1900. The building is constructed of brick under a pitched tiled roof and is located fronting Friends Road.

9. From the Rent Register, the flat comprises one bedroomed flat with garden and parking space.

### **Valuation**

10. From *Spath Holme Limited -v- Chairman of the Greater Manchester, etc. Tribunal*, other registered rents are not relevant as a starting point because they are not market rents.
11. The Tribunal must first determine the market rent for a property of this size, in this location and in its current condition. It must also disregard the personal circumstances of either party. The Tribunal notes that the rent officer adopted a starting point rent of £960 per month. Using its own general knowledge of the Greater London property market, the Tribunal disagrees with the rent officer and considers that the market rent for a property of this size and in this location, in good condition, with the usual white goods, carpets and decorated to a good condition would be £1150. per month.
12. However, all white goods, carpets and curtains are presumed to be the property of the tenant. In addition, a tenant of a Rent Act property has more onerous repairing obligations than those under an assured shorthold tenancy.
13. The Tribunal therefore made the following deductions from the market rent of £1150.00 per month to reflect those differences:

Market Rent: £1150. per month

Less 10% for more onerous tenancy terms compared to that of an assured shorthold tenancy.

Less 10% for lack of white goods, carpets and curtains.

Less 15% for lack of central heating and double glazing .

14. This aggregated to 35% or £402.50 per month leaving a net rent of £747.50 per month.
15. The Tribunal found that there was substantial scarcity in the locality of Greater London, having taken judicial notice of long Housing Association and Local Authority waiting lists in Greater London. It therefore made deduction in respect of scarcity of 20% (£149.50 per month) from the adjusted market rent to reflect this element. This left an adjusted rent of £598 per month.
16. The Tribunal is then required to apply the Rent Act (Maximum Fair Rent) Order 1999. The calculation was included on the Decision sheet and produced a maximum fair rent of £630.95 per month.
17. The Tribunal must register the lower of the adjusted market rent or maximum fair rent as the fair rent for the property. In this instance, the maximum fair rent produces a higher figure and the Tribunal therefore registered the rent at £598.00 per month for this property, with effect from 31<sup>st</sup> October 2022 being the date of the Tribunal Decision.

**Name:** Mr John A Naylor MRICS FIRPM

**Date:** 16.03.23

### **ANNEX – RIGHTS OF APPEAL**

The Tribunal is required to set out rights of appeal against its Decision 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.

**APPENDIX**

**Rent Act 1977**

**Section 70 Determination of Fair Rent**

- (1) In determining, for the purpose of this part of this Act, what rent is or would be a fair rent under a regulated tenancy of a dwellinghouse, 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 dwellinghouse...F1
  - (b) if any furniture is provided for use under the tenancy, the quantity, quality and condition of the furniture (F2 and)
  - (c) (F2(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 purpose of the determination, it shall be assumed that the number of persons seeking to become tenants of similar dwelling-houses in the 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).....F3
  - (d) 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 in title of theirs 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 them, or any sub-tenant of theirs.

(e) F4 [(3a) in any case where under Part 1 of the Local Government Finance Act 1992 the landlord or a superior landlord is liable to pay Council Tax in respect of a hereditament (“*the relevant hereditament*”) of which the dwelling-house forms part, regard shall also be had to the amount of Council Tax which, as at the date on which the application to the rent officer was made, was set by the billing authority –

(a) for the financial year in which that application was made, and

(b) for the category of dwelling within which the relevant hereditament fell on that date,

but any discount or other reduction affecting the amount of Council Tax payable shall be disregarded.

(3b) In subsection (3a) above –

“*hereditament*” means a dwelling within the meaning of Part 1 of the Local Government Finance Act 1992.

“*billing authority*” has the same meaning as in that part of the Act, and

“*category of dwellings*” has the same meaning as in Section 30(1) and (2) of that Act.]

(4) In this section “*improvement*” includes the replacement of any fixture or fitting.

[F5 (4a) in this section “*premium*” has the same meaning as in part IX of this Act and “*sum in the nature of a premium*” means –

(a) any such loan as is mentioned in Section 119 or 120 of this Act,

(b) any such excess over the reasonable price of furniture as is mentioned in Section 123 of this Act, and

(c) Any such advance payment or rent as is mentioned in Section 126 of this Act.]

(5) .....