



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

Case reference : **CAM/00ME/F77/2023/0001**

HMCTS code : **P:PAPERREMOTE**

Property : **39 Albany Road, Old Windsor, SL4
2QD**

Applicant (Landlord) : **Bradford Property Trust Limited**

Respondent (Tenant) : **David Charles Gaines**

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

Tribunal members : **Peter Roberts FRICS CEnv**

Date of Determination : **11 April 2023**

DECISION

Description of hearing

This has been a remote determination on the papers which the parties are taken to have consented to, as explained below. The form of determination was a paper determination described above as P:PAPERREMOTE. The documents that the Tribunal was referred to are in bundles from the Applicant and the Respondent. The Tribunal has noted the contents and the decision is below.

Decision

The Tribunal determined a fair rent of £219.23 per week effective from 11 April 2023.

Reasons

Background

1. On 7 October 2022 the Landlord made an application to register the rent of the Property at £261.80 per week.
2. The Rent Officer registered a Fair Rent of £227 per week on 28 November 2022 effective from 6 January 2023. This was in lieu of the previous registered rent of £220 per month which was registered on 23 November 2020 and effective from 6 January 2021.
3. The Landlord objected by way of an email dated 16 December 2022 submitted by Ms Caslaw of Grainger Residential Management Limited and the matter was referred to the First Tier Tribunal, Property Chamber.
4. The Tribunal issued directions on 11 January 2023, inviting the parties to submit any further representations (including any photographs and details of rentals for similar properties) they wished the Tribunal to consider.

The Property

5. The Tribunal inspected the Property on 6 March 2023. The inspection was attended by the Tenant. Neither the Landlord nor a representative was in attendance.
6. The Property comprises an end-terraced two-storey period house of brick and slate construction together with a driveway to the side, garden and garden to the rear. It is located within a block of four terraced houses located in a cul-de-sac.
7. The ground floor comprises two lounges, a kitchen area and a bathroom together with a porch leading out to the garden. There are two bedrooms and a boxroom at first floor level.
8. There is no heating but the windows are UPVC double glazed. There is no garage but private off-road parking is available to the side.
9. The Tenant has tiled the bathroom and provided white goods and kitchen units. In addition, the Tenant has carpeted throughout and heats the Property by means of stand-alone electric heaters.
10. The Tribunal noted that the soffits to the rear single storey extension are rotten and the felt is in poor condition. In addition the slate roof and guttering requires attention.

11. The Property is entered in the Council Tax List in Band D.
12. The EPC energy rating is G. Accordingly, the Domestic Minimum Energy Efficiency Standard (MEEES) Regulations would apply on any reletting of the Property such that the Landlord would be required to carry out works to improve the property's rating to a minimum of E or register an exemption.
13. In this regard, the EPC assessment draws attention to the lack of insulation in the walls and roofs and raises concerns in respect of the lack of heating together with poor quality lighting and hot water provision.

The Law

14. The relevant law is set out in section 70 of the Rent Act 1977 (the Act) and The Rent Acts (Maximum Fair Rent) Order 1999 (the Order).
15. Section 70 (1) of The Act provides that in assessing the rent:

“regard shall be had to all the circumstances (other than personal circumstances) and in particular to—

- i. the age, character, locality and state of repair of the dwelling-house,*
- ii. if any furniture is provided for use under the tenancy, the quantity, quality and condition of the furniture and*
- iii. 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.”*

16. Section 70 (2) of the Act provides that:

“...there shall be disregarded

- i. 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;*
- ii. 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*
- iii. 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 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.”*

17. In addition, section 70 (2) of The Act requires the Tribunal to assume:

“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.”

18. This latter provision requires the Tribunal 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, the Tribunal is to adjust the rental figure so that the fair rent is not affected by it.

19. 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 similar 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. (These rents may have to be adjusted where necessary to reflect any relevant differences between those comparables and the subject property).”

20. In considering scarcity under section 70 (2) the Tribunal recognised that:

(a) “there are considerable variations in the level of scarcity in different parts of the country and that there is no general guidance or “rule of thumb” to indicate what adjustment should be made; the Tribunal therefore considers the case on its merits;

(b) terms relating to rent are to be excluded. A lack of demand at a particular rent is not necessarily evidence of no scarcity; it may be evidence that the prospective tenants are not prepared to pay that particular rent.”

21. Section 71 (1) of the Act provides that the registration of the rent takes effect from the date that the Tribunal makes its decision.

22. 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 increase in the Retail Price Index since the previous registration.

23. Section 72 (1) (b) of the Act provides that the registration of a rent takes effect:

“...if the rent is determined by the appropriate tribunal, from the date when the tribunal make their decision”

Representations – Tenant

24. The Tenant did not make any submissions.

Representations – Landlord

25. The Landlord did not make any submissions.

Determination

26. As set out in the Spath case as referred to above, the first step is to determine the rent which a landlord could reasonably expect to obtain for the Property in the open market if it were let today in the condition and on the terms now usual for open market lettings. The rent currently paid and/or registered is not relevant to this exercise.
27. The Tribunal is unable to take into account the personal circumstances of the Parties. As such, the assessment of rent has no regard to the personal financial or health circumstances of either party both of whom are considered to be hypothetical.
28. There is a clear lack of semi-detached or terraced houses available to let within the general locality. In this regard, there is a three-bedroom newbuild semi-detached property available at Ripplesmere Close which is 0.7 miles from the Property and is available for £2,300 per month. Further afield there is a semi-detached three bedroom modern house available to let for £1,950 per month in Denham Road, Egham.
29. In view of the paucity of evidence it and lack of representations it has been necessary for the Tribunal to rely upon its own knowledge and expertise. In this regard, the Tribunal considered that the rent in accordance with the assumptions set out at paragraph 26 would be £1,450 pcm/£334.61 pw.
30. The Tribunal then made deductions on account of the following matters:
- a. White goods belong to the Tenant
 - b. Floor coverings/curtains belong to the Tenant
 - c. Kitchen fittings belong to the Tenant
 - d. Heating provided by tenant
 - e. Blown windows
 - f. Disrepair to the exterior (as set out above)
 - g. Lack of fixed heating and insulation
 - h. The need for refurbishment and modernisation
31. The Tribunal has no evidence before it in respect as to whether the Property would be subject to exemption from the MEES standards as referred to above at paragraph 12. However, the Tribunal has formed the opinion that, regardless as to the lawfulness of occupation or otherwise, the Property would require significant improvements in order to be attractive to prospective occupiers in any event, the effect of which would be to improve the EPC rating.
32. It is apparent to the Tribunal that there are limited properties offering similar accommodation to the Property within reasonable distance such that a scarcity allowance is warranted.

33. Taking all these points into account, the Tribunal considers the “uncapped” Fair Rent, to be £950 pcm/£219.23 pw.
34. The provisions of the Rent Acts (Maximum Fair Rent) Order 1999 require that the registered rent is either the capped Fair Rent, details of which are attached to this Decision, or the Fair Rent decided by the Tribunal, whichever is the lower.
35. The capped rent is £286.50. This is higher than the Fair Rent assessed by the Tribunal.
36. Therefore, the Fair Rent assessed by the Tribunal of **£219.23 per week** is to be registered.

Name: Peter Roberts FRICS CEnv

Date: 11 April 2023

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.

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.

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.

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

Notice of the Tribunal Decision

Rent Act 1977 Schedule 11

Address of Premises

39 Albany Road, Old Windsor, SL4 2QD

The Tribunal members were

Peter Roberts

Landlord

Bradford Property Trust Limited

Tenant

David Charles Gaines

1. The fair rent is

£219.23

per

week

(excluding water rates and council tax but including any amounts in paras 3&4)

2. The effective date is

11 April 2023

3. The amount for services included in the rent is

Nil

Per

N/A

4. The amount for fuel charges (excluding heating and lighting of common parts) not counting for rent allowance is

Nil

Per

N/A

not applicable

5. The rent is not to be registered as variable.

6. The capping provisions of the Rent Acts (Maximum Fair Rent) Order 1999 apply

7. Details (other than rent) where different from Rent Register entry

The Property comprises an end-terraced two-storey period house of brick and slate construction together with a driveway to the side, garden and garden to the rear. It is located within a block of four terraced houses located in a cul-de-sac. The ground floor comprises two lounges, a kitchen area and a bathroom together with a porch leading out to the garden. There are two bedrooms and a boxroom at first floor level. There is no heating but the windows are UPVC double glazed. There is no garage but private off-road parking is available to the side. The EPC is G

8. For information only:

(a) The fair rent to be registered is less than the maximum fair rent as prescribed by the Rent Acts (Maximum Fair Rent) Order 1999. The rent that would otherwise have been registered was £938 pcm.

Chairman

Peter Roberts FRICS
CEnv

Date of decision

11 April 2023

MAXIMUM FAIR RENT CALCULATION

Address of premises

39 Albany Road, Old Windsor, SL4 2QD

LATEST RPI FIGURE x 367.2

PREVIOUS RPI FIGURE y 293.5

x 367.20 minus y 293.5 = (A) 73.7

(A) 73.7 divided by y 293.5 = (B) 0.25110733

First application for re-registration since 1 February 1999 No

If yes (B) plus 1.075 = (C) N/A

If no (B) plus 1.05 = (C) 1.3011

Last registered rent* 220 Multiplied by (C) = 286.24
 *(exclusive of any variable service charge)

Rounded up to the nearest 50 pence = 286.50

Variable service charge (Yes/No) No

If YES add amount for services = N/A

MAXIMUM FAIR RENT = 286.50 per week

Explanatory Note

1. The calculation of the maximum fair rent, in accordance with the formula contained in the Order, is set out above.
2. In summary, the formula provides for the maximum fair rent to be calculated by:
 - a) increasing the previous registered rent by the percentage change in the retail price index (the RPI) since the date of that earlier registration and
 - b) adding a further 7.5% (if the present application was the first since 1 February 1999) or 5% (if it is a second or subsequent application since that date).

A 7.5% increase is represented, in the calculation set out above, by the addition of 1.075 to (B) and an increase of 5% is represented by the addition of 1.05 to (B)

The result is rounded up to the nearest 50 pence

3. For the purposes of the calculation the latest RPI figure (x) is that published in the calendar month immediately before the month in which the Committee's fair rent determination was made.
4. The process differs where the tenancy agreement contains a variable service charge and the rent is to be registered as variable under section 71(4) of the Rent Act 1977. In such a case the variable service charge is removed before applying the formula. When the amount determined by the application of the formula is ascertained the service charge is then added to that sum in order to produce the maximum fair rent.