



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

Case Reference : **LON/OOAU/F77/2023/0051**

Property : **3 Friend Street, London EC1V 7NS**

Tenant : **Mr C & Mrs M Smyth**

Landlord : **The Dame Alice Owen Foundation**

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

Tribunal : **Mr R Waterhouse MA LLM FRICS**

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

Date of Decision : **5th April 2023**

Date of Statement of Reasons: 5th April 2023

Statement of Reasons

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Background

The Tribunal gave formal notice of its decision by a Notice dated 5th April 2023 of the determined Fair Rent of £xxxx per week with £xxxx per week with effect from same date.

By way of application, dated 3rd November 2022 made by the landlord of the property, applied for re registration of a fair rent of £412.00 per week with £0 per week attributed to services. Previously the Rent Officer had registered a rent of £333.50 per week with £0 per week noted as attributed to services with effect from 15th September 2020. The Rent Officer registered a fair rent of £410.00 per week with £0 per week attributed to services with effect from 23rd December 2022.

In a letter dated 16th January 2023 the tenants Mr & Mrs Smyth 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 6th 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

There was no request to inspect the property, nor did the tribunal consider one proportionate.

The property is a terraced house over three floors, on the ground, one room, a kitchen dinner and a WC, on the first, two rooms, a utility room and a roof terrace, and on the second floor two rooms, and a bathroom with WC. The property was constructed late twentieth century.

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.

Submissions

Landlord

The landlord's agent Daniel Watney completed and returned a reply form.

The form notes the property has central heating, no double glazing, and that the tenant supplied the carpets, curtains and white goods. Additionally, that there is a private garden. A number of repairs carried out by the landlord have been noted, the roof in 2020, redecoration of hall following leak in 2021 and replacement of kitchen sink and tap in 2022.

Additionally, the Reply form noted the difference in floor size of number 3a 1108 sq ft and number 3 1140 sq ft.

Tenant

The tribunal was in receipt of a letter from the tenants received by the Rent Officer on 21st November 2022, which noted, an obligation by the tenants to keep the interior in good decoration and repair, and an obligation by the landlord to maintain the exterior every seven years which the tenants cite has not been done. This has resulted in paint peeling and exposed wood rotting. The tenants noted that there had been an expectation of “major works” being carried out in Spring 2022 this had not happened due to insufficient funds.

The Determination

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

Reasons for Decision

The rent to be determined must reflect the condition found on the date of the hearing disregarding all tenants' improvements. None were noted in the submissions.

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. .

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 £690 per week.

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 10% 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 - £690 per week

Less 10% condition £69.00 per week

£621 per week

Less 10% for terms and supplied goods inc white goods

£62.00 per week

£559.00 per week

Less 20% for scarcity £111.800 per week

The rent after this final adjustment was £447.20 per week say £447.00 per week.

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 £xxx per week with £0 per week attributable for services. This figure is higher than the figure calculated by reference to the market rent with adjustments, of £447.00 per week with £0 per week attributed for services.

Accordingly, the sum of £xxx per week will be registered as the fair rent with effect from 5th April 2023, being the date of the Tribunal's decision.

Valuer Chair: Richard Waterhouse FRICS

Decision Date: 5th April 2023

Extended reasons: 5th April 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.