



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

Case reference : **CAM/42UD/F77/2023/0008**

HMCTS code : **P:PAPERREMOTE**

Property : **64 Manchester Road, Ipswich,
Ipswich, IP2 9PU**

Applicant (Tenant) : **Mrs E Trout**

Respondent (Landlord) : **Earliba Finance Co Ltd**

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 : **26 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 £500 per month effective from 26 April 2023.

Reasons

Background

1. On 14 November 2022 the Landlord made an application to register the rent of the Property at £530 per month.
2. The Rent Officer registered a Fair Rent of £495 per month on 11 January 2023 effective from the same day. This was in lieu of the previous registered rent of £450 per month which was registered on 31 December 2020 and effective from the same date.
3. The Tenant objected by way of a letter dated 19 January 2023. The matter was referred to the First Tier Tribunal, Property Chamber.
4. The Tribunal issued directions on 6 February 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 Parties were notified that the Tribunal would inspect on 3 April 2023 at 10:30 AM. However, on arrival, the Tribunal found that the Tenant had left a note on the front door stating, "*Sorry Back at 1PM Urgent appointment 10.30AM*".
6. In the circumstances, the Tribunal decided to proceed without an internal inspection.
7. Neither the Landlord nor a representative was in attendance.
8. The Property comprises a first floor flat accessed by means of an external staircase and located within a two-storey block of purpose-built flats of brick and tile construction dating from the 1960/70s.
9. According to the details and floor plan provided by the Rent Officer, the Property comprises two bedrooms, lounge, kitchen and bathroom with WC and extends to 50.1 sqm GIA. There is no reference within the papers to the Tenant having the use of a garage or allocated parking space.
10. Whilst the Tribunal's inspection was restricted to the outside, the Tribunal did not note any disrepair likely to be of concern to a Tenant and none has been brought to the Tribunal's attention.
11. The Council Tax Band for the Property is A

12. The EPC energy rating is D. The assessment advises that the Property benefits from double glazing and full heating but lacks cavity or roof insulation.
13. It is apparent from the Rent Officer's notes that the Property is dated with basic kitchen and bathroom facilities.

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’s letter dated 19 January 2023 refers to falling house prices and the increases in living costs. In addition, the Tenant states *“...other flats in this block of 6 when empty are refurbished to modern standards... ...but mine being an old agreement signed by me in 1983 does not come into (sic) category.”*

25. The Tenant's second letter dated 13 February 2023 stated:

"...if you can reduce my rent from £495 to 8% (sic) as since I applied for this the economic situation has quietened down..."

26. The Tenant did not provide any evidence of comparable rents.

Representations – Landlord

27. The Landlord has not provided any evidence.

Determination

28. 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.

29. 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.

30. In the absence of any evidence being provided by either of the Parties, it has been necessary for the Tribunal to make its own enquiries utilising its experience and knowledge of such matters.

31. The Tribunal noted that two-bedroom flats in Campair Crescent and Reavell Place are being advertised at rents of £850 to £900 per month. However, these are modern developments.

32. A first floor two-bedroom flat is available at Hale Close for an asking price of £825 per month. However, this flat has been renovated and modernised with new kitchen and bathroom fittings and new flooring throughout. The Tribunal noted that the majority of the properties in Hale Close are in Council Tax Band A (i.e., similar to the Property).

33. One-bedroom flats are being advertised at prices from £600 per month but, again, these are fitted to a more modern standard.

34. Unfortunately, the Tribunal has not been provided with evidence of market rents being paid in respect of the Manchester Road flats which would have been of assistance in this matter, but it would be reasonable to assume that if, as the Tenant has indicated, these flats have been modernised, the market rents would reflect these improvements accordingly.

35. In other words, the Tenant may well be correct in her assertion that the other flats within the block have been refurbished and modernised, but it would be expected that these flats would achieve higher rents as a result.

36. Taking all these points into account, the Tribunal is of the opinion that, if the Property was modernised and refurbished throughout, it could potentially attract a rent in the region of £700 per month.
37. In this regard, the Tribunal notes the Tenant's comments in respect of market performance but, according to the Land Registry data, average property values in the Ipswich area have, since December 2020, risen from £204,083 to £240,332 and flat values in the Ipswich area have increased from a reported average of £137,862 to £153,576. As such, whilst the Tenant states that "*...house prices have fallen.*" the market evidence suggests that prices have continued to rise.
38. Having determined the hypothetical market rent, it is necessary to make deductions to disregard any improvements or alternations carried out by the Tenant since 1984. In effect, the Tribunal assumes, in this case, that no alterations have taken place and the Property has just been kept in repair.
39. It is also necessary to consider whether a scarcity allowance is warranted. In this case the Tribunal considers that there is a relative shortage of similar property available in the market such that there is a small but discernible imbalance between demand for flats and the availability thereof that is reflected in the rents being achieved.
40. Taking all these matters into account, the Tribunal is of the opinion that the fair rent for the Property as it actually exists, disregarding any Tenant's improvements but taking into account current market performance, is £500 per month.
41. 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.
42. The capped rent is £582 per month. This is higher than the Fair Rent assessed by the Tribunal.
43. Therefore, the Fair Rent assessed by the Tribunal of **£500 per month** is to be registered.

Name: Peter Roberts FRICS CEnv

Date: 26 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

64 Manchester Road, Ipswich, Ipswich,
IP2 9PU

The Tribunal members were

Peter Roberts

Landlord

Earliba Finance Co Ltd

Tenant

Mrs E Trout

1. The fair rent is

£500

per

month

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

2. The effective date is

26 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 a first floor flat accessed by means of an external staircase and located within a two-storey block of purpose built flats of brick and tile construction dating from the 1960/70s.

According to the details and floor plan provided by the Rent Officer, the Property comprises two bedrooms, lounge, kitchen and bathroom with WC and extends to 50.1 sqm GIA.

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 £582 pcm.

Chairman

Peter Roberts
FRICS CEnv

Date of decision

26 April 2023

MAXIMUM FAIR RENT CALCULATION

Address of premises

64 Manchester Road, Ipswich, Ipswich, IP2 9P

LATEST RPI FIGURE	x		367.2	
PREVIOUS RPI FIGURE	y		295.4	
x		367.20	minus y	295.4
				= (A) 71.8
(A)		71.8	divided by y	295.4
				= (B) 0.24306026
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)				1.293
Last registered rent* <small>*(exclusive of any variable service charge)</small>		450	Multiplied by (C) =	581.87
Rounded up to the nearest 50 pence =		582		
Variable service charge (Yes/No)		No		
If YES add amount for services =		N/A		
MAXIMUM FAIR RENT =		582	per	month

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.