



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

Case reference : **CHI/45UG/F77/2023/0011**

Property : **1 The Limes, Church Lane, Albourne,
Hassocks, West Sussex, BN6 9BY**

Applicants : **Jake Fisher, Wiston Estate**

Representative : **None**

Respondent : **Mr B Stevens**

Representative : **None**

Type of application : **Section 70 of the Rent ACT 1977**

Tribunal members : **Mr Duncan Jagger MRICS
Mr Jan Reichel BSc MRICS
Mr Michael J.F.Donaldson FRICS
MCI Arb MAE**

Venue : **Paper determination**

Date of decision : **18th April 2023**

DECISION

The Tribunal determines £694 per month is to be registered as the fair rent for the above property with effect from 18th April 2023 being the date of the Tribunal's decision.

The reasons for this decision are set out below.

Reasons

Background

On 13th December 2022 the landlord, applied to the Valuation Office Agency (Rent Officer) for registration of a fair rent of £850 per month for the property.

The rent payable at the time of the application was £542 per month effective from 9th March 2021

On 3rd February 2023 the Rent Officer registered a fair rent of £685.50 per month, effective from the 9^h March 2023. The rent increase imposed by the Rent Officer had been “capped” or limited by the operation of the Rent Acts (Maximum Fair Rent) Order 1999 (the Order).

By a letter dated 10th February 2023 from Mr Stevens, the Tenant objected to the rent determined by the Rent Officer and the matter was referred to this Tribunal.

The law

When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, must have regard to all the circumstances including the age, location and state of repair of the property. It also must disregard the effect of (a) any relevant tenant's improvements and (b) the effect of any disrepair or other defect attributable to the tenant, on the rental value of the property. Section 70(2) of the Rent Act 1977 imposes on the Tribunal an assumption that the number of persons seeking to become tenants of similar dwelling house 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. This is commonly called ‘scarcity’.

In *Spath Holme Ltd v Chairman of the Greater Manchester Council (1995) 28 HLR 107* and *Curtis v London Rent Assessment Tribunal [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).

The Rent Acts (Maximum Fair Rent) Order 1999 places a “cap” on the permissible amount of the increase of a fair rent between one registration and the next, by reference to the amount of the increase in the United Kingdom Index of Retail Prices between the dates of the two registrations. Where the cap applies the Rent Officer and the Tribunal is prevented from increasing the amount of the fair rent that it registers beyond the maximum fair rent calculated in accordance with the provisions of the Order and the mathematical formula set out in the Order.

By article 2(7) of the 1999 Order the capping provisions do not apply *“in respect of a dwelling-house if because of a change in the condition of the dwelling-house or the common parts as a result of repairs or improvements (including the replacement of any fixture or fitting) carried out by the landlord or a superior landlord, the rent that is determined in response to an application for registration of a new rent under Part IV exceeds by at least 15% the previous rent registered or confirmed.”*

Facts found without Inspection

The parties did not request the Tribunal to inspect the property and the Tribunal were satisfied this was not required and relied on information provided by the parties together with its expert knowledge.

The property is a 1920s built three bedroom semi detached house located in a rural area between the villages of Henfield and Hurstpierpoint.

The accommodation comprises: living rooms, kitchen ground floor bathroom and lavatory, 3 bedrooms, rear garden, off road parking.

There is oil central heating system to radiators.

Terms of the tenancy

It is understood that this tenancy commenced in April 1982. It is agreed that the landlord is responsible for structural repairs and external decoration; the tenant is responsible for internal decorations. The property was let unfurnished.

Tenant's improvements and condition

The tenant provided photographic evidence in his submissions and has confirmed the kitchen fittings were installed by the tenant during the 1990s. The landlord installed the oil boiler some five years ago, although radiators were provided by the tenant. Double glazed windows were installed by the

landlord approximately 2.5 years ago. The tenant states there is damp mould in the kitchen.

Evidence

The Tribunal had copies of the Valuation Office Agency correspondence and including the rent registers effective 9th March 2021 and 9th March 2023 together with the calculations for the most recent registration.

The parties provided limited information in connection with the property in the form of completed Reply forms. No comparable evidence was provided by the parties.

Valuation

In the first instance 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.

Based upon the evidence provided together with its expert knowledge, the Tribunal consider that the subject property, if finished to a reasonable standard would be likely to attract a rent let on an assured shorthold tenancy, for £1300 per month.

Next, we need to **adjust that hypothetical rent of £1300 per month** to allow for the differences between the terms of this tenancy and the lack of white goods, carpets and curtains, tenants internal decoration responsibility, damp to the kitchen walls and dated kitchen and bathroom fittings (disregarding the effect of tenant's improvements and any disrepair or other defect attributable to the tenant).

The Tribunal has considered very carefully the parties submissions and the notes prepared by the Rent Officer.

Using our own expertise we considered that deductions of 25% should applied in order to take into account the terms of the tenancy, and condition of the property. This provides a deduction of £325 per month from the hypothetical rent. This reduces the figure to **£975** per month.

It should be noted that this figure cannot be a simple arithmetical calculation and is not based upon capital costs but is the tribunal's estimate of the amount by which the rent would need to be reduced to attract a tenant.

Scarcity

Thirdly, the tribunal then went on to consider whether a deduction falls to be made to reflect scarcity within the meaning of section 70(2) of the 1977 Act. The tribunal followed the decision of the High Court in *Yeomans Row Management Ltd v London Rent Assessment Committee*, in which it was held that scarcity

over a wide area should be considered rather than scarcity in relation to a particular locality.

In the Tribunals opinion there should be no deduction for scarcity as it is considered there is a reasonable supply of rented properties in the area.

Conclusion

The capping provisions of the Rent Acts (Maximum Fair Rent) Order apply and therefore the above figure does not apply. The capped fair rent in accordance with the attached calculations is **£694.00 per month**. For the tenants information, this calculated figure is based upon the latest RPI figure and therefore there has been an increase since the Rent Officers registered rent.

Therefore, this is the fair rent to be registered limited by the Rent Acts (Maximum Fair Rent) Order 1999 with effect from the 18th April 2023 being the date of the Tribunals decision.

Detailed calculations are provided on the back of this decision form.

D Jagger MRICS Valuer Chair

18th 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).