



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

Case reference : **CAM/33UG/F77/2023/0022**

HMCTS code : **P:PAPERREMOTE**

Property : **The Cottage, Crowes Loke, Little Plumstead, Norwich, NR13 5JB**

Applicant (Tenant) : **Mrs J Sullivan**

Respondent (Landlord) : **Bankway Properties Limited**

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 : **15 August 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 £335 per month effective from 15 August 2023.

Reasons

Background

1. On 2 February 2023 the Landlord made an application to register the rent of the Property at £350 per month.
2. The Rent Officer registered a Fair Rent of £364 per month on 30 March 2023 effective from 30 March 2023. This was in lieu of the previous registered rent of £288 per month per month which was registered on 25 March 2021 and effective from 25 March 2021.
3. The Landlord objected by way of an email dated 10 April 2023. The matter was referred to the First Tier Tribunal, Property Chamber.
4. The Tribunal issued directions on 5 June 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 31 July 2023 accompanied by the Tenant. The Landlord did not attend.
6. The Property comprises a detached period two-storey cottage of brick and tile construction providing a hall, bathroom, kitchen and lounge at ground floor and a bedroom at first floor leading through to a further bedroom. There is a garden to the rear.
7. There is no heating to the property other than an open fire in the lounge. However, there is UPVC double glazing throughout.
8. The bathroom and kitchen were fitted out by the Tenant who has also provided floor coverings and curtains.
9. There is extensive mould, rising damp and condensation throughout the Property. In addition, it appears that there is a lack of ventilation to the roof void which may be contributing to the damp and mould within the bedrooms. There is also rot and cracking to the external elevations.
10. The Property was assessed on 26 April 2014 in accordance with The Domestic Minimum Energy Standards Regulations and designated an Energy Rating of G based on a score of 19 out of 100. Unless the Landlord is able to

demonstrate grounds of exemption it is therefore illegal for the Property to be let.

11. Notwithstanding the legality of the letting, the Tribunal has significant concerns as to whether the Property is fit for human habitation and it is concerning that although the Landlord is clearly aware of this and appears to be advised by Savills who it would be expected would have provided advice in this regard, no action has been taken since at least 2014 to rectify the matter.

The Law

12. 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).

13. 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.”*

14. 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.”*

15. 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.”

16. 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.
17. 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).”*
18. 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.”*
19. Section 71 (1) of the Act provides that the registration of the rent takes effect from the date that the Tribunal makes its decision.
20. 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.
21. 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

22. The Tenant submitted two letters dated 15 February 2023 and 10 April 2023 respectively together with the completed Reply Form.

23. These letters and the comments within the Reply Form raised a number of concerns with the condition of the Property.
24. The Tenant had offered to settle the matter with the Landlord at £350 pm.

Representations – Landlord

25. The Tribunal understands that the Landlord is advised by Ms Dalby of Savills.
26. However, no representations have been made by or on behalf of the Landlord.

Determination

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. The Tribunal has therefore had regard to hypothetical, willing parties in the open market.
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 previous rent is therefore irrelevant, and it is not appropriate to undertake the valuation exercise by simply applying indexation.
30. The Tribunal, in the absence of being presented with any evidence, has relied upon its own knowledge and expertise whilst taking note of the Rent Officer's valuation and the offer made by the Tenant.
31. The Rent Officer adopted a market value, assuming the Property was in a condition commensurate with modern market requirements, of £793 per month. They then made a deduction of £304.66 pm on account of tenant's improvements and the general condition of the Property.
32. However, it appears from the documents provided to the Tribunal that the Rent Officer last inspected the Property on 1 March 2004 and was consequently relying on historic information. It is entirely reasonable to assume that the Property has deteriorated since 2004.
33. The Rent Officer has then made a deduction of 5% on account of scarcity resulting in a rent of £475 per month which, due to the capping provisions, is reduced to £364 per month.
34. The difficulty in this case is that the Tribunal is of the opinion that, even if there was no requirement to comply with The Domestic Minimum Energy Standards Regulations, it is highly unlikely that there would be any tenant in the market willing pay rent for the Property in its existing state of disrepair and assuming that the Tenant's improvements had not been carried out.

35. The fact that the actual Tenant is prepared to occupy the Property suggests that there would be at least one person willing to bid for the property on the basis that it was vacant and to let but it is difficult for the Tribunal to envisage that there would be many other prospective tenants willing to submit a bid particularly bearing in mind the cost and hassle of taking action against the Landlord to force repairs and improvements outside of the Tenants' covenant responsibilities.
36. In this regard, the Tribunal notes that the Tenant wrote to the Landlord offering to agree £350 pm to settle this matter which is indicative of her ability to make a financial offer in the theoretical scenario that the Property was vacant and to let.
37. However, a distinction should be drawn between an offer that has been made to settle this matter and avoid this reference and the offer than would be made in an open market scenario where Tenant's improvements had not taken place. In this regard, the Tribunal considers that the rent would be discounted to account for the Tenant's improvements.
38. Having taken all these matters into account, the Tribunal considers that the **Fair Rent is £335 pm.**
39. 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.
40. The Tribunal notes that the previous rent detailed on the Rent Register is £288 per month. The current calculated capped rent is therefore £380 per month.
41. The Fair Rent is below the capped rent. Therefore, the Fair Rent of **£335 per month** is to be registered.

Name: Peter Roberts FRICS CEnv

Date: 15 August 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**

The Cottage, Crowes Loke, Little Plumstead, Norwich, NR13 5JB

The Tribunal members were

Peter Roberts

Landlord

Bankway Properties Limited

Tenant

Mrs J Sullivan

1. The fair rent is

£335

per

month

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

2. The effective date is

15 August 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 detached period two-storey cottage of brick and tile construction providing a hall, bathroom, kitchen and lounge at ground floor and a bedroom at first floor leading through to a further bedroom. There is a garden to the rear.

There is no heating to the property other than an open fire in the lounge. However, there is UPVC double glazing throughout.

The bathroom and kitchen were fitted out by the Tenant who has also provided floor coverings and curtains. There is extensive mould, rising damp and condensation throughout the Property. In addition, it appears that there is a lack of ventilation to the roof void which may be contributing to the damp and mould within the bedrooms. There is also rot and cracking to the external elevations.

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 £380 pcm.

Chairman

**Peter Roberts
FRICS CEnv**

Date of decision

15 August 2023

MAXIMUM FAIR RENT CALCULATION

Address of premises

The Cottage, Crowes Loke, Little Plumstead,
Norwich, NR13 5JB

LATEST RPI FIGURE	x	376.4	
PREVIOUS RPI FIGURE	y	296.9	
x		376.4	minus y
		296.9	
			= (A) 79.5
(A)		79.5	divided by y
		296.9	
			= (B) 0.26776692
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)		1.31776692	
Last registered rent*		288	Multiplied by (C) =
*(exclusive of any variable service charge)			379.51
Rounded up to the nearest 50 pence =		380	
Variable service charge (Yes/No)		No	
If YES add amount for services =		N/A	
MAXIMUM FAIR RENT =		380	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.