



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

Case reference : **CHI/00HB/F77/2023/0025**

Property : **Flat 38A Stackpool Road, Southville
Bristol BS3 1NQ**

**Applicant
(Landlord)** : **Brighter Places**

Representative : **None**

**Respondent
(Tenant)** : **Ms L Hanson**

Representative : **None**

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

Tribunal members : **Mr D Jagger MRICS
Mr J Reichel BSc MRICS
Mr M Woodrow MRICS**

Venue : **Paper determination**

Date of decision : **30th June 2023**

DECISION

The Tribunal determines £174.00 per week is to be registered as the fair rent for the above property with effect from 30th June 2023 being the date of the Tribunal's decision.

The reasons for this decision are set out below.

Reasons

Background

On the 20th January 2023 the landlord, applied to the Valuation Office Agency (Rent Officer) for registration of a fair rent of £166.50 per week for the property.

The rent at the time of the application was £127.31 per week which was the rental figure set by the Rent Officer on the 27th November 2018.

On 13th March 2023 the Rent Officer registered a fair rent of £133.08 per week, effective from that date. The rent increase imposed by the Rent Officer has not been “capped” or limited by the operation of the Rent Acts (Maximum Fair Rent) Order 1999 (the Order). For some reason, the Rent Officer expressed the rent as an annual figure, when in fact the agreement is a secure weekly tenancy.

By an email dated 21st March 2023 from Brighter Places, the Landlord 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 converted flat located at ground floor level which forms part of Victorian two storey property located in an established road convenient to local amenities.

The accommodation comprises: living room, kitchen, two bedrooms, bathroom, communal garden overlooking parkland. (It was noted that the landlords application referred to this property as a one bedroom flat. However the documentation in the evidence bundle, including the tenancy agreement itself, confirms this is a two bedroom property)

There is gas central heating to radiators, double glazed windows.

Terms of the tenancy

The Secure Tenancy commenced on the 23rd February 1987 with Solon South West Housing Association Ltd. 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 has not indicated whether any improvements have been made to the property during the term of the tenancy. However, the landlord confirms carpets, curtains and any white goods were not provided by landlord.

Evidence

The Tribunal had copies of the Valuation Office Agency correspondence and including the rent register effective from the 9th December 2019 and 13th March 2023 together with the calculations for the most recent registration.

In a bundle of documents, the landlord provided information in connection with the property in the form of a completed Reply form, the front page of the tenancy agreement, reasons of the objection and 3 comparables taken from "Rightmove" which range from £1000 pcm- £1300 pcm. These details did not provide any precise addresses, no date of transaction or floor area. The tenant has not engaged with this application.

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 generic list of comparable evidence provided by the landlord 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 **£288** per week. (£1250 per month)

The landlord has confirmed that the sum of £30.96 per week is attributed to services. The previous sum was £6.24 per week. This revised service charge is considered excessive given the previous service charge. The revised figure is not substantiated in the evidence provided and is out of kilter with previous applications made by the landlord for other similar properties. Therefore, the Tribunal considers the appropriate sum for services is the former figure of £6.24 per week. This sum is considered negligible by the Tribunal and does not form part of these calculations.

We now need to **adjust that hypothetical net rent of £288 per week** to allow for the differences between the terms of this tenancy and the lack of white goods, carpets and curtains, and the tenants decorating responsibilities (disregarding the effect of tenant's improvements and any disrepair or other defect attributable to the tenant).

The Tribunal has considered very carefully the landlord's submissions and the notes prepared by the Rent Officer.

Using our own expertise, we considered that deductions of 20% should be applied to take into account the terms of the tenancy, and the condition of the property at the commencement of the tenancy. This provides a deduction of £57.60 per week from the hypothetical rent. This reduces the figure to £230.40 per week.

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

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 Tribunal's opinion there should be a deduction of 10% for scarcity as it is considered demand outweighs supply of rented properties in the area. This provides a figure of £23.04 and therefore reduces the rent to **£207.36 per week**.

Conclusion

The capping provisions of the Rent Acts (Maximum Fair Rent) Order apply and therefore the capping figure applies. The fair rent in accordance with the attached calculations is **£174 per week**.

Therefore, this is the fair rent to be registered limited by the Rent Acts (Maximum Fair Rent) Order 1999 with effect from the **30th June 2023** being the date of the Tribunal's decision.

The rental figure determined by the Tribunal exceeds that proposed by the landlord. Such figure is the maximum rent payable. However, the landlord is under no obligation to charge the full amount.

D Jagger MRICS Valuer Chair

30th June 2023

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for 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.
4. The application for permission to appeal must 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.