



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

Case Reference : **MM/LON/OOAN/F77/2023/0199**
Property : **33 Wandsworth Bridge Road London SW6
2TB**
Tenant : **Miss M Barbieri**
Landlord : **Broadham Property Ltd**
Type of Application : **Determination of a Fair Rent under section 70
of the Rent Act 1977**
Tribunal : **Mr R Waterhouse BSc (Hons) MA LLM
FRICS
Mr A Ring**
HMCTS Code : **Alfred Place – Face to Face Hearing**
Date of Decision : **4th September 2023**
Date of Statement of Reasons: **4th September 2023**

Statement of Reasons

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Decision

1.The decision of the Tribunal is that the Fair Rent of £1310.00 per month is determined with effect 4th September 2023.

Background

2.The Rent Officer, received an application to re-register a fair rent, dated 12th April 2023, made by the landlord of the property requesting a fair rent of £1300.00 per month.

3.Prior to the application, the Rent Officer had registered a rent of £1092.00 per month with effect from 2nd March 2020. Following the application by the landlord for re registration of a fair rent, the Rent Officer registered a fair rent of £1170.00 per month from 31st May 2023.

4.In a letter received by the Rent Officer on 23rd June 2023, the landlord, objected to the rent registered and the matter was referred to the First –tier Tribunal (Property Chamber) (Residential Property).

5. Directions were issued by the Tribunal on the 11th July 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

6. The tribunal did inspect the property.

7. The property is a self-contained converted flat with full central heating comprising three rooms, one kitchen, a bathroom/shower and WC, there is a garden with the flat.

8. The windows to the front of the property are single glazed and extensive. The road had relatively modest traffic, however this was due to Wandsworth Bridge being closed. The bridge is expected to re-open soon and as a consequent the level of traffic will be expected to increase. The windows to the side road are all double glazed and are the landlord's improvements. The exterior brick work appears largely in good order.

9. The central heating is around late 1970s or early 1980s in date and has narrow bore piping.

10. The kitchen dates from 1980s or late 1970s with many of the units nearing the end of their practical life. The fridge freezer and the washing machine are the tenants.

11. The bathroom similarly dated comprising bath, separate shower, wash hand basin and WC. The boiler is located in the bathroom.

12. The front room facing the road has previously experienced damp to the right of the windows. This has been attended to by the landlord, but there is damage in the form of wallpaper removed and plaster damage. This has not been decorated.

There are two further rooms both with radiators.

13. At various rooms and hallway, the ceiling, which is the original lathe and plaster, is showing signs of cracking.

14. At the rear of the property there is a walled garden, with shed, the shed is the tenants. There is access to the garden via gates from the side road.

15. Beneath the ground floor is a substantial cellar. At the time of inspection, it was used mainly for storage and a workshop. The cellar is of good height, appears dry, there is no natural light nor ventilation. There is however electricity and artificial light to the cellar.

Relevant Law

16. 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

17. No submissions from the landlord were received other than the application form dated 12th April 2023 which requested a re registered rent of £ 1300.00 per month, the application form notes the tenant is responsible for internal repairs and the landlord external.

Tenant

18. By letter from the tenant received by the Rent Officer on 26th April 2023, the tenant noted;

The tenancy started 15th June 1988.

“No upgrading has been undertaken by the landlord since their purchase in 2016.

The property offers basic accommodation with no wall insulation on all internal walls that face the road: no double glazing in the front room where the major road sees an increased motorised traffic due to the Mayor LTN. Traffic noise and pollution is not contained by the large single glass window.

Lack of wall insulation also means colder rooms in winter although the heating is on at most hours of the day; also, the large room at the front has a patch of mould on the wall which had not been taken care of by the landlord. “

The kitchen furniture, bathroom, boiler and WC are reported as being old.

“The mentioned cellar is a dump and cannot be used as a storeroom.”

The registered fair rent of two other protected tenancy properties is quoted.

19. By completed Reply Form, undated, the Tenant notes;

Under Improvements - “April 2023 changed window in the kitchen as the metallic frame was completely damaged by builders that were supposed to fix the window.

Landlord paid

Under disrepairs - “single glazed window at front- damp patch in the corner in the larger room-

Crack on ceiling in room 1 and ceiling in room 2 and kitchen damaged by water leak from 1st floor flat. Never fixed properly.

Old kitchen with cupboards falling apart.

Doors not secure (easy to gain entry ad they have glass that could be easily smashed and opened).

Under any other comments - “buses but no train stains nearby – I had to purchase shutters to keep the noise and pollution out due to the heavy congested main road.”

Rent Officer notes of inspection

20. The notes are dated 30th May 2023 relating to a meeting between the Rent Officer and the tenant, the landlord was not present. The condition of the property was noted in the inspection notes.

No submissions were received from the tenant other than the objection letter.

The Hearing

21. The landlord did not attend.

22. The tenant attended, and the submissions followed the written evidence previously provided. Additionally, the tenant submitted that similar properties held under assured shorthold tenancies in modern condition achieved in the region of £650 per week.

Decision

23. The property was inspected, and the determination was undertaken following the hearing and inspection.

Reasons for Decision

24. The rent to be determined must reflect the condition found on the date of the hearing disregarding all tenants' improvements.

25. 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. This means that comparison with other properties the subject of Fair Rent is not material. Initially the Tribunal determined what rent the Landlord could reasonably be expected to obtain for the subject property in the open market if it were let today in the condition that is considered usual for such an open market letting.

26. The tenant in their written evidence supplied examples of other fair rents from the fair rent register. These cannot be taken into account. The correct process as set out in the regulations is to consider a contemporary open market rent making adjustments and comparing it with the figure derived from the maximum fair rent calculation.

27. 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 the market rent, on modern assured shorthold tenancy terms would be £2600.00 per month. However, the subject 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 30% is made.

28. 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.

29. Thereafter the tribunal considered the question of scarcity in section 70 (2) of the Rent Act 1977. A figure of 20% was adopted.

30. The figure of £ 2600.00 per month was derived from contemporary letting of properties in good condition through assured shorthold tenancies.

31.

Market derived rental level - £2600.00 per month

Less 30% condition £ 780.00 per month

£ 1820.00 per month

Less 10% for terms and supplied goods inc white goods

£182.00 per month

£ 1638.00 per month

Less 20% for scarcity. £163.80 per month

The rent after this final adjustment was £1310.00 per month.

Rent Acts (Maximum Fair Rent) Order 1999

32. The rent to be registered is not limited by the Rent Acts (Maximum Fair Rent Order) 1999. The rent calculated in accordance with the Order is £1459.50 per month which was higher than the amount determined under section 70.

33. Accordingly, the sum of £1310.00 per month will be registered as the fair rent with effect from 4th September 2023, being the date of the Tribunal's decision.

Valuer Chair: Richard Waterhouse FRICS

Decision Date: 4th September 2023

Extended reasons: 4th September 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.