



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

**Case reference** : CHI/00ML/F77/2023/0037

**Property** : Second Floor Flat, 12 Westbourne Villas,  
Hove, BN3 4GQ

**Tenant** : Mrs A Curran

**Representative** : None

**Landlord** : Hala Management Ltd

**Representative** : None

**Type of application** : Determination of registered rent  
Section 70 Rent Act 1977

**Tribunal member(s)** : Mrs J Coupe FRICS  
Mr I Perry FRICS  
Mr J Reichel MRICS

**Date of decision** : 30 August 2023

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**DECISION**

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## Decision of the Tribunal

**On 30 August 2023 the Tribunal determined that a sum of £1,050.00 per month will be registered as the Fair Rent with effect from the same date.**

## Background

1. On 3 May 2023 the Rent Officer received an application dated 2 May 2023 on behalf of the landlord for registration of a Fair Rent of £1,150.00 per month in lieu of the passing rent of £855.00 per month.
2. On 5 June 2023 the Rent Officer registered a rent of £925.00 per month effective 3 August 2023.
3. On 19 June 2023 the landlord objected to the registered rent.
4. The tenancy appears to be a statutory protected tenancy commencing April 1987. The Tribunal was not provided with a copy of the tenancy agreement.
5. The Rent Register records that the landlord is responsible for repairs and external decorations, whilst the tenant covenants to decorate internally. Section 11 Landlord and Tenant Act 1985 applies.
6. On 14 July 2023 the Tribunal issued Directions advising the parties that it considered the matter suitable for determination on papers unless either party objected, in writing, within 7 days. The parties were also advised that no inspection would be undertaken. No objections were received.
7. The Directions required the landlord and tenant to submit their statements to the Tribunal by 28 July 2023 and 11 August 2023 respectively. Both parties complied.
8. Having reviewed the parties' submissions, the Tribunal concluded that the matter was capable of being determined fairly, justly and efficiently on the papers, consistent with the overriding objective of the Tribunal.
9. These reasons address in **summary form** the key issues raised by the parties. They do not recite each and every point referred to in submissions. The Tribunal concentrates on those issues which, in its view, are fundamental to the determination.

## Law

10. When determining a Fair Rent the Tribunal, in accordance with section 70 of the Rent Act 1977, must have regard to all the circumstances including the age, location and state of repair of the property. The Tribunal must disregard the effect, if any, of any relevant tenant's improvements and the effect of any disrepair or any other defect attributable to the tenant or any predecessor in title under the regulated tenancy, on the rental value of the property.

11. In *Spath Holme Ltd v Chairman of the Greater Manchester etc Committee* (1995) 28HLR 107 and *Curtis v London Rent Assessment Committee* (1999) QB 92 the Court of Appeal emphasised:

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 to that of a regulated tenancy, and

That for the purposes of determining the market rent, assured tenancy market rents are usually appropriate comparables; adjusted as necessary to reflect any relevant differences between the comparables and the subject property.

12. The Rent Acts (Maximum Fair Rent) Order 1999 restricts the amount by which the rent, less variable service charge, may be increased to a maximum 5.00% plus Retail Price Index since the last registration.
13. Under paragraph 7 of the Order an exemption to this restriction applies where the Landlord proves that repairs or improvements undertaken have increased the rent by at least 15% of the previous registered rent.

### **The Property**

14. In accord with current policy, the Tribunal did not inspect the property, instead relying on information provided and viewing the exterior of the property via publicly available online platforms.
15. The property is a self-contained flat situated on the upper floors of a converted Victorian mid-terraced house with bay frontage. Online images appear to show the property to be of masonry construction with a pitched roof clad in slate. The property is located within a short distance of the seafront and close to local amenities and public transport links.
16. The accommodation comprises a hallway, living room, kitchen, two bedrooms, bathroom and w.c. There is no outside space allocated to the property nor off-road parking.
17. The property has gas central heating and double glazing to two windows.
18. Carpets, curtains and white goods are provided by the tenant.

### **Submissions – Tenant** (summarised)

19. The tenant states that no major works to the flat have been undertaken by any landlord for approximately twenty years. Furthermore, the exterior of the building and the communal areas have not been upgraded in approximately thirty years. Any scheduled improvements to the communal areas should have no bearing on the rent payable for the flat.
20. The tenant states that the landlord has not met their obligations in regard to repair and maintenance, including reference to:

- i. Main bedroom: cracking and blown plaster
  - ii. Bedroom 2: sash window in disrepair and dampness
  - iii. Hallway: dampness
  - iv. Living room: dampness and rotten window (health hazard)
  - v. Kitchen: antiquated.
21. Photographs appearing to show plaster cracking, damp staining, peeling paintwork, blown plaster and window deterioration were submitted in evidence. The tenant states that in January 2023 the landlord was notified of a damp issue in the living room but that this issue remains unaddressed.
22. The tenant states that only two small windows are double glazed and that these were fitted some thirty years ago.
23. The tenant considers the landlord's comparison of the property to the recently let flat at 12 Westbourne Villas as inappropriate, as such property has undergone a programme of refurbishment throughout.
24. The tenant did not rely on any comparable rental evidence.

**Submissions – Landlord** (summarised)

25. The landlord states that the property is well located, being within a short walk to the seafront and close to public transport links. Hove railway station is within a twenty-minute walk.
26. The landlord, who recently purchased the property, states that no inspection of the flat was carried out prior to the acquisition. However, relying on estate agents' particulars, the landlord regards the property to be in a very good condition.
27. The landlord advises that the communal areas are in the process of being refurbished, that a door entry system is to be installed and that the exterior of the building is scheduled to be redecorated. Such works are anticipated to be completed by July 2023 and, furthermore, the landlord is contributing in the region of £1,500 to block insurance and repairs.
28. The landlord objects to the fair rent registered by the Rent Officer referring to the sum as "far too low and totally unfair". In support of such assertion the landlord relies on letting evidence including one, two and three bedroom flats ranging in asking prices from £1,095 (1 bed) to £2,000 (3 bed). Screenshots of three comparable lettings, taken from advertisements on the online platform Rightmove, were provided. Such adverts displayed the street location, number of bedrooms and bathrooms, and asking rent but no further detail.
29. The landlord also relied upon an email from Property Plus Lettings Limited dated 19 June 2023 which stated "I feel the recommended marketing price would be £1600.00 per calendar month, but I would respectfully ask that you consider any offer obtained upon its individual merits as the market valuation provided is based upon market conditions which takes into account the availability and prices of similar properties."

30. In response to the Maximum Fair Rent Order the landlord asserts that the Order should cease to apply in this instance as demand for such property far exceeds supply and that the gap between open market and protected tenancy rents is too wide.

### **Determination**

31. The Tribunal has carefully considered all the submissions before it.
32. 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.
33. No comparable evidence was submitted by the tenant for consideration.
34. The landlord relied upon a basket of comparable evidence which included flats providing between one, two and three bedroom accommodation and with asking prices ranging from £1,095 - £2,000 per month. The landlord further relied upon a marketing appraisal from a local letting agent suggesting an asking price of £1,600 but which continued by respectfully suggesting the landlord considers any offer upon its individual merit.
35. Extracting from the landlord's evidence those properties which were of a similar size and available to rent at around the pertinent date and having regard to the Tribunal's own experience as a specialist expert Tribunal and its knowledge of rental values locally, the Tribunal determined the open market rent of a two bedroom upper floor flat in a converted building in such location to be £1,500 per month.
36. Once the hypothetical rent was established, it was necessary for the Tribunal to determine whether the property meets the standard of accommodation, repair and amenity of a typical modern letting. In this instance the Tribunal determined that the subject property falls short of the standard required by the market.
37. The tenant states that the property is in want of repair and provides a number of photographs to evidence such. By his submissions, the landlord confirms that no inspection of the property was carried out prior to acquisition and nor is any suggestion made that an inspection has been carried out since. Instead, the landlord relied upon the estate agents' marketing particulars to form an opinion that the property is in 'very good condition'. The Tribunal favours the narrative and photographic evidence of the tenant in such regard and, accordingly, makes an adjustment to rent for want of repair.
38. The landlord referred to imminent works of refurbishment to the communal areas and to the fabric of the block, and that a contribution of some £1,500 in such regard, to include insurance, is being made. However, the landlord offered no evidence as to the specification of such works or confirmation as to the commencement or completion date. Accordingly, the Tribunal finds that the proposed works have no effect on the rental value as at the pertinent date. However, this is not to say that such works

will not be taken account of in future applications.

39. In regard to the condition of the property and in the absence of evidence to the contrary from the landlord, the Tribunal prefers the evidence of the tenant, and finds that the property and in particular the kitchen and bathroom are dated and unmodernised.
40. It is common ground between the parties that the white goods, carpets and curtains are supplied by the tenant and that the property is only partially double glazed.
41. Furthermore, the tenant is responsible for the internal decoration of the property. The Tribunal considers such a covenant a greater burden than the normal responsibility for an assured shorthold tenant to keep the landlords' decorations in good order.
42. In reflection of such differences the Tribunal make a deduction of 30% from the hypothetical rent to arrive at an adjusted rent of £1,050.00 per month.
43. The Tribunal then directed itself to the question of scarcity, as referenced in paragraph 11 above and, in arriving at its decision on the point, takes account of the following:
  - a. The Tribunal interpreted the 'locality' for scarcity purposes as being the whole area of Hove and Brighton (i.e. a sufficiently large area to eliminate the effect of any localised amenity which would, in itself, tend to increase or decrease rent);
  - b. Availability of property to rent;
  - c. Local Authority and Housing Association waiting lists;
  - d. Property rental prices which could be an indicator of increased availability of housing and a reduction in scarcity;
44. The members of the Tribunal have, between them, many years of experience of the residential letting market and that experience, coupled with the above, leads them to the view that there is currently no shortage of similar properties to let in the locality defined above.
45. Accordingly, the Tribunal made no deduction for scarcity.

### **Maximum Fair Rent**

46. This is the rent calculated in accordance with the Maximum Fair Rent Order details of which are shown on the rear of the Decision Notice.
47. The Rent Acts (Maximum Fair Rent Order) 1999 restricts the amount by which the rent, less any variable service charge, may be increased, to a maximum 5% plus RPI since the last registration.
48. The only exception to this restriction 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. The

Tribunal determined that such exception does not apply in this instance.

49. The rent to be registered in this application is not limited by the Fair Rent Acts' (Maximum Fair Rent Order) 1999 because it is below the maximum fair rent that can be registered of £1,084.00 per month prescribed by the Order.
50. The Tribunal accordingly determines that the rent of **£1,050.00 per month is registered as the Fair Rent with effect from 30 August 2023**, that being the date of the Tribunal's decision.

#### **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](mailto: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.