



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

Case Reference : **MM/LON/OOBK/F77/2023/0202**

Property : **20 Elgin Court , Elgin Avenue, London, W9
2NU**

Tenant : **Mr Derek Jeffrey**

Landlord : **E K Ellis Trust**

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**

HMCTS Code : **Determination on papers**

Date of Decision : **5th September 2023**

Date of Statement of Reasons: **5th September 2023**

Statement of Reasons

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Decision

1. The decision of the tribunal is that a fair rent of £1268.44 per month inclusive of £39.58 per month of services, is determined with an effective date of 5th September 2023.

Background

2. An application was made to re-register a fair rent, dated 5th April 2023, by the landlord of the property. Prior to the application to re-register a fair rent, the Rent Officer had registered a rent of £925.00 per month with £33.46 per month for services, included in afore going rent, with effect from 19th July 2018 following an FTT decision.

3. Subsequently the Rent Officer registered a fair rent of £1080.00 per month with £19.53 per month included in the foregoing rent, attributed to services with effect from 6th June 2023.

4. In an email of 25th June 2023 the tenant 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 14th 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 not inspect the property. The property is a self-contained purpose built flat without central heating, comprising three rooms, one kitchen and a bathroom/ WC.

Relevant Law

7. 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

8. A letter from the landlord to the Rent Officer noting;

That the flat, is furnished rather than unfurnished as the tenant submitted. “You will observe that some of the furniture is classical, and I see no reason why they are written off to zero.”

A document noting the service charge breakdown showing £475 per flat dated 6th April 2023.

A copy of a note showing the letting was furnished as at 20th July 1974.

An e mail from the landlord to the Rent Officer dated 5th May 2023, providing further background on the property, furniture and service charge.

A copy of a rent payment ledger from 1984 and an inventory.

Tenant

9. A letter to the Rent Officer dated 22nd April 2023 from the tenant. The letter comments on the landlords application, noting

Re Item 4 -The block consists of 11 flats.

Re item 8 – services included in the service charge and comment upon them

Re item 10 – that the property is unfurnished

Finally that the tenant has continued to maintain their property and disagrees with the sum requested in the application.

10. A letter dated 28th June 2023 to the Rent Officer from the tenant. Noting;

The permanent (and dangerous) broken front gate offering zero security

The broken intercom

The unsatisfactory condition of the top ceilings and the numerous collapses I have experienced over the years. Not least the 50% collapse of the front room ceiling caused by perpetual water ingress from the long-compromised roof.

The combination of the absence of any heating appliance and notoriously drafty sash windows.

The incorrect classification of this flat as furnished

11. An inventory for the flat undated

A “Consultation and considerations – Notes” from the Rent Officer noting defects in the property.

The Determination

10. The property was not inspected, and the matter was determined on papers.

Reasons for Decision

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

12. 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.

13. There was a difference in the evidence over whether the property was furnished or not. The evidence shows it was let furnished. Also, that this was a considerable time ago. Whilst there is a dispute over whether the furniture was discarded or had reached the end of its natural life, there is no landlords furniture within the property, now. Making what it can of the evidence, the tribunal finds that the presence or not of furniture dating from the commencement of the tenancy would have a deminis effect on the rent to be determined.

13. Initially 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. 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 rent was £2600.00 per month if let on a contemporary assured shorthold basis.

14. The 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 20% is made. 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. Thereafter the Tribunal considered the question of scarcity in section 70 (2) of the Rent Act 1977. A figure of 20% was adopted.

The calculation

15. The rent of £2600.00 per month is on the basis of an assured shorthold tenancy where the tenant would not be responsible for the service charge. The protected tenant is in this case liable for the service charge of £ 475.00 per year equivalent to £39.58 per month. Last registered rent noted a service charge of £19.53 per month. The application form also notes £475 per year. The tenant within this protected tenancy is liable for the service charge. Prior therefore to any adjustments for condition, tenancy terms and scarcity a deduction of the service charge is made.

16. The rent prior to adjustment for condition, terms and scarcity, but adjusted for service charge is

£2600.00 per month

Less service charge £39.58 per month

£2560.42 month

Less 20% condition including no central heating

Less £512.08 per month

£ 2048.34 per month

Less 10% for terms and supplied goods inc white goods

£204.83 per month

£1843.50 per month

Less 20% for scarcity. £368.70 per month

17. The rent after this final adjustment was £1474.80 per month. Add back the monthly service charge £39.58 per month, £1514.38 per month including service charge.

Rent Acts (Maximum Fair Rent) Order 1999

18. The rent to be registered is limited by the Rent Acts (Maximum Fair Rent Order) 1999. The rent calculated in accordance with the Order is £1268.44 per month with £39.58 per month included within it attributable for services. This figure is lower than the figure calculated by reference to the market rent with adjustments, of £1514.38 per month with £39.58 per month attributed for services.

19. Accordingly, the sum of £1268.44 per month including a service charge of £39.58 per month will be registered as the fair rent with effect from 5th September 2023, being the date of the Tribunal's decision.

Valuer Chair: Richard Waterhouse FRICS

Decision Date: 5th September 2023

Extended reasons: 5th 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.

