



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

**Case Reference** : **BIR/00CN/F77/2023/0017**

**Property** : **Ground Floor Flat, 204 Gravelly Hill  
Birmingham B23 7PE**

**Landlord** : **Adalat Khan**

**Tenant** : **Jacqueline Davies**

**Type of Application** : **Determination of a fair rent under section  
70 of the Rent Act 1977 – Extended Reasons**

**Tribunal Members** : **N Wint BSc (Hons) FRICS ACI Arb  
J Arain**

**Date of Decision** : **17 October 2023**

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**DECISION**

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## **BACKGROUND**

1. This Decision arises because of an application made by the Landlord for extended reasons arising from the Tribunal's decision dated 25 August 2023 that the fair rent payable by the Tenant in accordance with Schedule 11 of the Rent Act 1977 shall be £389.75 per month.
2. By way of background, on 8 December 2022, the Landlord applied to the Rent Officer for registration of a fair rent of £695 per month in respect of Ground Floor Flat, 204 Gravelly Hill Birmingham B23 7PE (the "Property").
3. The rent payable at the time of the application was £358.50 per month which was registered by the Rent Officer on 13 October 2020, effective from 13 October 2020.
4. The Rent Officer registered a rental of £390 per month on 14 February 2023, effective from 26 February 2023.
5. On 21 February 2023, the Landlord objected to the rent determined by the Rent Officer and the matter was referred to the Tribunal.
6. The Tribunal issued its Directions dated 2 June 2023. It advised that the matter would be determined based on any written submissions made by the parties, an inspection of the property and advised either party may request a hearing if required.
7. The Tribunal carried out an internal inspection of the Property on 25 August 2023 in the presence of the Tenant only.
8. The Tenant requested a hearing however at the inspection advised the Tribunal she no longer wished to attend and the hearing was attended by the Landlord only.

### **The Property**

9. The Property is situated on the A5127 Gravelly Hill Road approximately 3 miles northeast of Birmingham city centre.
10. The Property comprises a converted ground floor flat within a period 2-storey semi-detached house built in the early circa. 1900's of brick and pitched roof construction.
11. The accommodation comprises entrance hall, living room, two bedrooms, kitchen and rear bathroom and WC. To the rear is a small patio area and to the front a shared driveway laid to hardstanding.

12. The Landlord is responsible for all repairs and external decorations and the Tenant for any internal decorations.

### **Submissions of the Tenant**

13. The Tribunal received a completed Reply Form from the Tenant and several pages of text and photographs.
14. The Tenant referred to several matters although some of which appear to have occurred several years ago. In particular, the Tenant referred to damp issues, window drafts, security issues, various leaks from the flat above, blocked drains, damaged/ stained ceilings, plaster damage, flooded cellar, woodworm, poor workmanship, damaged/ leaking skylight and a problem with the fireplace, removal of steps to the front door as well as blocked guttering and an overgrown rear garden area. New windows were also installed in the bathroom area, but no sealant has been used to finish the gap between the wall and frame.
15. The Tenant also explained that since the last rent assessment no improvements or alterations have been carried out by the Landlord.
16. The Tenant did not however refer to any rental evidence except to advise the Landlords proposal was unacceptable.

### **Submissions of the Landlord**

17. The Tribunal did not receive a completed Reply Form from the Landlord.
18. However, at the hearing the Landlord advised he had had previous difficulties with the Tenant and that due to a breakdown in the relationship had not been able to inspect the Property for over 3 years. The Landlord also advised that the Property is managed by a separate company run by the Landlord's son who has also had similar difficulties with the Tenant.
19. On the question of disrepair the Landlord advised that as far as he was aware the Tenant has not reported any such matters but if he had been aware would be happy to undertake these but that the Tenant had prevented him from inspecting the Property.
20. The Landlord advised that the only alterations carried out since the last review were the relocation of the meters from the cellar to a box on the front of the building.
21. The Landlord also advised that having regard to the age, condition and location of the property considers the market rent should be £900 per month. In support

of this the Landlord provided details of the first floor flat he has let at £650 per month which comprises 2 bedrooms and is of a basic specification.

## **THE LAW**

22. The relevant provisions in respect of jurisdiction of the Tribunal and determination of a fair rent are found in Paragraph 9(1) Part 1 Schedule 11 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.

23. **Rent Act 1977**

24. **Paragraph 9(1) Part 1 Schedule 11 (as amended)**

*“Outcome of determination of fair rent by appropriate tribunal*

*9. – (1) The appropriate tribunal shall –*

*if it appears to them that the rent registered or confirmed by the rent officer is a fair rent, confirm that rent;*

*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**

*“(1) In determining, for the purposes of this 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-*

*the age, character, locality and state of repair of the dwelling-house...*

*if any furniture is provided for use under the tenancy, the quantity, quality and condition of the furniture, and*

*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 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.*

*(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)...*

*(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 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.”*

25. When determining a fair rent the Tribunal, in accordance with the Rent Act, section 70, had regard to all the circumstances including the age, location and state of repair of the Property. It also disregarded the effect of (a) any relevant Tenant’s improvements and (b) the effect of any disrepair or other defect attributable to the Tenant or any predecessor in title under the regulated tenancy, on the rental value of the Property.

26. 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).*

27. 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.

28. 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 the previous registration.

## **VALUATION**

29. In the first instance, the Tribunal determined what rent the Applicant could reasonably expect to obtain for the property in the open market if it were let today in the condition that is considered usual for such open market lettings. It did this from its own general knowledge of market rent levels in the local area and by considering the evidence provided in the parties submissions and from the hearing.
30. The Tribunal considered the market rent to be in the order of £650 per month. However, the Tribunal considered various adjustments were necessary to reflect the nature of the accommodation. In particular, the Tribunal made adjustments for the unmodernised kitchen, bathroom, flooring and curtains and overall general condition of the property and extensive disrepairs as well as the various Tenants obligations totalling £185 per month arriving at an adjusted market rent of £465 per month.
31. The Tribunal then made an adjustment to reflect the tenant's responsibility for internal decorations.
32. Tribunal then considered the question of scarcity. This was done by considering whether the number of persons genuinely seeking to become tenants of similar properties in the wider area of Birmingham on the same terms other than rent is substantially greater than the availability of such dwellings as required by section 70(2) of the Rent Act 1977.
33. The Tribunal finds that many landlords dispute that scarcity exists because they are of the opinion that the market is 'in balance'. Although tenants do not in all cases have difficulty in finding accommodation this ignores the fact that it is the price of such accommodation which creates a balance in the market. Section 70(2) specifically excludes the price of accommodation from consideration in determining whether there are more persons genuinely seeking to become tenants of similar properties than there are properties available. Although the rental market for Assured Shorthold properties may be in balance many potential tenants may be excluded from it for various reasons such as age, poor credit history or because they are on housing benefit. The Tribunal found that there was scarcity and, accordingly, made a deduction of 10% amounting to £46.50.

34. This leaves a fair rent for the subject property of £389.75 per month.
35. The Tribunal then considered whether the capping provisions of the Rent Acts (Maximum Fair Rent) Order 1999 apply and based on this calculated that the maximum fair rent permitted is £471.50 per month. Accordingly, the rent limit does not apply.

## **DECISION**

36. The fair rent determined by the Tribunal for the purposes of Section 70 is, therefore £389.75 per month with effect from 25 August 2023, being the date of the Tribunal's decision.
37. In reaching its determination, the Tribunal had regard to the evidence and submissions of the parties, the relevant law and their own knowledge and experience as an expert Tribunal but not any special or secret knowledge.

## **APPEAL**

38. If either party is dissatisfied with this decision, they may apply for permission to appeal to the Upper Tribunal (Lands Chamber) **on any point of law arising from this Decision**. Prior to making such an appeal, an application must be made, in writing, to this Tribunal for permission to appeal. Any such application must be made within 28 days of the issue of this decision (regulation 52 (2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rule 2013) stating the grounds upon which it is intended to rely in the appeal.

**Nicholas Wint BSc (Hons) ACI Arb FRICS**