



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

Case Reference : **TR/LON/OOAC/F77/2023/0182**

Property : **618b Finchley Road London NW11 7RR**

Tenant : **Mr Neil Hornick**

Landlord : **Mr G Fitzsimmons, Mrs E Coates & C
Fitzsimmons C/O William Dace Brown**

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 : **Inspection followed by determination on
papers**

Date of Decision : **12th October 2023**

Date of Statement of Reasons: **12th October 2023**

Statement of Reasons

Decision

1. The decision of the tribunal is that a fair rent of £3176.50 per quarter is determined with an effective date of 12th October 2023.

Background

2. An application was made to re-register a fair rent, dated 27th March 2023, by the landlord of the property Mr G Fitzsimmons, Mrs E Coates & C Fitzsimmons. Prior to the application to re-register a fair rent, the Rent Officer had registered a rent of £2479.00 per quarter effect from 3rd October 2020 which was later reduced by the First Tier Tribunal to £2448.00 per quarter with effect from 11th May 2021.

3. Subsequently the Rent Officer registered a fair rent of £3100.00 per quarter, with effect from 25th May 2023.

4. In an email of 5th June 2023 the tenant Mr Hornick objected to the registered rent of 25th May 2023 and the matter was referred to the First –tier Tribunal (Property Chamber) (Residential Property).

5. Directions were issued by the Tribunal on the 27th June 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 on the morning of 12th October 2023. The property is a self-contained converted flat, across the second and third floor, without central heating, three rooms and a kitchen on the second floor, and two rooms on the third floor with 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. The landlords submissions comprised the Application to Re Register a Fair Rent.

A completed Reply Form. The Form noted that an inspection nor a hearing was required.

Under accommodation it is noted that the living room is in poor decorative order.

The landlord provided double glazing, there is no central heating in the property and the tenant has supplied the curtains, carpets and white goods.

Under improvements, a new cooker is not installed by the landlord in October 2019.

Under repairs it was noted that “extensive repairs carried out in 2023, new box gutters installed”, and “external emergency staircase – refurbished 2023.”

The close proximity to Golders Green tube station was noted.

Tenant

9. The Tenant wrote to the tribunal in a letter date 10th July 2023 noted that the registered rent was too high and that no improvements had been made in the previous two years.

A completed Reply Form, requesting an inspection but not a hearing. The Form notes there is no central heating, double glazing was provided by the landlord, and carpets/curtains and white goods supplied by the tenant.

A supplementary sheet dated 10th July 2023 which provides a description of the property in general terms and room by room in terms of size and condition.

Repairs were noted in that extensive roof repairs had been carried out.

The flat is located above a shop and in an area which has frequent traffic jams resulting in noise and air pollution.

The Determination

10. The property was inspected on the 12th October 2023. The property is a busy stretch of the Finchley Road. The wider building within which the flat is located, comprises a retail premises on the ground floor, a separate flat on the first floor. The subject property is accessed through a door on the ground floor, which leads to a shared staircase with the first floor flat. The second and third floor flat has its own front door, The property overall is in a dated condition possibly 1950s or earlier. There is no central heating within the property. There are low level electric sockets in the rooms but less than modern standards in terms of numbers. The kitchen is dated with piecemeal units. The bathroom is dated potentially from the 1960s. The property has suffered from leaking roof over the past few years, this has been recently attended to, although there was some evidence that some leaks may be ongoing. The stairs to the flat are relatively steep. In terms of layout, the second floor has a front room used as a living room, a dining room, a further bedroom, a kitchen and a small room off the kitchen. On the third floor, the front room is used as a bedroom, and a further room. The bathroom is located on the third floor.

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. 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 £3500.00 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 £3500.00 per month, equivalent to £10,500 per quarter is on the basis of an assured shorthold tenancy.

16. The rent prior to adjustment for condition is

£10,500.00 per quarter

Adjusting for condition

Less 25% condition

Less £2625.00 per quarter

£ 7875.00 per quarter

Less 10% for terms and supplied goods inc white goods

£787.50per quarter

£7087.50 per quarter

Less 20% for scarcity. £1417.50 per quarter

17. The rent after this final adjustment was £5670.00 per quarter.

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 £3176.50 per quarter. This figure is lower than the figure calculated by reference to the market rent with adjustments, of £5670.00 per quarter.

19. Accordingly, the sum of £3176.50 per quarter will be registered as the fair rent with effect from 12th October 2023, being the date of the Tribunal's decision.

Valuer Chair: Richard Waterhouse FRICS

Decision Date: 12th October 2023

Extended reasons: 12th October 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.