



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

Case Reference : **FL/LON/OOAP/F77/2023/0239**

Property : **Flat 51 Florin Court, 6-9 Charterhouse
Square, London EC1M 6EU**

Tenant : **Miss Carol Bavin**

Landlord : **Dorrington Queensway Limited C/O Savills
(UK) 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**

HMCTS Code : **Determination on papers only
(paper, video, audio)**

Date of Decision : **3rd October 2023**

Date of Statement of Reasons: **3rd October 2023**

Statement of Reasons

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Decision

1.The decision of the Tribunal is that the Fair Rent of £24,358.59 per year with £3,649.15 per year included is determined with effect 3rd October 2023.

Background

2.The Rent Officer, received an application to re-register a fair rent, dated 10th May 2023, made by the landlord of the property.

3.Prior to the application, the Rent Officer had registered a rent of £17,160 per year with £3,649.15 per year noted as attributed to services and included in the foregoing sum with effect from 2nd December 2020. This was appealed and the Tribunal determined £20,929.15 per year with £3,649.15 per year attributed to services and included in the foregoing sum with effect from 11th May 2021. Subsequent to the application to re-register a fair rent dated 10th May 2023, the Rent Office registered a fair rent of £21,802.69 per year including services £3,649.15 per year with effect from 7th July 2023.

4.In a letter dated 17th July 2023 the tenant expressed concern over the figure registered by the Rent Officer and the matter was referred to the First –tier Tribunal (Property Chamber) (Residential Property).

5.Directions were issued by the Tribunal on the 10th August 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 fourth floor flat in a purpose-built block. The property has central heating, bathroom with WC and kitchen and three rooms.

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 number of submissions were received from the landlord;

The application to register a fair rent,

An email dated 16th May 2023 from Savills noting the annual expenditure for the whole building was £1,188,230 pa, and there are 120 flats which “is £9,901.91 per flat”.

A document entitled service charge accounts which supports the figure £1,188,230 pa.

Tenant

9. The tenant submitted a letter to the Rent Officer dated 24th May 2023 received 26th May 2023. It noted that there had been no improvements to the property since May 2021. “The kitchen has a very old single unit. Bathroom bedroom also have old ...windows, do not close properly.”

“There has been a long period when one lift was not working.”

“I do not have a functioning video entry phone.

“There have been three occasions when my bathroom has been flooded “

“I consider the 20% increase in rent is more than excessive ...”

A separate letter from the tenant to the Rent Officer dated 17th July 2023 similarly noted concern at the increase.

The tenant submitted a completed Reply Form received 25th August 2023. The form noted the accommodation and its condition, improvements and disrepairs. A number of photographs were included with the Reply Form. Noting additionally that carpets, curtains and white goods were supplied by the tenant.

Determination

10. The property was not inspected.

Neither party requested an inspection nor an in-person hearing.

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. 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.

13. 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 £3500.00 per month equivalent to £42,000 per year. 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 25% is made.

14. 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.

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

16. The figure of £42,000 per year was derived from contemporary letting of properties in good condition through assured shorthold tenancies. A tenant in an assured shorthold tenancy would not be liable for a service charge. The assured shorthold tenant would pay rent on the understanding their landlord would pay the service charge. The tenant within their 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.

17. The service charge is £ 3649.15 per year. Market rent net of service charge is £42,000.00 per month less £3649.15 per year, making £38350.85 per year.

Market derived rental level - £38350.85 per year

Less 25% condition £9587.71 per year

£ 28763.13 per year

Less 10% for terms and supplied goods inc white goods

£2876.31 per year

£25,886,81 per year

Less 20% for scarcity. £5177.36 per year

The rent after this final adjustment was £20709.44 per year.

18. Adding back the service charge, £3649.15 per year gives £24358.59 per year, including £3649.15 per year.

Rent Acts (Maximum Fair Rent) Order 1999

19. 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 £26068.79 per year with £3649.15 per year attributable for services within the former figure.

20. This figure is higher than the figure calculated by reference to the market rent with adjustments, of £ 24358.59 per year with £3649.15 per year included within the sum attributed for services.

21. Accordingly, the sum of £24358.59 per year with £3649.15 per year included in the aforementioned sum attributed for services, will be registered as the fair rent with effect from 3rd October 2023, being the date of the Tribunal's decision.

Valuer Chair: Richard Waterhouse FRICS

Decision Date: 3rd October 2023

Extended reasons: 3rd 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.