



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

Case Reference : **LON/OOBD/F77/2023/0189**

Property : **Flat 3, 310b Richmond Road, Twickenham,
Middlesex TW1 2PD**

Tenant : **Mr Neil Jones**

Landlord : **John Gillette and Gillian Gillette**

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
Mr A Ring**

HMCTS Code : **Hearing on papers with inspection
(paper, video, audio)**

Date of Decision : **27th October 2023**

Date of Statement of Reasons: **27th October 2023**

Statement of Reasons

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Decision

1.The decision of the Tribunal is that the Fair Rent of £1064 per month is determined with effect from 27th October 2023

Background

2.The Rent Officer, received an application from the landlord dated 1st March 2023 to re-register a fair rent, at £1600 per month.

3.Prior to the application, the Rent Officer had registered a rent of £414.00 per month with effect from 10th June 1999 following a First Tier Tribunal decision. Following the application, the Rent Officer registered a fair rent of £1415.00 per month. With effect from 1st March 2023,

4.In a letter dated 11th June 2023 the tenant Neil Jones objected to the rent registered and the matter was referred to the First tier Tribunal (Property Chamber) (Residential Property). The landlord also objected to the rent by letter dated 19th June 2023.

5.Directions were issued by the Tribunal on the 4th July 2023. 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.

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 application form dated 1st March 2023 included;

A document titled “310 Richmond Road Twickenham TW1 2PD”,

A schedule of price and rental levels for flats in 310 Richmond Road

A floor plan

A letter dated 6th January 2022 to Mr N Jones from LCI Property Management noting removal of lights as requested by tenant and intended replacement of electrical heaters. There is a note also regarding arranging a contractor to look at an

issue with the bathtub and that the landlord does not supply furniture for Rent Controlled properties.

9. A second letter dated 17th January 2022 from LCI Property Management to Mr N Jones detailing within 12 points and the possibility of moving to a lower floor flat.

10. Lastly with the application, there is a memo dated January 2023 detailing the works carried out by the landlord in 2022.

11. There is a letter from the landlord dated 23rd April 2023, received 4th May 2023 to the Rent Officer, noting that a similar but inferior property 314 Richmond Road had a rent of £ 1005 per month registered in September 2022. Additionally noting that a rent of £2250 per month is likely to be the market rent for the subject property,

12. There are two photographs of repair work to the property, included which appear to show the blocking off, of a doorway.

13. By letter dated 14th August 2023, the landlord noted the tenant wanted an inspection, and the landlord requested for them to attend at the same time.

14. By completed reply form, the landlord did not request an inspection, nor a hearing.

Noted also, there is no double glazing nor central heating in the property but there are carpets, curtains and white goods although the form does not note their provider.

Under Improvements it is noted that

During 2022 the following items were carried out in the flat by the landlord.

Replacement with all carpet with soundproof underlay

Painting and decoration of the entire flat

Replacement of bathroom and kitchen flooring

Instal a new bathtub along with shower enclosure and handheld shower hose, retiled shower area

Installed a handle for getting in and out of the shower

Installed new panel electric heaters

Provided a bed mattress sofa and hoover.

Plumbed and provided a new washer dryer in the bathroom

Replaced sash cords to relevant windows as per tenant's request

Provide new curtains for bedroom

Installed a new entry phone system into the flat

Installed new TV ariel to link to communal dish

Removed inappropriate doorway to bathroom from landing, to render the flat more self-contained with a conventional single newly decorated access to the interior, previously two doors from the common parts.

Redecorated refurbished and recarpeted the access and stairs from the entrance to the building to the door of the flat

15. In the "other comments" section of the Reply Form, there is commentary of the building, its location and comparable levels of rent for properties in contemporary condition on contemporary tenancies. A level of £2250 per month is suggested.

16. Also various notes and invoices relating to the service charge of the property which the landlord is liable for.

Tenant

17. A copy of a letter from the tenant dated 11th April 2023, received 12th April 2023 by the Rent Officer expressing concern at the proceedings.

18. An additional letter from the tenant Neil Jones to the Rent Officer dated 15th March 2023. The letter contending that inflation between 1999 and January 2023

should not be taken into account in settling the fair rent. The tenant suggests an increase of £21.00 per month.

19. A letter dated 19th March 2023 notes the Knight Frank Forecast Data submitted by the landlord which the tenant suggests would indicate a rent of £1100 per month would be the market rent but that these are derived from comparables of superior quality. The tenant submits £414 per month is fair or lower.

20. A letter dated 22nd March, raising concerns over the processing of the application to register a fair rent.

21. A letter dated 30th April 2023, raising further concerns regarding the arrangement of a consultation by the Rent Officer.

22. A completed Reply Form from the tenant -

The tenant requests an inspection but does not request a hearing.

The form confirms there is no central heating, nor double glazing, but that the landlord has provided carpets and curtains.

The Form confirms the list of improvements above shown in the landlord's submission.

The tenant also notes, the repairs that have been undertaken constitute largely cosmetic and do not constitute major changes as defined by the Rent Acts.

The submission includes a number of photographs of the interior of the property.

The Inspection

23. The inspection took place on 27th October before the determination on papers. The inspection confirmed the repairs and improvements noted by the landlord and the tenant. Notably the kitchen has new flooring, but the units supplied by the tenant remain from 1950s 1970s, the sink is small and dated. The bathroom, has a replaced bath with shower over, supplied by the landlord. The bathroom also contains a new water immersion tank, supplied by the landlord and also a new washing machine again supplied by the landlord. Additionally, the bathroom previously had a door to the external landing of the building's common parts. The flat does not have a car

parking space. There is a leak through the flat roof over the bay window area of the living room.

Determination

Reasons for Decision

24. The Tribunal first had to determine discrepancies in the factual evidence provided by the parties. The Tribunal finds the carpets, curtains are supplied by the landlord, and the microwave is supplied by the tenant but the washing machine and oven hob by the landlord. Lampshades supplied by the tenant.

25. The tribunal notes the repairs and improvements carried out by the landlord.

Rent Acts (Maximum Fair Rent) Order 1999 provides for a limit on the increase of a fair rent.

26. 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.

27. The Tribunal next needed to determine whether the works carried out by the landlord between the last registration in 1999 and the date of the hearing constitute sufficient to reach the 15% threshold.

28. The test must be carried out at one point of time, the date of the determination. The fact that the rent was last set in 1999 and market movements and inflation will have caused an increase is not material. The test is whether the property taken at the date of determination, comparing the rental value with and without the repairs and improvements.

29. The works are itemised in the landlord's evidence and confirmed in the evidence of the tenant. Whilst none of them in themselves is altering the nature of the property, they do amount collectively to an increase of its rental level.

30. The rental value of the property determined under section 70 without repairs and without improvements is;

Market rent - derived from comparable properties in contemporary letting condition
£2000 per month.

Deduction for condition 40% £800 per month

£1200 per month

Deduction for terms and conditions

of the tenancy compared with assured

shorthold comparables 10% £120 per month

£1080 per month

Deduction for scarcity under Act 20%

£210 per month

£864 per month.

31. The rental value of property determined under section 70 with landlords' repairs carried out since last registration in June 1999.

Market rent - derived from comparable properties in contemporary letting condition

£2000 per month.

Deduction for condition 30% £600 per month

£1400 per month

Deduction for terms and conditions

of the tenancy compared with assured

shorthold comparables 5% £70 per month

£1330 per month

Deduction for scarcity under Act 20%

£266 per month

£ 1064 per month.

32. Comparing the outcome of the before repairs and improvement,

Without repairs £864 per month, with repairs £1064 per month.

Increase in value £1064 minus £864 gives £ 200, this as a percentage of the pre repaired and pre improvements $\frac{£200}{£864}$ is 23%

The figure of 23% is in excess of 15% so the limit provided by the Rents Act (Maximum Fair Rent) Order 1999 is by paragraph 7 of the Order.

The Rents Act (Maximum Fair Rent) Order 1999 does not apply in this case as the landlord's improvements and repairs are determined in excess of 15% of the rental value.

Rent Acts (Maximum Fair Rent) Order 1999

33. The rent to be registered is not limited by the Rent Acts (Maximum Fair Rent Order) 1999, paragraph 7 applying.

The rent calculated in accordance with section 70 of the Act is £1064 per month.

34. Accordingly, the sum of £1064 per month will be registered as the fair rent with effect from 27th October 2023, being the date of the Tribunal's decision.

Valuer Chair: Richard Waterhouse FRICS

Decision Date: 27th October 2023

Extended reasons: 27th October 2023

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the Regional Office which has been dealing with the case. The application should be made on Form RP PTA available at

<https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking. Please note that if you are seeking permission to appeal against a decision made by the Tribunal under the Rent Act 1977, the Housing Act 1988 or the Local Government and Housing Act 1989, this can only be on a point of law.

If the First-tier Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).
