



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

Case Reference : **LON/OOBD/F77/2023/0210**

Property : **1st & 2nd Floor 105 Sheen Road, Richmond ,
Surrey, TW9 1YL**

Tenant : **Ms Alison L Wyldeck**

Landlord : **Northumberland & Durham Property Trust
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**

Mr A Ring

HMCTS Code : **Hearing on papers /external inspection**

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 £1037 per month is determined with effect from 27th October 2023.

Background

2.The Rent Officer, received an application from the; landlord dated 29th March 2023, to re-register a fair rent, at £1132.20 per month.

3.Prior to the application, the Rent Officer had registered a rent of £943.50 per month with effect from 21st November 2020. Following the application, the Rent Officer registered a fair rent of £1075.00 per month with effect from 28th April 2023.

4.In an email of 13th April 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 18th 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.

The Property

6. On 27th October the Tribunal attended the property for an inspection but did not gain access, so an external inspection was carried out. From the Rent register, the property is a self-contained flat, with full central heating, on the first floor there is a kitchen diner, bathroom, WC and one room, on the second floor two further rooms. The inspection showed the property to be accessed through a shared front door, shared with the ground floor flat. The building is externally painted, and the roof replaced some years ago. On the first floor the windows have been replaced and are double glazed sash windows. On the second floor, within the roof area there appear to be wooden single glazed casement windows. The road at the front is quite busy and there is no off-road parking noted.

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. No submissions from the landlord were received.

Tenant

9. In an e mail dated 13th April 2023, the tenant objected to the registered rent noting “ I would like to object to my rent rise nothing has been done to my flat as it needs many improvements ie new bathroom cracks in walls. Have contacted Grainger many times and nothing gets done.”

In an email dated 20th May 2023 to the Rent Officer from the tenant, it is submitted, that no one from the tribunal or rent officer has inspected the property for 5 years.

That the tenant has lived in the property since 1978 and work is needed to the property but is not carried out.

In particular;

1. Bathroom floor, Lino in complete disrepair, in desperate need of replacement

Bathroom walls, need rendering and painting, hole in plaster down to brickwork!

Bathroom window surround is coming away.

2. Stairwell and skylight. Skylights broken with black mould in the surrounding area which Grainger have been informed about. This being a health hazard. Damp patch on the ceiling

3. Bedroom -Cracks and holes in the walls through to the plaster

4 Kitchen -Large cracks across whole ceiling no kitchen units

Photographs were also included.

The tenant also completed a Reply Form of 26 pages,

Noting double glazing and central heating were by landlord and carpets and curtains and white goods are provided by the tenant.

Determination

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. If the tenant is responsible for certain items and if the tenant has not carried out those responsibilities, then the reduction attributed to the failure to carry is not deducted from the rent. The Rent Register notes that repairs fall under section 11 of the Landlord and Tenant Act 1985. Broadly this means repairs to the external and structure and windows falls to landlord, internal decoration to the tenant. Where external disrepair causes damage to interior the tenant may not be able to decorate until external issue repaired.

13. 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 £1800 per month. However, the subject property is not in the condition considered usual for a modern letting at a market rent. Without an internal inspection, the Tribunal must make a judgement on the quantity of disrepair and who is responsible for repairing it. Therefore, it is necessary to adjust the above hypothetical rent, a deduction of 20% is made to reflect disrepair.

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 £1800 per month was derived from contemporary letting of properties in good condition through assured shorthold tenancies.

17.

Market derived rental level - £ 1800 per month

Less 20% condition £ 360 per month

£ 1440 per month

Less 10% for terms and supplied goods including white goods

£ 144 per month

£ 1296 per month

Less 20% for scarcity. £ 259 per month

The rent after this final adjustment was £ 1037 per month.

Rent Acts (Maximum Fair Rent) Order 1999

18. 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 £1264 per month.

19. This figure is higher than the figure calculated by reference to the market rent with adjustments, of £1037 per month.

20. Accordingly, the sum of £1037 per month is 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).
