



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

**Case reference** : **CAM/42UF/F77/2023/0037**

**HMCTS code** : **P:PAPERREMOTE**

**Property** : **15 Dinsdale Court, Undercliffe  
Road West, Felixstowe, IP11 2BX**

**Applicant (Landlord)** : **Orbit Housing Association**

**Respondent (Tenant)** : **Ms D Lynes**

**Type of application** : **Determination of a fair rent under  
section 70 of the Rent Act 1977**

**Tribunal members** : **Peter Roberts FRICS CEnv**

**Date of Determination** : **27 November 2023**

---

**DECISION**

---

**Description of hearing**

This has been a remote determination on the papers which the parties are taken to have consented to, as explained below. The form of determination was a paper determination described above as P:PAPERREMOTE. The documents that the Tribunal was referred to are in bundles from the Applicant and the Respondent. The Tribunal has noted the contents and the decision is below.

## **Decision**

**The Tribunal determined a Fair Rent of £743.39 per month effective from 27 November 2023.**

## **Reasons**

### **Background**

1. On 8 June 2023 the Landlord made an application to register the rent of the Property at £656.62 per month inclusive of a variable service charge of £163.39. The requested net rent was therefore £493.23 per month.
2. The Rent Officer registered a Fair Rent of £580 per month on 4 August 2023 effective from 7 September 2023. This was in lieu of the previous rent of £550 per week which was registered on 4 August 2021, and effective from 7 September 2021.
3. The Landlord objected by way of a letter dated 10 August 2023 which was referred to the First Tier Tribunal, Property Chamber.
4. The Tribunal issued Directions on 6 September 2023, inviting the parties to submit any further representations (including any photographs and details of rentals for similar properties) they wished the Tribunal to consider.

### **The Property**

5. The Tribunal had arranged to inspect the Property on 30 October 2023 but, despite gaining entry to the apartment block was unable to illicit a response from the Tenant and was therefore unable to inspect the interior of the flat.
6. The Tribunal understands that the Property comprises a two-bedroom flat on the second floor of a purpose built mid 1970's block.
7. The lift was broken so access was taken via the stairs. The communal areas were in a very poor state with dirty and stained carpets and lack of decoration.

### **The Law**

8. The relevant law is set out in section 70 of the Rent Act 1977 (the Act) and The Rent Acts (Maximum Fair Rent) Order 1999 (the Order).
9. Section 70 (1) of The Act provides that in assessing the rent:  
*“regard shall be had to all the circumstances (other than personal circumstances) and in particular to—*
  - i. *the age, character, locality and state of repair of the dwelling-house,*

- ii. *if any furniture is provided for use under the tenancy, the quantity, quality and condition of the furniture and*
- iii. *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.”*

10. Section 70 (2) of the Act provides that:

*“...there shall be disregarded.*

- i. *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;*
- ii. *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*
- iii. *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.”*

11. In addition, section 70 (2) of The Act requires the Tribunal to assume:

*“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.”*

12. This latter provision requires the Tribunal to assume that the demand for similar rented properties in the locality does not significantly exceed the supply of such properties for rent; in effect, if such scarcity exists, the Tribunal is to adjust the rental figure so that the fair rent is not affected by it.

13. 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).”*

14. 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.”*
15. Section 71 (1) of the Act provides that the registration of the rent takes effect from the date that the Tribunal makes its decision.
16. 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 increase in the Retail Price Index since the previous registration.
17. Section 72 (1) (b) of the Act provides that the registration of a rent takes effect:
- “...if the rent is determined by the appropriate tribunal, from the date when the tribunal make their decision”*

### **Representations – Landlord**

18. The Landlord stated:
- “the new registered rent is £580 including a service charge of £116.98 per month and the effective date of the register was 7 September 2023. We will be charging a new rent of £523.11 (inclusive of service charge) from 1 October 2023 having given one month’s notice to the tenant.*
- Therefore the new rent has not only been capped to the maximum rent in accordance with current law but is also below the registered rent.*
- We have appealed against the registered rent because the registered service charge is significantly lower than the amount we applied for. We attached a copy of the service charge budget and actual costs for the last financial year to support our application.”*

### **Representations –Tenant**

19. The Tenant did not make any representations.

### **Determination**

20. The Tribunal notes from the Rent Officer’s Fair Rent Valuation Sheet that the registered rent of £580 per month was **exclusive** of the service charge which was stated as an **additional amount** of £116.98 per month. The total gross rent inclusive of the service charge was therefore £696.98 per month.

21. The Tribunal also understands that the previous rent of £550 per month was inclusive of a service charge of £89.04 such that the net rent was £460.96 per month.
22. It therefore appears that the Rent Officer's assessment of net Fair Rent was £460.93 per month as at September 2021 and is now £580 per month as at September 2023.
23. With regard to the net rent element, the Tribunal is unable to take into account the personal circumstances of the Parties. As such, the assessment of rent has no regard to the personal, financial or health circumstances of either party both of whom are considered to be hypothetical. The Tribunal has therefore had regard to hypothetical, willing parties in the open market.
24. In this context and, as set out in the Spath case as referred to above, the first step is to determine the rent which a landlord could reasonably expect to obtain for the Property in the open market if it were let today in the condition and on the terms now usual for open market lettings. The rent currently paid and/or registered is not relevant to this exercise.
25. Having calculated the market rent, it is then necessary to deduct for outstanding disrepair that is the responsibility of the Landlord and tenant's improvements together with an adjustment in respect of the scarcity of alternative similar accommodation.
26. Neither the Landlord nor the Tenant have provided any evidence of market rents nor drawn the Tribunal's attention to any Tenant's improvements that have been carried out. As such, the Tribunal has relied upon its own knowledge and experience of such matters.
27. In this regard, the development is unattractive to the market and a significant discount would be required in order to entice interest. As such, the Tribunal does not disagree with the Rent Officer's assessment of a Fair Rent of £580 per month.
28. The provisions of the Rent Acts (Maximum Fair Rent) Order 1999 require that the registered rent is either the capped Fair Rent, details of which are attached to this Decision, or the Fair Rent.
29. As set out above, the capped rent is determined by a formula that has regard to the increase in the Retail Price Index since the date of the last rent registration. However, in calculating the Maximum Fair Rent, section 2 (5) of The Rent Acts (Maximum Fair Rent) Order 1999 states that, in calculating the capped rent "**...no account shall be taken of any variable sum to be included in the registered rent in accordance with section 71 (4) of the 1977 Act.**"
30. It is therefore the case that indexation should only be applied to the net amount (i.e., exclusive of the service charge) rather than gross amount. In this regard, the existing net rent is £460.96 which means that the capped rent as

at the date of this Determination would be £587.50 pm plus the service charge.

31. The net Fair Rent is below the net capped rent. Therefore, the net Fair Rent of **£580 per month** applies.
32. However, the gross registered rent includes the service charge and it is therefore necessary for the Tribunal to consider the amount of service charge to be added on.
33. In this context, the Tribunal is unclear as to why the Rent Officer decided to reduce the service charge element from £163.39 pm to £116.97 pm.
34. From the documentation provided to the Tribunal, the amount of £163.39 pm appears to relate to the financial year with effect from April 2023 and, bearing in mind that the revised registered rent takes effect from the date of this Determination, it is therefore apparent that the estimated service charge is current.
35. Having reviewed the estimated service charge, the Tribunal notes that, comparative to the previous year, the most significant change comprises the increase in the electricity budget from £13,153.41 as actually incurred in the previous financial year, to a budgeted amount of £31,532.15 in the current year such that the Tenant's annual contribution for this element has increased from £398.59 to an estimated amount of £955.52 equating to £79.62 per month.
36. Whilst this is a large increase in cost, the reality is that energy prices have increased dramatically and, from a budgeting perspective, this is not unreasonable.
37. It is therefore the Tribunal's decision that the Registered Rent is £580 pm in respect of the net rent plus £163.39 pm for the service charge, resulting in a **Gross Registered Rent of £743.39 per month.**
38. The Tribunal also directs that the revised registered rent takes effect from the date of this Determination.
39. **This rent is the maximum that can be charged to the Tenant and there may be circumstances in which the Landlord decides not to charge the full amount. The Tenant is therefore encouraged to contact the Landlord to ascertain the actual amount that the Landlord requires in payment.**

**Name:** Peter Roberts FRICS CEnv

**Date:** 27 November 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 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 to the person making the application (regulation 52 (2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rule 2013).

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.

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

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

**Notice of the Tribunal Decision**

Rent Act 1977 Schedule 11

Address of Premises

15 Dinsdale Court, Undercliffe Road  
West, Felixstowe, IP11 2BX

The Tribunal members were

Peter Roberts FRICS CEnv

Landlord

Orbit Housing Association

Tenant

Ms D Lynes

1. The fair rent is

£743.39

per

month

(excluding water rates and council tax  
but including any amounts in paras  
3&4)

2. The effective date is

27 November 2023

3. The amount for services included in  
the rent is

163.39

Per

Month

4. The amount for fuel charges (excluding heating and lighting of common parts) not  
counting for rent allowance is

Nil

Per

N/A

not applicable

5. The rent is not to be registered as variable.

6. The capping provisions of the Rent Acts (Maximum Fair Rent) Order 1999 apply

7. Details (other than rent) where different from Rent Register entry

Chairman

Peter Roberts  
FRICS CEnv

Date of decision

27 November 2023



## MAXIMUM FAIR RENT CALCULATION

Address of premises

15 Dinsdale Court, Undercliffe Road West,  
Felixstowe, IP11 2BX

LATEST RPI FIGURE	x		377.8		
PREVIOUS RPI FIGURE	y		308.6		
x		377.8	minus y	308.6	= (A) 69.2
(A)		692	divided by y	308.6	= (B) .004238
First application for re-registration since 1 February 1999					No
If yes (B) plus 1.075 = (C)					N/A
If no (B) plus 1.05 = (C)					1.274238
Last registered rent* <small>*(exclusive of any variable service charge)</small>		460.96	Multiplied by (C) =		587.373
Rounded up to the nearest 50 pence =		587.50			
Variable service charge (Yes/No)		Yes			
If YES add amount for services =		163.39			
<b>MAXIMUM FAIR RENT =</b>		750.89	per		month

### Explanatory Note

1. The calculation of the maximum fair rent, in accordance with the formula contained in the Order, is set out above.
2. In summary, the formula provides for the maximum fair rent to be calculated by:
  - a) increasing the previous registered rent by the percentage change in the retail price index (the RPI) since the date of that earlier registration and
  - b) adding a further 7.5% (if the present application was the first since 1 February 1999) or 5% (if it is a second or subsequent application since that date).

A 7.5% increase is represented, in the calculation set out above, by the addition of 1.075 to (B) and an increase of 5% is represented by the addition of 1.05 to (B)

The result is rounded up to the nearest 50 pence
3. For the purposes of the calculation the latest RPI figure (x) is that published in the calendar month immediately before the month in which the Committee's fair rent determination was made.

4. The process differs where the tenancy agreement contains a variable service charge and the rent is to be registered as variable under section 71(4) of the Rent Act 1977. In such a case the variable service charge is removed before applying the formula. When the amount determined by the application of the formula is ascertained the service charge is then added to that sum in order to produce the maximum fair rent.