



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

Case reference : **CAM/42UF/F77/2023/0036**

HMCTS code : **P:PAPERREMOTE**

Property : **14 Eastern Way, Bury St Edmunds,
Suffolk, IP32 7AB**

Applicant (Landlord) : **Mr A Archer**

Respondent (Tenant) : **Mr G Drane**

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 £915.50 per month effective from 27 November 2023.

Reasons

Background

1. On 4 June 2023 the Landlord made an application to register the rent of the Property at £775 per month.
2. The Rent Officer registered a Fair Rent of £775 per week on 31 July 2023 effective from 2 August 2023. This was in lieu of the previous rent of £690 per month which was registered on, and effective from, 5 February 2021.
3. The Landlord objected by way of email dated 18 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 inspected the Property on 30 October 2023 accompanied by the Tenant.
6. The Property comprises a semidetached brick and tile house dating back to the 1970/80's and provides a living room, dining room, kitchen and hallway at ground floor level together with three good sized bedrooms, one small bedroom, shower-room and WC at first floor level.
7. The Landlord has installed double glazing and central heating but the Tenant has provided flooring throughout, replaced the lounge door, installed guttering on the porch, installed the rear fence and provided his own cooker and washing machine.
8. The kitchen is extremely dated and there is evidence of historic cracking in the ceiling of the bedroom located over the garage which has a flat roof.
9. The Tenant has maintained the Property in good decoration and there is no evidence of damp, mould or condensation.
10. The Tribunal understands that the Property extends to 126.7 sqm which is assumed to be calculated on a Gross Internal Area basis.

The Law

11. 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).

12. 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.”*

13. 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.”*

14. 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.”

15. 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.

16. 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).”*

17. 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.”*

18. Section 71 (1) of the Act provides that the registration of the rent takes effect from the date that the Tribunal makes its decision.

19. 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.

20. 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

21. The Landlord emailed the Rent Officer on 18 August 2023 contending, inter alia, that:

“...it was also clear that none of the agents consider the location to be a disadvantage (as the sale of 19 Eastern Way last year affirmed...” and

“... the achievable rent in its existing condition was considerably higher than the £1,170 you alluded to...” and

“...the discounts you apply to arrive at the rental value seem unwarranted...”

22. The Landlord made further submissions dated 17 September 2023 in which the main points raised can be summarised as follows.
- The notational rent level of £1,170 per month used by the Rent officer as his starting point is too low
 - Local estate agents have suggested rents ranging from £1,100 to £1,500 with the most reliable opinion considered to be £1,200 per month
 - There is no real evidence of scarcity
 - Whilst the location is unusual it is popular with inhabitants and there is no justification for a deduction comparative to other locations set out in his evidence
23. The Landlord also attached an analysis of asking rents and enclosed copies of letting particulars.
24. The Landlord submitted a further analysis of rental evidence by way of email dated 23 October 2023

Representations –Tenant

25. The Tenant did not make any written representations.

Determination

26. 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.
27. 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.
28. The Tribunal notes that the Landlord is critical of the Rent Officer's starting rent of £1,170 per month (i.e., £270 per week) which has been reduced to £1,053 per month on account of "locational issues".
29. The Landlord referred the Tribunal to opinions from three agents which, having regard to the locality, range from £1,100 to £1,500 with Shires Residential advising £1,200 per month.
30. The Landlord also refers to the sale of 19 Eastern Way which, according to the Land Registry sold for £270,000 on the 5 August 2022. Photographs of this property are available on Rightmove together with floor plans. As referred to by the Landlord, this property was also sold at auction on the 29 October 2020

for £141,000 and the online auction particulars state that it was subject to an AST lease at £7,980 per annum increasing to £8,160 per annum (which equates to £680 per month) from 5 November 2020.

31. The Tribunal has also noted the Landlord's comments in respect of Bright Close, Kelso Road and Prigg Walk in respect of access and location.
32. Nevertheless, the road surface to Eastern Way is poor and the Property is located in the middle of an industrial estate with the associated light and smell pollution. On the other hand, the Property is tucked away and the privacy, to a certain extent, counterbalances the drawbacks.
33. The Tribunal has therefore weighed the evidence and considers that, if the property was in a condition commensurate with market expectations and on the basis of a modern lease, the rent would be likely to be in the region of £1,200 pm.
34. Having calculated the market rent, it is then necessary to deduct to account for works undertaken by the Tenant as set out above.
35. With regard to scarcity, the Tribunal notes from online searches that there does not appear to be a current lack of three to four semi-detached properties available on the market in this general location and considers that a scarcity allowance is not warranted on this occasion.
36. The Tribunal therefore concludes that the Fair Rent as at the date of this Determination is £960 per month.
37. However, 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.
38. 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.
39. The Tribunal notes that the previous rent detailed on the Rent Register is £690 per month. The current calculated capped rent is therefore £915.50 per month.
40. The Fair Rent is above the capped rent. Therefore, the capped rent of **£915.50 per month** is to be registered.
41. The Tribunal also directs that the revised registered rent takes effect from the date of this Determination.

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).

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Notice of the Tribunal Decision

Rent Act 1977 Schedule 11

Address of Premises

14 Eastern Way, Bury St Edmunds IP32
7AB

The Tribunal members were

Peter Roberts FRICS CEnv

Landlord

Mr A Archer

Tenant

Mr G Drane

1. The fair rent is

915.50

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

Nil

Per

N/A

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

14 Eastern Way, Bury St Edmunds IP32 7AB

LATEST RPI FIGURE	x	377.8	
PREVIOUS RPI FIGURE	y	296	
x		377.8	minus y
			296
			= (A)
		81.8	
(A)		81.8	divided by y
			296
			= (B)
		0.2763514	
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)			1.3263514
Last registered rent*		690	Multiplied by (C) =
*(exclusive of any variable service charge)			915.182
Rounded up to the nearest 50 pence =		915.50	
Variable service charge (Yes/No)		No	
If YES add amount for services =		N/A	
MAXIMUM FAIR RENT =		915.50	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.