



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

Case reference : **CAM/22UH/F77/2023/0016**

HMCTS code : **P:PAPERREMOTE**

Property : **26 Millfield High Ongar Essex CM5
9RJ**

Applicant (Tenant) : **Mr and Mrs Bauckham**

Respondent (Landlord) : **Mountview Estates PLC**

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 : **19 June 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 £212.54 per week effective from 19 June 2023.

Reasons

Background

1. On 6 January 2023 the Landlord made an application to register the rent of the Property at £278 per week.
2. The Rent Officer registered a Fair Rent of £219 per week on 22 February 2023 effective from 4 April 2023. This was in lieu of the previous registered rent of £172.50 per week which was registered on 17 February 2021 and effective from 4 April 2021.
3. The Applicant objected by way of an email received by the Rent Officer on 16 March 2023. The matter was referred to the First Tier Tribunal, Property Chamber.
4. The Tribunal issued directions on 5 April 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 May 2023 accompanied by the Tenant. The Landlord did not attend.
6. The Property comprises a semi-detached property of brick and tile construction providing three bedrooms and bathroom at first floor level together with a lounge which has been temporarily partitioned to form an additional bedroom, lounge, kitchen and single storey storage at ground floor. There is a garden to the rear and a garage to the side.
7. The Property would benefit from modernisation, new front and rear doors, repairs to the soffits and replacement of “blown” double glazed windows.
8. The Landlord installed the kitchen units and central heating together with bath, WC and sink but the white goods belong to the Tenant.
9. The Council Tax Band for the Property is D.
10. The Property has been assessed for EPC purposes as a Band C property with a floor area of 89 sqm.

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 – Tenant

21. The Applicant stated:

“The property is in dire need of repairs and as such feel the increase is not in standing with current circumstances. Not to mention the financial hardships we are all having to deal with at this present time.”

22. No further submissions were made.

Representations – Landlord

23. The Respondent wrote to the Tribunal on 19 April 2023 stating:

“We are in agreement with the Rent Officer and have nothing further we wish to add...”

24. No further representations have been received by the Tribunal.

Determination

25. 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.

26. 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.

27. Neither party has provided any evidence of rental transactions for consideration by the Tribunal. In this regard, there does not appear to any properties in the immediate vicinity available to let and the most recent sale within Millfield was of 45 Millfield which sold for £300,000 on 26 February 2021. Furthermore, there are only five properties available to let within the CM5 postcode area and all five properties are located within the Ongar area.

28. It is noted that the Rent Officer adopted a starting rent (i.e., prior to deductions) of £1,500 per month which equates to £346.15 per week. The Tribunal considers that this is on the higher end of the potential range of rental values but is a useful starting point.

29. However, this assumes that the Property has been modernised in respect of floor coverings, curtains, kitchen and bathroom units, windows and doors as well as being fully decorated and kept in repair.

30. In this regard, the woodwork to the Property (i.e., window frames, soffits and doors) are in disrepair and a number of the windows are “blown” and/or the rubber seals have perished such that they are no longer effective at retaining heat such that there is consequential impact on heating bills. In addition, the felt roof to the rear single storey extension is in poor condition and there is evidence of mould.

31. The Tribunal also understands that the white goods, floor fittings and curtains comprise tenant’s improvements such that they fall to be disregarded.

32. The Tribunal is unable to ascertain whether the Rent Officer has previously inspected the Property and, therefore, whether or not the disrepair was

accounted for within their determination. Notwithstanding this point, the Tribunal are required to have regard to such matters and consider the rent that might be achieved if the Property was to be let in its actual state of repair and fit out but disregarding the Tenant's improvements.

33. In this context, the Tribunal notes the Rent Officer's deduction from the market rent assessment of £75 per week to account for these matters but considers that a greater allowance is warranted. The Tribunal has therefore deducted a total of £110 per week resulting in an adjusted rent of £236.15 per week.
34. The Tribunal is required to have regard to scarcity. In this regard, it is clearly apparent that there is a shortage of similar properties in this location such that an allowance of 10% is warranted.
35. The resultant Fair Rent is therefore £212.54 per week. This compares to the Rent Officer's Fair Rent of £245 per week.
36. 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 decided by the Tribunal, whichever is the lower.
37. The Tribunal notes that the previous rent detailed on the Rent Register is £157.50 per week. The current calculated Capped Rent is therefore £226 per week. This is higher than the Capped Rent calculated by the Rent Officer of £219 per week. This is because the relevant RPI as at the date of the Rent Officer's assessment was 360.3 whereas the latest published RPI (as at April 2023) is 372.3.
38. The Fair Rent is below the Capped Rent. Therefore, the increase to the Fair Rent of **£212.54 per week** is to be registered with effect from the date of this Decision.

Name: Peter Roberts FRICS CEnv

Date: 19 June 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 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.

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