



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

Case Reference : **LON/OOAM/F77/2023/0341**
Property : **3 Aden Grove London N16 9NP**
Tenant : **Tereasa Walshe**
Landlord : **Mr Singh**
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
Judge Bernadette MacQueen**
HMCTS Code : **Hearing with inspection**
Date of Decision : **7th December 2023**
Date of Statement of Reasons: **7th December 2023**

Statement of Reasons

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Decision

1.The decision of the Tribunal is that the Fair Rent of £206.00 per week is determined with effect from 7th December 2023

Background

2.The Rent Officer, received an application from the landlord dated 20th July 2023 to re-register a fair rent, at £300.00 per week.

3.Prior to the application, the Rent Officer had registered a rent of £116.00 per week with effect from 27th July 2009 following a First Tier Tribunal decision. Following the application, the Rent Officer registered a fair rent of £198.00 per week with effect from 19th September 2023.

4.The tenant and the landlord 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 10th November 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

6. 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/Hearing

Landlord

7. The landlord submissions comprised the Application for Re Registration of a Fair Rent, the completed Reply Form and note detailing expenditure of the property dated 20th July 2023.

8. The expenditure included amongst other items, costs associated the roof, external maintenance installation of central heating.

9. The valuer for the landlord supplied a number of comparables for market rent, indicating that in her view the average rent for a two-bedroom flat was £2750 per month.

The valuation submitted by the landlord's valuer drew on contemporary market lettings which she felt supported a contemporary market letting £2750 per month.

10. To this starting figure, was applied a deduction for condition of 25% and further deduction of 10% for scarcity. Finally an allowance of 50% because the accommodation was not self-contained, resulting in a proposed fair rent of £250.00 per week.

The landlord's valuer also contended that the improvements and repairs the landlord had carried out meant that paragraph 7 of the Rent Acts (Maximum Fair Rent) Order 1999 was engaged and so no capping was appropriate for this determination.

Tenant

11. The tenant's submissions comprised a completed Reply Form and letter of objection to the registered rent. The tenant Tereasa Walshe presented her submission to the tribunal supported by her niece Sarah Ferandes. The evidence first described the accommodation, and the works of improvement she had carried out since moving in in 1980. Additionally, she described the building works by the landlord to the house within which the accommodation is located including the installation of central heating by the landlord. In summary with regard to the rental level she felt the recent registered rent was too high.

The Inspection

12. The inspection took place on 7th December 2023, in the presence of the landlord and tenant. The accommodation is within a detached mid nineteenth century town house. There are two occupations in the building. The subject tenancy comprises the whole of the lower ground floor and two rooms on the raised ground floor.

13. The lower ground floor accommodation comprises a bathroom with WC / handbasin and bath, and flooring. There was an electric fan heater in the bathroom. Additionally there was a towel railed plumbed in the central heating, Other than the heated towel rail the bathroom fittings were installed by the tenant. Also on the lower ground floor was a dining room. This contained a fire surround, windows which were wooden sash single glazed, two radiators and some electric sockets. Other than the central heating the tenant supplied the remainder. The kitchen which leads to the garden, was fitted with units, there was raised flooring, and central heating boiler and radiator. Additionally original single glazed windows were in place. Other than the central heating the remainder was fitted by the tenant. Finally on the lower

ground floor was a store partially built under the entrance stairs to the building. It had some natural light and was damp in places and contained no central heating.

14. On the raised ground floor, the front room was used as a living room, this had single glazed sash windows and generous in proportion, electrical sockets and lighting was present. Where the external wall abutted the ceiling on the right of the windows, there was evidence of a leak, causing water penetration. Finally on the raised ground floor there was a large room used by the tenant as a bedroom, this had single glazed windows overlooking the garden.

15. There are two occupations in the building, the front door is communal, the hallway and staircases are communal. Whilst the lower ground floor had a lockable door, as did the two rooms on the raised ground floor, access between the two sets of rooms required crossing the communal hallway.

The rear garden is used exclusively by the tenant.

Determination

Reasons for Decision

16. 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.

17. 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.

18. The Tribunal next needed to determine whether the works carried out by the landlord between the last registration in 2009 and the date of the hearing constitute sufficient to reach the 15% threshold.

19. 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 2009 and market movements and inflation will have caused an increase is not material. The test is the property taken at the date of determination, comparing the rental value with and without the repairs and improvements.

20. The works are itemised in the landlord's evidence, some are specific to the accommodation - that is installation of central heating, and some are to the wider building. Whilst none of them in themselves is altering the nature of the property, they do amount collectively to an increase of its rental level.

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

The tribunal adopts £2750.00 per month proposed by the landlord's valuer as the starting point.

Market rent - derived from comparable properties in contemporary letting condition
£2750.00 per month.

Deduction for condition 35% £ 962.50 per month

£1787.50 per month

Deduction for terms and conditions

of the tenancy compared with assured

shorthold comparables 10% £178.75 per month

£1608.75 per month

Deduction for scarcity under Act 20%

£321.75 per month

£1287.00 per month equivalent to £297.00 per week.

Allowance for non-self-containment- 40%

£178.20 per week say £178.00 per week

22. The rental value of property determined under section 70 with landlords' repairs carried out since last registration in 2009.

The tribunal adopts £2750.00 per month as the starting point.

Market rent - derived from comparable properties in contemporary letting condition
£2750.00 per month.

Deduction for condition 25% £ 687.5 per month

£2062.50 per month

Deduction for terms and conditions

of the tenancy compared with assured

shorthold comparables 10% £206.25 per month

£1856.25 per month

Deduction for scarcity under Act 20%

£371.25 per month

£1485.00 per month equivalent to £342.69 per week.

Allowance for non-self-containment 40%

£205.60 per week, say £206.00 per week.

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

Without repairs £178.00 per week, with repairs £206.00 per week.

Increase in value £28.00 per week this as a percentage of the pre repaired and pre improvements of £178.20 is 15.7%

The figure of 15.7% is in excess of 15% so the capping limit provided by the Rents Act (Maximum Fair Rent) Order 1999 paragraph 7 is engaged.

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

24. 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 £206.00 per week.

25. Accordingly, the sum of £206.00 per week will be registered as the fair rent with effect from 7th December 2023, being the date of the Tribunal's decision.

Valuer Chair: Richard Waterhouse FRICS

Decision Date: 7th December 2023

Extended reasons: 7th December 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).
