



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

Case reference : **CHI/00HY/F77/2023/0049**

Property : **2 Newmead Cottages, Maiden
Bradley, Warminster, Wiltshire, BA12
7HJ**

Applicants (Tenant) : **Mr Phillip Bath**

Representative : **None**

**Respondent
(Landlord)** : **Lord Seymour's Estate**

Representative : **None**

Type of application : **Section 70 of the Rent ACT 1977**

Tribunal members : **Mr D Jagger MRICS
Mr J Reichel BSc MRICS
Mr S Hodges FRICS**

Venue : **Paper Determination**

Date of Decision : **28 November 2023**

Reasons

The Tribunal determines £682.50 per month is to be registered as the fair rent for the above property with effect from 28th November 2023 being the date of the Tribunal's decision.

The reasons for this decision are set out below.

Reasons

Background

On the 21st June 2023 the landlord, applied to the Valuation Office Agency (Rent Officer) for registration of a fair rent of what appears to be £720 per month for the property, although the figure in the application was difficult to fully identify.

The rent payable at the time of the application was £649 per month, effective from 18th January 2021. This figure includes Water Rates which are in the region of £40 per month.

On 9th August 2023 the Rent Officer registered a fair rent of £662.10 per month effective from that date. The rent increase imposed by the Rent Officer had not been “capped” or limited by the operation of the Rent Acts (Maximum Fair Rent) Order 1999 (the Order).

By a letter dated 14th August 2023 the landlord objected to the rent determined by the Rent Officer and the matter was referred to this Tribunal.

On the 26th October 2023, the Tribunal wrote to the parties inviting them to confirm contradictory evidence in connection with fittings that was contained in the bundle of documents presented to the Tribunal.

The law

When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, must have regard to all the circumstances including the age, location and state of repair of the property. It also must disregard the effect of (a) any relevant tenant's improvements and (b) the effect of any disrepair or other defect attributable to the tenant, on the rental value of the property. Section 70(2) of the Rent Act 1977 imposes on the Tribunal an assumption that the number of persons seeking to become tenants of similar dwelling house 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. This is commonly called ‘scarcity’.

In *Spath Holme Ltd v Chairman of the Greater Manchester Council* (1995) 28 HLR 107 and *Curtis v London Rent Assessment Tribunal* [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).

The Rent Acts (Maximum Fair Rent) Order 1999 places a “cap” on the permissible amount of the increase of a fair rent between one registration and the next, by reference to the amount of the increase in the United Kingdom Index of Retail Prices between the dates of the two registrations. Where the cap applies the Rent Officer and the Tribunal is prevented from increasing the amount of the fair rent that it registers beyond the maximum fair rent calculated in accordance with the provisions of the Order and the mathematical formula set out in the Order.

By article 2(7) of the 1999 Order the capping provisions do not apply “*in respect of a dwelling-house if because of a change in the condition of the dwelling-house or the common parts as a result of repairs or improvements (including the replacement of any fixture or fitting) carried out by the landlord or a superior landlord, the rent that is determined in response to an application for registration of a new rent under Part IV exceeds by at least 15% the previous rent registered or confirmed.*”

Facts found without Inspection.

In the circumstances, the Tribunal did not consider it necessary and proportionate to undertake an inspection of the property. The Tribunal was assisted by Google Maps, Rightmove and relied on its expert knowledge of the Warminster area.

The property is a two storey semi detached Victorian cottage located in a semi-rural area.

The accommodation comprises: three bedrooms, living room, kitchen, utility room, ground floor bathroom/WC. rear garden, garage and off street parking.

There is no central heating, Double glazed windows installed by the previous landlord in 2010-2016.

Terms of the tenancy

The Tribunal issued Directions on the 20th September 2023 which set out a timetable for the matter and requested the tenant to submit a copy of the tenancy agreement. This was not forthcoming; however, the tenant confirms he has lived the property for almost 39 years.

It is assumed this made the landlord responsible for structural repairs and external decorations. The tenant is responsible for internal decorations. It is assumed the property was let unfurnished.

Tenant's improvements

In his completed Reply Form and further letter the tenant confirms the following improvements have been undertaken during the tenancy: white goods, carpets and curtains, installation of kitchen units.

Evidence

The Tribunal had copies of the Valuation Office Agency correspondence including the rent registers effective 18th January 2021 and 9th August 2023 together with the calculations for the most recent registration.

In his Fair Rent Appeal Statement, the tenant challenged the proposed increase in rent and set out the condition of the property which is in need of general modernisation and has damp issues and included helpful photographs. The Landlord also submitted a completed Fair Rent statement which provided addresses of three 2 and 3 bedroom Estate properties which are let at £900-£1,150.

Valuation

In the first instance the Tribunal determined what rent the landlord could reasonably be expected to obtain for the property in the **open market** if it were let today in the condition that is considered usual for such an open market letting.

Based upon the limited evidence provided by the landlord together with its knowledge of the Warminster area, the Tribunal consider that the subject property, if finished to a reasonable standard would be likely to attract a rent let on an assured shorthold tenancy of £1,050 per month.

Next, the Tribunal needs to **adjust that hypothetical rent of £1,050 per month** to allow for the differences between the terms of this tenancy, the unmodernised condition, no central heating, dated sanitary fittings and kitchen units, the lack of white goods, carpets and curtains, and the tenants decorating responsibilities (disregarding the effect of tenant's improvements and any disrepair or other defect attributable to the tenant).

The Tribunal has considered very carefully the information prepared by the Tenant.

Using its own expertise, the Tribunal considers that deductions of approximately 35% should be applied in order to take into account the terms of the tenancy, the condition of the property and the lack of carpets, curtains and white goods and no central heating. This provides a deduction of £367.50 per month from the hypothetical rent. This reduces the figure to £682.50 per week.

It should be noted that this figure cannot be a simple arithmetical calculation and is not based upon capital costs but is the Tribunal's estimate of the amount by which the rent would need to be reduced to attract a tenant.

Scarcity

Thirdly, the Tribunal then went on to consider whether a deduction falls to be made to reflect scarcity within the meaning of section 70(2) of the 1977 Act. The tribunal followed the decision of the High Court in *Yeomans Row Management Ltd v London Rent Assessment Committee*, in which it was held that scarcity over a wide area should be considered rather than scarcity in relation to a particular locality.

In the Tribunals opinion there should not be a deduction for scarcity as it is considered that demand does not significantly outweigh supply of rented properties in the general area.

Conclusion

The capping provisions of the Rent Acts (Maximum Fair Rent) Order do not apply and therefore the above figure applies. For information, the capped rent is accordance with the attached calculations.

Therefore, £682.50 per month is the fair rent to be registered limited by the Rent Acts (Maximum Fair Rent) Order 1999 with effect from the 28th November 2023 being the date of the Tribunals decision.

Detailed calculations for the capped maximum fair rent are provided on the back of the decision form.

D Jagger MRICS Valuer Chair

28th November 2023

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpslondon@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.