



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

**Case reference** : CHI/29UD/F77/2023/0072

**Property** : 78 High Street, Swanscombe,  
Kent, DA10 0AH

**Applicant Landlord** : Prof L Lyons

**Representative** : None

**Respondent Tenant** : Ms M Robinson

**Representative** : Citizens Advice North and West Kent

**Type of application** : Determination of registered rent  
Section 70 Rent Act 1977

**Tribunal member(s)** : Mrs J Coupe FRICS  
Ms C Barton MRICS  
Mr N Robinson FRICS

**Date of decision** : 11 December 2023

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**REASONS**

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## Decision of the Tribunal

**On 11 December 2023 the Tribunal determined that a sum of £845.50 per month will be registered as the Fair Rent with effect from the same date.**

## Background

1. On 14 August 2023 the Rent Officer received an application from the landlord for registration of a Fair Rent of £1,250.00 per month in lieu of the passing rent of £675.00 per month.
2. On 28 September 2023 the Rent Officer registered a rent of £713.25 per month effective from 9 November 2023.
3. On 12 October 2023 the Rent Officer received an objection to the registered rent from the landlord.
4. The tenancy appears to be a statutory protected tenancy commencing 1 July 1987. The Tribunal was not provided with a copy of the tenancy agreement.
5. The Rent Register provides that the landlord is responsible for repairs and external decorations. The tenant covenants to decorate internally. Section 11 Landlord and Tenant Act 1985 applies.
6. On 1 November 2023 the Tribunal issued Directions advising the parties that it considered the matter suitable for determination on papers unless either party objected, in writing, within 7 days. The parties were also advised that no inspection would be undertaken. No objections were received.
7. The Directions required the landlord and tenant to submit their statements to the Tribunal by 15 November 2023 and 29 November 2023 respectively. Both parties complied.
8. Having reviewed the parties' submissions, the Tribunal concluded that the matter was capable of being determined fairly, justly and efficiently on the papers, consistent with the overriding objective of the Tribunal.
9. These reasons address in **summary form** the key issues raised by the parties. They do not recite each individual point referred to in submissions. The Tribunal concentrates on those issues which, in its view, are fundamental to the determination.

## Law

10. When determining a Fair Rent the Tribunal, in accordance with section 70 of the Rent Act 1977, must have regard to all the circumstances including the age, location and state of repair of the property. The Tribunal must disregard the effect, if any, of any relevant tenant's improvements and the effect of any disrepair or any other defect attributable to the tenant or any predecessor in title under the regulated tenancy, on the rental value of the

property.

11. In *Spath Holme Ltd v Chairman of the Greater Manchester etc Committee* (1995) 28HLR 107 and *Curtis v London Rent Assessment Committee* (1999) QB 92 the Court of Appeal emphasised:

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 to that of a regulated tenancy, and

That for the purposes of determining the market rent, assured tenancy market rents are usually appropriate comparables; adjusted as necessary to reflect any relevant differences between the comparables and the subject property.

12. The Rent Acts (Maximum Fair Rent) Order 1999 restricts the amount by which the rent, less variable service charge, may be increased to a maximum 5.00% plus Retail Price Index since the last registration.
13. Under paragraph 7 of the Order an exemption to this restriction applies where the Landlord proves that repairs or improvements undertaken have increased the rent by at least 15% of the previous registered rent.

### **The Property**

14. In accord with current policy, the Tribunal did not inspect the property, instead relying on information provided, information readily available online and viewing the exterior of the property via publicly available online platforms.
15. The property is a two storey mid-terraced house within a row of similar age and style properties, built between 1800-1918. Neither party provided any photographs. Online images appear to show the property to be of traditional masonry construction under a pitched roof clad in tiles. The property is situated in an established residential area close to local facilities and within a short distance of public transport.
16. The property has a living/dining room which was previously two rooms, kitchen and bathroom/WC at ground floor level, and two bedrooms at first floor level. The property has a garden, garage and off-road parking.
17. The parties concur that the property has no central heating and only partial double glazing.
18. The landlord states that carpets and a cooker are provided, whilst the tenant says that the floor coverings, carpets and white goods are provided by her.
19. Having consulted the National Energy Performance Register online, the Tribunal noted the property to have an Energy Performance Certificate (EPC) Rating of F and a floor area of 59m<sup>2</sup>.

### **Submissions – Landlord** (summarised)

20. In his initial objection to the Rent Officer's determination the landlord raises a number of points including that the quantum of the rent increase registered is less than that registered two years ago; that the tenant has no responsibility or financial liability for repairs; the tenant is only responsible for decorations; and that comparable properties let by the landlord on the open market currently achieve £1,150.00 per month and £1,250.00 per month.
21. In his statement of case the landlord expands on the above points and lists various works of repair and maintenance undertaken to the property during the period 2018-2022 which include: flashing repairs to chimneys; render repairs; roof strengthening and fire prevention measures; loft insulation; and the replacement of an immersion heater.
22. The landlord is unable to comment on either the age or condition of the bathroom or kitchen fittings as, it is alleged, the tenant has replaced such without landlord approval.
23. The landlord states that the property is situated within close proximity of public transport links.
24. The landlord relies on the rents achieved on his own portfolio of five houses within the same row as the subject which, with the exception of central heating, he states are in an equivalent internal condition to the subject. Three such properties (No's 76, 80 and 84 High Street) are let to long-term tenants at a rent of £950.00 per month each. No. 74 High St and No.82 High Street are let at rents of £1,150.00 per month and £1,250.00 per month respectively and it is these two comparables which the landlord asserts provide evidence of "true market rents".
25. The landlord further relies upon an advertisement on the online letting platform Rightmove, whereby a two-bedroom terraced house in Sun Road, Swanscombe was offered as available for rent at an asking price of £1,450.00 per month. The advertisement describes the house as refurbished and with a new fitted kitchen, ground floor bathroom and double glazing throughout. The landlord describes the property as within close proximity of the subject and "very comparable".
26. The landlord considers it likely that demand for similar properties exceeds supply, due to increased interest rates and landlords exiting the market.

### **Submissions – Tenant** (summarised)

27. The tenant lists various improvements made to the property by both the tenant and the landlord. The tenant explains that all alterations were undertaken with the agreement of the previous landlord who inspected upon completion. Such works included: erection of a garage in 1988; fitted kitchen in 1987, refurbished in 2023; kitchen and bathroom flooring 2023; bathroom tiling c.2015; replacement front door. The tenant says that upon taking the tenancy the floors were bare boards and concrete, and that there

was no kitchen.

28. The tenant comments that the landlord's comparable properties, in contrast with the subject, each have the benefit of full central heating and double glazing. Two of the properties are said to have the benefit of a new bathroom installed by the landlord however, neither was identified.
29. The tenant says that the summerhouse to which the landlord refers is located in the neighbour's garden and does form part of this property. The garage is solely a garage and, having been erected by the tenant in 1988 is a tenant's improvement.
30. The tenant did not provide, or rely upon, any comparable rental evidence, nor did she provide comment as to whether the demand for such properties exceeds supply.

### **Determination**

31. The Tribunal has carefully considered all the submissions before it.
32. 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.
33. The landlord relies upon five agreed rents for properties in the same row of houses as the subject and within their ownership, the two most recent having let at £1,150.00 and £1,250.00 per month. The tenancy agreements were not provided in evidence. In contrast to the subject, the comparables had the benefit of central heating and, the tenant suggests, double glazing. However, without details of these properties or evidence of the agreed rentals the Tribunal was unable to confirm this.
34. The comparable at Sun Road, Swanscombe, for which advertising details were provided, is described as refurbished and providing a new fitted kitchen and double glazing throughout. The Tribunal find this comparable to be in a superior condition to the subject property.
35. In regard to an additional bedroom, the landlord states:  
"we believe the garage may be converted into another useable room (summer house)."

In response, the tenant states:

"Landlord states that we have a summerhouse with a bedroom. This is incorrect. The summerhouse is in our neighbour's garden."

The Tribunal refers to an inspection of the property undertaken by the Rent Officer on 28 September 2023 and contemporaneous notes which recorded:

"RR1 states that there is a summerhouse with an extra bedroom but on inspection this was just a garage."

The Tribunal finds that no evidence has been adduced to support the landlord's assertion of an additional room. In the absence of such

evidence, the Tribunal prefers the statement of the tenant on the point, such position being corroborated by the Rent Officer following an independent inspection. Accordingly, the Tribunal find the property provides two bedroom accommodation.

36. Having weighed the landlord's comparable evidence against the Tribunal member's own experience as a specialist and expert property Tribunal and its knowledge of rental values in the locality, the Tribunal determined the open market rent, in good tenable condition, to be £1,200.00 per month.
37. Once the hypothetical rent was established, it was necessary for the Tribunal to determine whether the property meets the standard of accommodation, repair and amenity of a typical modern letting. In this instance the Tribunal determined that the subject property falls short of the standard required by the market.
38. It is common ground between the parties that the property has no central heating and that hot water is provided via an electric immersion heater. Also, that the property only has partial double glazing. Both of which are contributory factors to the poor EPC rating. The majority of white goods, if not all, are provided by the tenant, as are some floor coverings and all curtains. The kitchen and bathroom fittings are tenants' improvements.
39. Furthermore, the tenant is responsible for the internal decoration of the property. The Tribunal considers such a covenant a greater burden than the normal responsibility for an assured shorthold tenant to keep the landlords' decorations in good order.
40. In reflection of such differences the Tribunal makes a deduction of 20% from the hypothetical rent to arrive at an adjusted rent of £960.00 per month.
41. The Tribunal then directed itself to the question of scarcity, as referenced in paragraph 11 above and, in arriving at its decision on the point, takes account of the following:
  - a. The Tribunal interpreted the 'locality' for scarcity purposes as being the whole area of Dartford and Gravesend (i.e. a sufficiently large area to eliminate the effect of any localised amenity which would, in itself, tend to increase or decrease rent);
  - b. Availability of property to rent;
  - c. Local Authority and Housing Association waiting lists;
  - d. Property rental prices which could be an indicator of increased availability of housing and a reduction in scarcity;
42. The tenant made no submissions on the point of scarcity, whilst the landlord considered that demand is likely to exceed supply. The members of the Tribunal have, between them, many years of experience of the residential letting market and that experience, coupled with the above, leads them to the view that there is currently no shortage of similar properties to let in the locality defined above. Accordingly, the Tribunal decline to apply a deduction for scarcity.

## **Maximum Fair Rent**

43. This is the rent calculated in accordance with the Maximum Fair Rent Order details of which are shown on the rear of the Decision Notice.
44. The Rent Acts (Maximum Fair Rent Order) 1999 restricts the amount by which the rent, less any variable service charge, may be increased, to a maximum 5% plus RPI since the last registration.
45. The only exception to this restriction 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. The Tribunal determined that such exception does not apply in this instance.
46. The rent to be registered in this application is limited by the Fair Rent Acts' (Maximum Fair Rent Order) 1999 because it is above the maximum fair rent that can be registered of £845.50 per month prescribed by the Order.
47. The Tribunal accordingly determines that the rent of **£845.50 per month is registered as the Fair Rent with effect from 11 December 2023**, that being the date of the Tribunal's decision.
48. The rental figure determined by the Tribunal is the maximum rent that can be charged for the property and is fixed until the next registration. The landlord is under no obligation to charge the full amount.

## **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 [rpsouthern@justice.gov.uk](mailto:rpsouthern@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.