



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

**Case Reference** : **LON/OOAH/F77/2023/0295**

**Property** : **Flat 9, Barnes Court, 75 Parchmore Road .  
Thornton Heath Surrey CR7 8LY**

**Tenant** : **Miss L Whitfield**

**Landlord** : **Orbit Housing Association**

**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  
Mr C Piarroux JP CQSW**

**HMCTS Code** : **Hearing on papers without inspection  
(paper, video, audio)**

**Date of Decision** : **4<sup>th</sup> December 2023**

**Date of Statement of Reasons:** **4<sup>th</sup> December 2023**

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## Statement of Reasons

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### Decision

1.The decision of the Tribunal is that the Fair Rent of £187.12 per week inclusive of £13.62 per week services is determined with effect from 4<sup>th</sup> December 2023

### Background

2.The Rent Officer, received an application from the landlord dated 19<sup>th</sup> June 2023 to re-register a fair rent, at £172.76 per week including £13.62 per week services.

3.Prior to the application, the Rent Officer had registered a rent of £146.90 per week including £10.90 per week services, with effect from 13<sup>th</sup> September 2021 following a First Tier Tribunal decision. Following the application, the Rent Officer registered a fair rent of £168.00 per week, including £9.41 per week for services , with effect from 13<sup>th</sup> September 2023,

4.In a letter dated 17<sup>th</sup> August 2023 the landlord Orbit 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 5<sup>th</sup> October 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**

### **Landlord**

7.The application form dated 17<sup>th</sup> May 2023 including the service charge breakdown.

8.Additionally, a completed Reply Form noting there was no request for an inspection nor a hearing, that the property comprised a living room, a kitchen, one bedroom, and a bathroom.

9.The property had central heating provided by the landlord, as was the double glazing. Carpets, curtains and white goods were supplied by the tenant.

10.The property has communal gardens and off-street parking.

11.The Reply Form also included a breakdown of the service charge, which shows as £13.62 per week.

### **Tenant**

12.The tenant submitted a completed Reply Form, received 25<sup>th</sup> October 2023. The form noted that no inspection was required, noting the accommodation comprising one living room, one kitchen and a bedroom. And separate bathroom.

13.Further it was noted that central heating was present, installed by the landlord, and that there was also double glazing, there was no indication on who had provided the double glazing.

14.Curtains, carpets and white goods were present, but these were provided by the tenant.

### **Determination**

#### **Reasons for Decision**

15. The Tribunal first had to determine discrepancies in the factual evidence provided by the parties. With double glazing, whilst the tenant notes its presence, there was under the Tenants Reply Form no indication who fitted it. The Landlords Reply Form similarly notes its presence but also notes the landlord fitted. The tribunal finds as a matter of fact that the landlord provided the double glazing.

16.The rental value of the property determined under section 70 is as follows;

Market rent - derived from comparable properties in contemporary letting condition  
£1400 per month equivalent to £323 per week

17.However assured shorthold tenancies do not require service charges to be paid. So adjusting for the requirement to pay service charge of £13.62 per week the market rent is £309.38 per week. So a tenant would pay £309.38 per week to occupy but with the additional liability to pay a service charge of £13.62 per week.

Deduction for condition    20%    £61.88 per week

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£247.50 per week

Deduction for terms and conditions

of the tenancy compared with assured

shorthold comparables      10%   £24.75 per week

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£222.75 per week

Deduction for scarcity under Act 20%

£44.55 per week

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£178.20 per week with liability to pay service  
charge of £13,62 peer week.

Rent including service charge is £191.40 per week.

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### **Rent Acts (Maximum Fair Rent) Order 1999**

18. The rent to be registered is limited by the Rent Acts (Maximum Fair Rent Order) 1999.

The rent calculated in accordance with section 70 of the Act is £191.40 including £13.62 per week attributed to services.

19. Accordingly, the sum of £187.12 per week inclusive of £13.62 per week services per week will be registered as the fair rent with effect from 4<sup>th</sup> December 2023, being the date of the Tribunal's decision.

**Valuer Chair: Richard Waterhouse FRICS**

**Decision Date: 4<sup>th</sup> December 2023**

**Extended reasons: 4<sup>th</sup> 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).

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