



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

Case Reference : **CHI/00ML/F77/2023/0073**

Property : **Flat 1
6 Norfolk Terrace
Brighton
BN1 3AD**

Applicant Landlord : **Prof L Lyons**

Representative : **Lyons Den Properties LLP**

Respondent Tenant : **Mr C Bailey**

Representative : **None**

Type of Application : **Rent Act 1977 (“the Act”) Determination
by the First-Tier Tribunal of the fair rent
of a property following an objection to
the rent registered by the Rent Officer.**

Tribunal Members : **Mr I R Perry FRICS
Mr M J Ayres FRICS
Mr J S Reichel MRICS**

Date of Inspection : **None. Determined on the papers**

Date of Decision : **3rd January 2024**

DECISION

Summary of Decision

On 3rd January 2024 the Tribunal determined a fair rent of £1,157 per month with effect from 3rd January 2024.

Background

1. On 21st August 2023 the Landlord applied to the Rent Officer for registration of a fair rent of £1,550 per month.
2. The rent was previously registered on the 15th November 2021 at £925 per month following a determination by the Rent Officer. This rent was effective from 15th November 2021.
3. A new rent was registered by the Rent Officer on the 4th October 2023 at a figure of £975 per month with effect from 15th November 2023.
4. On 31st October 2023 the Landlord's Agent objected to the new rent and the matter was referred to the First-Tier Tribunal Property Chamber (Residential Property) formerly a Rent Assessment Committee.
5. The Tribunal does not routinely consider it necessary and proportionate in cases of this nature to undertake inspections or hold Tribunal hearings unless either are specifically requested by either party or a particular point arises which merits such an inspection and/or hearing.
6. The Tribunal office issued directions on 29th November 2023 which informed the parties that the Tribunal intended to determine the rent on the basis of written representations subject to the parties requesting an oral hearing. No request was made by the parties for a hearing.
7. Both parties were invited to include photographs and video within their representations if they so wished and were informed that the Tribunal might also consider information about the property available on the internet.
8. Both Parties made submissions to the Tribunal, which were copied to the other Party.
9. These reasons address **in summary form** the key issues raised by the parties. They do not recite each and every point referred to either in submissions or during any hearing. The Tribunal concentrates on those issues which, in its opinion, are fundamental to the application.

The Law

10. When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, had regard to all the circumstances including the age, location and state of repair of the property. It also disregarded the effect of (a) any relevant tenant's improvements and (b) the effect of any

disrepair or 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) 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).
12. The Tribunal also has to have regard to the Rent Acts (Maximum Fair Rent) Order 1999 where applicable. Most objections and determinations of registered rents are now subject to the Order, which limits the amount of rent that can be charged by linking increases to the Retail Price Index. It is the duty of the Property Tribunal to arrive at a fair rent under section 70 of the Act but in addition to calculate the maximum fair rent which can be registered according to the rules of the Order. If that maximum rent is below the fair rent calculated as above, then that (maximum) sum must be registered as the fair rent for the subject property.

The Property

13. From the information provided and available on the internet, the property can be described as a self-contained basement flat within a 5-storey period property in central Brighton. The property is in a Conservation Area and is Grade II listed. All main amenities are available in the city.
14. The accommodation is described as including a Living Room, Kitchen, 2 Bedrooms, Bathroom and a Storeroom off the Kitchen. Outside there is a small, paved area in the well at the front of the property and a shared rear garden. There is on-street parking which requires a permit, purchased from the Local Authority.
15. There is an Energy Performance Certificate which states that the property measures some 38 square metres and rates the property as 'E'.

Evidence and Representations

16. The Rent Officer assessed an open market rent for the property of £1,200 per month and made deductions including for Tenant's decoration liability, Tenant's provision of carpets, curtains and white goods and for scarcity.

17. In his original submission to the Rent officer the Tenant provides a history of works to the property since his original occupation in 1983 which included redecoration. In 1984 the Tenant moved out for six weeks to enable the Landlord to carry out structural works, mainly to remedy damp issues but to also install replacement, second hand kitchen units.
18. In 1997 the Tenant carried out further decoration, partly tiled the kitchen, laid a tiled floor in the kitchen and bought a new gas cooker. In 2010 various works were undertaken “under Dr Lyons” which included further damp works, the installation of central heating, replacing the back door and new fittings in the bathroom. The kitchen units were replaced in 2016 at the Landlord’s expense.
19. Since 2016 there have been intermittent repair issues with the Tenant maintaining some decorating and using a dehumidifier to reduce damp from condensation.
20. Mr Bailey attached a number of photographs to his submission showing flaking paint to the ceiling in the Storeroom and external photographs demonstrating the need for some minor repairs and decorations.
21. On 27th December 2023 the Tenant made a further submission to the Tribunal stating that no part of the flat is double glazed and that he had twice replaced the original carpets.
22. The Landlord’s Agent made a submission to the Tribunal on 11th December 2023 which states that the property has partial double glazing, the Landlord provides carpets and cooker and that the property is in good condition. The Agent states that another 2-bedroom flat in the block has been let at £1,550 per month and claims that the Maximum Fair Rent should not apply because the property “has been well looked after and is in a very good condition”.

Findings of Fact and Valuation

23. The Tribunal first considered whether it felt able to reasonably and fairly decide this case based on the papers submitted only, with no oral hearing. Having read and considered the papers it decided that it could do so.
24. There was some variance between the evidence provided to the Tribunal with particular regard to the provision or lack of double glazing and the provision of carpets and curtains. Given the long history of occupying the property the Tribunal favoured the comments made by the Tenant and proceeded on the basis that there is no double glazing and that the Tenant had provided the carpets.
25. The Tribunal noted the Landlord’s Agent’s comment that the property was well maintained but the Agent should know that this is not a valid reason to ignore the provisions of the Maximum Fair Rent Order.

26. 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 good condition that is considered usual for such an open market letting. Market rents are usually expressed as a figure per month.
27. In determining an 'open market rent' the Tribunal had regard to the evidence supplied by the parties and the Tribunal's own general knowledge of market rent levels in the area of Brighton and Hove. Having done so it concluded that such a likely market rent would be £1,450 per calendar month.
28. However, the property was not let in a condition considered usual for a modern letting at a market rent. Therefore, it was first necessary to adjust that hypothetical rent of £1,450 per calendar month particularly to reflect the fact that the carpets, curtains and white goods were all provided by the Tenant which would not be the case for an open market assured shorthold tenancy.
29. Further adjustments are justified to reflect the poor EPC rating which leads to high energy costs, the Tenant's decoration liability and the dated kitchen and bathroom fittings.
30. The Tribunal therefore considered that this required a total deduction of £250 per month made up as follows:
- | | |
|--|------------|
| Tenant's provision of carpets and curtains | £50 |
| Tenant's provision of white goods | £30 |
| Tenant's liability for internal decoration | £50 |
| Poor EPC rating causing high energy costs | £20 |
| Unmodernised kitchen and bathroom | £100 |
| TOTAL per month | <hr/> £250 |
31. The Tribunal also noted that no major improvements had been carried out by the Landlord since the rent was last registered in 2021. The capping by the Maximum Fair Rents Order would therefore apply.
32. The Tribunal did not consider that there was any substantial scarcity element in the area of Brighton as there is a reasonable selection of 1 and 2-bedroom flats available to rent, all available on Rightmove.

Decision

33. Having made the adjustments indicated above the fair rent determined by the Tribunal for the purpose of section 70 of the Rent Act 1977 was accordingly £1,200 per calendar month.

34. The Section 70 Fair Rent determined by the Tribunal is above the maximum fair rent of £1,157 permitted by the Rent Acts (Maximum Fair Rent) Order 1999 details of which are shown on the rear of the Decision Notice and accordingly we determine that the lower sum of £1,157 per month is registered as the fair rent with effect from 3rd January 2024.

Accordingly the sum of £1,157 per month will be registered as the fair rent with effect from the 3rd January 2024 being the date of the Tribunal's decision.

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 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.