



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

**Case Reference** : **FL/LON/OOAN/F77/2023/0384**  
**Property** : **Lower Ground Floor 78 Barons Court Road  
W14 9DU**  
**Tenant** : **Mr Roberts**  
**Landlord** : **Westline Estates Ltd**  
**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 A Ring**  
**HMCTS Code** : **Hearing at Alfred Place with inspection  
(paper, video, audio)**  
**Date of Decision** : **29<sup>th</sup> January 2024**  
**Date of Statement of Reasons:** **29<sup>th</sup> January 2024**

---

## **Statement of Reasons**

---

© CROWN COPYRIGHT 2024

### **Decision**

1.The decision of the Tribunal is that the Fair Rent of £236 per week determined with effect 29<sup>th</sup> January 2024.

### **Background**

2.The Rent Officer, received an application to re-register a fair rent, dated 20<sup>th</sup> July 2023 made by the landlord of the property requesting £400 per week.

3.Prior to the application, the Rent Officer had registered a rent of £223 per week with effect from 12<sup>th</sup> September 2013 determined by tribunal. Following the application by the landlord for re registration of a fair rent, the Rent Officer registered a fair rent of £235 pw with effect from 13<sup>th</sup> October 2023.

4.In a note dated 2<sup>nd</sup> November 2023 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 29<sup>th</sup> November 2023. Thereafter, 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.

## **The Property**

6. The tribunal did inspect the property. The property is a self-contained converted flat with central heating, comprising two rooms one kitchen a bathroom and WC.

## **Relevant Law**

7. 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**

8. A submission was sent by the landlord prior to the hearing to the tribunal and shared with the tenant. Unfortunately, the tribunal did not have sight of the submission until the hearing, and a short adjournment was permitted to secure the papers. The submission contained passing rents of a number of comparable properties in the area,

### **Tenant**

9. The Rent Officer met with the Tenant prior to the registration of the rent and noted the following;

Noise insulation is very poor in the flat

Very poor thermal insulation and there are gaps in windows

Due to gaps in windows , there has been vermin infestation

Damp issues and the ceiling has collapsed

Rising damp in the kitchen, ceiling /walls and cellar is cold

Kitchen has floor nails just coming out due to damp

Bathroom has no radiator – only towel railing

Unfinished repairs and it is difficult to contact landlord

White good and furniture all by Mr Roberts and only cooker oven provided by landlord

Landlord and Tenant confirmed that landlord is liable for water rates.

The tenant also completed a Reply Form, noting the central heating is provided by the landlord, there is no double glazing, and that carpets supplied by landlord, curtains by tenant and white goods supplied by tenant also.

The reply form noted the following issues in addition to those noted above;

Bitumen on main property steps has cracks in it allowing water to drip into the former coal cellar behind the end wall of the kitchen, which is made of board and is damp.

Extractor fan on cooker hood does not work.

Since 2012 we have had three instances of the living room ceiling collapsing due to leaks in the bathroom in the ground floor flat

Property backs onto the overground section of the Piccadilly and District Lines between Barons Court and West Kensington, so there is constant noise and vibration from the tube trains.

## **The Inspection**

10. The property was inspected on 29<sup>th</sup> January 2023. The property is located on Barons Court Road a short distance from the underground. The flat is the lower ground floor section of a converted mid terrace house dating from around 1880. The terrace backs onto the underground which is over ground at this point. The line being a few meters from the building.

11. The flat is accessed using wrought iron staircase from road level. There is a small area in front of the property at the base of the stairs which forms a couple of meters of container garden. Immediately above the front door there is a vertical crack, and the mortars between the door and the brick work arch is missing. Entering the front door the kitchen is reached which is formed from the entrance area and the corridor that connects the rooms in the flat. The kitchen has units and an oven which are functional but dated. The road end of the kitchen is panelled and abuts a former coal hole. This is a source of damp which presents with some mould on the exterior of the panelling, more towards the ground.

12. Immediately off the kitchen area is the front room which is used as a bedroom. There is a radiator and single glazed windows. The room has electrical sockets and electric lighting. Some damp is evident in the ceiling from the flat above.

13. Further along the kitchen corridor area is the access to the second room. This is used as a living room, there is a radiator below the single glazed window which faces the railway line. The room has electrical sockets and electrical lighting. There is a damp area on the ceiling potentially from the flat above.

14. Beyond the corridor kitchen there is a section of corridor used for storage which draws "borrowed" light from the living room. At the end of the corridor there is a bathroom which contains basin, bath and WC. This room has a flat roof, there is some evidence of dampness in the ceiling. The bathroom is double glazed. Prior to the bathroom is an outside space utilised as a small container garden. Access from the garden to the outside cupboard where the boiler is located.

## **The Hearing**

15. The appellant, landlord objected to the rent registered. Present was Mr Shmul Atkins of the landlord Westline Estates Ltd, represented by Gunne Jones. The tenant Mr Roberts represented himself.

The appellant presented the tribunal with a number of passing rents from properties in the locality;

74 Comeragh Road W14 9HR with weekly rents ranging from £260 pw to £335 pw.

69 Blythe Road W14 0HP a lower ground floor 2 bedroom at £508 pw and first floor at £5109 per week.

78 Barons Court W14 9DU with a range of £265 pw to £519 pw

The landlord also noted they had commissioned a report into damp issued in the flat. In summary the appellant submitted a figure of £400 per week was correct.

Mr Roberts the tenant discussed the physical attributes of the property and submitted the fair rent should remain at £235 per week.

### **Reasons for Decision**

16. The tribunal was grateful for the rental information, however, the evidence lacked detail in terms of size of properties and date of transactions. The tribunal therefore could only use the information as evidence of the wider context.

17. The damp report had not been shared with the tribunal or the respondent and so was not admitted as evidence.

18. The rent to be determined must reflect the condition found on the date of the hearing disregarding all tenants' improvements.

19. The process for determining a fair rent is the application of Rent Act 1977 section 70 on the subject property and then comparison with the maximum rent permitted under the Maximum Fair Rent Order 1999. This means that comparison with other properties the subject of Fair Rent is not material. Initially the Tribunal determined what rent the Landlord could reasonably be expected to obtain for the subject property in the open market if it were let today in the condition that is considered usual for such an open market letting.



20. Considering evidence submitted and the tribunal acting in its capacity as an expert tribunal and using its general knowledge of market levels in the area, concluded that the market rent, on modern assured shorthold tenancy terms would be £ 1675 per month, equivalent to £386

However, the subject property is not in the condition considered usual for a modern letting at a market rent, and its layout would not be considered ideal by many potential bidders in the market. Therefore, it is necessary to adjust the above hypothetical rent, a deduction of 15% is made.

21. In addition, the tribunal determined that there should be a further deduction of 10% to reflect the fact the terms and conditions and goods supplied under the tenancy would differ from those of a contemporary assured shorthold tenancy, from which the rental comparables are derived. In this case it is noted the landlord pays water rates which is a benefit to the tenant.

22. Thereafter the tribunal considered the question of scarcity in section 70 (2) of the Rent Act 1977. A figure of 20% was adopted.

23. The figure of £386 per week was derived from contemporary letting of properties in good condition through assured shorthold tenancies. A tenant in an assured shorthold tenancy would not be liable for a service charge. The assured shorthold tenant would pay rent on the understanding their landlord would pay the service charge. The tenant within their protected tenancy is liable for the service charge. Prior therefore to any adjustments for condition, tenancy terms and scarcity a deduction of the service charge should be made. There is no service charge in this case so no deduction is required.

24. Market derived rental level - £386 per week

Less 15% condition	£ 58 per week
	-----
	£ 328 per week

Less 10% for terms and supplied goods inc white goods

-£33 per week

	£295 per week
Less 20% for scarcity.	£ 59 per week

18. The rent after this final adjustment was £ 236 per week.

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

25. The rent to be registered is not limited by the Rent Acts (Maximum Fair Rent Order) 1999 because the rent calculated in accordance with section 70 is lower.

26. Accordingly, the sum of £236 per week will be registered as the fair rent with effect from 29<sup>th</sup> January 2024, being the date of the Tribunal’s decision.

**Valuer Chair: Richard Waterhouse FRICS**

**Mr A Ring**

**Decision Date: 29<sup>th</sup> January 2024**

**Extended reasons: 29<sup>th</sup> January 2024**

**Appeal to the Upper Tribunal**

A person wishing to appeal this decision to the Upper Tribunal (Property Chamber) on a point of law must seek permission to do so by making a written application to the First-tier Tribunal at the Regional Office which has been dealing with the case which application must:

- a. be received by the said office within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
- b. 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.

If the application is not received within the 28 –day time limit, it must include a request for an extension of time and the reason for it 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.