



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

Case reference : CHI/43UB/F77/2023/0078

Property : 23 Wellington Close, Walton-on-Thames,
Surrey, KT12 1AZ

Applicant Landlord : Mr M Dixon

Representative : None

Respondent Tenant : Mrs D Scott

Representative : None

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

Tribunal members : Mrs J Coupe FRICS
Ms C Barton MRICS
Mr M Woodrow MRICS

Date of decision : 30 January 2024

REASONS

Decision of the Tribunal

On 30 January 2024 the Tribunal determined that a sum of £1,200.00 per month, inclusive of a variable service charge of £80.64, will be registered as the Fair Rent with effect from the same date.

Background

1. On 15 September 2023 the Rent Officer received an application from the landlord, dated 14 September 2023, for registration of a Fair Rent of £1,230.00 per month (inclusive of a variable service charge of £80.64), in lieu of the passing rent of £1,005.00 per month (inclusive of a variable service charge of £96.16).
2. On 9 October 2023 the Rent Officer registered a rent of £1,098.00 per month (inclusive of a variable service charge of £80.64), effective from 26 October 2023.
3. On 12 November 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 in 1974. A copy of the tenancy agreement was not provided.
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 28 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. Directions required the landlord and tenant to submit their statements to the Tribunal by 13 December 2023 and 28 December 2023 respectively, latterly extended to 18 December 2023 and 3 January 2024 respectively. A statement of case was received from the landlord. The tenant chose not to submit representations.
8. Having reviewed the 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 point referred to in submissions but concentrate on those issues which, in the Tribunal's 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 accordance with current policy, the Tribunal did not inspect the property, but did view it externally via information obtained from publicly available online platforms.
15. The property is a self-contained flat situated on the fourth floor of a purpose-built block, constructed in or around 1964. Accommodation consists of reception room, kitchen, two bedrooms, bathroom and separate WC. Outside: parking space and communal gardens. The property is located within the town centre, close to local amenities and public transport.
16. The property has partial gas central heating and uPVC double glazing. Floor coverings, curtains and white goods are provided by the tenant.
17. Having consulted the National Energy Performance Register online, the Tribunal noted the property to have a current Energy Performance Certificate (EPC) Rating of C.

Submissions – Landlord (summarised)

18. In a letter addressed to the Valuation Office Agency and dated 14 September 2023, the landlord sought a rent of £1,425.00 per month, (inclusive of variable service charges) less £195.00 deductions, to arrive at a registered rent of £1,230.00 per month (inclusive).
19. Deductions applied by a previous Tribunal, and to which the landlord referred, comprised £60.00 (carpets/curtains and white goods); £65.00 (dated kitchen and bathroom); £30.00 (part central-heating); £40.00 (tenant's contractual liabilities).
20. Whilst accepting that, under statute, similar deductions were likely to be applied to the current determination, the landlord argued that the tenant had failed to utilise such allowances for their intended purpose.
21. The landlord referred to historic comparable evidence of rental values between £1,395.00 - £1,500.00 per month, and recent evidence of similar flats available to let at £1,395.00 and £1,600.00 per month.
22. Referring to major works of refurbishment to the development, which commenced in 2020 and which remain ongoing, including exterior cladding and installation of double glazing, and for which a contribution of £76,000 per flat is payable, the landlord argued that the property was exempt from the Maximum Fair Rent Order.
23. In support of the variable service charge, the landlord relied upon the year end accounts dated 29 September 2022, such being the latest published accounts. The landlord's apportioned costs across all heads of expenditure comprised £86.58 per month.

Submissions – Tenant (summarised)

24. No statement of case was submitted by the tenant.

Determination

25. The Tribunal has carefully considered all the submissions before it.
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 condition that is considered usual for such an open market letting.
27. The Tribunal had regard to those works of refurbishment which had been completed but disregarded those works either ongoing or those not affecting the rental value of the subject property directly.
28. The landlord provided two comparable properties that were recently advertised as available to let, both described as either well-presented or recently redecorated. Asking prices were £1,395.00 per month and £1,600.00 per month. Achieved rents were not provided. No comparable evidence was submitted by the tenant.

29. Weighing such evidence against its 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 £1,425.00 per month.
30. 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.
31. In this instance the Tribunal determined that the subject property falls short of the standard required by the market as the carpets, curtains and white goods are provided by the tenant, the kitchen and bathroom fittings are dated and only partial central heating is provided.
32. 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.
33. In reflection of such differences the Tribunal makes a deduction of £225.00 per month from the hypothetical rent to arrive at an adjusted rent of £1,200.00 per month.
34. The Tribunal does not approve the landlord's method of calculating the appropriate service charge, as such apportionment appears to include certain items that would fall under the Landlord's responsibilities under Section 11 of the Landlord and Tenant Act 1985. Such matters are not recoverable from the Tenant and include for example expenses under the headings: General Repair and Maintenance and General Expenses. In these circumstances the Tribunal accepts the Rent Officer's calculation.
35. In the absence of the 29 September 2023 year end accounts, the Tribunal adopts the Rent Officer's variable service charge figure of £80.64, such figure also being that originally applied for by the landlord.
36. 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 Surrey (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 two-bedroom flats 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;
37. 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 two-bedroom flats to let in the locality defined above. Accordingly, no adjustment is made to the rent for scarcity.

Maximum Fair Rent

38. 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.
39. 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.
40. 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.
41. The Tribunal has considered the landlord's submissions on such point. However, the Tribunal has determined that the works undertaken, such being predominantly to the fabric of the building and improvements to the environment, have not increased the rental value of the subject property by 15% or more. Accordingly, the property is not exempt from the Maximum Fair Rent Order.
42. However, the rent to be registered in this application is not limited by the Fair Rent Acts' (Maximum Fair Rent Order) 1999 because it is below the maximum fair rent that can be registered of £1,230.14 per month prescribed by the Order.
43. The Tribunal accordingly determines that the rent of **£1,200.00 per month, inclusive of a variable service charge of £80.64, is registered as the Fair Rent with effect from 30 January 2024**, that being the date of the Tribunal's decision.
44. 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 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.