



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

Case reference : **CAM/22UC/F77/2023/0041**

Property : **78 Albert Road,
Braintree,
Essex CM7 3JH**

Applicant : **Mr. G Halibard (Landlord)**

Representative : **Joscelyne Chase (Agent)**

Respondent : **Mrs. Wade (Tenant)**

Representative : **None**

Type of application : **Application by the Appellant for
review & permission to appeal**

Tribunal : **N. Martindale FRICS**

Date & Venue : **22 February 2024
First Tier Tribunal (Property)
HMCTS Cambridge CB1 1BA**

Date of decision : **22 February 2024**

DECISION

Decision

1. The Tribunal has considered the applications for a review and permission to appeal, dated 4 January 2024 and determines that:
 - (a) it will not review its decision of 17 November 2023 ('the Decision'); but

- (b) permission to appeal, is granted.
2. In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the landlord may appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this decision to the party applying for permission to appeal. In this case permission to appeal has been granted by the First Tier Tribunal.
 3. For further details, the Upper Tribunal (Lands Chamber) may be contacted at: 5th Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL (tel: 020 7612 9710); or by email: lands@hmcts.gsi.gov.uk

Reason for the Decision

4. *“The requirement of leave to appeal requires one to submit one’s grounds of dissatisfaction for scrutiny to see whether they have sufficient merit to justify an appeal.”* [Saleem v SoS for the Home Department [2001] 1 WLR 443, per Hale LJ @459]. However; *“It is Parliament’s wish and intention that resources should not be devoted to continuing appeals at higher levels if an appeal fails to cross the threshold test of permission to appeal.”* [Moyse v Regal Mortgages Ltd [2004] EWCA Civ 1269, per Brooke LJ @ 31].
5. Rule 55, Property Chamber Rules 2013, restricts the power of review: *“The Tribunal may only undertake a review of a decision – (a) pursuant to rule 53 (review on an application for permission to appeal); and (b) if it is satisfied that a ground of appeal is likely to be successful.”*
6. The applicant landlord stated in their application for review and permission to appeal the decision, that: *“I am writing to appeal the decision as I believe it is wrong in law in that it incorrectly applied a cap.”*
7. The applicant landlord continued: *“The decision stated that the registered rent was £167.00 per week (Paragraph 1) on 31.03.2020. The decision said the correct rent for the premises should be £275 per week as stated in Paragraph 14 . In Paragraph 16, the tribunal then applied the fair rent cap without even considering the effect of the landlords improvements.”*
8. The applicant landlord continued: *“However in paragraph 6, the decision described improvements made by the landlord in May 2022 of a new bathroom suite, central heating, loft insulation and various kitchen improvements, with invoices.”*
9. The applicant landlord continued: *“It is obvious that these improvements will have increased the rental value by far more than*

15% indeed, the increase from previous rent of £167 to £275 is an increase of 65%. It was therefore an error in law for the tribunal a) not to consider disapplying the cap and b) to apply the cap, as the improvements were clearly way in excess of 15%.

10. The applicant landlord concluded: *“I am requesting the full rent of £275 to be applied.”*
11. In paragraph 6 of the Decision, the Tribunal simply set out in brief, the landlord’s representations, without further comment.
12. The Tribunal’s Decision sets out two fair rent figures: 1. the uncapped rent of £275 pw and 2. the capped rent of £226 pw. If the Tribunal is wrong about the application of the Maximum Fair Rent Cap (MFRC) then the Tribunal in its Decision has already set out that the Fair rent to be registered would otherwise be £275 pw, the same as the applicant claims.
13. The rent of £275 pw exceeds the rent that would otherwise be set at this review, without the improvements of; *“a new bathroom suite, central heating, loft insulation and various kitchen improvements”* at £235 pw. This rental figure was regrettably omitted from the earlier Decision. A rent of £275 pw being at least 15% more than a rent of £235 pw, the MFRC would not apply, however it would depend on whether Paragraph 7 of the Order, applied.
14. The issue raised by the applicant landlord, centres around whether The Rent Acts (Maximum Fair Rent) Order 1999 (The Order) applies to the final Fair rent to be registered here, on this occasion, or not. The Tribunal accepts that it did not deal at length with this issue in its Decision but, identifies paragraph (7) of the Order as the relevant element in determining whether the MFRC applies.
15. Paragraph 7 of the Order reads: *“This article (the Maximum Fair Rent Cap) does not apply in respect of a dwelling-house if because of a change in the condition of the dwelling-house or the common parts as a result of repairs or improvements (including the replacement of any fixture or fitting) carried out by the landlord or a superior landlord, the rent that is determined in response to an application for registration of a new rent under Part IV exceeds by at least 15% the previous rent registered or confirmed.”*
16. The Tribunal accepts from the representations made, that there had been; 1. *“a change in the condition of the dwelling house”*. That it had been; 2. as *“a result of repairs or improvements (including the replacement of any fixture or fitting”*. 3. But, the Tribunal was unconvinced that these were demonstrated to be the result of works that were all; *“carried out by the landlord.”* 4. The Tribunal accepts that as a result of the works set out, the rent under Part IV would have exceeded the previously registered Fair rent, by at least 15% as set out in paragraph 13 above.

17. Whilst paragraph 7 of the Order allows for a further category of actor regarding the works, it remains very narrowly drawn as a “*superior landlord*” only, suggesting that no further widening of the term is envisaged. There was no superior landlord identified or claimed to exist at this Property. No other actor or agency which might have “*carried out*” the works here, is mentioned for in the Order.
18. On the evidence received prior to its Decision, the Tribunal took the view that; it was the tenant’s own financial status and/or benefit entitlement that enabled it, to obtain and directly commission, or to obtain and indirectly commission, sufficient works at the Property, that would increase the rent by at least 15% of the Fair rental value of the Property. That the works that took the rental value to a new Fair rent that was at least 15% higher than the previous registration, were completed in whole or part with the landlord’s consent at most but, that a consent, did not amount to the landlord carrying them out even if they were to the Property in the ownership of the landlord. On such evidence, the Tribunal found that the MFRC remained in place.
19. The Tribunal is however mindful of the increasing use of grant assistance available to residential tenants and/or which is only available to the tenant and/or is dependant on the tenant’s status or at the tenant’s sole application and landlords simple consent. Often such assistance is conditional on the tenant’s financial or other particular status, which may be individual to that tenant or to a wider class of tenants, in the repair and especially in the improvement of a dwelling.
20. The Tribunal considers that a wider consideration and a clarification of the correct application of this Order to substantial rental increases commonly occurring, would be of a more general assistance to other landlord, tenants and Tribunals, when determining new Fair rents.
21. The Tribunal is satisfied that the grounds stated above by the applicant, are arguable and that there is the realistic prospect of success.
22. The Tribunal gives permission for the landlord to appeal the Decision to the Upper Tribunal. Such permission extends as to whether the Order applies or does not apply, only.
23. The new Fair rents resulting from either conclusion were already set out in the Decision and leave is not given to appeal either of these: A new Fair rent of £226 pw is to be registered if the Order applies; or a new Fair rent of £275 pw is to be registered if the Order does not apply.