



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

Case Reference : **LON/OOAY/F77/2023/0312**
Property : **Flat 11 Stamford Buildings South Lambeth
Road , London , SW18 1UY**
Tenant : **Mr & Mrs M Gray**
Landlord : **Backway Properties Ltd**
Type of Application : **Determination of a Fair Rent under section
70 of the Rent Act 1977**
Tribunal : **Mr R Waterhouse BSc (Hons) MA LL.M
FRICS
Mr C Piarroux JP**
HMCTS Code : **Inspection with determination on papers
(paper, video, audio)**
Date of Decision : **2nd February 2024**

Date of Statement of Reasons: 2nd February 2024

Statement of Reasons

Decision

1. The decision of the Tribunal is that the Fair Rent of **£756.60** per month is determined with effect **2nd February 2024**.

Background

2. The Rent Officer, received an application to re-register a fair rent, dated **15th September 2022** made by the landlord of the property requesting **£161.34** per week, equivalent to **£699.14** per month.
3. Prior to the application, the Rent Officer had registered a rent of **£583** per month with effect from **25th November 2020** determined by the tribunal. Following the application by the landlord for re-registration of a fair rent, the Rent Officer registered a fair rent of **£715** per month with effect from **25th November 2022**.
4. In a note received on **28th November 2022** 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 **13th October 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 landlord's 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 purpose built flat without central heating, comprising two rooms, one bathroom /WC and one living room.

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.”

8. 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.

9. 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).

10. In considering scarcity under section 70 (2), the Tribunal recognises that:

(a) there are considerable variations in the level of 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.

The Inspection

- 11.** The property is accessed via communal stairs and is on the second floor. The living room has a double-glazed window, which has a large gap in the top of them. There is damp evident in the ceiling of the living room. Electrical surface trunking is present.
- 12.** Bedroom one has a large section of plaster crumbling and covered by black mould that indicates significant and prolonged water ingress from outside.
- 13.** The bathroom had a bath, WC and basin, this also suffered from damp walls requiring regular application of paint.
- 14.** Bedroom two there was evidence of damp on the ceiling, and ill-fitting windows.
- 15.** The property has no central heating. The kitchen was within the living room and had been supplied by the tenant's occupants as had some of the internal doors.

Submissions

Landlord

- 16.** No submissions from the landlord were received.

Tenant

- 17.** The Rent Officer met with the Tenant prior to the registration of the rent, **8th October 2022**, and noted the following;
- 18.** Landlord has not been to see the extent of the dampness on the walls in the bedrooms, caused possibly by a blocked gully above, this has caused the wall to get mould and the plaster to be cracked. Water comes through whenever it rains.
- 19.** Black mould occurs in the bathrooms. There is no heat in the flat at all.

There is noise from the new additional flat added to the building, this was added recently. There was a leak from the bathroom of the flat above which came through and caused the hallway light to blow, it was repaired but has blown again. Water also came into the bathroom and has left a stain.

- 20.** The old double-glazed windows are a poor fit, the one in the kitchen /living room, has a large gap also the top edge when fully closed the one within the bedroom has a gap to the left-hand side.
- 21.** The tenant completed a Reply Form, noting they requested an inspection but not a hearing.

The form notes;

Living room contains the kitchen, the kitchen is outdated and has not been updated since the tenancy began in 1987.

The bathroom is outdated and has not been updated since the tenancy began in 1987.

The double glazing is provided by the landlord. Carpets, curtains and white goods provided by the tenant.

The tenant has redecorated the property twice a year for the past 6 years due to water ingress, damp and mould.

The landlord has not carried out any improvements to the property since the tenancy began in 1987.

The property suffers from the effects of water ingress, damp and mould. This has been particularly bad for the past 6 years since the landlord added an additional floor to the building creating a flat above the property.

Not only is there no central heating there is no source of heating at all.

Although the windows have double glazed the windows are ill-fitting and the property is very cold and drafty.

There is increased noise due to the newly created flat.

Hot water supply is intermittent and depends on usage by other flats.

The lightbulbs and fuses keep blowing. The cause is unknown.

Additionally, a number of photographs showing the water ingress were included with the tenants reply.

The Determination

Reasons for Decision

- 22.** The rent to be determined must reflect the condition found on the date of the hearing disregarding all tenants' improvements.
- 23.** 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.
- 24.** 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 **£485.00** per week.

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.

25. 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.

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

27. The figure of **£485.00** 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.

28. Market derived rental level - **£ 485** per week

Less **50%** condition **£ 242.50** per week

£ 242.50 per week

Less **10%** for terms and supplied goods inc white goods

-£24.25 per week

£ 218.25 per week

Less **20%** for scarcity. **£ 174.60** per week

29. The rent after this final adjustment was **£174.60** per week equivalent to month equivalent to **£756.60** per month which is below the maximum fair rent cap.

Rent Acts (Maximum Fair Rent) Order 1999

30. 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.

31. Accordingly, the sum of **£756.60** per month will be registered as the fair rent with effect from **2nd February 2024**, being the date of the Tribunal's decision.

Valuer Chair: Richard Waterhouse FRICS

Decision Date: 2nd February 2024

Extended reasons: 2nd February 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.