



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

Case reference : CHI/29UC/F77/2024/0008

Property : Flat 5 Kent Coast Mansions, 23 Canterbury Road, Herne Bay, Kent, CT6 5DQ

Applicant Tenants : Mr & Mrs A Grosvenor

Representative : None

Respondent Landlord : Kenneth Hughes-Jones Deceased Will Trust

Representative : Arun Estates

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

Tribunal members : Mrs J Coupe FRICS
Mr R Waterhouse FRICS
Ms C Barton MRICS

Date of decision : 12 April 2024

REASONS

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Decision of the Tribunal

On 12 April 2024 the Tribunal determined that a sum of £684.00 per month will be registered as the Fair Rent with effect from the same date.

Background

1. On 6 December 2023 the Rent Officer received an application from the landlord for registration of a Fair Rent of £710.00 per month in lieu of the passing rent of £645.00 per month.
2. On 9 January 2024 the Rent Officer registered a Fair Rent of £750.00 per month effective the same date.
3. On 22 January 2024 the tenants objected to the registered Fair Rent and requested the Rent Officer to refer the matter to the Tribunal.
4. The tenancy appears to be a statutory protected tenancy commencing 1 September 1984. The Tribunal was not provided with a copy of the tenancy agreement.
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 2 February 2024 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 advised that no inspection would be undertaken. No objections were received.
7. The Directions required the landlord and tenant to submit their statements to the Tribunal by 16 February 2024 and 1 March 2024 respectively. A statement of case was only received from the landlord.
8. Having reviewed the parties' 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.
14. In addition, in appropriate cases there are limits on the maximum weekly rent in accordance with the Rent Standard 2023 produced by the Regulator of Social Housing. It should be noted however, that the Rent Standard sets the maximum amount of weekly rent recoverable by Registered Providers, but this operates outside the provisions of the Rent Act 1977 and has no bearing on the Tribunal's function in determining a Fair Rent under section 70 of the 1977 Act.

The Property

15. 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.
16. The property is a self-contained maisonette within a three-storey Victorian mansion block, built circa. 1800-1918 of masonry construction under a pitched roof clad in tiles. The property is located in a Conservation Article 4 area, close to local facilities and within a short distance of public transport.
17. Accommodation is laid out over two floors and comprises two rooms, kitchen and utility at ground level, and four rooms (two of which were previously one bedroom) and a bathroom/WC at first floor level. The property has a garden and, whilst the landlord describes off-road parking as provided, the tenants advise that no parking is included in the tenancy and that the current parking arrangement is a private agreement with a neighbour. The Tribunal returns to this point later.

18. The property has no central heating and only partial uPVC double glazing. Floor coverings, curtains and white goods are provided by the tenants.

Submissions – Tenant

19. The tenants chose not to submit a statement of case to the Tribunal and the Tribunal has therefore had regard to the points raised in their objection to the Rent Officer's determination, which are summarised as follows:
- The property has three rooms on the first floor, the fourth room being a temporary subdivision of the third bedroom;
 - No central heating within the property;
 - All kitchen units and appliances are provided by the tenants;
 - The utility area is a tenants' improvement;
 - Partial single glazed windows, which are in a poor condition;
 - The tenants are responsible for all floor coverings;
 - The tenants are responsible for internal decorations, including windows;
 - Garden sheds are tenants' improvements;
 - The tenancy agreement does not include any parking. An informal agreement, which is outside the terms of the tenancy, has been made with a neighbour in regard to driveway parking;
 - The Rent Officer's determination is excessive and should be limited to 7% in line with social rents.
20. The tenants did not provide any comparable rental evidence, nor did they provide comment as to whether, in their opinion, demand for such properties exceeds supply.

Submissions – Landlord

21. The landlord describes the property as offering four-bedroom accommodation, with a private garden, driveway parking and as situated within close proximity of public transport and the beach.
22. The landlord states that the mansion block has been renovated in accordance with local authority requirements, with emphasis on retaining the historic character. The costs of such work, in tandem with expenditure on the subject property, significantly exceeds the rent receipts.
23. Works exclusively to Flat 5 include window and joinery re-decoration. Works undertaken to the block, and completed prior to the previous Fair Rent determination in 2021, include flat roof and external elevation repairs, replacement windows, repairs and maintenance, new footpath, garden improvements.
24. In 2021, those windows not visible from the street were upgraded with uPVC units, the remainder windows being subject to Conservation Article 4 area planning constraints.
25. A site block and location plan dated July 2017, as prepared by Aspire Architectural Services, was provided. The plan illustrated the

accommodation layout and identified the third bedroom split into two. A series of undated external photographs were provided.

26. In support of the proposed rent the landlord relied upon three comparable lettings as summarised below:
 - i. Ramsgate: 3 bedroom ground floor maisonette advertised as available to let on the online platform *Zoopla* at an asking price of £1,500 per month;
 - ii. Herne Bay: 3 bedroom flat in a mixed residential and commercial district advertised as available to let on the online platform *Zoopla* at an asking price of £1,300 per month;
 - iii. Canterbury: 3 bedroom property with two bathrooms, described as both a mid-terraced house and a two-storey maisonette, advertised as available to let at an asking price of £1,450 per month.
27. The landlord reiterated that they seek an increase in rent to £710.00 as opposed to the Rent Officer's rent of £750.00 per month.
28. The landlord makes no comment as to whether the Maximum Fair Rent Order should not apply nor as to whether the demand for such properties exceeds supply.

Determination

29. The Tribunal has carefully considered all the submissions before it.
30. 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.
31. In order to do so, the Tribunal first had to make a finding as to the accommodation provided. The tenants have subdivided, by way of a temporary partition, a bedroom into two smaller spaces. The Aspire plan, dated July 2017, illustrates the accommodation layout. The Tribunal considers such alteration to be a temporary arrangement and one capable of simple reversal. Accordingly, the Tribunal finds the property to be a three- bedroom maisonette, and value it as such. That said, in this instance, the Tribunal considers the layout to be immaterial to the rental value. In the Tribunal's experience the hypothetical tenant is unlikely to pay a higher rent for a property with a fourth bedroom where such additional accommodation is simply created by subdividing the third bedroom.
32. The Tribunal next considered the issue of parking and deliberated as to whether oral evidence on the point was required. The Tribunal find it undisputed that off-road parking is utilised, whether that be by way of an informal agreement with a neighbour or as a term of letting. The Tribunal also note that neither party makes suggestion of any lack of roadside parking locally. The Tribunal therefore find the point to have no bearing

on the market rent a hypothetical tenant would bid for the property. Such tenant would either look to extend the informal agreement with the neighbour or to seek roadside parking locally. Accordingly, the Tribunal concluded that, as the point was immaterial to the rental value, oral evidence was not required.

33. In support of the proposed rent the landlord relies upon three comparable properties, each offering three-bedroom accommodation. The Tribunal was unable to place weight on either the property in Ramsgate or the property in Canterbury as they were located some 15 miles and 8 miles respectively from the subject property. In the Tribunal's experience the rental market is sensitive to the immediate locality. Both comparables were therefore considered to be situated too far from the subject to be of any relevance.
34. The landlord's third comparable was a three-bedroom flat in Herne Bay advertised as available to let at £1,300 per month. The landlord provided only brief details of this property and a hyperlink, such links being unacceptable for Tribunal purposes. At first glance, the exterior of the property appeared to the Tribunal to be superior to that of the subject however no conclusions were drawn due to the sparsity of information provided.
35. The tenants provided no comparable evidence for consideration.
36. Having weighed the landlord's comparable evidence in Herne Bay against the Tribunal members' 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 tenantable condition, to be £1,200.00 per month.
37. 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. In this instance the Tribunal determined that the subject property falls short of the standard required by the market.
38. It is common ground between the parties that the property has no central heating and only partial double glazing (for reasons explained by the landlord). It is also agreed that the white goods, floor coverings and carpets are provided by the tenants. Furthermore, it is undisputed, as found by the Rent Officer, that the kitchen is unmodernised. The Tribunal therefore finds that the property does not meet the standard of a modern let in terms of condition, quality and fittings.
39. 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 landlord's decorations in good order.
40. In reflection of such differences the Tribunal makes a deduction of 40% from the hypothetical rent to arrive at an adjusted rent of £720.00 per month.

41. 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 Herne Bay and coastal north Kent (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 property 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;
42. Neither party made any submissions on the point of scarcity. 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 a slight shortage of similar properties to let in the locality defined above. Accordingly, the Tribunal applies a deduction of 5% to reflect scarcity to arrive at an adjusted rent of £684.00 per month.
43. The tenants made reference to a Fair Rent being determined in accordance with rents set by social housing providers. The Tribunal refers the reader to paragraph 14 above and reiterates that such constraints have no bearing on the rent to be determined under the Rent Act 1977 statute.

Maximum Fair Rent

44. 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.
45. 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.
46. 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. The Tribunal determined that such exception does not apply in this instance.
47. 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 £820.00 per month prescribed by the Order.
48. The Tribunal accordingly determines that the rent of **£684.00 per month is registered as the Fair Rent with effect from 12 April 2024**, that 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.