



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

Case reference : CHI/00MR/F77/2024/0009

Property : First Floor Flat, 117 Laburnum Grove,
Portsmouth, Hampshire, PO2 0HF

Applicant Tenant : Mrs D Rogers

Representative : None

Respondent Landlord : Russell (AS) Ltd

Representative : Abbotts Langley Property Management

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 : 26 April 2024

REASONS

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Decision of the Tribunal

On 26 April 2024 the Tribunal determined that a sum of £147.55 per week will be registered as the Fair Rent with effect from the same date.

Background

1. On 3 November 2023 the Rent Officer received an application from the landlord for registration of a Fair Rent of £196.15 per week in lieu of the passing rent of £120.50 per week.
2. On 3 January 2024 the Rent Officer registered a Fair Rent of £140.00 per week effective the same date.
3. On 18 January 2024 the tenant objected to the registered Fair Rent and requested the Rent Officer refer the matter to the Tribunal.
4. The tenancy appears to be a statutory protected tenancy commencing on an undisclosed date in 1963. 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 6 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 20 February 2024 and 5 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 publicly available online platforms.
16. The property is a self-contained first-floor flat within a two-storey semi-detached house, built circa. 1800-1918 of masonry construction under a pitched roof clad in tiles. The property is situated within close proximity of local facilities and public transport.
17. Accommodation comprises two rooms, kitchen, bathroom and WC. Externally there is a small area of shared outside space. Parking is roadside.
18. The property is heated by a gas central heating system, installed through the Warm Front scheme. Floor coverings, curtains and partial white goods are provided by the tenant.

Submissions – Tenant

19. The tenant chose not to submit a statement of case to the Tribunal and the Tribunal has therefore had regard to the points raised in her objection to the Rent Officer's determination, which are summarised as follows:
- An increase of £20.00 per week, within a cost of living crisis, is unaffordable;
 - The tenant is a 90-year old pensioner who has occupied the property for in excess of 60 years, during which time she has requested little maintenance and has looked after the property.
20. The Tribunal also had regard to the Consultation and Consideration Notes prepared by the Rent Officer following a property inspection and meeting with the tenant and landlord's representative on 3 January 2023, within which it was recorded that the tenant commented as follows:

Tenant felt the proposed rent was on the high side and a huge jump. Moved into the property in 1963 – it was a shell at that time – she has made it her home over the years. Everything belongs to the Tenant – All carpets, curtains, decorations, furniture, kitchen fittings. GFCH was installed by Warm Front grant. Misted double glazing panes.

21. The tenant did not provide any comparable rental evidence, nor did she provide comment as to whether, in her opinion, demand for such properties exceeds supply.

Submissions – Landlord

22. The landlord comments that:
- “Rents fixed by the rent officer is unjustifiably low and we ask the tribunal to allow the increase to match the reasonable market rents in comparison with the current market rents. In our view £850.00 per calendar month is reasonable rents accommodating very high inflation rates and bank of England base rates last year and currently, high cost of maintenance of the properties, high cost of wages and costs of various types of certificates. Particularly Gas Safety Certificates on an annual basis costing £100, which is not unreasonable and further the management charges for the property – 10%.”
23. The landlord challenges the Rent Officer's decision not to register any amount for services, arguing that that the costs incurred by the landlord for safety certificates, insurance costs and quarterly inspections are justified costs.
24. In support of the proposed rent the landlord relies upon an email from Barnard Marcus Letting Agents dated 15 February 2024 stating “... the current value of a 1 bedroom property in and around Laburnum Grove, PO2 oHF is around £850-900 PCM.”
25. The landlord also provides a table listing ten 1-bedroom flats at various locations across postcodes PO2 and PO4, with rents ranging from £720 - £975 per month, as let between November 2022 and January 2024.

26. Finally, the landlord relies upon multiple redacted Assured Shorthold Tenancy Agreements on various properties across postcodes PO2 and PO4.
27. 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

28. The Tribunal has carefully considered all the submissions before it.
29. 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.
30. In support of the proposed rent the landlord relies upon three forms of submissions, each now addressed in turn:
 - i. Barnard Marcus advises the landlord that the current value of a 1-bedroom property in the area is between £850-900 per month. However, no qualification is provided as to whether such figures include 1-bedroom houses which, in the Tribunal's experience, command a higher value than 1-bedroom flats. Furthermore, the advice contains no reference to the Rent Act 1977 nor to the condition, facilities or state of modernisation of any comparable properties within the price bracket provided. As such, the Tribunal considers the letting agent's email to contain a general statement as to the level of market rents achievable in the open market, as opposed to a more specific statement relating to the subject property. The Tribunal therefore takes account of the statement solely in consideration of the starting figure of the open market rent and no more.
 - ii. The Tribunal were unable to extract much assistance from the table of comparable rental evidence provided. Again, these rents appeared to the Tribunal to be open market rents, with no details provided other than each being a 1 bedroom flat. No comment on condition, facilities, parking or the like was included. The only conclusions the Tribunal were therefore able to reach from analysing the data was that open market rents of between £720 - £975 per month were achievable over a 14-month period across two postcodes.
 - iii. The Tribunal found the redacted copies of Assured Shorthold Tenancy Agreements on various properties across postcodes PO2 and PO4 of no assistance. As before, without specific details of these properties the Tribunal were unable to attribute any weight to the rent figures noted within.

31. The only submissions before the Tribunal from the tenant relate to affordability and the tenant's care of the property, coupled with her infrequent requests for maintenance. However, the Tribunal is unable to take account of the personal circumstances of the tenant when making its determination. The tenant provided no comparable evidence for consideration.
32. Having weighed the landlord's comparable evidence 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 tenable condition, to be £825.00 per month, a figure which falls within the landlord's own range.
33. 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.
34. It is common ground between the parties that carpets, curtains and some of the white goods are provided by the tenant. Furthermore, the Rent Officer's deduction in reflection of an unmodernised kitchen was undisputed. The Tribunal therefore finds that the property does not meet the standard of a modern let in such regard and, accordingly, the Tribunal makes a deduction of 12.5% from the hypothetical rent.
35. 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 and, in reflection of such differences, the Tribunal makes a deduction of 10% from the hypothetical rent, to arrive at a final adjusted rent of £639.37 per month, equating to £147.55 per week.
36. It appears to the Tribunal that the landlord may have conflated rent payable under an assured shorthold tenancy, with Fair Rents under the Rent Act 1977 and services payable by leaseholders to superior landlords.
37. Section 71(1) of the Rent Act 1977 provides that a Fair Rent includes any payments for council tax made by the tenant to the landlord, use of furniture and any services, whether or not these sums are separate from sums payable for the occupation of the dwelling house.
38. No evidence was provided of the tenancy or terms within it, which indicated that any of the items in para 37 above formed part of the liability of the tenant to the landlord. Nor in the absence of the tenancy was there any evidence of specific performance which would indicate an implied position.
39. Rents payable under assured shorthold tenancies which form the starting point for the section 70 determination, do not as a matter of market practice tend to include these items either.

40. The cost of insurance, may generally be recoverable by a landlord from a leaseholder, but this is not the position we have here.
41. Accordingly, the Tribunal concurs with the Rent Officer's decision that there are no variable services and therefore that none need be noted in the Rent Register.
42. 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 whold city of Portsmouth (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;
43. 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 no shortage of similar properties to let in the locality defined above. Accordingly, the Tribunal makes no deduction for scarcity in this instance.

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 £156.50 per week prescribed by the Order.
48. The Tribunal accordingly determines that the rent of **£147.55 per week is registered as the Fair Rent with effect from 26 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.