



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

Case Reference : **LON/OOAP/F77/2023/0035**

Property : **Flat 69 Barrington Court, Colney Hatch
Lane, London N10 1QH**

Tenant : **Mr K Henry**

Landlord : **Inbar 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
Mrs J Hawkins**

HMCTS Code : **Hearing no inspection**

Date of Decision : **24 May 2024**

Date of Statement of Reasons: 24 May 2024

Statement of Reasons

Decision

1. The decision of the Tribunal is that a fair rent of **£12054.19 per year including £864.96 for services of which £ 130.46 is attributed for fuel.** is determined with an effective date of **24 May 2024.**

Background

2. An application was made to re-register a fair rent, dated **16 August 2023**, by the landlord of the property Inbar Ltd requesting a Fair Rent of **£369 per week, with £390 per quarter noted for services.** Prior to the application to re-register a fair rent, the Rent Officer had registered a rent of **£9965.50 per year** with effect from **8 November 2019 including £536.87 per year for services of which £ 172.77 per year are attributed to fuel charges following determination by the First –tier-Tribunal.**

3. Subsequently the Rent Officer registered a fair rent of **£12,780.00 per year** with **£864.96 per year** included and noted for services of which **£130.46 per year** for fuel charges with effect from **14 November 2023.**

4. In a letter Mr K Henry the Tenant, received 4 December 2023, 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 **13 February 2024.** 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 landlords statutory repairing obligations; the tenant is responsible for internal decorations.

The Property

6. The Tribunal did not inspect the property.

The property is a self contained purpose built flat , with partial central heating comprising ; 3 rooms, 1 kitchen, and 1 bathroom/WC. Double glazed windows Bathroom pre dates 1984 , 1930s bath/ wash hand basin / Kitchen units 2006 semi fitted . Pay electricity separately , but not the gas. Property wired by T

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 amend

ed 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.”

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.

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).

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

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

Submissions

Landlord

8. No submissions from the landlord were received, other than the Application to Register a Fair Rent and a Completed Reply Form. The completed Reply Form, outlined the accommodation, and noted the works carried out by the Landlord since 2021 , including work to the boiler and associated pipework.

The Landlord also submitted the breakdown from the service charge for the year ending in March 2023 which showed £130.46 per year.

Tenant

9. By letter dated 11 March 2023 the Tenant requested a hearing.

The Hearing

The Tenant attended the hearing, the Landlord did not. The Tenant described the property and noted that due to the proximity of the flat to the lift there was noise disturbance. The tenant did not have a specific figure in mind for the Fair Rent but asked to the Tribunal to take into account the properties condition and general levels of rent.

The Determination

10. The property was not inspected.

Reasons for Decision

11. The rent to be determined must reflect the condition found on the date of the hearing disregarding all tenants' improvements.

12. 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.

13. Initially 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. 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 rent was **£1700 per month** if let on a contemporary assured shorthold basis.

14. The Property is not in the condition considered usual for a modern letting at a market rent, therefore, it is necessary to adjust the above hypothetical rent, a deduction of **20%** is made. 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. Thereafter the Tribunal considered the question of scarcity in section 70 (2) of the Rent Act 1977. A figure of **20%** was adopted.

15. Evidence from the Rent register shows that the Tenant is responsible for payment of a service charge within the rent. This is stated as £864.92 per year. Rents derived from assured shorthold tenancies would not be expected to pay a service charge. So the total rental bid for this property would not be more than the rental figure without a service charge. In this case that is £1700.00 per month, which equates to £20,400 per year. However, the service charge also includes some matters which the Tenant would expect to pay separately for, in this case that is gas which is £130.46 per year.

The calculation

16. The rent prior to adjustment for condition, terms, service charge and scarcity is £20,400 per year.

Contemporary rents are derived from assured shorthold tenancies. These comparable tenancy's do not generally require the Tenant to pay towards the service charge. Therefore, the total bid a Tenant would make is net of service charge. The Tribunal therefore makes an adjustment from the contemporary market rent to deduct the service charge of £846.96 per year of which £130.46 per year is made up of fuel costs. The net being £846.96 per year less £130.46 per year giving £716.50 per year.

	£20,400 per year
Less	£716.50 per year

	£19683.50 per year

Less 20% condition (dated bathroom, and tenant undertaking the wiring)

	Less	£3936.70 per year

£15746.80 per year

Less 10% for terms interior decoration liability and supplied goods inc white goods

£1574.68 per year

£14172.12 per year

Less 20% for scarcity. £2834.42 per year

£11337.69 per year

Add back service charge,

net of gas (£130.46) £716.50 per year

£12054.19 per year

Rent Acts (Maximum Fair Rent) Order 1999

17. The rent to be registered is not limited by the Rent Acts (Maximum Fair Rent Order) 1999. The rent calculated in accordance with the Order is **£13753.00 per year**. This figure is higher than the figure calculated by reference to the market rent with adjustments, of **£12054.19 per year, including service charge of £864.96 per year of which £130.46 per year is fuel.**

18. Accordingly, the sum of **£12054.19 per year including service charge of £864.96 per year of which £130.46 per year is fuel**, will be registered as the fair rent with effect from **24 May 2024**, being the date of the Tribunal's decision.

Valuer Chair: Richard Waterhouse FRICS

Decision Date: 24 May 2024

Extended reasons: 24 May 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.