



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

Case Reference : **LON/OOAP/F77/2024/0094**

Property : **Ground Floor Flat, 64 Ferme Park Road,
London, N4 4ED**

Tenant : **Graham Murdoch**

Landlord : **Expert Housing 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 with 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 **£936.00 per month** is determined with an effective date of **24 May 2024**.

Background

2. An application was made to register a fair rent, received **18 October 2023**, by the landlord of the property **Expert Housing Ltd** requesting a Fair Rent of **£1500.00 per month**. Prior to the application to register a fair rent, there is no record of a registered Fair Rent.

3. Subsequent to the Application the Rent Officer registered a fair rent of **£880.00 per month** with effect from **30 November 2023**. The Rent Register entry notes the Registration is exempt from Maximum Fair Rent. The Maximum Fair Rent Order provides for an alternative procedure to ascertain the Fair Rent, based on a Statutory formula involving Retail Price Index. The result of which is then compared with the Fair Rent calculated through the section 70 procedure. The lower of the two is then adopted as the Fair Rent.

4. In a letter of **18 December 2023**, the Tenant 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 March 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 inspect the property, on the day of the hearing.

The property is a flat within a converted house. Entrance to the building is through a communal front door which leads to a tiled communal hallway. Off the communal hallway are basement storage area with no natural light that is contained within the tenancy. On the ground floor there is a living room, with access to a private garden. The living room has ornate original plaster detailing, some of which has come detached. The room has a double radiator, two double sockets.

The kitchen is located on the ground floor, directly off the living room, there is a double radiator and two double sockets. Within the kitchen there are dated fitted units that were in place at the start of occupation of the flat which was 1990. There is a boiler, stainless steel sink, and dated kitchen units.

The bathroom is also on the ground floor, accessed off the kitchen. The bathroom contains a WC, free standing hand basin and a panel bath. The bathroom items are dated but appear useable. Attached and accessed from the bathroom is a wooden conservatory which has considerable decay. The garden is the width of the house and is of good size the garden is overgrown.

An additional room which faces the road, is accessed off the main room, it contains with two double sockets, one double radiator and bay window. There is a large crack on the left-hand side of the room when viewed facing the road. The windows are single glazed.

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.”

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. The Landlord submitted a complete Application for Registration of a Fair Rent and a completed Reply Form. The Form noted the accommodation, a two-room ground floor flat with kitchen and bathroom with additionally basement stores. The property has no double glazing, but central heating supplied by the landlord. There is private parking and sole use of a garden. A “Market Appraisal Guide” included providing properties to let or let in the vicinity. There are a number of letters between the landlord and the Tenant relating to outstanding repair issues and their intended rectification. The Landlord asserted that repairs were difficult because of the difficulty in communication he has had with the tenant. During the hearing the Landlord submitted that given the level of rent he had achieved with the first-floor flat which he owned, he believed the subject property would command a rent of £2000.00 per month if in good order.

Tenant

9. The tenant submitted a Reply Form and accompanying letter received 11 April 2024. The documents record the condition of the property and assert the various repairing issues including, but not limited to, that the central heating is not functioning, the windows are in poor condition and plaster in some places has become detached. During the hearing, the tenant Mr Murdoch stated that the landlord had carried out no works to the property and the previous rent of £433.00 per month should be maintained. The Tenant had been in the building since 1

October 1986, but without break in his tenancy moved to the subject flat in 1990. He noted that the flat above had leaked in the past and this had contributed to some of the plaster mould falling from the ceiling. Also, that whilst the boiler worked, hot water was only supplied to the taps rather than also to the central heating system. He stated that in or around 2008 he had attended the Tribunal for a hearing. The exact nature of the hearing was not known

Rent Officer

The Rent Officer “Consultation and Considerations Notes dated 28 November 2023 **notes this is the first registration.**

The Determination

10. The property was 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 £2000.00 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.

The calculation

15. The rent prior to adjustment for condition, terms and scarcity is £2000.00 per month.

£2000.00 per month

Less 35% condition (defective ch / poor bathroom/poor kitchen,)

Less £700.00 per month

£ 1300.00 per month

Less 10% for terms and supplied goods inc white goods

£130.00 per month

£1170.00 per month

Less 20% for scarcity. £234.00 per month

16. The rent after this final adjustment was **£936.00 per month.**

Rent Acts (Maximum Fair Rent) Order 1999

17. Without evidence of a previous registration of a Fair Rent for the property, the Tribunal is unable to apply the Maximum Fair Rent Order. It falls to the Tribunal to apply the section 70 determination as above.

18. Accordingly, the sum of **£936.00 per month** 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.