



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

Case reference : **CAM/00KA/F77/2023/0014**

HMCTS code : **P:PAPERREMOTE**

Property : **89 Ridgeway Road, Luton, LU2 7RS**

Applicant (Landlord) : **Dorrington Housing Ltd C/O Savills UK Ltd**

Respondent (Tenant) : **Mr W J McCartney**

Type of application : **Determination of a fair rent under section 70 of the Rent Act 1977**

Tribunal members : **Peter Roberts FRICS CEnv and Mrs M Wilcox BSc MRICS**

Date of Determination : **19 June 2023**

DECISION

Description of hearing

This has been a remote determination on the papers which the parties are taken to have consented to, as explained below. The form of determination was a paper determination described above as P:PAPERREMOTE. The documents that the Tribunal was referred to are in bundles from the Applicant and the Respondent. The Tribunal has noted the contents and the decision is below.

Decision

The Tribunal determined a fair rent of £173 per week effective from 19 June 2023.

Reasons

Background

1. On 25 January 2023 the Landlord made an application to register the rent of the Property at £173 per week.
2. The Rent Officer registered a Fair Rent of £166 per week on 10 March 2023 effective from 13 April 2023. This was in lieu of the previous registered rent of £157.50 per week which was registered on 2 March 2021 and effective from 13 April 2021.
3. Savills UK Limited objected on behalf of the Landlord by way of an email dated 20 March 2023. The matter was referred to the First Tier Tribunal, Property Chamber.
4. The Tribunal issued directions on 3 April 2023, inviting the parties to submit any further representations (including any photographs and details of rentals for similar properties) they wished the Tribunal to consider.

The Property

5. The Tribunal inspected the Property on 2 May 2023 accompanied by the Tenant. The Landlord did not attend.
6. The Property comprises a mid-terraced period two-storey cottage of brick and tile construction providing two bedrooms at first floor level together with bathroom, kitchen, dining room and lounge at ground floor. There is a garden to the rear which includes a shed but no off-street parking.
7. The external elevations appeared to be in reasonable condition although the Property would benefit from modernisation.
8. The Property benefits from central heating and UPVC double-glazing which had been installed by the Landlord.
9. The Tribunal understands that the Tenant installed the kitchen units, shower and flooring but the Landlord provided the bath and bathroom sink.
10. The Council Tax Band for the Property is B.
11. The Property has been assessed for EPC purposes as a Band D property with a floor area of 59 sqm.

The Law

12. The relevant law is set out in section 70 of the Rent Act 1977 (the Act) and The Rent Acts (Maximum Fair Rent) Order 1999 (the Order).

13. Section 70 (1) of The Act provides that in assessing the rent:

“regard shall be had to all the circumstances (other than personal circumstances) and in particular to—

- i. the age, character, locality and state of repair of the dwelling-house,*
- ii. if any furniture is provided for use under the tenancy, the quantity, quality and condition of the furniture and*
- iii. 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.”*

14. Section 70 (2) of the Act provides that:

“...there shall be disregarded.

- i. 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;*
- ii. 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*
- iii. 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 in title 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.”*

15. In addition, section 70 (2) of The Act requires the Tribunal to assume:

“that the number of persons seeking to become tenants of similar dwelling-houses in the 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.”

16. This latter provision requires the Tribunal to assume that the demand for similar rented properties in the locality does not significantly exceed the supply of such properties for rent; in effect, if such scarcity exists, the Tribunal is to adjust the rental figure so that the fair rent is not affected by it.

17. 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 similar 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. (These rents may have to be adjusted where necessary to reflect any relevant differences between those comparables and the subject property).”*

18. In considering scarcity under section 70 (2) the Tribunal recognised 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 adjustment should be made; the Tribunal therefore considers the case on its merits;*

(b) *terms relating to rent are to be excluded. A lack of demand at a particular rent is not necessarily evidence of no scarcity; it may be evidence that the prospective tenants are not prepared to pay that particular rent.”*

19. Section 71 (1) of the Act provides that the registration of the rent takes effect from the date that the Tribunal makes its decision.

20. 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 increase in the Retail Price Index since the previous registration.

21. Section 72 (1) (b) of the Act provides that the registration of a rent takes effect:

“...if the rent is determined by the appropriate tribunal, from the date when the tribunal make their decision”

Representations – Tenant

22. The Tenant did not submit any representations.

Representations – Landlord

23. The Landlord’s objection (as submitted by Ms Beresford of Savills) stated the following:

“We would like to object to the amount registered as we feel that it is too low considering the current market and the rate of inflation.

The Increase to £166 per week from £157.50 per week represents a 5.4% increase, which is well below the level of inflation. Furthermore, 2-bedroom terraced properties within 5 miles of this postcode are on the market starting at £1,000 pcm which is significantly higher than the rent registered for this property, even when the necessary adjustments are taken into account.”

24. Neither Ms Beresford nor the Landlord have submitted further representations or evidence.

Determination

25. The Tribunal is unable to take into account the personal circumstances of the Parties. As such, the assessment of rent has no regard to the personal, financial or health circumstances of either party both of whom are considered to be hypothetical. The Tribunal has therefore had regard to hypothetical, willing parties in the open market.
26. As set out in the Spath case as referred to above, the first step is to determine the rent which a landlord could reasonably expect to obtain for the Property in the open market if it were let today in the condition and on the terms now usual for open market lettings. The rent currently paid and/or registered is not relevant to this exercise.
27. The Tribunal noted that there were three similar (in terms of age, configuration and size) properties available to let in the locality as follows:
- a. **High Town Road, Luton** - a three-bedroom mid-terraced period property marketed at £1,250 per month or £288 per week.
 - b. **Ridgway Road** - a two-bedroom terraced property with upstairs bathroom marketed at £1,200 per month
 - c. **31 Ridgeway Road** – a three-bedroom mid-terraced period property with refitted kitchen and fitted to a high standard marketed at £1,295 pcm or £299 per week.
 - d. **Cardigan Street** – a two-bedroom terraced property that has been refurbished marketed at £1,250 per month or £288.46 per week.
28. Taken together, these indicate that the asking rent for a two-bedroom, well maintained and modernised period terraced property in the locality is in the region of £1,150 per month (£265 per week). However, whilst the Property is in repair and has been decorated, it lacks modernisation, and the bathroom is on the ground floor.
29. The Tribunal would therefore anticipate that the Property would let in the region of £1,000 per month (£230.77 per month) if it became available on the open market as it actually exists and on the basis of typical market terms.

30. However, the statutory hypothesis requires the Tribunal to disregard improvements carried by the Tenant of which the most value significant comprises the fitting out and equipping of the kitchen. In this regard, once these works are disregarded, the assumption would be that an incoming tenant would require a reduced rent to compensate.
31. In addition, the Tenant has fitted the floor carpets such that an incoming tenant would require an additional reduction to account for this.
32. Taking all these factors into account, the Tribunal considers that a 25% deduction from the adjusted market rent is warranted.
33. The Tribunal has reviewed the availability of similar properties in light of which it does not consider that a scarcity allowance is appropriate for this location at the present time.
34. Taking all these matters into account, the Tribunal is of the opinion that the fair rent for the Property as it actually exists (i.e., taking account of existing disrepair) and disregarding the Tenant's improvements is £750 per month which equates to £173 per week.
35. The provisions of the Rent Acts (Maximum Fair Rent) Order 1999 require that the registered rent is either the capped Fair Rent, details of which are attached to this Decision, or the Fair Rent decided by the Tribunal, whichever is the lower.
36. The Tribunal notes that the previous rent detailed on the Rent Register is £157.50 per week. The current calculated capped rent is therefore £206 per week.
37. The Fair Rent is below the capped rent. Therefore, the Fair Rent of **£173 per week** is to be registered.

Name: Peter Roberts FRICS CEnv

Date: 19 June 2023

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).