



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

Case Reference	:	CAM/22UL/F77/2023/0056
Property	:	3 Mariner Court Seaview Drive Southend-on-Sea Essex SS3 0DR
Applicant	:	Ms S M Levitan (Tenant)
Representative	:	None
Respondent	:	London and Quadrant Group (Landlord)
Representative	:	None
Type of Application	:	S.70 Rent Act 1977 – Determination of a new fair rent
Tribunal Members	:	Mr N. Martindale FRICS
Date and venue of Meeting	:	8 January 2024 First Tier Tribunal (Eastern) HMCTS Cambridge CB1 1BA
Date of Decision	:	8 January 2024

REASONS FOR DECISION

Background

- 1 By an application dated 15 August 2023, the landlord applied to the Rent Officer for registration of a fair rent of £694.10 per calendar month. The rent stated by the agent, payable at the time of the application was said to be £588.55 per calendar month. The effective date was unclear from the application. The registered rent was actually £631 pcm from 14 March 2014, though this was not the rent charged.

- 2 On 31 October 2023, the Rent Officer registered a fair rent of £964.50 per calendar month with effect from 31 October 2023. By a letter dated 5 November 2023, the tenant objected to the new fair rent. The First Tier Tribunal was notified of this objection and a request for a fresh determination of the rent.

Directions

- 3 Directions dated 23 November 2023 were issued by Laura Lawless, Legal Officer, for case progression. The tenant requested a hearing. The tenant's written representations did not include a completed standard Reply Form. The landlord's written representations including a completed Reply Form, were dated 7 December 2023.
- 4 A hearing was arranged by telephone for 10 am 8 January 2023: In the event, neither tenant, nor landlord's representative attended. The Tribunal determined the new rent on the parties' written statements.

Tenant's Representations

- 5 The tenant confirmed that the Property was a semi-detached house on 2 levels. A ground floor room and kitchen; three first floor rooms and bathroom/ WC. There was a small garden, off street parking and garage. The Property included landlord's full gas fired central water and space heating. Carpets and curtains and white goods were provided by the tenants in line with social lets. The tenancy began on 1 April 1976.
- 6 The tenant explained in their letter of 6 November 2023 that: *"...I am the original tenant of 3 Mariners Court having moved into the property on the 1st April 1976. As a result I remain on the original contract for the rest of the property and have confirmed with London ad Quadrant Group that I am in fact exempt from the Maximum Fair Rent and should be in receipt of a substantial discount on my rent."*
- 7 *"While I appreciate that my rent is inevitably going to be increased at times and have been happy for this to have happened in the past the increases I have previously received have always been very slight and the increase is usually spread over a period of time. The increase you have registered is just shy of £400 a month, which is nearly double the rent I am currently paying. You have also not given me any notice for this increase."*

Landlord's Representations

- 8 The landlord's confirmed the accommodation on 2 levels in a semi-detached house. The landlord explained that the monthly rents that they had actually charged for many years, were but a fraction of the open market rent and were in any case significantly below the registered fair rent that was already in place.

- 9 The landlord explained that whilst the new registered rent would increase, the longstanding restrictions in place on the landlord as a social residential landlord provider, meant that the final increase they proposed to bill the tenant, would still be well under the final registered rent even when capped by the Maximum Fair Rent Cap.

Inspection

- 10 The Tribunal did not inspect the Property. The Tribunal was however able to externally view the Property from Google Streetview (@ June 2023). The semi detached house appears to date from the 1960's, on a small residential housing estate of the same age. The estate is a little way inland from the coastline in a large village, north east of the City of Southend On Sea.
- 11 The Property has a double pitched single lap concrete tiled roof and elevations of brick and partial render. There does not appear to be modern double glazed windows. Externally the Property appears to be in fair to good condition on the front elevations.
- 12 There is a front concrete hard standing extending down the side of the house to a garage located at the back of this. The house appears to back on open land to the rear. There is a small grassed front garden. The road is a short cul-de-sac..

Law

- 13 When determining a fair rent the Committee, in accordance with the Rent Act 1977, section 70, had regard to all the circumstances including the age, location and state of repair of the property. It also disregarded the effect of (a) any relevant tenant's improvements and (b) the effect of any disrepair or other defect attributable to the tenant or any predecessor in title under the regulated tenancy, on the rental value of the property.
- 14 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 emphasized
- (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).

- 15 Where the condition of a property is poorer than that of comparable properties, so that the rents of those comparables are towards twice that proposed rent for the subject property, it calls into question whether or not those transactions are truly comparable. Would prospective tenants of modernized properties in good order consider taking a tenancy of an un-modernised house in poor repair and with only basic facilities or are they in entirely separate lettings markets? The problem for the Tribunal is that the only evidence of value levels available to us is of modernised properties. We therefore have to use this but make appropriate discounts for the differences, rather than ignore it and determine a rent entirely based on our own knowledge and experience, whenever we can.
- 16 On the evidence of the comparable lettings and our own general knowledge of market rent levels in and around Southend On Sea, we accept that the subject property would let on normal Assured Shorthold Tenancy (AST) terms, for £1500 per calendar month. This then, is the appropriate starting point from which to determine the rent of the property as it falls to be valued.
- 17 A normal open market letting would include carpets, curtains and “white goods”, but not usually provided in social housing lets and were assumed not provided here by the landlord. The Tribunal assumes the kitchen and bathroom whilst functional are basic. The windows are taken as single glazed. Deduction for these shortcomings amount to £400 pcm, leaving the adjusted market rent at £1100 pcm.
- 18 The Tribunal also has to consider the element of scarcity and whether demand exceeded supply. The Tribunal found that there was no scarcity in the locality of Southend On Sea for this type of property and makes no further deduction from the adjusted market rent.
- 19 The fair rent to be registered on this basis alone would be £1100 pcm, but, the new rent is limited by the statutory Maximum Fair Rent Cap calculation. The Property is not, as the tenant asserted, “exempt”. If this Cap did not apply, the registered Fair rent would be £1100 pcm.
- 20 The MFRC limits any increase to the change in RPI (set two months prior at each date), between the date of the last registration of a fair rent and the current, plus 5%. The calculations are shown in the MFR form and this caps the new rent at £974.50 pcm. The fair rent is therefore capped at this figure.
- 21 The Rent Act makes no allowance for the Tribunal to take account of hardship arising from the new rent payable compared with the existing rent registered. The landlord is entitled but, not compelled, to charge the tenants rent at the registered figure from the effective date. However the landlord may not charge more than the fair rent.

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 either party is dissatisfied with this decision, they may apply for permission to appeal to the Upper Tribunal (Lands Chamber) on any point of law arising from this Decision.

Prior to making such an appeal, an application must be made, in writing, to this Tribunal for permission to appeal. Any such application must be made within 28 days of the issue of this decision to the person making the application (regulation 52 (2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rule 2013).

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).