



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

**Case reference** : **CAM/22UH/F77/2024/0004**

**HMCTS code** : **A: BTMMREMOTE**

**Property** : **13 Bansons Way, Ongar, CM5 9AS**

**Applicant (Landlord)** : **Fairdale Property Trading Limited  
C/O Baron Management**

**Respondent (Tenant)** : **Mr K Walker**

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

**Tribunal members** : **Peter Roberts FRICS CEnv**

**Date of Determination** : **27 April 2024**

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**DECISION**

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**Description of hearing**

This has been a Telephone Hearing determination. 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.

The Hearing was held on 19 March 2024.

## **Decision**

**The Tribunal determined a fair rent of £218 effective from 27 April 2024.**

## **Reasons**

### **Background**

1. The Landlord made an application dated 19 October 2023 to register the rent of the Property at £237 per week.
2. The Rent Officer registered a Fair Rent of £215 per week on 7 December 2023 effective from the same day. This was in lieu of the previous rent of £197 per week which was effective from 22 November 2021.
3. The Landlord objected by way of a letter email 21 December 2023. The matter was referred to the First Tier Tribunal, Property Chamber.
4. The Tribunal issued Directions on 17 January 2024, 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 did not inspect the Property but relied upon the submissions of the Parties together with the oral evidence presented during the Hearing and information available in the public domain.
6. The Property was formerly occupied by London Underground staff and comprises an end terraced house of brick and tile construction providing two living rooms, kitchen and bathroom at ground floor level and two bedrooms together with a small additional room at first floor level.
7. There is central heating and double glazing throughout with the exception of the bathroom.
8. The Tenant has provided the carpets and curtains together with “white goods” and has decorated internally throughout.
9. The Landlord has recently replaced the felt roof to the first-floor window and made good together with some roof tile replacement works, ceiling repairs and a new boiler.

### **The Law**

10. 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).
11. 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.”*

12. Section 70 (3) 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.”*

13. 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.”*

14. 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.

15. 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)."*

16. 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."*

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

18. 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.

19. 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**

20. The Tenant completed the Reply Form and advised during the Hearing that he had fitted out the kitchen and installed the flooring as well as improving the Property generally.

21. The Tribunal was advised that the bathroom comprises a single storey extension at ground floor level of frame construction which is corroding/rotting and pulling away from the main structure. The Tenant also advised that the bathroom contains asbestos.

### **Representations –Landlord**

22. The Landlord advised within the Reply Form that:

*"We have appealed as the increase is not in line with inflation and does not reflect the increased rents of properties in the rental market."*

23. Mr Marsh attended the Hearing on behalf of the Landlord and advised that the Landlord had purchased the Property in 2019 so he was unable to comment as to the state of affairs prior to that.

24. He confirmed that the Landlord had not carried out any works that went beyond their obligations. However, the Landlord owns over 150 regulated tenancy properties and there has recently been a serious of increases in the region of 15 to 25% albeit with some outliers.
25. No specific rental evidence was brought to the Tribunal's attentions.

### **Determination**

26. 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. The ownership costs arising to the actual Landlord are therefore irrelevant to this exercise.
27. Having determined that the parties to the assumed transaction are hypothetical, the next step, as set out in the Spath case as referred to above, 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.
28. The rent currently paid and/or registered is not relevant to this exercise. As such, the Tribunal has not relied upon the previous rent in any way and has disregarded historic evidence/determinations.
29. In this regard, whilst the Tribunal accepts that rents have increased since 2021 it would be wholly inappropriate to index the previous rent to determine the rent that should now be payable.
30. In the absence of any rental evidence being presented as part of these proceedings it has been necessary for the Tribunal to rely upon its own knowledge and expertise.
31. The Tribunal is of the opinion that the current unadjusted open market rent would, if the Property was fully modernised and in repair, be in the region of £1,500 per month.
32. Having calculated the market rent, it is then necessary to make deductions on account of "value sensitive" Tenant's alterations and the additional obligations (i.e., decoration and maintenance) that do not typically apply to modern lettings.
33. In this regard, it is uncontested that the Tenant has made significant alternations and improvements over the years which would have a direct impact on the rental value of the Property.
34. A Tenant taking possession under a modern lease would not be prepared to bear the cost and hassle of these works but would expect a discount in their rent to incentivise them to take a lease on the Property in that state rather

than take a lease on an alternative property in an improved state. The Tribunal acknowledges that a scenario could arise where a Property is uninhabitable unless the improvements are carried out but, nevertheless, the principle still applies whereby it is assumed that a Tenant would take occupation if the rent was suitable reduced.

35. In essence, the Tribunal is required to assess the Property in the state in which it was originally provided together with any improvements carried out by the Landlord. Matters of age and obsolescence in respect of the Tenant's alterations are therefore of no relevance to the valuation exercise.
36. The main "value sensitive" items comprise the kitchen fit out (10%) and carpets (5%) and curtains (2.5%). However, the Tribunal considers that an incoming tenant would also have concerns in respect of the bathroom both in respect of its condition but also the potential risk of asbestos being released through continued deterioration.
37. A further adjustment is required to account for the fact the Tenant has carried out the interior decoration whereas modern open market lettings do not typically include specific redecorating obligations.
38. Having taken all these matters into account, a total allowance of 30% is considered to be appropriate.
39. There appears to be a shortage of similar property available to let such that the Tribunal considers a scarcity allowance of 10% to be appropriate on this occasion.
40. Having fully considered all matters relevant to this case, the Tribunal therefore considers the Fair Rent to be £945 per month which equates to £218 per week.
41. 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.
42. As set out above, the capped rent is determined by a formula that has regard to the increase in the Retail Price Index since the date of the last rent registration.
43. The Tribunal notes that the previous rent detailed on the Rent Register was £197 per week as registered on 10 November 2021. The calculated capped rent as at the date of this Determination is therefore £250 per week.
44. The Fair Rent is below the capped rent. Therefore, the Fair Rent of **£218 per week** applies.
45. The Tribunal also directs that the revised rent takes effect from the date of this Determination. This means that the rent will continue at £197 per week until the date of this Determination at which point it will increase to £218 per week.

46. The Rent Officer's assessment is therefore of no effect having been supplanted by this Determination.

**Name:** Peter Roberts FRICS CEnv

**Date:** 27 April 2024

### **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).

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