



FIRST-TIER TRIBUNAL

PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference : **CAM/26UD/F77/2024/0006**

HMCTS code : **P:PAPERREMOTE**

Property : **91 High Street, Watton-at-Stone, Hertfordshire, SG14 3SB**

Applicant (Tenant) : **Mrs C A Smith**

Respondent (Landlord) : **The Abel Smith Trust**

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 : **4 April 2024**

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 £759 per month effective from 4 April 2024.

Reasons

Background

1. The Landlord made an application dated 11 October 2023 to register the rent of the Property at £8,813 per annum (£2,203.25 per quarter - £734.41 per month).
2. The Rent Officer registered a Fair Rent of £2,430 per quarter (£9,720 per annum - £810 per month) on 15 November 2023 effective from 15 November 2023. This was in lieu of the previous rent which was stated on the Rent Register as provided to the Tribunal as being £2,069 per quarter effective from 8 June 2021. However, the previous rent was determined by the Tribunal as being £2,040 per quarter with effect from 21 October 2021. This Tribunal has therefore relied upon the previous Tribunal decision in preference to the Rent Register.
3. The Tenant objected by way of an email dated 14 December 2023 submitted on her behalf by Ms Bryan. The objection was accepted and the matter was referred to the First Tier Tribunal, Property Chamber.
4. The Tribunal issued Directions on 22 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 and has relied on the papers together with the previous findings of the Tribunal as set out in the decisions dated 21 October 2021 and 29 April 2019 together with information in the public domain.
6. The Property comprises a small two-bedroom period property of brick with timber cladding providing a small entrance lobby, galley kitchen, shower room/WC, two reception rooms and two bedrooms at first floor level.
7. There is a steeply sloping rear garden and a shared driveway. The Tribunal understands that the Tenant provided the decking area at the rear of the Property.
8. The Property benefits from central heating (partially provided by the Landlord) and the Tenant has provided flooring, curtains and white goods together with a number of improvements. There is no double glazing.
9. The Tribunal notes that the EPC rating of the Property, as assessed on 23 July 2021, is E which is the minimum level for letting purposes. The assessor has rated the energy efficiency of the

timber frame walls, roof and windows as “very poor” and the solid wall as “poor”. The heating and hot water provision is assessed as “good”.

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 set out a number of comments which can be summarised as follows:

- *Living Room – “serious condensation resulting in mouldy windows and sill. Unable to open windows – new floor fitted by me.”*
- *Dining Room – “Inadequate heating, condensation damp on walls. New Flooring fitted by me.”*
- *Kitchen – “Refitted at my expense – 5 years ago. New flooring fitted. Unable to open window*
- *Bedroom 1 – “Window rotten, condensation, damp on walls.”*
- *Bedroom 2 – “New window fitted but leaks when raining.”*
- *Bathroom – “New bathroom fitted by Landlord but shower inadequate/unusable.”*

- Landing – “Problem with electrics. Window rotten will not shut
- Front Door – “Doesn’t shut properly”

21. The Tribunal notes that similar issues were raised at the previous Tribunal hearings.

Representations –Landlord

22. Ms Sanderson (Property Manager) submitted a letter dated 6 February 2024 which advised that:

“Substantial improvement works have been carried out over the last 7 years, these included a new bathroom (new suite, flooring, underfloor heating & electrical works) external decorations, electrical improvements and external groundworks amounting in total expenditure of £12693.47 excluding VAT.

This property is a character dwelling in a very popular location with good local facilities including a mainline train station. There is a sizable garden and off-road parking which are highly sought after in this village centre location. Comparable rents in the area are very strong and the current/proposed rent provides in our opinion at minimum a 50% market rent discount.”

23. No rental evidence was provided.

Determination

24. 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.

25. Having established the extent of the Property to be valued and 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.

26. 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.
27. Neither the Landlord nor Tenant have provided any evidence of current market rents. It has therefore been necessary for the Tribunal to rely upon its own expertise and knowledge of the market.
28. The Tribunal is of the opinion that the Property would, if it was fully modernised in accordance with the expectations of the market, be capable of attracting a rent in the region of £1,700 per month.
29. However, it is clear that the Property is not in the state that would be expected by the market and it is therefore necessary to make deductions to account for disrepair and lack of modernisation. In this regard, the Tribunal considers that the Property would attract a rent in the region of £1,250 per month.
30. The Tenant has made a number of improvements that fall to be disregarded such that the Property has to be assumed as being the state that it would have been in had the Tenant not carried out these works.
31. In this regard, the cost of these works is not relevant as a Tenant taking possession under a modern lease would not be prepared to bear the cost of the works but would negotiate a discount in their rent to incentivise them to take a lease on the Property rather than an alternative property in an improved state.
32. 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 of no relevance to the valuation exercise.
33. 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.

34. Having taken all these matters into account, a total allowance of 32.5% is considered to be appropriate.
35. It is apparent that there is a scarcity of similar available properties within the general locality such that a further allowance of 10% is warranted in accordance with section 70 (2) of the Act.
36. Having fully considered all matters relevant to this case, the Tribunal therefore considers the Fair Rent to be £759 per month.
37. 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.
38. 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.
39. The Tribunal notes that the previous rent detailed on the Rent Register was determined by the Tribunal at £680 per month with effect from October 2021. The calculated capped rent as at the date of this Determination is therefore £864.50 per month.
40. The Fair Rent is below the capped rent. Therefore, the Fair Rent of **£759 per month** applies.
41. The Tribunal also directs that the revised rent takes effect from the date of this Determination. This means that the rent will continue at £680 per month until the date of this Determination at which point it will increase to £759 per month.
42. The Rent Officer's assessment is therefore of no effect having been supplanted by this Determination.

Name: Peter Roberts FRICS CEnv

Date: 4 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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