



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

Case reference : **CAM/00KA/F77/2023/0033**

HMCTS code : **P:PAPERREMOTE**

Property : **66 Cardigan Street, Luton, LU1 1RR**

Applicant (Tenant) : **Mr J Docherty and Ms M Southall**

Respondent (Landlord) : **Luton Community Housing Limited**

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 : **24 November 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 £161 per week effective from 23 November 2023.

Reasons

Background

1. On 14 June 2023 the Landlord made an application to register the rent of the Property at £127.91 per week.
2. The Rent Officer registered a Fair Rent of £160 per week on 2 August 2023 effective from 2 August 2023. This was in lieu of the previous rent of £106 per week which was registered on, and effective from, 13 April 2015.
3. The Tenant objected by way of an undated letter which was referred to the First Tier Tribunal, Property Chamber and acknowledged on 22 August 2023.
4. The Tribunal issued Directions on 25 August 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 has inspected the Property from the front external elevation of the Property but has not inspected internally.
6. The Tribunal understands that the Property comprises a period terraced house of brick and tile construction providing lounge, living room, kitchen and bathroom/WC at ground floor together with three bedrooms at first floor. There is central heating.

The Law

7. 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).
8. 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.*”

9. 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.*”

10. 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.”

11. 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.

12. 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).”*

13. 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.”*

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

15. 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.

16. 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 – Landlord

17. The Landlord did not make any representations.

Representations –Tenant

18. The Tenant’s letter stated:

“I think I should have been given notice as the lady that come to the house Karen Phillips said that it will not come in effect until April next year 2021 can this be review (sic) please. I don’t mind an increase but this is a big increase from £106 to £160 which is £54 extra each week 216 pound extra a month. I find this increase high and would like a review.”

19. No other points or arguments have been raised.

Determination

20. 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.

21. In this context and, 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.

22. Having calculated the market rent, it is then necessary to deduct for outstanding disrepair that is the responsibility of the Landlord and tenant's improvements together with an adjustment in respect of the scarcity of alternative similar accommodation.
23. The previous rent is of limited, if any, relevance to the determination of the current rent. However, the Tribunal notes that the rent has not been reviewed since 13 April 2015, i.e., 8.5 year ago, since when rents have increased significantly thereby resulting in a larger increase than might have been the case had the rent been reviewed more recently.
24. 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.
25. 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.
26. The Tribunal notes that the previous rent detailed on the Rent Register is £106 per week. The current calculated capped rent is therefore £161.
27. The Tribunal considers the Fair Rent to be £207.69 per week.
28. The Fair Rent is above the capped rent. Therefore, the capped rent of **£161 per week** is to be registered.
29. The Tribunal also directs that the revised registered rent takes effect from the date of this Determination.
30. This rent is the maximum that can be charged to the Tenant and there may be circumstances in which the Landlord decides not to charge the full amount. The Tenant is therefore encouraged to contact the Landlord to ascertain the actual amount that the Landlord requires in payment.

Name: Peter Roberts FRICS CEnv

Date: 24 November 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 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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