



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

**Case reference** : **CAM/00MX/F77/2023/0059**

**HMCTS code** : **P:PAPERREMOTE**

**Property** : **Holly Howe, Rockwell End,  
Hambleton, RG9 6NG**

**Applicant (Landlord)** : **Grainger Finance Company  
Limited**

**Respondent (Tenant)** : **Mr and Mrs Malthouse**

**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** : **19 February 2024**

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**DECISION**

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**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 £1,290 per month effective from 19 February 2024.**

## **Reasons**

### **Background**

1. The Landlord made an application to register the rent of the Property at £1,374 per month. This application was received by the Rent Officer on 5 October 2023.
2. The Rent Officer registered a Fair Rent of £1,197 per month on 7 November 2023 effective from 1 December 2023. This was in lieu of the previous rent of £1,145 per month which was effective from 16 December 2021.
3. The Landlord objected by way of a letter dated 22 November 2023. The matter was referred to the First Tier Tribunal, Property Chamber.
4. The Tribunal issued Directions on 23 November 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 the 22 January 2024 accompanied by the Tenant. The Landlord did not attend.
6. The Property comprises a detached period house of brick, flint and tile construction providing a dining room, lounge, WC, and kitchen on the ground floor together with three bedrooms and a bathroom on the first floor and extensive gardens backing onto open fields.
7. The Landlord has installed oil fired central heating and UPVC double glazing.
8. The Tenant has fitted the kitchen, partially refitted the bathroom, drylined the front bedroom, gravelled the driveway, carpeted throughout, fitted the curtains, constructed the utility area, and decorated throughout.
9. There is evidence of damp in the lounge which appears to be the result of penetrating water.

### **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 (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.”*

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. Other than completing the Reply Form, the Tenant did not submit any evidence.

### **Representations –Landlord**

21. Although the Landlord had instigated these proceedings, they did not attend the Tribunal's inspection and failed to submit any representations, evidence or explanation as to the basis of their challenge despite being given adequate chance to do so.
22. The Tribunal found this approach to be unhelpful.

### **Determination**

23. 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.

24. 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.
25. 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.
26. Neither party submitted any evidence as to the likely current rent that would be achieved in the event that the Property was brought up to modern standards and let on the open market on market terms.
27. Having applied its own judgement and expertise, the Tribunal is of the opinion that the Property would, if fully modernised, attract a current rent in the region of £2,400 per month. However, the Property has not been modernised such that if was to be let as it actually is (i.e., with the benefit of the Tenant's alterations but unmodernised) it would be likely to attract a rent in the region of £2,150 per month.
28. Having calculated the market rent, it is then necessary to make deductions on account of "value sensitive" Tenant's alterations.
29. The main "value sensitive" items comprise the kitchen fit out (10%) and bathroom alterations (3%), utility space (5%), carpets (5%) and curtains (5%).
30. A further adjustment is required to account for the fact the Tenant has carried out the interior decoration and repair whereas modern open market lettings do not typically include specific redecorating obligations. In addition, it is apparent that the Tenant has taken the lead in caring for the fabric of the Property including dry lining.
31. Having taken all these matters into account, a total allowance of 30% is appropriate.
32. It is apparent that there is a shortage of similar size property available to let relative to demand notwithstanding the point that this is a rural location. In this regard, the Tribunal has applied a further allowance of 10% on account of scarcity. The total allowance in respect of the Tenant's alterations and scarcity is therefore 40%.
33. Having fully considered all matters relevant to this case, the Tribunal therefore considers the Fair Rent to be £1,290 per month.
34. 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.
35. 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.

36. The Tribunal notes that the previous rent detailed on the Rent Register was £1,145 per month as registered on 12 November 2021. The calculated capped rent as at the date of this Determination is therefore £1,434.50 per month.
37. The Fair Rent is below the capped rent. Therefore, the Fair Rent of **£1,290 per month** is to be registered.
38. The Tribunal also directs that the revised rent takes effect from the date of this Determination. This means that the rent will continue at £1,145 per month until the date of this Determination at which point it will increase to £1,290 per month.
39. This Determination therefore has the effect of supplanting the Rent Officer's assessment which is now of no effect.

**Name:** Peter Roberts FRICS CEnv

**Date:** **19 February 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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