



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

Case reference : **CHI/00ML/F77/2024/0023**

Property : **Flat 3, 59 Ventnor Villas, Hove, East
Sussex BN3 3DB**

**Applicant
(Landlord)** : **Prof. Paul Lyons**

Representative : **Lyons Den Properties LLP**

**Respondent
(Tenant)** : **Mrs Gertrude Braley**

Representative : **Mr and Mrs F Downs**

Type of application : **Section 70 of the Rent ACT 1977**

Tribunal members : **Mr D Jagger MRICS
Mr K Ridgeway MRICS**

Venue : **Paper determination with inspection**

Date of decision : **2nd August 2024**

DECISION

The Tribunal determines £715.50 per month is to be registered as the fair rent for the above property with effect from 2nd August 2024 being the date of the Tribunal's decision.

The reasons for this decision are set out below.

Reasons

Background

On the 13th April 2024 the Landlord, applied to the Valuation Office Agency (Rent Officer) for registration of a fair rent of £1,450 per month for the property.

The rent registered at the time of the application was £601.50 per month effective from the Tribunal's decision dated 29th June 2022.

On the 15th May 2024 the Rent Officer registered a fair rent of £708.00 per month, effective from the 29th June 2024. The rent increase imposed by the Rent Officer has been "capped" and limited by the operation of the Rent Acts (Maximum Fair Rent) Order 1999 (the Order).

By an email dated 28th May 2024, the Landlord's agent objected to the rent determined by the Rent Officer and the matter was referred to this Tribunal.

The law

When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, must have regard to all the circumstances including the age, location and state of repair of the property. It also must disregard the effect of (a) any relevant tenant's improvements and (b) the effect of any disrepair or other defect attributable to the tenant, on the rental value of the property. Section 70(2) of the Rent Act 1977 imposes on the Tribunal an assumption that the number of persons seeking to become tenants of similar dwelling house 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. This is commonly called 'scarcity'.

In *Spath Holme Ltd v Chairman of the Greater Manchester Council (1995) 28 HLR 107* and *Curtis v London Rent Assessment Tribunal [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).

The Rent Acts (Maximum Fair Rent) Order 1999 places a “cap” on the permissible amount of the increase of a fair rent between one registration and the next, by reference to the amount of the increase in the United Kingdom Index of Retail Prices between the dates of the two registrations. Where the cap applies the Rent Officer and the Tribunal is prevented from increasing the amount of the fair rent that it registers beyond the maximum fair rent calculated in accordance with the provisions of the Order and the mathematical formula set out in the Order.

By article 2(7) of the 1999 Order the capping provisions do not apply *“in respect of a dwelling-house if because of a change in the condition of the dwelling-house or the common parts as a result of repairs or improvements (including the replacement of any fixture or fitting) carried out by the landlord or a superior landlord, the rent that is determined in response to an application for registration of a new rent under Part IV exceeds by at least 15% the previous rent registered or confirmed.”*

Facts found with Inspection.

The Tenant requested the Tribunal inspect the property and this was undertaken at 12am on the 2nd August 2024 in the presence of Mr and Mrs Downs and the Tenant. A request was made to the Tribunal by the Landlord’s agent to attend the inspection, but access was denied by Mr Downs, acting on behalf of the Tenant.

The property is a Victorian first floor converted flat forming part of a four-storey building with stucco elevations under a pitched and tiled roof located in an established road convenient to local amenities in Hove

The accommodation comprises: living room, kitchen, two bedrooms, bathroom. Access to the property is provided by a communal hallway and staircase to the upper floors. These areas are in very poor condition and require significant refurbishment. The fabric of the building appears neglected and the flat itself is in a dated condition. Kitchen and sanitary fittings are dated, there are significant cracked lath and plaster ceilings via a previous leak from the flat above. The timber sash windows are suffering from rot infestation and are draughty. There is damp and mould to the walls in the bathroom.

Terms of the tenancy

The Tribunal prepared Directions on the 19th June 2024 setting out the conduct of the matter. The Landlord’s application states that the tenancy agreement commenced in 1988 for Flat 2. It is stated by the Tenant that she then when on to occupied Flat 3 in 2003 with the Landlord’s consent which is disputed by the

Landlord. The parties did not provide the Tribunal with a copy of the tenancy agreement which will be considered below. It is assumed the Periodic Protected Tenancy made the landlord responsible for structural repairs and external decoration; the tenant is responsible for internal decorations. Once again, it is assumed the property was let unfurnished.

Evidence

The Tribunal had copies of the Valuation Office Agency correspondence including the rent registers effective from 29th June 2022 and 29th June 2024 together with the calculations for the most recent registration.

In the bundle of documents, the Landlord's agent completed the Fair Rent Appeal Statement and Mr Downs sent the Tribunal helpful correspondence. The Landlord provided a Rightmove "Best Price Guide which gives a range of rents from £1550 pcm-£1595 pcm.

The first matter for the Tribunal to consider is, is *this tenancy a Registered Tenancy in accordance with the Rent Act 1977*. The Tribunal has considered all the evidence and agrees with the Rent Officer that this is a Registered Rent. The Tribunal is satisfied that Mrs Braley, who is 95 years of age, took the Registered Fair protection status with her when she moved from Flat 2 to Flat 3. It is the Tribunal's opinion that there is insufficient evidence to confirm otherwise.

The Tribunal found the evidence submitted by Mr Downs to be convincing and credible and had no reason to reject this. Therefore, on the balance of probability based on the evidence provided by the parties, the Tribunal is satisfied that this is a Registered Tenancy under the Act. So, the next matter to consider is the valuation.

Valuation

In the first instance the Tribunal determined what rent the landlord could reasonably be expected to obtain for the property in the **open market** if it were let today in the condition that is considered usual for such an open market letting.

The Tribunal used its expert knowledge in the area and the comparable evidence produced by the Landlord and considers that the subject property, if finished to a reasonable standard with modern services, carpets, curtains and white goods would be likely to attract a rent let on an assured shorthold tenancy, of **£1,600** per month.

However, it necessary for the Tribunal to **adjust that hypothetical rent of £1,600 per month** to allow for the differences between the terms of this tenancy, the lack of white goods, carpets and curtains, and the condition of the property and common parts as set out above, together with the tenants decorating responsibilities (disregarding the effect of tenant's improvements and any disrepair or other defect attributable to the tenant).

The Tribunal has considered very carefully the information prepared by the Rent Officer in the absence of evidence from the parties.

Using our own expertise, the Tribunal considers that a deduction of 30% should be applied to take into account the terms of the tenancy, the condition of the property at the commencement of the tenancy, the lack of white goods, carpets, curtains. This results in a deduction of £480 per month from the hypothetical rent and reduces the figure to £1,120 per month.

It should be noted that this figure cannot be a simple arithmetical calculation and is not based upon capital costs but is the Tribunal's estimate of the amount by which the rent would need to be reduced to attract a tenant.

Scarcity

The tribunal then went on to consider whether a deduction falls to be made to reflect scarcity within the meaning of section 70(2) of the 1977 Act. The tribunal followed the decision of the High Court in *Yeomans Row Management Ltd v London Rent Assessment Committee*, in which it was held that scarcity over a wide area should be considered rather than scarcity in relation to a particular locality.

In the Tribunals opinion there should be a deduction of 10% for scarcity as it is considered demand outweighs supply of rented properties in the area. This provides a figure of £112 and therefore reduces the rent to **£1,008 per month**.

Conclusion

The capping provisions of the Rent Acts (Maximum Fair Rent) Order apply and therefore the capping figure in accordance with the attached calculations does not pertain.

Therefore, **£715 per month** is the fair rent to be registered limited by the Rent Acts (Maximum Fair Rent) Order 1999 with effect from the **3rd August 2024** being the date of the Tribunals decision.

Detailed calculations for the capped maximum fair rent are provided attached to this decision. This calculation for this figure is based upon the indexation of the Retail Price Index (RPI) during the period of the two rent assessments. During the past 12 months, the RPI has increased dramatically due to the cost-of-living crisis and therefore this rental calculation has escalated significantly.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.