



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

Case Reference	:	LON/00AN/F77/2024/0214
Property	:	2 Library Mansions Pennard Road Shepherds Bush London W12 8DR
Applicant	:	Helen Carey (Tenant)
Representative	:	None
Respondent	:	Ian Leigh (Landlord)
Representative	:	None
Type of Application	:	S.70 Rent Act 1977 – Determination of a new fair rent
Tribunal Members	:	Mr N. Martindale FRICS
Date and venue of Meeting	:	3 September 2024 First Tier Tribunal (London) HMCTS 10 Alfred Place, London WC1E 7LR
Date of Decision	:	3 September 2024

REASONS FOR DECISION

Background

- 1 By an application, the landlord applied to the Rent Officer for registration of a fair rent. The rent stated as payable at the time of the application was said to be £861.50 pcm including a variable service charge of £39.81 pcm.

- 2 With effect from 26 March 2024, the Rent Officer registered a fair rent of £1153 pcm including a small service charge element. There was an objection to the new fair rent. The First Tier Tribunal was notified of this objection and a request for a fresh determination of the rent.

Directions

- 3 Directions dated 5 July 2024 were issued by the Tribunal, for case progression. Neither party requested a hearing.
- 4 The Tribunal determined the new rent on such written statements from the parties as were received. Some secondary representations giving some more background on the tenancy and arrangements at the building were received from the tenant late; but were not excluded from the determination process because of that.

Representations

- 5 Standard Reply Forms were issued by the Tribunal prior and both parties invited to complete and return them. The tenant referred to the long history of the tenancy dating from 31 October 1988. Although the space was extensive, the condition of the Property was said to be poor and had not been modernised. There had been recent floods from neighbouring parts of the building. There was no central heating.
- 6 The landlord provided background to other lettings in the building, occupied mainly apparently under modern assured shorthold tenancies being of smaller sub-divided spaces, former larger residences. There was clearly a recent difference of opinion between on the rental worth of the Property in its condition, despite its large size. The tenant referred to other registered rents nearby for similar properties.
- 7 The Tribunal determined the new rent with the assistance of such written statements from the parties as were received for which it is grateful.

Inspection

- 8 The Tribunal did not inspect the Property. The Tribunal was however able to externally view the Property from Google Streetview (@ June 2022). The Property appeared to date from the 1890's set on in an otherwise residential street. The building appeared to provide purpose built accommodation for, or certainly nearby, a former public library at the end of Pennard Road.
- 9 Externally the building of which the Property forms part, appears to be in fair to good condition, with fair faced brick to lower storeys and two levels finished to white painted render. The Property is within a large tall, but essentially low rise building, being a purpose built flat, of 6 rooms, kitchen and bathroom WC.

- 10 The building has 4 levels plus a possible basement. The roof appears to be flat. The building is set within compact communal gardens. There are on-road parking restrictions.
- 11 Original features had been retained to the front exterior elevation. The Property appeared to have double glazing units to window openings but did not have central heating.
- 12 The tenancy began 31 October 1988. Registered rent increases on the tenancy appear to have been limited, over many years. Whilst other parts of the building appear to have been later vacated, sub-divided, modernized and then re-let as smaller units, the Property had remained largely laid out as it had been in 1988.
- 13 The tenant had experienced a number of recent damage to parts of the Property, as a result of floods from other parts of the building and whilst apparently subject to insurance claims it caused nuisance to the tenant. Carpets and curtains and white goods are assumed to now be provided by the tenants even if they had not been initially. Bathroom and kitchen are assumed to be basic and functional, only.

Law

- 14 When determining a fair rent the Committee, in accordance with the Rent Act 1977, section 70, had regard to all the circumstances including the age, location and state of repair of the property. It also disregarded the effect of (a) any relevant tenant's improvements and (b) the effect of any disrepair or other defect attributable to the tenant or any predecessor in title under the regulated tenancy, on the rental value of the property.
- 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 emphasized
 - (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 Where the condition of a property is poorer than that of comparable properties, so that the rents of those comparables are towards twice that proposed rent for the subject property, it calls into question

whether or not those transactions are truly comparable. Would prospective tenants of modernized properties in good order consider taking a tenancy of an un-modernised house in poor repair and with only basic facilities or are they in entirely separate lettings markets? The problem for the Tribunal is that the only evidence of value levels available to us is of modernised properties. We therefore have to use this but make appropriate discounts for the differences, rather than ignore it and determine a rent entirely based on our own knowledge and experience, whenever we can.

- 17 On the evidence of the comparable lettings and our own general knowledge of market rent levels in and around Hammersmith and Fulham, the Tribunal accepts that the Property would let on normal Assured Shorthold Tenancy (AST) terms, for £4000 pcm. This then, is the appropriate starting point from which to determine the rent of the Property as it falls to be valued.
- 18 A normal open market letting would include carpets, curtains and “white goods”, but after grant in the 1980’s it is assumed that these are in effect provided by the tenant. The Tribunal assumes that the kitchen and bathroom whilst functional, are both basic. There is no central heating. There has been some recent inconvenience and damage to the Property from insurance claims. Deduction for these shortcomings amounts to £1200 pcm, leaving the adjusted market rent at £2,800 pcm.
- 19 The Tribunal also has to consider the element of scarcity and whether demand exceeded supply. The Tribunal found that there was scarcity in the locality of Hammersmith and Fulham for this type of property and makes a further deduction of 20% from the adjusted market rent.
- 20 The fair rent to be registered on this basis alone would be £2240 pcm, but, the new rent is limited by the statutory Maximum Fair Rent Cap calculation. The MFRC limits any increase to the change in RPI (set two months prior at each date), between the date of the last registration of a fair rent and the current, plus 5%. The calculations are shown in the MFR form and this caps the new fair rent at £1179.80 pcm including £56.80 pcm service charges. The fair rent is therefore capped and registered at this figure of £1179.80 pcm.
- 21 The Rent Act makes no allowance for the Tribunal to take account of hardship arising from the new rent payable compared with the existing rent registered. The landlord is entitled but, not compelled, to charge the tenants rent at the registered figure from the effective date. However the landlord may not charge more than the fair rent.

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).