



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

**Case reference** : **CAM/42UF/F77/2024/0008**

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

**Property** : **7 Snow Hill, Sudbury, Suffolk,  
CO10 8QF**

**Applicant (Landlord)** : **C Shaw**

**Respondent (Tenant)** : **M Morris**

**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** : **17 May 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 £120.28 effective from 17 May 2024.**

## **Reasons**

### **Background**

1. The Landlord made an application dated 7 November 2023 to register the rent of the Property at £160 per week.
2. The Rent Officer registered a Fair Rent of £120 per week on 19 December 2023 effective from 7 February 2024. This was in lieu of the previous rent of £119 per week which was registered on 15 December 2021 and effective from 7 February 2022.
3. The Landlord submitted an objection which was referred to the First Tier Tribunal by the Rent Officer on 9 January 2024.
4. The Tribunal issued Directions on 8 February 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 inspected the Property on the 7 April 2024. The Landlord did not attend.
6. The Property comprises an end-terraced period house providing a kitchen and lounge at ground floor together with a single bedroom and bathroom at first floor level. There is parking to the side and gardens to front and rear.
7. The windows are single glazed and there is no central heating. The kitchen and bathroom are extremely dated and there is evidence of mould in the bedroom. The Property would require significant modernisation and decoration if it were to be let on the open market on the basis of a modern tenancy.
8. The Tribunal notes that there is no EPC rating for the Property but is unaware as to whether any exemptions apply. It also notes that the adjoining property has been assessed as being in Band F which is indicative as to the potential rating that might apply to the Property if it was assessed.

### **The Law**

9. 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).
10. 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.”*

11. 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.”*

12. 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.”*

13. 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.

14. 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)."*

15. 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."*
16. Section 71 (1) of the Act provides that the registration of the rent takes effect from the date that the Tribunal makes its decision.
17. 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.
18. 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**

19. The Tenant provided some historical background to the previous arrangements at the Property and works that had been undertaken.

### **Representations –Landlord**

20. The Landlord provided various documents which were summarised in a letter dated 8 February 2024.
21. The Tribunal was concerned to note that the Landlord has not visited the Property since, by his own admission, 2006. It would appear that the Landlord is dependent on others to bring matters to their attention.
22. The Landlord had the opportunity to be present during the Tribunal's inspection but chose not to attend.
23. The Landlord questioned the allowance made by the Rent Officer on account of scarcity stating that:

*"As such, its safe to say that properties such as this are indeed "scarce" to the point of being pretty much non existent. Any that do make it to market are snapped up immediately."*

24. In the Landlord's opinion, such scarcity should lead to an increase rather than decrease in price.

### **Determination**

25. 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. The ownership costs arising to the actual Landlord are therefore irrelevant to this exercise.
26. Having 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.
27. 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.
28. The Tribunal is of the opinion that, the Property would, if it was fully modernised and EPC compliant commensurate with market expectations, attract a rent in the region of £196.15 per week (£850 per month).
29. However, the Tribunal is required to value the Property as it actually exists having regard to the state of repair, obsolescence and the dated nature of the accommodation relative to the standard expected by prospective tenants in the market.
30. In this regard, even if the Landlord had secured an EPC certificate it may still be unlawful to let the Property in its existing state if the requisite rating could not be achieved. However, as this would frustrate the valuation exercise required by the Act, the Tribunal assumes that a Tenant would be willing to occupy the Property but in exchange for a significantly reduced rent.
31. The cost of the works to bring the Property up to modern standards is not relevant to the amount by which the rent would be reduced. In this regard, it is reasonable to assume that the works would be carried out by the Landlord who would retain the benefit of those works after the existing Tenancy has expired rather than the Tenant who would only receive benefit during the term of their lease. In any event, the Tenant would be unable to remain in occupation during the works.
32. In particular, the Tribunal notes the lack of central heating and double glazing, the lack of insulation and the basic kitchen and bathroom fitout. Taking these points into account, the Tribunal has therefore adopted a "headline" rent of £692.78 per month in respect of the Property as it actually exists which equates to £159.87 per week.

33. Having calculated the market rent, it is then necessary to make deductions on account of “value sensitive” Tenant’s alterations and the additional obligations (i.e., decoration and maintenance) that do not typically apply to modern lettings.
34. The main “value sensitive” items comprise the installation of white goods (5%), carpets (5%) and curtains (2.5%).
35. 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 redecorating obligations. The Tribunal has therefore made a further deduction of 5%.
36. Having taken all these matters into account, a total additional allowance of 17.5% is considered to be appropriate.
37. It is apparent that there is a shortage of similar property available on the market such that, as the Landlord argues, rental values would be pushed up through a lack of supply relative to demand. However, the Tribunal is required to assume that there is an adequate supply of alternative similar housing available and to discount the rent back to the level that would be expected if supply matched demand.
38. It is therefore the case that whilst market rents increase as a result of scarcity in the marketplace, Fair Rents are assessed on the basis that there is no scarcity.
39. In this situation it appears to be uncontested that there is a scarcity of alternative accommodation such that a scarcity allowance is warranted. The Tribunal has therefore applied a further deduction of 10%. This is considered to adjust the rent back to that which would apply if there was adequate supply to meet demand.
40. Having fully considered all matters relevant to this case, the Tribunal therefore considers the Fair Rent to be £120.28 per week (£521.21 per month).
41. The Tribunal notes the Landlord’s argument in respect of rental growth. However, that the Property needs significant expenditure to achieve the minimum standards required by the market and to comply with basic minimum standards such that it is not appropriate to make comparisons with properties that meet or exceed such standards. It therefore does not follow that Properties that are in a worse state of repair should be considered to increase or decrease in value in direct proportion to properties that are let on modern tenancies and meet modern market standards.
42. 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.

43. 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.
44. The Tribunal notes that the previous rent detailed on the Rent Register was £119 per week per annum as effective from 7 February 2022. The calculated capped rent as at the date of this Determination is therefore £148.50 per week.
45. The Fair Rent is below the capped rent. Therefore, the Fair Rent of **£120.28 per week** applies.
46. The Tribunal also directs that the revised rent takes effect from the date of this Determination. This means that the rent will continue at £119 per week until the date of this Determination at which point it will increase to £120.28 per week.
47. The Rent Officer's assessment is therefore of no effect having been supplanted by this Determination.

**Name:** Peter Roberts FRICS CEnv

**Date:** 17 May 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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