



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

Case reference : **CAM/00MX/F77/2023/0053**

HMCTS code : **P:PAPERREMOTE**

Property : **57 High Street, West Wycombe,
High Wycombe, HP14 3AG**

Applicant (Landlord) : **London and South East National
Trust**

Respondent (Tenant) : **Mrs Lynch**

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 : **2 May 2024**

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 £9,780 per annum effective from 2 May 2024.

Reasons

Background

1. The Landlord made an application dated 29 August 2023 to register the rent of the Property at £11,255.05 per annum.
2. The Rent Officer registered a Fair Rent of £9,180 per annum on 11 October 2023 effective from 11 October 2023. This was in lieu of the previous rent of £8,425 per annum which was effective from 27 November 2019.
3. The Landlord objected by way of an email 6 November 2023. The matter was referred to the First Tier Tribunal, Property Chamber.
4. The Tribunal issued Directions on 22 January 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 18 March 2024 accompanied by the Tenant. The Landlord did not attend.
6. The Property comprises a mid-terraced period house providing a bathroom, hallway, kitchen, lounge, rear hallway and sitting room at ground floor level with three bedrooms at first floor level. The Property is fitted with oil-fired central heating and single glazed windows with partial secondary glazing.
7. There is a garden and outbuildings to the rear but no parking.
8. There are signs of damp throughout the property and the first-floor window frames require attention.
9. The Tribunal notes that there is no EPC rating for the Property. It also notes that the adjoining properties have been assessed either as E or F which is indicative as to the potential rating that might apply to the Property.

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 (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.”*

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. The Tenant completed the Reply Form and advised as follows:
 - a. Existence of damp and mould.
 - b. Tenant levelled the garden.
 - c. The Garden and outbuildings are excluded from the rent assessment and are the subject of a separate agreement dated 17 October 1997.
 - d. The Tenant originally installed electric heating but this was replaced by the oil-fired central heating as installed by the Landlord.
 - e. Neither the Tenant nor Landlord benefit from rights to cross Third Party land to access and fill the oil tank from the car park at the rear of the Apple Orchard Coffee Shop. The only other option would be to take access from the High Street.
21. The Tenant confirmed that the central heating and double glazing was provided by the Landlord but the carpets, curtains and white goods were provided by the Tenant. In this regard, whilst the Landlord fitted the kitchen

floor, it was paid for by the Tenant. In addition, the Tenant has taken responsibility for decoration throughout the Property.

Representations –Landlord

22. The Landlord objected on the grounds that the Rent Officer had assumed that there was no central heating whereas this was installed in circa 2001.
23. No other points were raised.

Determination

24. The first point to clarify concerns the Property that is to be valued. In this regard, it is clear that the rear section of the garden and the outbuildings are to be excluded from any consideration of rental value in respect of the Property in accordance with the terms agreed between the Parties. The Tribunal has therefore disregarded these.
25. Whilst the central heating is clearly of benefit to any occupier of the Property, this depends upon the Tenant being able to replenish the oil. In this regard, access for oil deliveries is currently taken from the car park owned by The Apple Orchard café and the adjoining property. This access is therefore subject to the express consent of the owners of the car park and adjoining property such that prescriptive rights have not arisen. It is therefore the case that, consent could be withheld.
26. It may be the case that oil deliveries could be provided from the High Street but the Tribunal is unable to determine whether or not this would be feasible.
27. It therefore follows that, whilst oil fired central heating has been installed, the Tenant is dependent upon the goodwill of the owner of The Apple Orchard and her immediate neighbour to fill the oil tank and keep the heating operative.
28. The Property has therefore been assessed as it exists but excluding the outbuilding and upper garden and on the basis that the Tenant is required to rely upon the consent of the neighbours to replenish the domestic oil heating supplies.
29. 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.
30. Having established the extent of the Property to be valued and 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.

31. 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.
32. The Tribunal is of the opinion that, having regard to the location, configuration and the nature of the Property together with the lack of car parking but taking into account the Tenant's alterations the current unadjusted open market rent would, if the Property was fully modernised and EPC compliant, be in the region of £14,400 per annum (i.e., £1,200 per month).
33. However, it is necessary to make deductions from this assessment to account for the lack of insulation within the Property and the disrepair arising from damp penetration both of which would be apparent to a prospective tenant. The Tribunal has therefore adopted a "headline" rent of £13,680 per annum.
34. 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.
35. In this regard, it is uncontested that the Tenant has made alternations and improvements over the years which would have a direct impact on the rental value of the Property.
36. It is commonly argued by Landlords that it would be appropriate to cost these improvements/alterations and amortise them over their anticipated life. However, this approach ignores the point that the anticipated life exceeds the typical length of a modern lease such that a Tenant would not expect to recoup the cost of their works and takes no account of the fact that the works would have a detrimental impact on the Tenant's enjoyment and beneficial occupation of the Property during their implementation.
37. In reality, a Tenant taking possession under a modern lease would not be prepared to bear the cost and hassle of these works but would expect a discount in their rent to incentivise them to take a lease on the Property in that state rather than take a lease on an alternative property in an improved state. The Tribunal acknowledges that a scenario could arise where a Property is uninhabitable unless the improvements are carried out but, nevertheless, the principle still applies whereby it is assumed that a Tenant would take occupation if the rent was suitable reduced.
38. In essence, the Tribunal is required to assess the Property in the state in which it was originally provided together with any improvements carried out by the Landlord. Matters of age and obsolescence in respect of the Tenant's alterations are therefore of no relevance to the valuation exercise.

39. The main “value sensitive” items comprise the installation of white goods (5%), carpets (5%) and curtains (2.5%).
40. A further adjustment is required to account for the fact the Tenant has carried out the interior decoration whereas modern open market lettings do not typically include specific redecorating obligations. The Tribunal has therefore made a deduction of 5%.
41. The Tribunal accepts the point that central heating has been installed. However, an incoming tenant would be concerned at the potential for the neighbours to refuse to provide access for deliveries such that access may have to be taken from the busy main road along the frontage of the Property. Whilst it would be hoped that this would be feasible, it is informative that this option has not been used thus far. In this regard, the Tribunal has made a notional allowance of 1% to recognise that the Tenant has to currently negotiate access with the neighbours every time a delivery is required.
42. Having taken all these matters into account, a total allowance of 18.5% is considered to be appropriate.
43. It is apparent that there is a shortage of similar property available on the market such that a scarcity allowance is warranted. The Tribunal has therefore applied a further deduction of 10% resulting in a total deduction of 28.5%.
44. Having fully considered all matters relevant to this case, the Tribunal therefore considers the Fair Rent to be £9,780 per annum.
45. 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.
46. 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.
47. The Tribunal notes that the previous rent detailed on the Rent Register was £8,425 per annum as registered on 27 November 2019. The calculated capped rent as at the date of this Determination is therefore £11,510 per annum.
48. The Fair Rent is below the capped rent. Therefore, the Fair Rent of **£9,780 per annum** applies.
49. The Tribunal also directs that the revised rent takes effect from the date of this Determination. This means that the rent will continue at £8,425 per annum until the date of this Determination at which point it will increase to £9,780 per annum.
50. The Rent Officer’s assessment is therefore of no effect having been supplanted by this Determination.

Name: Peter Roberts FRICS CEnv

Date: 2 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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