FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/OOBK/F77/2024/0263**
Property	**:**	**Flat 78 Dibden House, Madia Vale, London, W9 1QF**
Tenant	**:**	**Mr and Mrs Buckley**
Landlord	**:**	**Grainger Invest No1 LLP** **Mr Darrin Soloman**
Type of Application.	**:**	**Determination of a Fair Rent under section 70 of the Rent Act 1977**
Tribunal	**:**	**Mr R Waterhouse BSc (Hons) MA LLM FRICS**
HMCTS Code	**:**	**Determination on papers**
Date of Decision	**:**	**21 October 2024**

Date of Statement of Reasons: 21 October 2024

Statement of Reasons

Decision

1. The decision of the tribunal is that a fair rent of **£240.50 per week**, is determined with an effective date of **21 October 2024.**

Background

2. An application was made to re-register a fair rent, received **1 February 2024**, by the landlord of the property **Grainger Invest No1 LLP**. Prior to the application to re-register a fair rent, the Rent Officer had registered a rent of **£191.50 per week**, with effect from **30 March 2022.**

3. Subsequently the Rent Officer registered a fair rent of **£237.50 per week** with effect from **4 June 2024.**

4. In a letter dated **17 June 2024**, the tenant objected to the rent registered and the matter was referred to the First–tier Tribunal (Property Chamber) (Residential Property).

5. Directions were issued by the Tribunal on the **28 August 2024**. Thereafter, the Directions made provision for the filing with the Tribunal of the parties' respective written submissions and, in particular, for the completion of a reply form giving details of the Property and including any further comments the parties wished the Tribunal to take into account in making its determination.

The tenancy is a statutory (protected) periodic tenancy. The tenancy (not being for a fixed tenancy of 7 years or more) is subject to section 11 of the Landlord and Tenant Act 1985 which sets out the landlords statutory repairing obligations; the tenant is responsible for internal decorations.

The Property

6. The property is as described by the Rent Register is a self-contained purpose built flat within a 1940s block, the property has central heating, three rooms, one kitchen a bathroom and a WC. There is no lift the flat is on the third floor.

The Inspection

7. The tribunal did inspect the property. The property has two bedrooms, one living room, a kitchen and a bathroom. The bathroom has a new floor and bath panel installed by the tenant, the bathroom tiles are painted over, in places historic pipes protrude through the wall, and the ceiling is plastered. The kitchen has been fitted by the tenant. The property has solid walls , thre hallway is laminate floored installed by the tenant , the living room is well decorated carried out by the tenant.

Relevant Law

8. Provisions in respect of the jurisdiction of the Tribunal and the determination of a fair rent are found in Schedule 11, Part 1, paragraph 9(1) to the Rent Act 1977, as amended by paragraph 34 of the Transfer of Tribunal Functions Order 2013, and section 70 of the Rent Act 1977.

Rent Act 1977

Schedule 11, Part 1, paragraph 9 (as amended)

"Outcome of determination of fair rent by appropriate tribunal

9. (1) The appropriate tribunal shall-

(a) if it appears to them that the rent registered or confirmed by the rent officer is a fair rent, confirm that rent;

(b) if it does not appear to them that that rent is a fair rent, determine a fair rent for the dwelling house."

Section 70: Determination of fair rent (as amended)

"(1) In determining, for the purposes of the Part of this Act, what rent is or would be a fair rent under a regulated tenancy of a dwelling house, regard shall be had to all the circumstances (other than personal circumstances) and in particular to-

(a) the age, character, locality and state of repair of the dwelling-house, ...
(b) if any furniture is provided for the use under the tenancy, the quantity, quality and condition of the furniture [, and
(c) 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.]

(2) For the purposes of the determination it shall be assumed that the number of persons seeking to become tenants of similar dwelling-houses in 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.

(3) There shall be disregarded-

(a) 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;

(b) 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;

(c), (d) ...[*repealed*]

(e) 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 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."

9. Consequently, when determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, has regard to all the circumstances including the age, location and state of repair of the Property. It also disregards the effect of (a) any relevant Tenant's improvements and (b) the effect of any disrepair or defect attributed to the Tenant of any predecessor in title under the regulated tenancy, on the rental value of the Property.

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 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. (The rents may have to be adjusted where necessary to reflect any differences between the comparables and the subject property).

10. In considering scarcity under section 70 (2), the Tribunal recognises that:

(a) there are considerable variations in the level of a scarcity in different parts of the country and that there is no general guidance or "rule of thumb" to indicate what adjustments should be made; the Tribunal, therefore, considers the case on its merits;

(b) terms relating to rents are to be excluded. A lack of demand at a particular rent is not necessarily evidence of scarcity; it may be evidence that the prospective tenants are not prepared to pay that particular rent.

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 proportional increase in the Retail Price Index since last registration.

The only exception to this restriction on a fair rent is provided under paragraph 7 of the Order where a landlord carries out repairs or improvements which increase the rent by 15% or more of the previous registered rent.

Submission and Hearing

Mr and Mrs Buckley, the tenants, appeared for themselves and Mr Darrin Soloman appeared for the landlord, Grainger.

Landlord

11. The landlord made no submissions other than their application to Register a Fair Rent. The Landlord completed a Reply Form noting the property has double glazing, central heating installed by the landlord, but the carpets, curtains and white goods were provided by the Tenant. The Landlord explained the windows to the property were double glazed and with solid wall construction this led to damp

build up and hence black mould. The landlord representative gave a comparable 2-bedroom flat in Carlton hill at £2500 per month, and suggested this should be a good comparable in setting the level of market rent before deductions for the property.

Tenant

12. The tenant objected by letter dated 27 February 2024. The letter noted;

That there was a recurring problem with mould in the living room and in both bedrooms. The tenant notes that the Tenant replaced the Kitchen and that the bath is old and chipped.

The tenant also notes in their reply form that;

On taking up the tenancy they had removed polystyrene tiles from the ceiling of the bathroom and replastered.

Adjusted some internal doors to fit and replaced some broken doorknobs.

New carpets put in bedrooms and laminate flooring in the hallway installed by tenant.

The tenant in the hearing reiterated their submissions noting in particular, that there was Artex on the ceiling of one bedroom which gave them concern, and there were a number of areas of damp mould growth.

The Determination

Reasons for Decision

13. The rent to be determined must reflect the condition found on the date of the hearing disregarding all tenants' improvements.

14. The process for determining a fair rent is the application of Rent Act 1977 section 70 on the subject property and then comparison with the maximum rent permitted under the Maximum Fair Rent Order 1999. This means that comparison with other properties the subject of Fair Rent is not material.

15. Initially 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 Landlord supplied a comparable, albeit from the other side of the main road that divides Madia Vale from St Johns Wood. The tribunal considered the comparable to be from a slightly superior location. Considering evidence submitted and the Tribunal acting in its capacity as an expert tribunal and using its general knowledge of market levels in the area, concluded that the rent was **£2100.00 per month** if let on a contemporary assured shorthold basis.

16. The Property is not in the condition considered usual for a modern letting at a market rent, therefore, it is necessary to adjust the above hypothetical rent, a deduction of **20%** is made. In addition, the Tribunal determined that there should be a further deduction of **10%** to reflect the fact the terms and conditions and goods supplied under the tenancy would differ from those of a contemporary assured shorthold tenancy, from which the rental comparables are derived. Thereafter the Tribunal considered the question of scarcity in section 70 (2) of the Rent Act 1977. A figure of **20%** was adopted.

The calculation

17. The rent prior to adjustment for condition, terms and scarcity, but adjusted for service charge is:

£2100.00 per month

Less 20% condition **£420.00** per month

£1680.00 per month

Less 10% for terms and supplied goods inc white goods

£168.00 per month

£1512.00 per month

Less 20% for scarcity **£302.40** per month

£1209.60 per month

18. The rent after this final adjustment was **£1210.00** per month, which is equivalent to. **£279.23 per week**.

Rent Acts (Maximum Fair Rent) Order 1999

19. The rent to be registered is limited by the Rent Acts (Maximum Fair Rent Order) 1999. The rent calculated in accordance with the Order is **£240.50 per week.** This figure is lower than the figure calculated by reference to the market rent with adjustments, of **£279.23 per week.**

20. Accordingly, the sum of **£240.50** per week from **21 October 2024,** being the date of the Tribunal's decision.

Valuer Chair: Richard Waterhouse

Decision Date: 21 October 2024

Extended reasons: 121 October 2024

Appeal to the Upper Tribunal

A person wishing to appeal this decision to the Upper Tribunal (Property Chamber) on a point of law must seek permission to do so by making a written application to the First-tier Tribunal at the Regional Office which has been dealing with the case which application must:

a. be received by the said office within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

b. 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.

If the application is not received within the 28–day time limit, it must include a request for an extension of time and the reason for it 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.