



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

Case Reference : **LON/OOAC/F77/2024/0253**

Property : **56 The Drive, London, NW11 9TL**

Tenant : **Monika Dorre**

Landlord : **Mr Fogel**

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
Mr C Piarroux JP**

HMCTS Code : **Determination after an inspection,**

Date of Decision : **4 November 2024**

Date of Statement of Reasons: **4 November 2024**

Statement of Reasons

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Decision

1. The decision of the Tribunal is that a fair rent of **£1144.00 per month**, is determined with an effective date of **4 November 2024**.

Background

2. An application was made to re-register a fair rent, dated **15 April 2024**, by the landlord of the property **Mr Fogel, seeking a rent of £1450.00 per month**. Prior to the application to re-register a fair rent, the Rent Officer had registered a rent of **£806.00 per month**, with effect from **15 January 2015**.
3. Subsequently the Rent Officer registered a fair rent of **£1035.00 per month, with effect from 10 June 2024**.
4. In a letter dated **28 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 **20 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 converted flat with full central heating, three rooms, one kitchen, one bathroom and a separate WC.

The Inspection

7. The Tribunal did inspect the property and found a converted self-contained first floor two-bedroom flat contained within a 1930s house. The property had no access to front or rear gardens. The flat had the original 1930s windows throughout other than windows to the front that had been replaced by the landlord with UPVC double glazing these from the Reply Form were said to leak, as was the window in the bathroom. The house had the original ceilings and there was some cracking in these as with some plaster on the walls. The WC, separate from the bathroom, was the original 1930s high level cistern. The bathroom itself contained the original

bath additionally there was a sink that had been replaced although the taps were loose. The kitchen had limited work surfaces the fridge freezer and the washing machine were the tenants. There were two bedrooms, and the house was centrally heated, the boiler being in the kitchen and supplied by the landlord.

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.

Submissions

Landlord

11. The landlord completed a **Reply Form** noting amongst other things, a new boiler in 2016 and outside painting in 2023.

Tenant

12. The tenant submitted a completed **Reply Form** requesting an inspection but not a hearing.

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. 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 **£2200.00 per month** if let on a contemporary assured shorthold basis. The Tribunal identified a flat in The Drive that had been let recently with an asking rent of £2200 per month. The property was in good modern condition.
16. The subject property is not in a condition considered usual for a modern letting at a market rent, therefore, it is necessary to adjust the above hypothetical rent by **25%**. This is to accommodate the difference in specification between the comparable and the subject property, in particular difference in kitchen, bathroom and WC specification, windows and cracking. In addition, the Tribunal determined that there should be a deduction of **10%** to reflect the fact the terms and conditions under the tenancy would differ from those of a contemporary assured shorthold tenancy, including the requirement to decorate internally, and provision of white goods, carpets and curtains by the tenant

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 the rent derived from the market is **£2200 per month**.

Less 25% specification and condition £550.00

Less 10 % terms and condition £220

Sub total **£1430**

Deduction for scarcity 20% £286.00 per month.

Total after deductions **£1144.00 per month**

Rent Acts (Maximum Fair Rent) Order 1999

- 18.** The rent to be registered is not limited by the Rent Acts (Maximum Fair Rent Order) 1999. The rent calculated in accordance with the Order is **£1267.99 per month**. This figure is higher than the figure calculated by reference to the market rent with adjustments, of **£1144.00 per month**.
- 19.** Accordingly, the sum of **£1144.00 per month is determined with effect from 4 November 2024** being the date of the Tribunal's decision.

Valuer Chair: Richard Waterhouse FRICS

Decision Date: 4 November 2024

Extended reasons: 4 November 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.