



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

**Case Reference** : **HS/LON/OOAC/F77/2024/0642**

**Property** : **27 Briar Close, London, N2 0RS**

**Tenant** : **Miss L Libetta**

**Landlord** : **Home Group Ltd**

**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 J Francis QPM**

**HMCTS Code** : **Determination on papers**

**Date of Decision** : **9 December 2024**

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**Statement of Full Reasons**

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## **Decision**

1. The decision of the tribunal is that a fair rent of **£921.60 per month**, including **£57.43 per month for service charges** is determined with an effective date of **9 December 2024**.

## **Background**

2. An application was made to re-register a fair rent, received **31 July 2024**, by the landlord of the property **Home Group Ltd**. Prior to the application to re-register a fair rent, the Rent Officer had registered a rent of **£880.00 per month**, including a service charge of **£34.68 per month** with effect from **5 July 2022**.
3. Subsequently the Rent Officer registered a fair rent of **£880.00 per month**, including a service charge of **£57.43 per month** with effect from **23 August 2024**.
4. In an email dated **15 August 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 **29 October 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, with full central heating, two rooms, one bathroom/WC and an open plan kitchen / living room.

## **The Inspection**

7. The tribunal did inspect the property. The property was in good condition, the kitchen and bathroom being in good modern condition. Windows towards the nearby main road had secondary glazing. The living room and kitchen were open plan. Wood engineered flooring ran through the property. The bathroom/ WC were in good condition.

## **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**

### **Landlord**

- 11.** The landlord has submitted a completed Reply Form, which ran to 24 pages noting they did not request a hearing or an inspection. The stated that central heating and double glazing were supplied by the landlord and carpets, curtains and white goods were the tenants. A letter from home group dated 12 November 2024 to the tribunal. The letter explained the level of service charge

for the building. Noting for the subject property that the service charge in advance, the estimated service charge for the year 24/25 was £72.26, and this is a predicated level of fixed charge. At the end of the year the actual amount spent is ascertained in this case the last actual cost was £57.43 per month.

## **Tenant**

**12.** The tenant submitted;

A completed reply form noting the request for a hearing and an inspection. The Reply Form considers each room in detail in terms of what work the tenant has carried out and the size and specification of the room. The Form notes the Tenant has supplied curtains, carpets and white goods.

Within the Reply Form the Applicant notes a schedule of other properties in the vicinity subject to secure rents.

An excel spreadsheet titled “Depooled fixed service charges from 2009/10”.

Copies of various documents supplied by the landlord including; service charge breakdown, and a letter regarding over charge of rent. The letter from homegroup dated 23 February 2024 identifies the service charge for 2024/25 as **£72.26 per month.**

Photograph of exterior of building or surrounds.

An email dated 25 October expressing concern that the applicants service charge is £57.43 per month.

## **The Hearing**

**13.** The Applicant, Miss L Libetta attended the hearing, the landlord was not present. The Applicant described the property and noted that the kitchen had been fitted by her and the bathroom by a former landlord.

The level of rent was not the issue, but the applicants concern rested with the level of service charge. Concern was expressed that tenants in the building under assured tenancies were being charge £72.20 per month but for the subject tenancy the charge was £ 57.43 per month. The Applicant noted that the number of service

charge items on the assured tenancy service charge was higher than for the subject tenancy.

## **The Determination**

### **Reasons for Decision**

**14.** The rent to be determined must reflect the condition found on the date of the hearing disregarding all tenants' improvements. In their letter of 12 November the home group, explained they operate a fixed service charge basis, where the estimated charge is levied in advance, for the year 2024/25 the amount is £72.26 per month. With a secure tenancy the landlord is required to provide the Rent Officer with actual costs. These for the last registration of 2023/24 were £57.43 per month. The home group explained the difference in these costs as being because,

“Different years – 2023-24 v 2024-25

Actuals versus estimates

Not being able to charge for certain services for secures as unable to provide invoices due to them only being carried out in certain years eg tree surgery and fixed asset replacement.”

The Tribunal therefore adopts the fixed service charge of £57.43 per month as being the most recent actual cost available, for the determination which is effective at date of decision.

**15.** 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.

**16.** 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 **£1600.00 per month** if let on a contemporary assured shorthold basis.

17. 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**

18. Tenants under assured shorthold tenancies which is where the rental evidence is derived from will bid up to a maximum figure. That maximum figure is on the assumption that there is no service charge to be paid, this would under an assured shorthold tenancy would have the service charge paid by the landlord. Therefore when the rental evidence is used to ascertain a fair rent that Fair Rent is on the basis that as in this case it includes a service charge, Therefore the maximum rent which includes the service charge will be no greater than that of the assured shorthold tenancy without a service charge liability for the tenant. The rent prior to adjustment for condition, terms and scarcity, but adjusted for service charge is:

|   |                           |
|---|---------------------------|
|   | <b>£1600.00 per month</b> |
| Less 20% condition                                    | <b>£320.00 per month</b>  |
|   | -----                     |
|   | <b>£1280.00 per month</b> |
|   | -----                     |
| Less 10% for terms and supplied goods inc white goods |                           |
|   | <b>£128.00 per month</b>  |
|   | -----                     |
|   | <b>£1152.00 per month</b> |
| Less 20% for scarcity                                 | <b>£921.60 per month</b>  |
|   | -----                     |
|   | <b>£921.60 per month</b>  |

19. The rent after this final adjustment was **£921.60 per month** which includes **£57.43 per month for services.**



## **Rent Acts (Maximum Fair Rent) Order 1999**

**20.** 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 **£1045.50 per month including £57.43 per month for services**. This figure is higher than the figure calculated by reference to the market rent with adjustments, of **£921.60 per month including £ 57.43 per month for services**.

**21.** Accordingly, the sum of **£921.60** per month including **£57.43 per month** for services is registered effective **9 December 2024**.

**Valuer Chair: Richard Waterhouse**

**Decision Date: 9 December 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.