



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

**Case Reference** : **HS/LON/OOAJ/F77/2024/0665**

**Property** : **85 Ealing Village, London W5 2EA**

**Tenant** : **Mr K Pattni**

**Landlord** : **West Ella Estates 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 only**

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

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**Summary of Reasons**

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**Decision**

1. The decision of the Tribunal is that a fair rent of **£16051.00 per year** including **£3130.00 per year** for services of which **£980.89 per year** is for fuel, is determined with an effective date of **09 December 2024**.

## **Background**

2. An application was made to re-register a fair rent, received, by the landlord of the property West Ella Estates Ltd. Prior to the application to re-register a fair rent, the Rent Officer had registered a rent of **£16584.00 per year, including £1795.96 per year for services, of which £1599.68 per year is for fuel** with effect from **31 October 2022**.
3. Subsequently the Rent Officer registered a fair rent of **£16827.00 per year** including service charge of **£6185.53 per year including £ 4036.42 per year for fuel** with effect from **31 October 2024**.
4. In an email dated **30 September 2024** the Landlord 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 **13 November 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, three rooms, one kitchen and a bathroom with WC.

## **, The Inspection**

7. The tribunal did inspect the property; Ealing Village is a distinctive Art Deco complex. The flat is accessed through external concrete covered steps. The subject

flat has hot water and central heating from a communal boiler. The flat, as does the remainder of the block has single glazed metal framed windows. The property suffers from draughts through the windows, there is clear evidence of water penetration from the outside and potentially inside the building causing extensive paint peeling in certain rooms. The kitchen and bathroom are relatively basic but in good order.

### **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.

## **Determination on Papers following Inspection**

### **Landlord**

**11.** The Landlord completed a Reply Form in addition to their application form the tribunal noted the contents of both.

### **Tenant**

**12.** The Tenant completed a Reply Form, the tribunal noted the contents.

## **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** including services and communal heating and hot water 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. 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, these included the provision of curtains by the tenant and the different of terms of a regulated tenancy from that of an assured shorthold tenancy. 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 is:

	<b>£2200.00 per month</b>
Less 20% condition inc disrepair caused by leaks	£440.00 per month
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	£1760.00 per month
Less 5% for terms and conditions	£88.00 per month

	£1672.00 per month
Less 20% for scarcity	£334.40 per month

£1337.60 per month

This is equivalent to **£16,051.00 per year which implicitly includes the services charges of £980.89 per year (for communal heating and hot water) and £ 2149.11 per year.**

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

- 18.** 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 **£19008.00 per year including £3130 per year for services including £980.89 per year.** This figure is higher than the figure calculated by reference to the market rent with adjustments, of **£16051.00 per year including £3130.00 per year for services which in turn included £980.89 per year for communal heating and hot water.**
- 19.** Accordingly, the sum of **£16051.00 per year including for services £3130.00 per year** which in turn comprises **£980.89 per year for fuel, is registered from 9 December 2024.**

**Valuer Chair: Richard Waterhouse**

**Decision Date: 9 December 2024**

**APPEAL PROVISIONS**

These summary reasons are provided to give the parties an indication as to how the Tribunal made its decision. If either party wishes to appeal this decision, they should first make a request for full reasons and the details of how to appeal will be set out in the full reasons. Any request for full reasons should be made within a month. Any subsequent application for permission to appeal should be made on Form RP PTA.

