



FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)

Case reference : CAM/26UE/F77/2024/0033

HMCTS code : P:PAPERREMOTE

Property : 165a Shenley Road, Borehamwood,  
Hertfordshire, WD6 1AH

Applicant (Tenant) : Mrs E Lewis

Respondent (Landlord) : Bank of Scotland

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 : 26 November 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 £770 per month effective from 26 November 2024.

## Reasons

### Background

1. The Landlord made an application dated 11 July 2024 to register the rent of the Property at £712 per month.
2. The Rent Officer registered a Fair Rent of £935 per month on 28 August 2024 effective from 28 August 2024. This was in lieu of the previous rent of £662.50 per month which was registered on 8 November 2018 and effective from 8 November 2018.
3. The Tenant submitted an objection by email dated 3 September 2024 which was referred to the First Tier Tribunal by the Rent Officer on 13 September 2024.
4. The Tribunal issued Directions on 20 September 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 has not inspected the Property but has relied upon the documents submitted by the Parties together with records in the public domain including Google Earth images.
6. The Property comprises a self-contained second-floor flat within a three storey "High Street" retail parade constructed circa 1940's and provides a living room, kitchen, three bedrooms, bathroom, and storage room. There is no lift but there is central heating and double glazing, There is no garden or allocated private car parking.

### The Law

7. 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).
8. 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."*

9. 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."*

10. 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."*

11. 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.

12. 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)."*

13. 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."*

14. Section 71 (1) of the Act provides that the registration of the rent takes effect from the date that the Tribunal makes its decision.

15. 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.

16. 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

17. The Tenant's objection concerned her ability to pay the rent as assessed by the Rent Officer. She advised that she considered the rent proposed by the Landlord to be fair.

18. The Tenant confirmed that she had lived at the Property since 1955.

#### Representations –Landlord

19. The Landlord did not make any representations. In this regard the Landlord's proposed rent of £712 per month was below that assessed by the Rent Officer at £935 per month.

#### Determination

20. In assessing the Fair Rent 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.

21. Having 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.

22. 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.
23. The Parties have not provided any evidence of rental value. The Tribunal has therefore relied upon its own experience and knowledge of matters having regard to the location of the Property, the need for modernisation together with the lack of lift access, outside space and car parking which are all factors that would render the Property less attractive compared to otherwise similar properties.
24. The Tribunal is of the opinion that, the Property would, if it was fully refurbished and modernised commensurate with market expectations, attract a rent in the region of £1,150 per month. However, this before account is taken of the need for refurbishment.
25. In this context, the Tribunal has deducted 15% on account of the need to replace the kitchen and bathroom, 10% to account for the Tenant providing floor coverings and curtains and a further 5% to account for the Tenant carrying the liability for redecoration in comparison to modern leases which typically do not require the tenant to redecorate. This reduces the rent to £770 per month.
26. The Tribunal did not consider that there is a scarcity of supply of flats for rent in the general location at the present time and does not therefore consider that a scarcity allowance is appropriate on this occasion.
27. Having fully considered all matters relevant to this case, the Tribunal therefore considers the Fair Rent to be £770 per month.
28. 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.
29. 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.
30. The Tribunal notes that the previous rent detailed on the Rent Register was £662.50 per month effective from 8 November 2018. The calculated capped rent as at the date of this Determination is therefore £943 per month.
31. The Fair Rent is below the capped rent. Therefore, the Fair Rent of £770 per month applies.
32. The Tribunal also directs that the revised rent takes effect from the date of this Determination.
33. The Rent Officer's assessment is therefore of no effect having been supplanted by this Determination.

Name: Peter Roberts FRICS CEnv

Date: 26 November 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).

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Notice of the Tribunal Decision

Rent Act 1977 Schedule 11

Address of Premises

165a Shenley Road, Borehamwood,  
Hertfordshire, WD6 1AH

The Tribunal members were

Peter Roberts FRICS CEnv

Landlord

Bank of Scotland

Tenant

Mrs E Lewis

1. The fair rent is

£770

per

month

(excluding water rates and council tax  
but including any amounts in paras  
3&4)

2. The effective date is

26 November 2024

3. The amount for services included in  
the rent is

Nil

Per

N/A

4. The amount for fuel charges (excluding heating and lighting of common parts) not counting for  
rent allowance is

Nil

Per

N/A

not applicable

5. The rent is not to be registered as variable.

6. The capping provisions of the Rent Acts (Maximum Fair Rent) Order 1999 do apply

7. Details (other than rent) where different from Rent Register entry

8. The calculated Fair Rent is £770 per month. As this is less than the Capped Rent the Fair Rent  
applies

Chairman

Peter Roberts  
FRICS CEnv

Date of decision

26 November 2024

## MAXIMUM FAIR RENT CALCULATION

Address of premises

165a Shenley Road, Borehamwood,  
Hertfordshire, WD6 1AH

LATEST RPI FIGURE	x	390.7			
PREVIOUS RPI FIGURE	y	284.6			
x		390.7	minus y		284.6
			= (A)		106.1
(A)		106.1	divided by y		284.6
			= (B)		0.3728039
First application for re-registration since 1 February 1999					No
If yes (B) plus 1.075 = (C)		N/A			
If no (B) plus 1.05 = (C)		1.4228039			
Last registered rent*		662.5	Multiplied by (C) =		942.60
*(exclusive of any variable service charge)					
Rounded up to the nearest 50 pence =		943			
Variable service charge (Yes/No)		No			
If YES add amount for services =		N/A			
MAXIMUM FAIR RENT =		943	per		month

### Explanatory Note

1. The calculation of the maximum fair rent, in accordance with the formula contained in the Order, is set out above.
2. In summary, the formula provides for the maximum fair rent to be calculated by:
  - a) increasing the previous registered rent by the percentage change in the retail price index (the RPI) since the date of that earlier registration and
  - b) adding a further 7.5% (if the present application was the first since 1 February 1999) or 5% (if it is a second or subsequent application since that date).

A 7.5% increase is represented, in the calculation set out above, by the addition of 1.075 to (B) and an increase of 5% is represented by the addition of 1.05 to (B)

The result is rounded up to the nearest 50 pence
3. For the purposes of the calculation the latest RPI figure (x) is that published in the calendar month immediately before the month in which the Committee's fair rent determination was made.
4. The process differs where the tenancy agreement contains a variable service charge and the rent is to be registered as variable under section 71(4) of the Rent Act 1977. In such a case the variable service charge is removed before applying the formula. When the amount determined by the application of the formula is ascertained the service charge is then added to that sum in order to produce the maximum fair rent.