



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

Case reference : **CAM/22UG/F77/2024/0606**

HMCTS code : **P:PAPERREMOTE**

Property : **56 Barrack Street, Colchester, CO1
2LR**

Applicant (Tenant) : **R A Woods**

Respondent (Landlord) : **Regis Group PLC**

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 : **10 March 2025**

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 £250 per month effective from 26 February 2025.

Reasons

Background

1. The Landlord made an application dated 4 October 2024 to register the rent of the Property at £437.50 per month. This was stated to be exclusive of any variable Service Charge.
2. The Rent Officer registered a Fair Rent of £385 per month on 8 November 2024 effective from the same day. This was in lieu of the previous rent of £350 per month which was registered on 21 July 2022 and effective from 27 August 2022.
3. The Tenant submitted an objection dated 18 November 2024.
4. The Tribunal issued Directions on 26 November 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 inspected the Property on 21 February 2025 accompanied by the Tenant and Mr Webster who represented the Landlord.
6. The Property comprises an end-terraced property of brick and tile construction providing a lounge at ground floor and two bedrooms at first floor level. The site slopes from front to rear such that the bathroom is accessed by stairs leading down from the ground floor lounge. There is a single storey flat roof extension to the back of the Property which is used as a kitchen leading out to the garden at the rear. There is no off-road car parking.
7. There is no central heating and the windows are single glazed timber framed. The Tenant has provided all fixtures and fittings together with White Goods. In addition, the Tenant has provided fence panels to the garden.
8. The Property is in bad condition and requires complete refurbishment including new fixtures and fittings, replacement ceilings, replacement of broken window panes and extensive repairs to all timber-work including the stairs, window frames and soffits. It also requires updating in accordance with modern health and safety requirements as well as market expectations.
9. The Tribunal was particularly concerned with the extent of water on the inside face of the eastern wall which directly abuts the boundary wall of the adjoining car park. It appears that rainwater may be passing between the eastern elevation and the boundary wall through the mortar such that it is trapped and can only escape by passing through the eastern elevation into the Property or out through the boundary wall. It appears, from the Tribunal's inspection

and historic Google Street Images, that this has been allowed to worsen over many years. It could be assumed that this is due to the deterioration of the mortar joint but, even if the mortar was sound, it is entirely feasible that water would still penetrate into the gap between the walls such that mere repair of the mortar would be unlikely to solve the problem on its own.

10. It also appears that the water ingress could be being exacerbated by rising damp due to the lack of a DPC within both walls. Regardless as to the actual cause, the internal walls are wet to the touch which is not only dangerous to the structure of the Property but also poses a significant risk to the health and wellbeing of the Tenant and visitors.

The Law

11. 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).

12. 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.”*

13. 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.”*

14. 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.”

15. 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.

16. 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).”

17. 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.”

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

19. 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.

20. 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

21. The Tenant raised a number of points including, but not restricted, to the following:

- a. *“Upper floor ceiling collapsed over two years ago*
- b. *Stairwell leading to basement loose and in danger of collapse*
- c. *Kitchen window frame rotted away boarded up 3 years ago*
- d. *Extensive damp in bathroom walls leading to collapse ongoing for last ten years*
- e. *Exterior rot and decay along gutters adjacent to Wilson Marriage Centre*
- f. *Gutters blocked all round*
- g. *Exterior upper floor window frames front and rear rotting with worn putty flaking away*
- h. *Exterior weather paint cracking and fading on front and side of house”*

22. The Tenant also stated:

“In its current condition this property would not be available to let at a commercial rent. I submit that the property... ..does not meet the codes and standards required under the 1985 Landlord and Tennant (sic) Act to qualify as a commercial let. Therefore, until the work is done to meet the standards required, the current registered rent should remain and not be reassessed.”

23. The Tenant did not provide any evidence in respect of rental values.

Representations –Landlord

24. The Landlord did not submit any written representations. However, Mr Webster was present during the Tribunal’s inspection and able to view the matters identified by the Tenant.

25. The Tribunal understands that the Landlord also owns Nos 52 and 54 Barrack Street which have been refurbished and let. No evidence was provided in respect of the rents achieved.

Determination

26. 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. In addition, the ownership costs (e.g., maintenance and mortgage costs) arising

to the actual Landlord are irrelevant to this exercise. The Tribunal has therefore assumed hypothetical and willing parties in the open market.

27. 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 was let today in the condition and on the terms now usual for open market lettings. The rent currently paid and/or registered is not relevant to this exercise. As such, the Tribunal has had no regard to the previous rent.
28. The Tribunal is of the opinion that the Property would, if it was fully refurbished and modernised commensurate with market expectations and free from damp or water ingress, attract a rent in the region of £1,100 per month.
29. The Tribunal deducted 10% each to account for the lack of a fitted kitchen and state of the bathroom respectively, 10% for the lack of any central heating, 5% for the lack of carpets and curtains, 10% each in respect of there being no insulation or double glazing respectively, 5% for the lack of White Goods and 5% in acknowledgement of the Tenant's decoration liabilities.
30. These allowances cumulatively equate to a deduction of 49.37% resulting in an adjusted rent of £556.80 per month.
31. The Tribunal has then applied a scarcity allowance of 10% resulting in an adjusted rent of £501.12 per month.
32. These adjustments assume that the Property is free from water ingress, and the Landlord has complied with its obligations. However, this is clearly not the case and further adjustments are required to take account of the impact these issues would have on the rent that would be offered in the market.
33. In this regard, the Tenant may have their own personal reasons for paying a certain level of rent in order to remain in occupation despite the condition of the Property but, as has already been set out, the Parties to the assumed letting are hypothetical. The rent that the Tenant might be prepared to pay to remain in occupation, is therefore of no assistance in considering the rent that would be paid by an incoming tenant.
34. Similarly, it cannot be assumed that the Tenant would be the hypothetical incoming tenant merely by virtue of currently being in occupation. This is because the attitude of the actual Tenant is only relevant to the valuation exercise to the extent that the characteristics and circumstances of the Tenant accord, if at all, with those of the hypothetical incoming tenant.
35. In essence, the question to be considered is **not** what the Tenant might be prepared to pay to **stay in occupation** but what rent would be paid by a successful hypothetical tenant following competition with other bidders in the market **to take occupation** having regard to the Property as it exists after the application of the statutory disregards set out in section 70(3) of the Act.

36. No evidence has been presented to the Tribunal by the Parties to assist it in considering the rent that might be offered by the market in this regard. It is doubtful that such evidence exists as it is unlikely that anyone would come forward to take occupation of the of the Property without prior rectification of the highlighted issues.
37. In this regard, it is not possible for the Tribunal to envisage a scenario whereby an incoming tenant might carry out the works themselves as the valuation hypothesis assumes that the works are the Landlord's responsibility and, in all likelihood, the Property would have to be vacated during the works such that the tenant would not receive any benefit for their expenditure.
38. It is important to stress that, whilst the Property could, perhaps, be used for non-residential purposes such as storage, such uses would fall outside the provisions of the Act. Any value arising from such use is therefore not relevant.
39. The Tribunal therefore has to assume that someone would take a tenancy of the Property in its existing state for residential occupation within the meaning of the Act without any ability to rectify the identified issues. In the absence of market evidence, the Tribunal is required to apply its knowledge and experience in order to assess the rent that might result.
40. On this basis, the Tribunal determines a Fair Rent of £250 per month.
41. 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.
42. 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.
43. The Tribunal notes that the previous rent detailed on the Rent Register was £350 per month effective from 27 August 2022. The calculated capped net rent as at the date of this Determination is therefore £415 per month.
44. The Fair Rent is below the Capped Net Rent. Therefore, the Fair Rent **of £250 per month** applies. The Tribunal also directs that the revised Rent takes effect from the date of this Determination.

Name: Peter Roberts FRICS CEnv

Date: 10 March 2025

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).

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Notice of the Tribunal Decision

Rent Act 1977 Schedule 11

Address of Premises

56 Barrack Street, Colchester, CO1 2LR

The Tribunal members were

Peter Roberts FRICS CEnv

Landlord

Regis Group PLC

Tenant

Mr R A Woods

1. The fair rent is

£250

per

month

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

2. The effective date is

26 February 2025

3. The amount for services included in the rent is

0

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 £200 per month. As this is lower than the Capped Rent the Fair Rent applies

Chairman

Peter Roberts
FRICS CEnv

Date of decision

10 March 2025

MAXIMUM FAIR RENT CALCULATION

Address of premises

56 Barrack Street, Colchester, CO1 2LR

LATEST RPI FIGURE	x	391.7			
PREVIOUS RPI FIGURE	y	345.2			
x		391.7	minus y		345.2
			= (A)		46.5
(A)		46.5	divided by y		345.2
			= (B)		0.1347045
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)		1.1847			
Last registered rent*		350	Multiplied by (C) =		414.64
*(exclusive of any variable service charge)					
Rounded up to the nearest 50 pence =		415			
Variable service charge (Yes/No)		No			
If YES add amount for services =		0			
MAXIMUM FAIR RENT =		£415	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.