



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

Case Reference : **LON/OOAW/F77/2020/0086**

Property : **Flat 46 , Stafford Court, Kensington High Street , W8 7DN**

Tenant : **Nicholas Jordan**

Landlord : **Pagasi Management Co. Ltd.**

Type of Application : **Determination of a Fair Rent under section 70 of the Rent Act 1977**

Tribunal : **Mr R Waterhouse FRICS**

HMCTS Code (paper, video, audio) : **P-Paper**

Date of Decision : **20 September 2021**

Date of Statement of Reasons : **27 October 2021**

Statement of Reasons

Background

The Tribunal gave formal notice of its decision by a Notice dated 20 September 2021 of £ 6141.50 per quarter with effect from the same.

On the 8 January 2020 the Landlord of the property applied to the Rent Officer for re registration of a fair rent of £5876.65 per quarter, the rent having been previously registered on 20 December 2017 at £5362.00 per quarter, a service charge of £1609.06 per quarter with £140.14 attributed to fuel charges, with effect from 20th December 2017.

On the 26 February 2020, the Rent Officer registered a fair rent of £5896.50 per quarter, a service charge of £1820.92 per quarter with £158.80 per quarter attributed to fuel charges, with effect from 26 February 2020.

In a letter dated 23 March 2021 the Tenant Mr Nicholas Jordan objected to the rent determined by the Rent Officer and the matter was referred to the First –tier Tribunal (Property Chamber) (Residential Property).

Directions were issued by the Tribunal on the 10 August 2021. In those Directions, the parties were informed that in accordance with Public Health England’s advice to avoid unnecessary travel and social interaction for the time being, the Tribunal would not hold an oral hearing, unless so requested by either or both the parties, or would it inspect the property. Neither party has requested a hearing.

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. In due course, the Landlord and the Tenant filed their written submissions.

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.

Following the issue of the Tribunals decision which was based on the written and visual evidence submitted by the parties that was germane to the determination of a fair rent, the landlord sought extended reasons for the Tribunal’s decision.

The Property

The property is a self-contained, centrally heated in part, purpose build flat , located on the first floor of the building , comprising four rooms with additionally a kitchen, a bathroom with wc and separate wc. The tenancy commenced on the 1st December 1974.

Relevant Law

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.”

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).

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

None received

Tenant

Submissions in support of the Tenant's position were submitted by Mr Nicholas Jordan the Tenant in two communications.

In communication dated 7th February 2020 from Nicholas Jordan to the Rent Officer the following points were made.

The block comprises two main different business, the first centring on the "old business of letting flats long term" and the second letting flats on a furnished basis short term basis.

In terms of scarcity, the landlord has relied exclusively upon its own furnished lettings as 'comparables' for its unfurnished lettings.

In support of the contention on scarcity, The Castle Court (Southampton) case, unreported but mentioned at para 49 of the Yeoman's Row v London RAC case - [2002] EWHC 835(Admin) was cited. The case centred on a small group of alleged comparables available at very low rents for reasons peculiar to themselves, "demand could exceed supply because of very low rents, but this would not equate to scarcity."

Additionally, in the Finegold case – 1975 1 WLR 349, is cited, contending the belief that there is not massive and unremitting scarcity in the London residential property market.

In terms of the individual flat the tenant notes the following.

The flat has a very high standard of decoration and furnishing, all supplied by the tenant.

The property has been improved over the years, with high quality rewiring.

Heating is 'part' centrally heated.

It is on the first floor and therefore has poor natural lighting and is smaller than the flats above it (having only a galley kitchen, not a full family dining kitchen).

It suffers from intermittent but serious nuisance from the commercial neighbours immediately beneath.

Additionally, since the last registration, the landlord has refurbished the flat immediately above (50) by removing all the carpets and underlay and installing a fashionable hard floor and reversing its interior layout so as to place its living

accommodation directly over two of our three bedrooms. This results in disturbance.

Lastly in relation to the service charge, the tenant submits the service charge has changed as the nature of the Landlords business has changed from predominantly long-term letting to short-term letting. The impact of this is to increase the number of staff required to run the block.

Additionally, submissions were made by letter of objection dated 23rd March to the rent registered by the Rent Officer. The letter made three main points each of which the Tenant submitted should be taken into account in setting the registered rent.

The first point reiterated the submission of increased service charge attributed to the change of the nature of the Landlords business.

The second notes the service charge contains proportions of cost attributed to the repair of the freehold structure of the block.

The third point concerns the global position as at the registration date of 26 February 2020 in with the start of the global pandemic.

Reasons for Decision

Service charge

Liability for a service charge in addition to rent is derived from the terms of the tenancy. The tribunal has not been provided with the details of the tenancy but has been provided with a break down of the service charge for the block payable by all the leaseholders. Making the best it can with the evidence, the rent established at the start of the section 70 rent determination process, the market rent is such as a tenant would pay with the knowledge of an additional liability of the nature and size of the service charge. The rental bid therefore takes into account, the service charge at the time of its determination. So far as the tenant is liable to pay, the service charge therefore implicitly takes into account, all the features of it including staffing costs.

Improvements and nature of the flat

The starting point for determination of the fair rent is the ascertainment of the unimproved condition of the property and the disregard of any improvements made by the tenant during their tenancy, unless made as a condition of the tenancy. Evidence has been supplied to the tribunal and has been taken into account in the section 70 rental determination process.

The Tenant notes the flat suffers long term from disturbance from commercial neighbours located below and has recently experienced disturbance from use of the flat above following removal of their floor coverings.

Scarcity

The Rent Act 1977 provides for the concept of scarcity under Section 70 (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.”

The Tenants submissions included concern that the concept of scarcity may not be applied correctly. Scarcity which is encapsulated within section 70 (2) seeks to remove the impact on rental bids of an imbalance of supply and demand, where demand is substantially greater. In areas of strong demand, above that of supply the market this would result in increased rental bids and higher bids. The section 70 determination process starts with ascertainment of rent from the market where there may be an imbalance in supply and demand. Whilst the concept of scarcity is not relevant in the selection of the comparable evidence, Section 70(2) requires the evidence to be adjusted to remove the imbalance. The degree of scarcity adjustment is dependant on the location and the date of the determination.

Nature of comparables

The Tenant expressed concern in their submissions that the Landlord relied on comparables drawn from short term furnished lettings. Whilst all comparables are relevant, the greatest weight is attributed to comparables that align the closest with the location, nature of the property and market terms of the tenancy. The Tribunal has made the best of the evidence and drawn on its specialist knowledge of the market in determining the rent under section 70.

Date of determination

The determination under section 70 considers evidence at the date of the determination and in the case of the tribunal hearing it is the date of the hearing. The tenants submissions provide opinion that the global pandemic will have had a negative effect on the level of rents within the locality. The market at the date of determination, will take into account the disruption caused by Covid 19 and any other factors prevalent at the time. The tribunal is mindful of these submissions with the criteria being evidence of the market at the date of determination.

Determination

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. In the absence of any material evidence as to the market, the Tribunal acting in its capacity as an expert tribunal and using its general knowledge of market levels in the area, concluded that such a likely market rent, if a market rent is adopted would be £10,400 per quarter. This rent is an open market rent not impacted by Rent Act section 70 and does not make any adjustments for any imbalance between demand and supply, known as scarcity under section 70, but does take into account the responsibility for paying the level of the service charge.

However, the Property is not in the condition considered usual for a modern letting at a market rent. The property valued is the unimproved condition, evidence of the

unimproved nature is derived from the submissions received by the Tribunal. Therefore, it is necessary to adjust the above hypothetical rent of £10,400 per week, a deduction of 10% is made. The adjusted rent is £9360.90 per quarter.

In addition, the Tribunal determined that there should be a further deduction of 10% to reflect the fact the Tenant provided the floor coverings, curtains and white goods and is responsible for internal decorating. The rent after this adjustment is £8424.81 per quarter.

Thereafter the Tribunal considered the question of scarcity in section 70 (2) of the Rent Act 1977. A figure of 20% was adopted. The rent after this final adjustment was £6739.84 per quarter.

Market rent	£	
		10,400 per quarter
Less		
Condition/ tenants improvements	1040	
Carpets, curtains, white goods supplied by tenant	936	

	£8424.81	
Less		
Scarcity – 20%	<u>£1684.80</u>	
	£6739.84	per quarter

Rent Acts (Maximum Fair Rent) Order 1999

The rent to be registered is limited to the lower of either the rent determined in accordance with the Rent Acts (Maximum Fair Rent Order) 1999 which is £6141.50 per quarter, or the uncapped figure determined in accordance with section 70.

Decision

The uncapped fair rent determined by the Tribunal, for the purposes of section 70, was £6739.84 per week.

Accordingly, the sum of £6141.50 per quarter will be registered as the fair rent with effect from 20 September 2021 being the date of the Tribunal's decision.

Valuer Chair: Richard Waterhouse FRICS

Date: 27 October 2021

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.