



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

Case Reference : **CHI/00ML/F77/2020/0030**

Property : **Flat 124 Eaton Manor, The Drive, Hove
BN3 3QD**

Landlord : **Eaton Manor Hove Ltd**
Representative : **Allsop Letting & Management**

Tenant : **Miss G Sinclair**
Representative : **None**

Type of Application : **Rent Act 1977 – Section 70
Appeal of Registered Rent**

Tribunal Members : **R T Athow FRICS MIRPM (Chairman)**
C Davies FRICS ACI Arb
N Robinson FRICS

Date of Inspection : **21st January 2021**

Date of Decision : **21st January 2021**

DECISION

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BACKGROUND

- 1) On 23rd July 2020 the Landlord made an application to register the rent of the property at £9,706.41 plus variable service charge.
- 2) The rent payable at the time of the application was £8,088.51 per annum plus variable service charge.
- 3) The rent was previously registered on the 13th July 2018 at £9,600 per annum with effect from the 26th August 2018. The Register notes a fuel charge of £316.03 per annum which was not counting for the rent allowance. It also noted an amount of £1,511.49 was attributable to services.
- 4) On the 23rd October 2020 the Rent Officer registered a Fair Rent of £9,900 per annum, and noted the fuel charge as £339.33 per annum and the services of £1,288.94 per annum, exclusive of rates with effect from that date.
- 5) On the 30th October 2020 the Landlord objected, and the matter was referred to the First-Tier Tribunal (Property Chamber).
- 6) On the 11th December 2020 the Tribunal made Directions informing the parties that in view of the Government's advice with respect to the Covid 19 outbreak an inspection would not take place. The parties were given the opportunity to provide supporting photographs of the property and if desired make representations to have the case stayed until an inspection was possible.
- 7) The Directions required the Landlord to send a statement to the Tenant and to the Tribunal supporting the application for an increase in rent. The Tenant was also required to send a statement to the Landlord and to the Tribunal in support of her objection.
- 8) Neither party requested a Hearing.
- 9) The Tribunal met on 21st January 2021 to consider the application.
- 10) The matter was dealt with as a paper determination without hearing. In the current circumstances it has not been possible to inspect the property and the Tribunal relied on submissions from the Landlord and Tenant in correspondence, publicly available housing data online and its own expert knowledge. One member of the Tribunal has sat in earlier determinations of rent at the block.

EVIDENCE

- 11) The Tribunal received written representations from the Landlord and the Tenant and these were copied to the parties. The Rent Office supplied some records and copies of correspondence they had had with the parties.
- 12) Eaton Manor is a large block of about 145 units built in the mid 1960's in a residential district of Hove fronting onto three different roads. All local facilities are within easy reach.

13) The self-contained flat is situated on the third floor and has 1 bedroom, bathroom/WC, living room, kitchen. There is communal central heating and hot water, and double glazing. In the grounds are communal car parking spaces, and there is a right to park in one of the unallocated spaces if vacant.

14) No tenancy agreement was provided. The Rent Register notes the start date as 25th December 1985, and the parties' responsibilities are as per S11 of the Landlord & Tenant Act 1985.

15) Prior to the consideration the Tribunal obtained details from Allsop of the floor area they had within their records for the flat. Their records state it is 66 square metres.

Landlord's Submissions

16) The Tribunal copies below the Landlord's submissions:

1. *Market rent – A property description purpose built flat comprising 2 rooms, kitchen and bathroom/WC. The flat benefits from the provision of heating and hot water, residents parking and onsite resident manager. As you will see from the evidence, comparable properties of the same size in the same block are achieving between £12,180.00 and £15,336.00 per annum.*

Property Address	Tenure	Type	Size	Annual Rent
67 Eaton Manor	AST	2 Room	1Kitchen Bathroom	£12,180.00
109 Eaton Manor	AST	2 Room	1Kitchen Bathroom	£14,304.00
114 Eaton Manor	AST	2 Room	1Kitchen Bathroom	£13,392.00
69 Eaton Manor	AST	2 Room	1Kitchen Bathroom	£15,336.00

In view of the above we consider the market rent for the subject property to 13,803.00 per annum, if let on an Assured Shorthold Tenancy with carpets and white goods.

2. *Scarcity – We consider that presently there should be no deduction for scarcity as the current demand for rented property in the area does not outstrip supply. At present there are over 34 comparable properties available to rent within a 1/2 mile radius of the property, so scarcity of supply is not inflating rental prices in the area.*
3. *Condition – We are not aware of any failure by the landlord to fulfil their statutory and contractual obligations as defined in the tenancy agreement. In the event that the tenant has failed to report any disrepair to the managing agents, we do not feel it appropriate or in accordance with Rent Act 1977, Section 70, to make deductions under such circumstances.*

4. *Location – The property The location[sic] is a short walk from local shops, amenities and Hove train station with fast connections to London Victoria and southern towns.*
5. *Conclusion – We conclude, therefore, that an appropriate Fair Rent is properly assessed at a minimum of £9,303.00 per annum allowing for the age, condition and locality of the property and that it is unfurnished, calculated as follows:*

<i>Market Rent:</i>	<i>£13,803.00</i>
<i>Carpets/White Goods</i>	<i>£1500.00</i>
<i>Updated Kitchen/bathroom</i>	<i>£3000.00</i>
<i>Heating</i>	<i>£0</i>
<i>Scarcity @ 5%:</i>	<i>£0</i>
<i>Fair Rent:</i>	<i><u>£9,303.00</u></i>

Maximum Fair Rent

RPI at the last registration = 284.2 , this registration = 294.3. Percentage increase = 10.1% Increase plus 5% enhancement = 15.1 %increase. £8088.51 + Variable service charge + 15.1% enhancement = £ 9,301.75 MFR rounded to £9,302.00 rounded up to nearest 50 pence annum.

In view of the above, as the Maximum Fair Rent calculation is the lower of the above two results, we submit that the rent of £9301.75 per annum should be set as the new fair rent and the rent should be registered at this level.

Tenant's Submissions

- 17) The Tenant made submissions in a series of correspondence.
- 18) There were minimal basic fittings when she took on the tenancy and she has modernised the flat to a high standard, including the fitting of a new kitchen with white goods.
- 19) She has also replaced the bathroom because the previous one was old and problematical.
- 20) These have been undertaken with the landlord's approval.
- 21) There has been a history of plumbing and drainage defects, and once the flat was flooded. This had to be dealt with via an insurance claim. Recently her washing machine plumbing developed problems and this was found to be due to old pipework not working efficiently.
- 22) There are continuing disruptions caused by the refurbishment of adjacent flats. This causes not only an ongoing noise nuisance, but also the builders have needed to access plumbing to adjoining flats through this flat. This resulted in removing the mirrored wall tiles in the bathroom and creating a hole to access the water problem in the party wall.

THE LAW

23) When determining a Fair Rent the Tribunal, in accordance with the Rent Act 1977, section 70, must have regard to all the circumstances including the age, location and state of repair of the property. It must also disregard the effect of (a) any relevant Tenants's improvements and (b) the effect of any disrepair or other defect attributable to the Tenants or any predecessor in title under the regulated tenancy, on the rental value of the property. That section also required the Tribunal not to take into account the personal financial and other circumstances of the Tenants.

24) 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 that section 70 means that:

- a) Ordinarily a Fair Rent is the market rent for the subject property discounted for 'scarcity' and
- b) 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 these comparables and the subject property).

25) The Rent Act (Maximum Fair Rent) Order 1999 limits the increase from the previous registered rent. It is worked out by a formula based on the change in Retail Prices Index since the last registration plus a fixed percentage increase set by law. If the Rent Officer or the Tribunal decides the property is worth more than the maximum fair rent, the maximum fair rent becomes the registered rent. If the valuation is lower than the maximum fair rent that valuation becomes the registered rent.

26) There are two occasions when the maximum fair rent will not apply: -
If there is no existing registered rent, and
If the Landlord has improved or repaired the property and the Rent Officer and/or the Tribunal considers the improvement or repair has made the rent at least 15% more than the existing registered rent.

VALUATION

The Market Rent

27) The Tribunal firstly 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 exclusive of water rates and council tax.

28) In the competitive letting market that now exists, properties need to be in first class structural and decorative order and be equipped with all amenities such as full modern central heating, double glazing and other energy-saving facilities along with white goods, carpets and curtains to ensure the property attains its full rental income potential. Where such items and facilities are missing the rent is found to be correspondingly lower.

29) The Tribunal was assisted by the comparables submitted by the Landlord to a certain extent, but information was sparse, and so the Tribunal also relied on its knowledge and experience of general rent levels for this type of property in this area.

30) The Tribunal noted from the EPC register dated 10th February 2017 the rating is 81B and the floor area is 58 square metres. This floor area varies considerably to that given by Allsop.

31) The Rent Officer's computations show that it was considered an open market rental value of £11,400 per annum was appropriate.

32) The Tribunal concluded that an appropriate open market rent for the property let on a modern open market letting of an Assured Shorthold Tenancy where the Landlord supplies white goods, carpets and curtains and the Tenant has no liability to carry out repairs or decorations, would be £12,000 per annum, including £1,288.94 Variable Service Charge.

33) However, the Tribunal noted from the representations made, together with the notes from the Rent Officer, that the actual property is not in the condition considered usual for a modern letting at a market rent, and it was necessary to adjust that hypothetical rent of £12,000 per annum to allow for the differences between the condition considered usual for such a letting and the condition of the actual property.

34) Firstly it removes the Variable Service charge from the hypothetical rent to enable adjustments to be made to the net rental element. This equates to £10,711.06.

35) The Tribunal lists below several items that impact upon the rental value and requires an appropriate adjustment to be made

- (a) Tenant's improvements.
- (b) Tenant's Repairing and Decorating Liabilities
- (c) White Goods
- (d) Carpets and Curtains

36) There is no laid down formula for assessing each individual item's impact on the rental value. The Tribunal has used its own knowledge and experience in assessing the overall impact these items would have when taken into account by a hypothetical tenant who would then require an appropriate reduction in rent to take these into account.

37) The Tribunal considered these factors and decided that a deduction of 20% should be made, which gives a rent of £8,568.85 per annum, rounded up to the next 50p in line with the MFR calculations method) giving £8,569.00. The Variable Service charge is then added back on which gives a rent of £9,857.94 per annum.

Scarcity

38) The Tribunal did not consider that there was any substantial scarcity element for this type of property in this area and accordingly no further deduction was made for scarcity.

Other matters

39) The Landlord's submissions on the Maximum Fair Rent are noted, but the correct calculations are shown on the Tribunal's Fair Rent Decision Notice.

THE DECISION

40) We therefore determined that the uncapped Fair Rent is £8,569.00 per annum to which the sum of £1,288.94 in respect of Variable Service Charge should be added, giving a total Fair Rent of £9,857.94 per annum.

41) As this amount is below the rent calculated in accordance with the Rent Acts (Maximum Fair Rent) Order 1999 details of which are shown on the rear of the Decision Notice we determine that the lower sum of £9,857.94 per annum is registered as the Fair Rent with effect from 21st January 2021.

42) The registered rent is to be entered/confirmed as variable in accordance with the terms of the tenancy (Rent Act 1977, s.71(4)).

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber), which may be on a point of law only, must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit the person shall include with the application for permission to appeal a request for an extension of time and the reason for 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.

4. The application for permission to appeal must 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.