



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

Case reference : **CHI/00ML/F77/2021/0002**

Tenant : **Mr C Bennett**

Landlord : **Brighton and Hove Securities Ltd
c/o Priors**

Property : **TFF, 61 Lansdowne Place, Hove,
BN3 1 FL**

Date of Objection : **Referred to First-tier Tribunal
by Valuation Office Agency on
15th December 2020**

Type of Application : **Section 70 Rent Act 1977 (the Act)**

Tribunal : **Mr R T Brown FRICS
Ms C D Barton BSc MRICS
Mr J Reichel Bsc MRICS**

Date of Decision : **26th March 2021**

REASONS FOR DECISION

Background

1. The Tribunal gave formal notice of its decision by a Notice dated 26th March 2021 that the rent would be **£720.00 per calendar month (pcm)** with effect from the same date.
2. On the 9th September 2020 the landlord's agent of the above property applied to the Rent Officer for registration of a fair rent of £828.50 pcm (£9,942.00 per annum). The rent having been previously determined by the First-tier Tribunal at £750.00 pcm on and effective from the 30th July 2018.
3. On the 10th November 2020 the Rent Officer registered a fair rent of £821.50 pcm effective from the same date.
4. The Tenant objected to the rent determined by the Rent Officer and the matter was referred to the First-tier Tribunal (Property Chamber) (Residential Property).
5. The tenancy was said to have commenced on 20th September 1963 but no written agreement was produced to the Tribunal. The tenancy appears to be a statutory protected periodic tenancy. The tenancy (not being for a fixed periodic tenancy of 7 years or more) is subject to Section 11 of the Landlord and Tenant Act 1985 (the landlord's statutory repairing obligations).

Factual Background and Submissions

6. Following the Directions dated 8th February 2021 and the explanation contained therein, the Tribunal did not inspect the premises. A hearing was not requested in the current proceedings.
7. Extracting such information as it could from the papers supplied to the Tribunal by the parties, by reference to information publicly available on the internet and with the benefit of its knowledge and experience, the Tribunal reached **the following conclusions and found as follows:**
8. The property comprises a Grade II listed 3rd and 4th floor self contained flat within a converted property. The accommodation comprises: 3rd Floor: 3 rooms. 4th Floor: Kitchen and Bathroom/WC. Permit parking.
9. All mains services are assumed to be connected although there is no provision for central heating. Hot water is via an electric immersion heater.
10. The property is assumed in tenable decorative order.
11. The Tribunal noted during its consideration:
 - a) The property was let unfurnished and does not include carpets curtains or white goods.

12. **The Tenant** says (summarised):

- a) No material repairs have been carried out since last registration only, apparently, repairs to the roof following ingress of water.
- b) There are a variety of 2 bedroom flats available at rents of £900.00 to £1,100.00 pcm however they are modern and newly decorated with carpets, curtains, white goods, modern kitchen and bathroom.
- c) The subject property has been kept in disrepair
- d) Tenant provides kitchen fitting, white goods, carpets, curtains and is responsible for internal decoration.
- e) There is no effective heating meaning that tenant's electric space heater is used in the living room making the flat effectively a 1 room studio. The temperature is effectively below the minimum standard.
- f) There is no effective insulation as the original (installed by the Tenant) has rotted away.
- g) The windows are the original single glazed, do not close properly and no repairs have been carried out in 50 years.
- h) There are no fire retardant doors in the flat.
- i) The bathroom fittings are outdated and the bath is only 60 inches long. The shower attachment no longer works and there is inadequate pressure in the hot water system.
- j) The condition of the property and its defects are such that the rent should be reduced.

13. **The Landlord's agent** says (summarised):

- a) It calculated the rent using the standard formula. The rent set by the Rent Officer at £821.00 pcm compares favourably with the market rent of 2 bedroom flats within the area. A 2 bedroom top floor flat in Cambridge Road recently let for £900.00 pcm and there are a number of 2 bedroom flats available at asking rents between £1,100.00 and 1,250.00 pcm on an assured shorthold basis. The Rent Officer's reduced (i.e. 'capped') figure of £821.50 more than reflects the nature of the Tenancy.
- b) There is no additional service charge above the rental.
- c) A number of repairs were organised to the flat by the previous Property Manager.

The Law

14. When determining a fair rent the Tribunal, in accordance with section 70 of the Rent Act 1977, had regard to all the circumstances including the age, location and state of repair of the property. It disregarded the effect of (a) any relevant tenant's improvements and (b) the effect of any disrepair or other defect attributable to the tenant or any predecessor in title under the regulated tenancy, on the rental value of the property.
15. In *Spath Holme Ltd v Chairman of the Greater Manchester etc Committee (1995) 28 HLR 107* and *Curtis v London Rent Assessment Panel [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).
16. The Rent Acts (Maximum Fair Rent) Order 1999 restricts the amount by which the rent may be increased to a maximum 5.00% plus RPI since the last registration.
17. The only exception to this restriction 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.

Tribunal's deliberations

18. The Tribunal considered the matter with the benefit of the submissions of the parties. The Tribunal notes it does not take into consideration the personal circumstances of the Landlord or Tenant in making its determination (including issues between Landlord and Tenant which do not affect the rental value of the property itself).
19. The Tribunal checked the National Energy Performance Register and noted that there was no Energy performance Certificate (EPC) registered for the property. It assumed that being Grade II listed the building is exempt. The minimum standard is Rating E (unless exempt) for offering a property to let on the open market and the Tribunal considers that a rating of this level would have an adverse effect on the rent achievable.
20. From information available to the Tribunal this property appears to have been let to Mr Bennett in 1963 and no evidence has been submitted indicating that any modernisation has taken place since that time. The

Tribunal concludes that the property in its present condition would be considered below the standard expected today in the market.

21. The Tribunal, acting as an expert tribunal, determined what rent the landlord could reasonably be expected to obtain for the subject property in the open market if it were let today in the condition and subject to the terms of such a tenancy that is considered usual for such an open market letting. It did this by having regard to the evidence supplied by the parties and the Tribunal's own general knowledge of market rent levels in the wider area of Brighton and Hove. Having done so, it concluded that such a likely market rent for a similar modernised property in fair condition with central heating, modern bathroom and kitchen facilities, floor coverings, curtains and an EPC Rating above F would be **£1,200.00 pcm.**
22. However, the subject property is not in the condition considered usual for a modern letting at a market rent. It is therefore necessary to adjust that hypothetical rent of **£1,200.00 pcm** to allow for the differences between the condition considered usual (including responsibility of tenants to maintain decorations as opposed to decorate) for such a letting and the condition of the actual property as stated in the papers (disregarding the effect of any disrepair or other defect attributable to this tenant or any predecessor in title), and the improvements carried out by the Tenant.
23. If this property were to come onto the open market it would of course come on the market in its present condition and not in the condition normally seen in such market lettings. The Tribunal considers that to reflect these matters, a deduction should be made to the hypothetical rent.
24. The Tribunal considers that to reflect these matters the following deductions should be made:
 - a) Lack of double glazing: £40.00
 - b) Decorating liability: £60.00
 - c) General disrepair (in particular the roof): £50.00
 - d) Lack of central heating: £120.00
 - e) Poor kitchen and bathroom: £120.00
 - f) Lack of floor coverings and curtains: £50.00
 - g) Lack of white goods: £40.00
25. A total deduction of **£480.000 pcm** to the hypothetical rent.
26. This leaves a fair rent of **£720.00 pcm.**

Scarcity

27. The matters taken into account by the Tribunal when assessing scarcity were:-
 - a) The Tribunal interpreted the 'locality' for scarcity purposes as being the area conurbation of Brighton and Hove (i.e. a sufficiently large area to eliminate the effect of any localised amenity which would, in itself, tend to increase or decrease rent).

- b) Local Authority and Housing Association waiting lists.
 - c) House prices which could be an indicator of increased availability of housing and a reduction in scarcity.
 - d) Submissions of the parties.
 - e) The members of the Tribunal have between them many years of experience of the residential letting market and that experience leads them to the view that there is no substantial shortage of similar houses available to let in the locality defined above.
28. Assessing a scarcity percentage cannot be a precise arithmetical calculation because there is no way of knowing either the exact number of people looking for a particular type of house in the private sector or the exact number of such properties available. It can only be a judgment based on the years of experience of members of the Tribunal. However, the Tribunal did not consider that there was a substantial scarcity element and accordingly made no further deduction for scarcity.
29. This leaves a fair rent for the subject property of **£720.00 pcm**

Relevant Law

30. The Rent Act 1977.
31. Rent Acts (Maximum Fair Rent) Order 1999. In particular paragraph 7 which states:

This article does not apply in respect of a dwelling-house if because of a change in the condition of the dwelling-house or the common parts as a result of repairs or improvements (including the replacement of any fixture or fitting) carried out by the landlord or a superior landlord, the rent that is determined in response to an application for registration of a new rent under Part IV exceeds by at least 15% the previous rent registered or confirmed.

Rent Acts (Maximum Fair Rent) Order 1999

32. The rent to be registered is not limited by the Fair Rent Acts (Maximum Fair Rent) Order 1999 because it is below the maximum fair rent (see calculation on reverse of decision sheet) of **£822.00 pcm and accordingly the sum of £720.00 pcm** will be registered as the fair rent on and with effect from 26th March 2021 being the date of the Tribunal's decision.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision (on a point of law only) to the Upper Tribunal (Lands Chamber) 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. Where possible you should send your application for permission to appeal by email to rpsouthern@justice.gov.uk as this will enable the First-tier Tribunal Regional office to deal with it more efficiently.

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