



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

Case Reference : CHI/00ML/F77/2021/0047

Property : Maisonette, 38 Brighton Square, Brighton,
BN1 1HD.

Landlord : South Bank Estates (Brighton Sq) Ltd

Representative : Stiles Harold Williams

Tenant : D Brown

Representative : -

Type of Application : Rent Act 1977 (“the Act”) Determination by the
First-Tier Tribunal of the fair rent of a
property following an objection to the rent
registered by the Rent Officer.

**Tribunal
Member(s)** : Mr W H Gater FRICS MCI Arb (Chair)
Miss C D Barton BSc MRICS
Mr P Smith BSc FRICS IRRV

**Date of Venue of
Inspection** : 17 November 2021

Date of Decision 17 November 2021

REASONS FOR DECISION

Summary of Decision

1. On 17 November 2021 the Tribunal determined a fair rent of £3000 per quarter with effect from 17 November 2021.

Background

2. The Landlord applied to the Rent Officer for registration of a fair rent of £3050 per quarter on 4 August 2021. The application states that services are provided but no further information was submitted.
3. The rent was previously registered from 29 May 2019 at £2700 per quarter.
4. The rent was registered by the Rent Officer on 27 August 2021 at a figure of £2850 per quarter.
5. The Landlord objected to the rent determined by the Rent Officer and the matter was referred to the First Tier Tribunal Property Chamber (Residential Property) formerly a Rent Assessment Committee.
6. The Coronavirus pandemic and considerations of health have caused a suspension of inspections and of Tribunal hearings in person until further notice.
7. The Tribunal office informed the parties that the Tribunal intended to determine the rent on the basis of written representations subject to the parties requesting an oral hearing. No request was made by the parties for a hearing.
8. The Tribunal office also informed the parties that the Tribunal might also consider information about the property available on the internet.
9. The parties were invited to include photographs and video within their representations if they so wished. Representations were made which were copied to both parties.

Submissions

10. The Tribunal dealt with applications for a time extension and adjournment as preliminary issues before determining the matter.
11. On 12 November 2021 the Tenant requested an extension of time for provision of submissions. Those submissions were subsequently received on 15 November 2021.
12. On 16 November 2021 the Landlord's agent submitted an application to allow a response to the Tenants late submissions and enclosed that response with the application.

13. The Tribunal deliberated on these preliminary issues and determined that in the interest of justice it could admit the late evidence and response and proceeded to determine the rent with the benefit of submissions.

The Property

14. The property is a two-storey maisonette over shops in a mixed residential / commercial area near the centre of Brighton. The development is arranged around a central square. The property was built about 65 years ago and the area has seen extensive development over the years, which continues.
15. The accommodation comprises, on the First Floor: Lounge and Kitchen. On the Second Floor : 2 bedrooms, Bath/WC. There is no garage or parking with the property.
16. Full double glazing was installed in 2011. The tenant points out that the gas central heating system cannot be used following removal of the gas meter. The Landlord indicates that this could be reinstated easily. Heating is currently provided by the Tenant in the form of independent heaters.
17. In the assessment of the property, the Rent Officer starts with a suggested open market rent of £3450 per quarter and then made adjustments to the rent to reflect the Tenant's liability for decoration, lack of white goods, carpets and curtains and the unmodernised kitchen. The assessed market rent is reduced by £600 per quarter to reflect this, leaving a fair rent of £2850 per quarter.
18. The Landlord's submission states that Market Rent is in the region of £21,000 p.a. [£5250 per quarter].
19. It provides details of recent rents for Assured Shorthold Tenancies granted on adjacent flats in the same block:
- Flat 33 £18,000 p.a. w.e.f. 21.06.2021 2 beds
 - Flat 34 £19,200 p.a. w.e.f. 04.05.2021 2 beds
 - Flat 35 £21,600 p.a. w.e.f. 04.03.2021 2 beds
 - Flat 36A £10,800 p.a. w.e.f. 28.08.2020 1 bed
 - Flat 36B £13,200 p.a. w.e.f. 04.05.2021 1 bed
 - Flat 39 £22,500 p.a. w.e.f. 20.09.2020 2 bed
 - Flat 44 £21,600 p.a. w.e.f. 09.10.2019 2 beds
 - Flat 45 £14,400 p.a. w.e.f. 15.03.2021 fairly new but very small one bed
 - Flat 46 £21,400 p.a. w.e.f. 09.08.2021 1 bed
 - Flat 47 £19,200 p.a. w.e.f. 01.03.2021 2 bed
20. Improvements are listed as
- double glazing installed in 2011
 - high security front door added
 - rewiring and additional communal lighting
 - new fire escape 2019
 - walkways covered in rubber sound softening membrane
 - new entry phone system

- large plants providing a garden effect
 - fully painted block 2017
21. The Tenant's submission points out that other properties in Brighton Square have been subject to refurbishment but not number 38. He describes the effect of development in close proximity and the loss of a store, parking and amenity space. The property has changed to mid terraced, and the view has deteriorated. The gas supply has been cut off thereby rendering the central heating unusable.
22. The Landlord's response to the Tenant's submissions seeks to counter comments made therein. Whilst the Tribunal will not repeat all the points raised, it has had regard to all submissions, observations and comments by the parties in making its findings.

The Law

23. When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, had regard to all the circumstances including the age, location and state of repair of the property. It also 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.
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
- (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).
25. The Tribunal also has to have regard to the Rent Acts (Maximum Fair Rent) Order 1999 where applicable. Most objections and determinations of registered rents are now subject to the Order, which limits the amount of rent that can be charged by linking increases to the Retail Price Index. It is the duty of the Property Tribunal to arrive at a fair rent under section 70 of the Act but in addition to calculate the maximum fair rent which can be registered according to the rules of the Order. If that maximum rent is below the fair rent calculated as above, then that (maximum) sum must be registered as the fair rent for the subject property.

Determination

26. The Tribunal first considered whether it felt able to reasonably and fairly decide this case based on the papers submitted only, with no oral hearing. Having read and considered the papers it decided that it could do so.
27. In the first instance the Tribunal determined what rent the Landlord reasonably expected to take 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. It did this having regard to the evidence supplied in submissions and the Tribunal's general knowledge of market rent levels in the Brighton area. It considered the evidence of recent lettings in the development and had regard to the evidence provided of development encroachment on the subject property. The Tribunal finds that the close proximity of the new development would have an adverse affect on rental value. In doing so it concluded that such a market rent would be £16500 per annum.
28. However, from the submissions the Tribunal concluded that the property was not let in a condition considered usual for a modern letting at a market rent. Therefore, it was first necessary to adjust that hypothetical rent of £16500 per annum.
29. The Landlord submits that the property has central heating but the Tenant choose not to use it. The Tenant states that the gas meter was removed and as a result it has been necessary to revert to individual electric heaters. The Landlord's response is that this could be reinstated on agreement.
30. The Tribunal finds that there is no effective central heating at the property .
31. The tribunal makes the following adjustments to reflect these items:-
- Lack of white goods- £750
 - Tenants repair and decoration liability -£1000
 - Lack of carpets and curtains- £750
 - Dated kitchen and bathroom- £1000
 - Lack of central heating -£1000
- Subtotal -£4500.
32. The net rent therefore be £12,000 per annum or £3000 per quarter.
33. The Tribunal therefore finds that the fair rent for the property in accordance with the Act is £3000 per quarter.
34. The Tribunal did not consider that there was any substantial scarcity element in the wider Brighton area.

35. It finds that the improvements listed by the Landlord are not supported by any valuation evidence of uplift in value. The Tribunal is satisfied that some of the items listed are part of the Landlords covenant and not improvements. The relevant improvements do not increase the rental value sufficient to engage the Maximum Fair Rent Regulations.

Decision

36. Having made the adjustments indicated above the fair rent initially determined by the Tribunal for the purpose of section 70 of the Rent Act 1977 was accordingly £3000 per quarter.

37. The Section 70 Fair Rent determined by the Tribunal is below the maximum fair rent permitted by the Rent Acts (Maximum Fair Rent) Order 1999 details of which are shown on the rear of the Decision Notice and accordingly that rent limit has no effect.

Accordingly, the sum of £3000 per quarter will be registered as the fair rent with effect from the 17 November 2021 being the date of the Tribunal's decision.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk 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.