



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

**Case Reference** : **LON/OOBK/F77/2021/0309**

**Property** : **Flat 22, Old Manor Court, 40-42 Abbey Road , London, NW8 0AR**

**Tenant** : **Irene Joan Osner**

**Landlord** : **Northumberland and Durham Property Trust Limited**

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

**Tribunal** : **Mr R Waterhouse MA LLM FRICS**

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

**Date of Decision** : **9<sup>th</sup> February 2022**

**Date of Statement of Reasons : 19<sup>th</sup> February 2022**

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**Statement of Reasons**

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## **Background**

The Tribunal gave formal notice of its decision by a Notice dated 9<sup>th</sup> February 2022 of the determined Fair Rent of £26,688 per year , with £2239.71 per year for services with effect from the same.

By way of application, undated, from Northumberland and Durham Property Trust Limited the landlord of the property applied for re registration of a fair rent of £6584.86 per quarter with £556.60 per quarter for services. Previously the Rent Officer had registered a rent of £23,443.50 per year, with £2475.62 per year for services, with £518.99 per year attributed to fuel, the rent being registered on 22<sup>nd</sup> October 2019.

The Rent Officer registered a fair rent of £25,957 per year with £2239.71 per year service charge, fuel being £518.99 per year, effective from 13 December 2021.

In a letter dated 7<sup>th</sup> December 2021 Nigel Osner on behalf of the tenant Irene Osner objected to the rent registered and the matter was referred to the First –tier Tribunal (Property Chamber) (Residential Property).

Directions were issued by the Tribunal on the 14 December 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 purpose built flat within a 1930 block. The flat is situated on the 5<sup>th</sup> floor and according to the application form from the landlord comprises 5 rooms, kitchen, dining and bathroom, and wc.

It has central heating and mains electricity, gas, water and drainage. The windows are single-glazed throughout.

The tenant has use of a bin store and the front garden shared with the two other flats.

The tenancy commenced 24<sup>th</sup> June 1970 with the landlord being responsible for repairs and external decoration, and the tenant internal repairs, as noted on the application to register a fair rent from the landlord.

### **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**

By way of email dated 14<sup>th</sup> December 2021, the landlord notes, that there has been no receipt of any written notification of any faults in the property in the last 12 months and so assumes all is in order. The landlord also notes they have not received any copy of the tenants Reply Form submissions to the tribunal.

By undated e mail, the landlord, submits that the tenant has failed by 8 December 2021 to supply copy of correspondence to the landlord, and as a consequence request that tenant's evidence is inadmissible. Also, the landlord notes that no contact has been had from the tenant.

By way of letter dated 16 November 2021, the landlord detailed the condition of the property and what repairs they had carried out. Additionally, evidence of rental levels was submitted.

Finally, a letter dated 6 January 2022 detail a set of purported events which were generally not material to the determination of the fair rent but demonstrate the relationship between landlord and tenant is stained.

### **Tenant**

The tenant made a raised a number of submissions to the Rent Officer, and by way the objection letter. These comprised;

Scaffolding erected to building in place for two years to repair roof or build penthouse above. This has resulted in restricted natural light to all rooms other than kitchen and bathroom.

The building work is causing disruption to heating in flat, TV reception and noise.

Leak from roof through kitchen ceiling not adequately repaired.

A number of dripping taps that have not been repaired by landlord as required water to block to be turned off.

The bathroom is unmodernised and the kitchen was replaced at the start of the tenancy.

The carpets have experienced damage from moths.

The flat is identical to Flat 14 in the block which had a rent registered in August 2021 at £21,350 per year.

### **Reasons for Decision**

The tribunal considered all relevant material submitted including reference to previous decisions which are not binding on the tribunal but were considered for wider context.

The process for determining a fair rent is the application of Rent Act 1977 section 70 on the subject property and then comparison with the maximum rent permitted under the Maximum Fair Rent Order 1999. This means that comparison with other properties the subject of Fair Rent is not material.

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. Considering evidence submitted and 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 £ 59,563 per year.

However, the Property is not in the condition considered usual for a modern letting at a market rent. Therefore, it is necessary to adjust the above hypothetical rent, a deduction of 10% is made and further 5% for ongoing building works.

In addition, the Tribunal determined that there should be a further deduction of 10% to reflect the fact the terms and conditions and goods supplied under the tenancy would differ from those of a contemporary assured shorthold tenancy, from which the rental comparables are derived.

Thereafter the Tribunal considered the question of scarcity in section 70 (2) of the Rent Act 1977. A figure of 20% was adopted.

Market derived rental level - £59,563 per year

Less 15% condition inc building works

Less 10% for terms and supplied goods inc white goods

Less 20% for scarcity.

The rent after this final adjustment was £32,760 per year.

### **Rent Acts (Maximum Fair Rent) Order 1999**

The rent to be registered is not limited by the Rent Acts (Maximum Fair Rent Order) 1999. The rent calculated in accordance with the Order is £ 26,688.00 per year, with services of £2239.71 per year. This figure is more than the figure calculated by

reference to the market rent with adjustments, of £32760.00 per year with services of £2239.71 per year.

Accordingly, the sum of £26,688 per year with services of £2239.71 per year will be registered as the fair rent with effect from 9<sup>th</sup> February 2022, being the date of the Tribunal's decision.

**Valuer Chair: Richard Waterhouse FRICS**

**Decision Date: 9<sup>th</sup> February 2022**

**Extended reasons: 21<sup>st</sup> February 2022.**

### **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.