



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

**Case Reference** : **LON/OOAW/F77/2021/0183**

**Property** : **18 Cranley Mews, London, SW7 3BX**

**Tenant** : **Michael Digby**

**Landlord** : **The Welcome Trust 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<sup>th</sup> September 2021**

**Date of Statement of Reasons** : **25<sup>th</sup> October 2021**

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**Statement of Reasons**

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**Covid-19 pandemic- description of hearing**

This has been a remote hearing on the papers, which has been not objected to by the parties. The form of remote determination was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined on paper.

## **1. Background**

The Tribunal gave formal notice of its decision by a Notice dated 20<sup>th</sup> September 2021 of £19,929.50 per annum with effect from the same.

An application was made by the Tenant on the 6<sup>th</sup> November 2020 for registration of a fair rent of £3600 per year.

On the 22 December 2020, the Rent Officer registered rent of £16850.00 with effect from 22<sup>nd</sup> December 2020. Replacing the previous entry of £16 596.50 per annum that had effect from 28<sup>th</sup> December 2016

In a letter received by the Rent Officer on the 17 February 2021 the Tenant Mr Michael Digby 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 21<sup>st</sup> April 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.

## **2. The Property**

The property is a two storey, terraced mews house comprising, one living room, one bedroom, a kitchen/dinner, a bathroom and a double garage on the ground floor. The property is centrally heated, installed by the tenant. The tenancy initially running from the 24<sup>th</sup> June 1969 for 10 years.

## **3. 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.

#### **4. Submissions**

##### **Landlord**

None received

##### **Tenant**

The Tribunal received a number of documents from the Tenant that have been considered. These include;

A letter dated 6<sup>th</sup> November 2020 from the Tenant to the Rent Officer detailing the background to the property including the original letting particulars undated from Farley and Co. The letter detailed condition of the property as let.

A letter dated 28<sup>th</sup> November 2020 from the Tenant to the Rent Officer.

The Tenant notes “the property was in a very primitive condition when I moved in 50 years ago” and that there was a large container for hay in the property at the time. Additionally submits that the landlord has made no improvements to the property in that time.

Consultation notes made by Rent Officer from the 15<sup>th</sup> December 2020 between the Rent Officer and the Tenant, the Landlord’s representative had been invited to the meeting but had been unable to attend.

The Tenant notes that he has carried out many improvements over the years and the landlord none.

The Tenant understands that he has a full repairing lease and therefore always maintains the property both internally and externally.

The Tenant also feels that the current rent registered for his property is too high compared to other rents registered for similar types of properties within this area.

The description of the property over the years has led and influenced the Rent Officer in registering a higher rent for this property – the description on the rent register includes Tenants’ alterations and improvements to the property which is a misrepresentation of the original condition of the property at the commencement of this tenancy.

The Tenant noted within a letter dated 27<sup>th</sup> January 2021 headed “Formal Complaint letter “to the Rent Officer, that he installed and maintained the central heating system, rather than the landlord and that even with it the “poor construction of the mews house results in large heating bills. In the winter the gas ventral heating has to be supplemented by electric heaters.”

A letter dated 17<sup>th</sup> February 2021 titled “Formal Compliant Letter and Objection to Registered Rent”, from the Tenant to the Rent Officer.

It notes that when let it had “ lead pipes, no roof insulation, dangerous wiring, an antiquated fuse box with old fashioned wire fuses , illegal gas geyser, no heating and a dangerously steep stair case” and that the “ roof was in a poor state”.

He submits that the description “kitchen/dinner” is “inaccurate as the so called kitchen is not a room but a space on the landing at the top of the dangerous stair case”.

Additionally that “the claimed double garage is in fact a single garage with a combined double door, width of nine feet”.

Noting also, “I took eight weeks off work after I moved in with a plumber and a builder and carried out basic remedial work.”

The letter also includes a number of comparables of properties subject to registered rents.

## 5. Reasons for Decision

Initially the Tribunal determined what the condition of the property was when originally let based on the submissions received from the Tenant and notes from consultations with Rent Officer. That is unimproved and no central hearing.

Then the Tribunal went on to consider what 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 £39600 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 of £39,600 per year, a deduction of 20% is made. The adjusted rent is £31,680 per year.

In addition, the Tribunal determined that there should be a further deduction of 15% to reflect the fact the Tenant provided the floor coverings, curtains and white goods and is responsible for internal and external repairing. The rent after this adjustment is £26,928 per year.

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 £21,542 per year.

Market rent	£39,600
Less	
Condition/ no central heating	£7,920
Carpets, curtains, white goods	£4,752
	<hr/>
	£26,928
Less	
Scarcity – 20%	<u>£5,386</u>
	£21,542

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

The rent to be registered is limited by the Rent Acts (Maximum Fair Rent Order) 1999.

Accordingly, the sum of £19929.50 per year will be registered as the fair rent with effect from 20<sup>th</sup> September 2021 being the date of the Tribunal's decision.

**Valuer Chair: Richard Waterhouse FRICS**

**Date: 25<sup>th</sup> 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.