IN THE UPPER TRIBUNAL (LANDS CHAMBER)

Neutral Citation Number: [2018] UKUT 149 (LC)
Case No: RAP/16/2017

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND TENANT – Fair rent assessment – Sufficiency of reasons – Rent assessed by the F-tT including £40 per month in respect of services – Tenant objecting on the ground that sum excessive and that services provided very poor – entry phone broken, common parts not maintained or cleaned – Point not dealt with in decision at all – Reasons held to be insufficient – decision quashed – appeal allowed.

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

BETWEEN:

Mr I AUGOUSTI **Appellant**

- and -

BAILEY HOLDINGS LIMITED **Respondent**

Re: Flat 1, Codrington Mansions,
139 Western Road
Brighton
East Sussex BN1 2LA

His Honour John Behrens

Determination on written representations

Representations having been made by the Appellant and/or on his behalf by his daughter Mrs Androulla Moore.
No representations have been received on behalf of the Respondent.

The following case is referred to in this Decision:

Tintern Abbey Residents Association Ltd v Owen [2015] UKUT 232 (LC)

DECISION

Introduction

1. This is an appeal against a decision of the First-tier Tribunal made on 31 July 2017. The decision was a paper determination of a fair rent for Flat 1, Codrington Mansions, 139 Western Road, Brighton ("Flat 1"). The F-tT carried out an inspection of Flat 1 on 31 July 2017 and determined a fair rent to be £600 per month with effect from that day. The rent included the sum of £40 per calendar month attributable to services

2. A number of grounds of appeal were raised against this decision. None found favour with the F-tT. However, this Tribunal granted permission on one ground only that is to say that the F-tT did not explain why it agreed with the Rent Officer that the value of the services provided by the Landlord should be valued at £40 per month in the light of the criticisms of those services by the Tenant.

3. This Tribunal directed the Landlord to file a Respondent's Notice if it wished to participate in the Appeal. It directed that the Appeal would be conducted under its written representation procedure unless any party requested an oral hearing. No Respondent's Notice has been filed. Further representations have been received from the Tenant and/or his daughter. There has been no request for an oral hearing. Accordingly, this decision is based on the written representations of the Tenant on the basis that the Landlord does not wish to participate.

The Facts

4. Mr Augoustini has been the tenant of Flat 1 for over 50 years. He is 78 years old. He lives there with his wife who is aged 73. The property is part of a mixed residential/retail building probably built over 100 years ago. It comprises a large hall, front bedroom, rear living room, bathroom/WC and a small rear kitchen approached by way of a narrow passage. There is no central heating.

5. The rent was registered in 2001 and again on 6 November 2008 at £5,526.50 p.a or £460.54 per calendar month.

6. On 5 April 2017 the Landlord applied to the Rent Officer for the registration of a fair rent. In the application form it sought a rent of £7,200 p.a. In answer to question 8 in the application form the Landlord stated that it did provide services under the tenancy which were

described as "Cleaning, Lighting of Public Ways, Entry Phone System". In answer to question 9 the Landlord suggested that £30 per week of the rent was attributable to the services.

7. On 5 May 2017 the Rent Officer determined the rent at £597.50 per calendar month. He attributed £40 per month as being attributable to services. He noted that the uncapped rent would have been assessed at £600 per calendar month.

8. The Tenant objected to the rent which the Rent Officer had determined, and the matter was referred to the F-tT. Written representations were received from the Tenant and/or his daughter. They are summarised in para 15 of its decision. It is not necessary to set them all out in view of the limited nature of this appeal. However, some allegations are relevant:

> The service charge which is shown as being inclusive of the registered rent is not to be removed from VAO register as we refuse to pay this charge given that hallways have not been cleaned for over 9 months and are filthy. We provide and pay for the light bulbs in the hallways each time they blow. The entry phone system is very old and outdated and is not maintained in good condition given that the box is always broken.
>
> We have to continually supply light bulbs for the communal hallway in order to get light which should be the Landlord's responsibility not the Tenants'.
>
> We spoke with Chris Demetriou the Director of pavilion Properties regarding the introduction and lodgement of an additional £40 monthly service charge. The other tenants are being charged £60 per annum whilst we are being charged £40 per month (£480 per annum) which is totally extortionate and unfair. Chris said that it was the Rent Officer who lodged and agreed this and not him. We have been in the property for over 50 years and th[i]s additional charge was never applied in addition to the rent.

9. There was no request for an oral hearing before the F-tT. Accordingly, the F-tT inspected Flat 1 on 31 July 2017 and made its determination the same day based on the written representations. As already noted it assessed the fair rent at £600 per month inclusive of a service charge of £40 per month.

The reasons given by the F-tT.

10. On the back of the decision notice the F-tT carried out a maximum fair rent calculation in accordance with the formula contained in the Rent Acts (Maximum Fair Rent) Order 1999. In summary, the RPI had increased by 25.78% since the previous registration in November 2008. As this was not the first re-registration the maximum increase permitted was accordingly 30.78% (25.78 + 5). When this is applied to the old rent of £460.54 it yields a figure of £602.29. Thus, the assessment of £600 per month was less than that permitted by the Order.

11. The valuation assessment is contained in paras 22 – 25 of the F-tT's reasons.

12. In para 22 the F-tT directed itself that the starting point was to determine what rent the Landlord could reasonably be expected to obtain for the property if it were let today on the terms and in the condition that is considered usual for such an open market letting. Using its own knowledge of general rent levels it assessed this starting point at £775 per month.

13. In para 23 the F-tT pointed out that the starting point was for the letting of a property in good modernised condition. In the light of the comments made by the Tenant it made a number of deductions from this starting figure:

Carpets provided by tenant	£45.00
Lack of central heating	£20.00
Unmodernised kitchen	£25.00
White goods provided by tenant	£15.00
Tenant responsible for internal decorations	£20.00
TOTAL DEDUCTIONS	£175.00
Adjusted rent	£600.00

14. In para 24 the F-tT considered and rejected a further deduction to reflect scarcity. In para 25 it concluded that the uncapped fair rent should be £600 per month. The final sentence of the decision states that this rent includes the sum of £40 per calendar month attributable to services.

The law on sufficiency of reasons

15. Under rule 36(2)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the F-tT must in a decision such as this provide each party with:

> Written reasons for the decision or, in cases relating to rents, notification of the right to request written reasons under paragraph (4).

16. In *Tintern Abbey Residents Association Ltd v Owen* [2015] UKUT 0232 (LC), the Deputy President considered the adequacy of written reasons under Rule 36(2)(b). He stated that the reasons:

> "… need not be elaborate. They should identify the issues for decision and provide a summary of the tribunal's basic factual conclusions. They need not to recite the evidence in detail, but they must briefly explain why the tribunal has arrived at its conclusions."

17. In *Tintern Abbey*, this Tribunal held that the reasons given by the F-tT fell below the minimum standard required under r.36(2). The Deputy President noted that whilst the document "comprehensively records the determinations made and the submissions received", it

made "no connection between them. No facts are found. No conflicts of evidence are addressed." He concluded at para.24 that:

> "The necessary connection between what the parties argued and what the FTT decided need not have been lengthy or complicated. A very few additional sentences are likely to have been sufficient for the purpose, but they are missing and without them the Tribunal is not in a position to understand the FTT's thinking or determine whether the appellant has justifiable grounds of complaint."

Discussion

18. Although the Tenant wished to challenge the decision on a number of grounds permission to appeal has been refused on all grounds except for the service charge element of the rent. The reasons for the refusal are set out clearly in the document granting permission to appeal. However, as the Tenant is not professionally represented and as his daughter has asked for clear reasons I shall (briefly) repeat them:

1. The calculation of the maximum rent permissible has been calculated correctly in accordance with the relevant order and is correct. Thus, all of the complaints based on capping are bound to fail. The fact remains that the RPI has increased by over 25% between November 2008 and July 2017. Thus, the permissible rent increase is over 30%.

2. The F-tT was correct to take the market value of Flat 1 as its starting point and then to adjust it as it did in para 23. There can accordingly be no challenge to the approach taken by the F-tT.

3. The F-tT was entitled not to admit further evidence in the absence of the Landlord. In any event the additional material was not relevant to the valuation. It was also entitled to use its own experience and expertise on the question of scarcity. No evidence was adduced on scarcity by either party.

19. That leaves the question of the service charge. It is quite clear from the passages I have set out above that the Tenant had put in issue the nature and the quality of the services provided by the Landlord. It was clearly the Tenant's contention that there should be a further allowance to reflect the difference between services provided in the notional market rent which it had assessed at £775 per month and those actually provided by the Landlord in Flat 1.

20. Regrettably the decision is completely silent on this issue. It sets out the Tenant's allegations but makes no further reference to the service charge at all. Thus, there are no findings of fact and no consideration of the issue at all.

21. To my mind therefore on this issue the F-tT has failed to give sufficient reasons and, as a result, this Tribunal is not in a position to understand the F-tT's thinking or determine whether the Tenant has justifiable grounds of complaint.

22. In those circumstances the appeal must be allowed. The decision of the F-tT must be quashed and the matter remitted to the F-tT to consider whether any further deduction should be made to the notional rent to reflect the condition of the common parts and the services provided by the Landlord.

Dated 30 April 2018

His Honour John Behrens