UPPER TRIBUNAL (LANDS CHAMBER)

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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND TENANT – Rent Determination – fair rent – sufficiency of reasons for FTT's decision that the Rent Acts (Maximum Fair Rent) Order 1999 did not apply following improvements to premises – appeal allowed

IN THE MATTER OF AN APPEAL FROM THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

BETWEEN:

DR N N LJEPOJEVIC **Appellant**

and

UNIVERSITY OF CAMBRIDGE ACCOMMODATION SERVICE **Respondent**

Re: 22 Causewayside, Cambridge CB3 9HD

Before: **Martin Rodger QC**
Deputy Chamber President

Sitting at: The Royal Courts of Justice, Strand, London WC2A 2LL
on
18 May 2017

Dr Ljepojevic on his own behalf as appellant
Mrs Nicky Blanning of the Respondent

The following cases are referred to in this decision:

Flannery v Halifax Estate Agencies Limited [2000] 1 All ER 373

Israel Moss Children's Trust v Bandy [2015] UKUT 0276 (LC)

Spath Holme v Manchester & Lancashire RAC [1995] 2 EGLR 80

Introduction

1. In *Flannery v Halifax Estate Agencies Limited* [2000] 1 All ER 373, 377J, Henry LJ explained why it is essential for a court or tribunal to give clear reasons for its decisions:

> "…Fairness surely requires that the parties – especially the losing party – should be left in no doubt why they have won or lost. This is especially so since without reasons the losing party will not know … whether the court has misdirected itself, and thus whether he may have an available appeal on the substance of the case.
>
> … The Judge must explain *why* he has reached his decision. The question is always, what is required of the Judge to do so; and that will differ from case to case. Transparency should be the watch word."

2. In *Trustees of the Israel Moss Children's Trust v Bandy* [2015] UKUT 0276 (LC) the Tribunal suggested that, in a fair rent case:

> "… The reasons need not be elaborate or lengthy but they must be intelligible and deal with the substantial points which have been raised. Having read the reasons the parties should be able to understand why the decision has been reached."

3. The issue in this appeal is whether the first-tier tribunal (Property Chamber) ("the FTT") provided sufficient reasons on 3 October 2016 when it explained why it had determined the fair rent payable for the appellant's flat at 22 Causewayside, Cambridge to be £2,805 per quarter, which was more than double the previously registered rent.

4. At the hearing of the appeal the appellant, Dr Ljepojevic, made submissions on his own behalf and the University was represented by the director of its accommodation service, Mrs Nicky Blanning. After the end of the hearing I informed the parties that I would allow the appeal and remit the determination of the fair rent to a differently constituted tribunal. I now provide my reasons for that decision.

The capping of fair rents

5. Before 1 February 1999 there was no limit on the amount of any increase which could be determined by a rent officer or tribunal on an application for the registration of a fair rent under Part IV, Rent Act 1977. That position was altered by the Rent Acts (Maximum Fair Rent) Order 1999 ("the 1999 Order"), Article 2 of which imposes a maximum increase, or "cap", by reference to the increase in the UK retail prices index since the previous registration plus 5%.

6. By Article 2(7) of the 1999 Order it is provided that the cap will not apply in the following circumstances:

> "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 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."

The facts

7. Causewayside is a purpose-built block of flats dating from the first half of the last century located in a desirable residential area close to the centre of Cambridge. Number 22 is a first floor flat comprises a living room, kitchen, bathroom and one double and one single bedroom.

8. The building was constructed with a communal heating system served by pipes from a central boiler. In 2007 the boiler was decommissioned and alterations were made to the flat to install an independent heating system. At the same time the University provided new kitchen and bathroom fittings, a cooker and a fridge, and new carpets.

9. The flat has been the home of Dr Ljepojevic since 1985 when he was granted a tenancy which is a regulated tenancy under the Rent Act 1977. It was a term of the tenancy that the University would provide what was referred to as "hot water and background central heating" and for that purpose would maintain in the flat and the building a system of background central heating. The rent payable under the tenancy was initially £1,260 p.a. which included an element to cover the costs of services and fuel for the central heating and hot water.

10. When Dr Ljepojevic took his tenancy all of the flats in the building were served by the same communal central heating system. I was told by Mrs Blanning that the system became unsafe. Dr Ljepojevic also informed me that gradually as flats became vacant the University disconnected them from the communal system and installed independent central heating for each flat. By 2007 only three flats remained connected to the communal system when the University decided to decommission it, strip out of the associated pipes and provide individual central heating facilities to the three flats of which his was one.

11. A fair rent was registered for the flat under Part IV, Rent Act 1977. The most recent registration before the decommissioning of the communal heating system took effect from 27 April 2006 when a rent of £1,257 per quarter was registered, including an amount for fuel charges (excluding heating and lighting of the common parts) of £176.49 per quarter.

12. After the change in the heating system the University reduced the amount of the rent payable by Dr Ljepojevic by an allowance or rebate to reflect the fact that he had assumed responsibility for his own heating costs. Mrs Blanning informed me that the same allowance had been paid for a period of 6 years after 2007 and that during that period the University made no attempt to increase the rent registered in 2006.

Registration of the new rent

13. In April 2016 the University informed Dr Ljepojevic that it had made a proposal to the rent officer to increase the fair rent payable under his tenancy.

14. On 5 May 2016 Dr Ljepojevic replied, explaining why he considered the proposed increase excessive, unreasonable and grossly unfair. Referring to the works undertaken in 2007, a list of which had been provided to the rent officer, Dr Ljepojevic explained his position:

> "From my point of view, I resisted this refurbishment for a long time because I was perfectly happy with how it was, and I still prefer how it used to be."

He then described the various works which had been carried out and explained to the rent officer why, from his perspective, they involved no improvement whatsoever:

> "(1) New kitchen: no improvement whatsoever. The substantial old built-in wooden cupboard was removed, and replaced by a characterless modern version. The landlord insisted on supplying me with a cooker, although I had a perfectly functioning one of my own in place which I then had to discard.
>
> (2) New flooring: the existing sold wood flooring was replaced by plastic laminate and cheap carpet. This cannot be called an improvement.
>
> (3) New combination boiler and full central heating: the landlord gave this as a principal reason for what then became the refurbishment. Namely, previously the heating and hot water were provided by the landlord from a central facility serving all the flats. This was included in the rent. The landlord was anxious to dismantle this central facility and replace it with individual boilers. Now it is no longer included in the rent. But this is an improvement for the landlord, not for me, the tenant.
>
> (4) New bathroom: the only real improvement there is the installed shower. Otherwise the old fittings were of a higher quality. In particular the shoddy door lock that broke caused me to be trapped inside. After this incident the landlord installed a lock of a higher quality.
>
> (5) Full redecoration: obviously this had to be done after all the works.
>
> (6) Not mentioned by the landlord: the living room had a working open fireplace with a fine mantelpiece which the landlord insisted on blocking up. This has removed what was a most attractive feature of the room."

15. Dr Ljepojevic also objected to the increased rent because each of the other flats in the building which was subject to a regulated tenancy enjoyed a fair rent capped under the 1999 Order. He considered it unfair that he alone should be required to pay an uncapped rent.

16. Despite these objections the rent officer took the view that the 1999 Order did not apply because of the work carried out by the University in 2007 and registered a new rent with effect from 14 June 2016 of £2,630 per quarter.

17. Dr Ljepojevic was dissatisfied with that decision and appealed to the FTT. On 28 July 2016 he received copies of all of the papers which had been forwarded to the FTT by the rent officer. These included a copy of his letter of 4 May explaining his objection to the proposed increase. The papers also included a second letter he had written to the rent officer on 26 June which included the following additional observation by Dr Ljepojevic:

> "In retrospect I recall that the work done on all the flats was for the benefit of the landlord, which was explicitly stated at the time. I was led to understand that the original facilities were not only old, but inefficient, there was also updating of the electrical systems, and a check for asbestos. No doubt much was concerned (and perhaps initiated) with health and safety, as well as meeting modern day standards of the authoritative body. I was reassured that in no way would this be grounds for a rent increase, I assumed that this statement was a verbal contract."

18. Both Dr Ljepojevic and the University were content for the FTT to make a decision without an oral hearing. The FTT duly inspected the flat and on 25 August 2016 issued a summary statement of reasons for its conclusion that the fair rent was £2,805 per quarter with effect from that date.

19. In its summary reasons the FTT explained that the open market rent for the flat was £1,100 per month to which it had applied a 15% allowance for scarcity, leaving a fair rent of £935 per month or £2,805 per quarter.

20. The FTT then referred to the 1999 Order, explaining first that:

> "Since the previous registration in 2006, the Landlord has installed an independent heating system for the Property, so the tenant can now control the heating – previously the heating for the whole block was provided from a central boiler – and the landlord has provided new kitchen and bathroom fittings, new carpets, cooker and fridge."

The continuing:

> "The tribunal considered whether the 15% exemption from this Order applied in relation to the works carried out by the landlord, set out above, and determined that the amount of rent attributable to these works was in excess of £188.55 per quarter, 15% of the previous registered rent, and so the exemption did apply."

21. At Dr Ljepojevic's request the FTT provided a full statement of its reasons on 3 October. In that statement the description of the work carried out in 2007 was identical to the sentence I have already quoted from the summary reasons. In paragraph 10 of its full statement the FTT referred again to the 1999 Order and recited the terms of paragraph 2(7), before continuing:

> "The exercise that must be carried out is to assess the amount by which the new fair rent, excluding the services element, exceeds the previous registered rent, excluding the services element, wholly as a result of relevant landlord's works. If that amount is at least 15% of the previously registered rent, excluding the services element, then capping will not apply. The tribunal considered whether the 15% exemption from this Order applied in relation to the works carried out by the landlord, set out above, and determined that the amount of rent attributable to these works was in excess of 15% of the previous registered rent excluding services, so the exemption did apply."

It will be noticed that the only respect in which the final sentence differs from the explanation already given by the FTT in its summary was that the full statement omitted the reference to a specific figure of £188.55 per quarter, representing 15% of the previously registered rent.

The appeal

22. Dr Ljepojevic applied for permission to appeal on a number of grounds but the only one on which permission was granted, by this Tribunal, was his complaint that the FTT had simply asserted that the amount of the rent attributable to the 2007 works was in excess of 15% of the previously registered rent without providing any intelligible explanation for that conclusion.

23. I agree with Dr Ljepojevic that the FTT gave no proper explanation for its critical conclusion, which made the difference between a rent increase pegged to RPI since 2006 and an increase of more than 100%. He had raised a number of specific points in his letter of objection to the proposed increased going to the extent and effect of the improvements on which the FTT relied. From his perspective the replacement of the communal heating system (which the University was obliged by clause 5 of his tenancy agreement to maintain) was not an improvement at all. It had necessitated disruptive work to remove pipes which had the consequence that the previous fireplace and the original wooden flooring had also been removed. The new individual heating system was more expensive for him than the communal system had been. He also disputed that the new kitchen and bathroom fixtures were any improvement on the original and found the carpet laid over the original wooden floor less attractive.

24. Faced with that case, clearly articulated by Dr Ljepojevic in the correspondence provided to the FTT, it was incumbent on it to consider his objections in a systematic way and, if it considered that the points made were persuasive, to explain why. As a minimum the reasons given by any tribunal must engage with and respond to the main arguments presented to it. They must explain to the unsuccessful party why they have been unsuccessful. In my judgment the reasons given by the FTT in this case fell below that standard and it would not have been obvious to Dr Ljepojevic why his contention that there had been no significant improvement to his flat had been rejected.

25. It was not enough for the FTT to satisfy itself that work had been done in the flat. That was not in dispute. It ought first to have focussed on was the question raised by Article 2(7) of 1999 Order namely whether there had been "a change in the condition of the dwelling house … as a result of repairs or improvements (including the replacement of any fixture or fitting)". Any

work or expenditure which brought about no change in the condition of the flat was therefore irrelevant.

26. Once the FTT had identified the changes it considered had been brought about in the condition of the flat it was then necessary for it to consider the extent to which those changes had caused the fair rent of the flat to increase. The question was not by how much the rental value of the flat had been increased in 2007 by the works relied on, but rather, by how much it was increased in 2016 by those works in the condition they were in at the date of the FTT's determination. The FTT should therefore have considered the rental value of the flat in August 2016 on the assumption that the work carried out in 2007 had not been undertaken, and on the assumption that the University had complied with its contractual obligation under clause 5 of the tenancy agreement to maintain the system of background central heating. It should have considered and compared the rental value, in August 2016, of a flat with a communal system of background heating and its original fittings and the value, at the same date, of a flat with the benefit of its own system which could be controlled separately and equipped with the current fittings, all of which had been installed nine years earlier.

27. It was therefore incumbent on the FTT to consider the effect on rent of the replacement of kitchen and bathroom fittings with what Dr Ljepojevic considered to be inferior modern substitutes. The University provided evidence of its expenditure, in round terms, in connection with the work undertaken in 2007 but that evidence was not sufficiently detailed to enable any view to be formed of the cost (or quality) of the new fittings, but the fittings were available for the FTT to inspect and it could form a view of how well they had worn and how they were likely to have compared to the flat's original fittings. That would not be an easy task, but it was for the University to establish that the cap did not apply, so the difficulty of comparing fittings which had been removed with nine year old fittings installed to replace them was one for it to address.

28. It was also necessary for the FTT to consider whether the provision of what Dr Ljepojevic termed "cheap carpet" was a change in condition which justified a higher rent than the previous wooden flooring which he thought had been better.

29. Finally the FTT ought to have considered whether the removal of the open fireplace and mantelpiece which Dr Ljepojevic considered an attractive feature of the living room, meant that the rental value of the flat was more, or less, than it would have been had that feature been retained.

30. It was for the FTT to decide whether its views on these issues, all of which arose out of Dr Ljepojevic written case, could be explained compositely, treating all of the changes together, or whether it was necessary to distinguish them and explain what it made of the individual changes. It was not necessary for it to attribute specific changes in rental value (up or down) to specific features, but it my judgment it was necessary for it not just to state that the increase in rent attributable to the changes was more or less than 15% of the previously registered rent, but to provide the figures, with and without the changes, on which it based that comparison.

31. Of course, when considering each of the changes relied on by the University the FTT would have in mind that the fact that one individual might consider a particular style of bathroom or kitchen fitting more attractive than another, or might regard wooden flooring as preferable to carpet, was not of significance in itself. As the Court of Appeal explained in *Spath Holme v Manchester & Lancashire RAC* [1995] 2 EGLR 80, a fair rent under section 70 of the 1977 Act is the market rent adjusted for scarcity under section 70(2) and disregarding the personal circumstances mentioned in section 70(1) and the matters specified in section 70(3). The question for consideration in any determination of a rent under section 70 of the 1977 Act is therefore how the market would value the premises, and not its value to the current tenant. It is not obvious, however, at least in the absence of explanation, that Dr Ljepojevic's preferences are eccentric or inconsistent with those of the generality of tenants who make up the market in Cambridge.

Conclusion

32. I am satisfied for these reasons that the decision of the FTT was flawed and must be set aside. I remit to the matter to for reconsideration by a differently constituted tribunal.

33. I would add finally that when the FTT considers the fair rent for the flat it need not have regard to the continuing disagreement between Dr Ljepojevic and the University over the effect of assurances which he says he was given in 2007 that if he permitted the work to be done it would not result in any increase in his rent. A fair rent registered under section 70 is a rent for the premises disregarding personal circumstances, and the private rights of Dr Ljepojevic (if any) are therefore not relevant to its determination. On the other hand, the registration of a fair rent imposes no more than a limit on the amount of rent payable by any tenant of the flat under a regulated tenancy. If there was an agreement or understanding between Dr Ljepojevic and the University that the rent payable by him would not be increased by reason of the works which he initially resisted, that might restrict the rent which he could be required to pay to a level below the registered rent, but it would not change the amount of the registered rent itself. Any dispute over the effect of any assurances given at the time the works were undertaken will have to be determined by the county court after the fair rent has been ascertained by the FTT. At the conclusion of the hearing I suggested to both parties that it might be preferable for them to seek the assistant of a mediator to resolve that disagreement before they incur the expense and inconvenience of further proceedings in the county court.

Martin Rodger

Deputy Chamber President

25 May 2017