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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND TENANT – RENT DETERMINATION – jurisdiction of First-tier Tribunal on consideration of objection to rent registered by rent officer – Sch.11, Rent Act 1977 – Art. 2(7), Rent Act (Maximum Fair Rent) Order 1999 – sufficiency of reasons – appeal allowed

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

BY

T HILLING & CO LIMITED

Appellant

Re: Tixley, Hookstone Lane,
West End,
Woking,
Surrey GU24 9QP

Martin Rodger QC, Deputy President

2 February 2016

Royal Courts of Justice
Strand, London WC2A 2LL

Nicola Muir, instructed by Fletcher Day, solicitors, for the Appellant

The following cases are referred to in this decision:

Birmingham City Council v Keddie [2012] UKUT 323 (LC)

Regent Management Ltd v Jones [2012] UKUT 369 (LC)

Introduction

1. This is an appeal by the landlord under a statutory tenancy arising under the Rent (Agriculture) Act 1976 against a decision of the First-tier Tribunal (Property Chamber) ("the F-tT") in which it determined that the registered fair rent for a house in Surrey should be £240.50 per week. The F-tT substituted that figure for a rent of £381 per week recently registered by a rent officer. The principle reason for the marked difference between the two rents was that the rent officer had accepted the landlord's case that repairs and improvements had been carried out since the previous registration which resulted in a sufficient increase in the rent to disapply the Rent Act (Maximum Fair Rent) Order 1999. The F-tT considered that the repairs and improvements had had a much less significant effect and registered the rent subject to the statutory cap imposed by the 1999 Order.

2. The appeal concerns the scope of the F-tT's jurisdiction under Part IV, Rent Act 1977 when a party objects to the rent registered by the rent officer. It also raises issues concerning the sufficiency of the reasons given by the F-tT for its decision.

3. The appellant, T Hilling & Co Ltd, is the landlord of the three bedroom house in question, known as Tixley, which is located in rural surroundings close to the village of West End in Surrey. The house has been occupied by the current tenant, Mrs Jill Ledger, since 1976. Mrs Ledger's husband was originally the tenant under a protected occupancy to which the Rent (Agriculture) Act 1976 applied, and on his death Mrs Ledger became the statutory tenant by succession.

4. At the hearing of the appeal the landlord was represented by Ms Nicola Muir of counsel. Mrs Ledger was not represented and took no part in the appeal, having previously informed the Tribunal that she was content to await its decision.

The statutory provisions

5. By section 13(1) of the 1976 Act the register of fair rents maintained under Part IV of the Rent Act 1977 includes dwelling-houses which are subject to statutory tenancies under the 1976 Act. The key provisions of the 1977 Act dealing with fair rents, including sections 67 and 70 and Schedule 11, have effect in relation to statutory tenancies under the 1976 Act by virtue of section 13(2).

6. Section 67 of the 1977 Act provides for applications for the registration of rents for dwelling-houses to be made to the rent officer. Section 67(7) gives effect to the provisions of Part 1 of Schedule 11 to the Act with respect to the procedure to be followed for the determination of such applications. In the first instance a determination is made by a rent officer and the resulting rent is registered, but if an objection is made to that rent by either the landlord or the tenant it is the rent officer's duty under para 6(1) of Schedule 11 to refer the matter to the appropriate tribunal. In England, the appropriate tribunal is the F-tT.

7. When a registered rent is referred to the F-tT it may require either the landlord or the tenant to provide such further information as it may reasonably require (para 7(1)(a) of Schedule 11). It must also serve on both parties a notice specifying a period within which representations in writing or a request to make oral representations may be made. The F-tT is required by para 8A to make such inquiry as it thinks fit and to consider any information or representations made to it, before making a determination. In accordance with para 9(1) of Schedule 11, the tribunal must consider whether the rent registered or confirmed by the rent officer is a fair rent, and if it does not appear to them to be so, they must determine a fair rent for the dwelling house. Where a rent has been confirmed or determined by the F-tT it is the duty of the rent officer under para 9(3) to register that rent as the rent for the dwelling-house.

8. Para 9B of Schedule 11 causes the schedule to take effect subject to Art.2 of the Rent Acts (Maximum Fair Rent) Order 1999. The relevant effect of Art.2 is to cap the maximum permitted increase in the fair rent at a level which is equal to the percentage change in the retail price index since the last registration plus 5%. The capping provision is itself subject to Art.2(7) of the 1999 Order, which was critical to the F-tT's decision in this case, and which provides that:

> "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 a 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

9. The rent payable by Mrs Ledger has been a registered fair rent since at least 2008 (and probably for very much longer than that). In January 2013 a new rent of £218 per week was registered following a determination by a rent assessment committee. The committee's decision described Tixley as a two-storey, semi-detached house dating from the 1920's or 1930's of brick and tile construction, and noted that some of the radiators serving the gas fire central heating system had been replaced by the tenant. The carpets, curtains and white goods had also been provided by the tenant, as had the kitchen, which was described as relatively basic. Adjoining the house was a former garage which had been converted into a storage/utility area by the tenant but remained un-insulated and unheated and was showing signs of damp ingress. The external decorations at the rear of the property were said to be in poor order and the committee note that some of the gutters and downpipes required maintenance. In arriving at its determination of the fair rent the committee made a global allowance of £450 a month to reflect an assumed difference between the terms of the statutory tenancy and an open market comparator, the basic kitchen, the assumed absence of carpets and curtains, and "general disrepair".

10. In 2014 the landlord undertook works to the property. In January 2015 when it next applied to the rent officer for the registration of a new rent, it provided a list of the improvements: a new boiler; a new kitchen with floor and wall units, worktops and a sink; a

new downstairs shower room; seven new radiators; a new front door; cavity insulation; insulated boarding in the utility room; new floors in the kitchen and utility room; the replacement of what was described as "the tenant's illegal wiring"; new waste and soil pipes; new fascias and soffits; new guttering and downpipes; and work to the roof including the provision of new tiles. The work was said to have cost just over £15,000.

11. In her written response to the application Mrs Ledger informed the rent officer that the modifications since the last rent increase had not resulted in any real improvement and she opposed any rent increase. The rent officer disagreed and registered a new rent of £381 per week, explaining how that figure had been arrived at in a letter of 7 April 2015. It was the officer's view that the works carried out to the premises since the previous registration had increased the previously registered rent by more than the 15% required to avoid the effect of the 1999 Order. The rent officer also considered that the fair rent should be less than the open market rent of the premises which was affected by demand for properties in the locality created by the catchment area of a popular local school. This additional demand in the immediate locality was said to justify a deduction for scarcity in accordance with section 70(2) of the 1977 Act. After that deduction from the open market rent and a further allowance of £250 to take account of the tenant's internal decoration responsibilities, carpets and white goods, the rent officer determined a fair rent of £1650 per month or £381 per week.

12. The landlord considered that the deduction for scarcity was wrong in principle and wished to appeal the determination. In accordance with the procedure I have previously described the rent officer referred the landlord's objection to the F-tT.

13. An F-tT case officer wrote to the parties providing explanatory leaflets, informing them that the tribunal would "assess a fair rent", inviting written representations "on the rent you think the tribunal should fix" and offering to hold an oral hearing. The parties were asked to provide their representations by a specified date and warned that late representations might be excluded or necessitate the postponement of the hearing to allow the other party to comment.

14. In a letter to the F-tT dated 12 May 2015 the appellant opted for an oral hearing, took issue with the rent officer's deduction for scarcity, and provided evidence of more up to date open market transactions. No other issue was identified as being the subject of its challenge.

The hearing and the decision

15. Before the hearing on 27 July 2015 the F-tT inspected the property. Mrs Ledger naturally attended the inspection and was accompanied by a friend. I was informed that Mrs Ledger had objected to allowing access to the appellant's representative who, for that reason, was not present. If that did occur, I do not know if the F-tT was informed (no reason for the appellant's absence is given in the decision) and it was not mentioned until the hearing of the appeal. If true, I would regard a denial of access as a serious procedural irregularity. The F-tT's inspection is an important part of its determination of a fair rent, which is a public process, and it should be open to a representative of both parties to attend the inspection. The F-tT cannot

insist that access be permitted to a landlord or its representative, but if access is refused the tribunal should carefully consider whether it can fairly proceed with its own inspection. It may take the view that it would be more appropriate not to do so and instead to draw adverse inferences against the person refusing access on any contentious issues concerning the condition of the premises.

16. One important reason for a representative of both parties to accompany the F-tT on its inspection is to ensure that any matter which either party wishes to draw to its attention can be viewed by all. In this case the F-tT's decision records certain information provided by Mrs Ledger during the inspection and describes features which had been pointed out. It is part of the landlord's case that it was unaware of these matters because its representative had not been present at the inspection and they had not been mentioned at the subsequent hearing.

17. At the start of the hearing a bundle of documents and written submissions was produced on behalf of Mrs Ledger. These had not been provided in accordance with the F-tT's previous direction but after allowing the landlord's solicitor the opportunity to consider them and take instructions the F-tT decided to admit the new material. That material criticised the quality of the new kitchen installations and floor coverings and recorded which of the new items were replacements of existing fittings which had been in disrepair. Some of the claims made by the appellant were challenged including the number of radiators said to have been fitted (Mrs Ledger said that only two, and not seven, had been fitted since the previous rent registration). Mrs Ledger also pointed out that the new cavity wall insulation had not been provided at the landlord's expense but had been installed without charge because of Mrs Ledger's age. Documents were produced in support of this suggestion, as were letters from solicitors acting for Mrs Ledger complaining of the previous state of disrepair of parts of the building. The remainder of Mrs Ledger's submission addressed the issue of scarcity and the significance of the demand created by proximity to a popular local school.

18. In its decision the F-tT described the premises and recorded its impression of the recent improvements. It described the new kitchen units as "of indifferent quality" and noted "a mixture of old and recently fitted kitchen units"; this seems to have been a reference to an old kitchen unit retained by Mrs Ledger because she regarded the new units as being too small for her needs. The F-tT listed the repairs and improvements mentioned in the landlord's original application; it was clearly concerned by the issue of improvements and invited further submissions on the work carried out since the last registration and whether it had increased rental value by more than 15%. It allowed a brief adjournment to enable the landlord's solicitor to take instructions, but on his return he confirmed only that all of the work referred to had been carried out since January 2013 and that in his view the maximum fair rent provisions would not apply. There was some disagreement about which radiators were replaced and when, and it was said on behalf of Mrs Ledger that only three had been replaced since January 2013, and that the cavity insulation had been carried out at no cost to the landlord. The F-tT recorded that no invoices had been supplied to confirm the cost of any of the works which had been undertaken.

19. Both parties also made submissions on the issue of scarcity, and a consensus emerged that the rent officer had had regard to a smaller area than was appropriate.

20. The F-tT then explained its own valuation. It first determined that the open market rent for the property, if it were let on an assured shorthold tenancy and in good condition, would be £1900 per month or £438.50 per week. That rent assumed a letting on terms where the tenant had no liability to carry out repairs or decorations and the landlord supplied white goods, carpets and curtains. An adjustment was required as Mrs Ledger had supplied her own white goods, carpets and curtains and (so the F-tT considered) held the property on terms which required her to carry out repairs and decorations. The value of improvements carried out by Mrs Ledger were also to be discounted. With these observations in mind the F-tT made seven deductions totalling £57.50 per week from the open market rent to arrive at an adjusted rent of £381 per week. The discounts included sums for "incomplete modernisation of kitchen", the extra cost of complying with tenant's repairing and decorating obligations, and allowances of £4.50 for "general disrepair" and £3.50 for "upgrade bathroom". There was no basis on which a deduction for scarcity could properly be made so the F-tT determined that the uncapped fair rent was £381 per week.

21. The F-tT next considered whether the 1999 Order should be applied to cap the rent. It noted that Mrs Ledger had disputed some of the items of work in the landlord's list of improvements and that no invoices had been provided in support of these. It noted that in 2013 the rent assessment committee had been told that 5 radiators had been purchased by the tenant's husband "at a reduced price for the landlord". It reminded itself that the replacement of the boiler was on a "like for like" basis. Having made these observations it went on:

> "47. Notwithstanding the fact that the landlord has carried out works since the rent was last determined, not all of the work will increase rental value. On examination of the list of works provided by the landlord, the Tribunal considers that rental value will be increased by the following items:
>
> | Item | Inc in rental value (pw) |
> |---|---|
> | Provision of shower | £11.50 |
> | Insulation backed plaster board in utility room | £ 4.50 |
> | New fascias and soffits | £ 2.50 |
> | New gutters and downpipes | £ 2.50 |
> | Total increase in rental value due to landlord's works | £21.00" |

22. The F-tT then calculated that, at £21.00 per week, the increase in rent attributable to the improvements it had taken into account amounted to less than 15% of the previously registered rent of £218.00 per week (15% of that rent was £32.70). It followed that the maximum fair rent provisions of the 1999 Order applied. The uncapped rent of £381 could not be registered but only the lower sum of £240.50, arrived at by applying the required indexation plus 5% to the rent previously registered.

The appeal

23. The landlord was granted permission to appeal on three grounds:

(1) Whether the F-tT had had jurisdiction to consider the issue of the maximum fair rent cap since neither party had referred that issue to it,

(2) If the F-tT did have jurisdiction to reconsider aspects of the rent officer's decision which were not in dispute between the parties, whether it was procedurally unfair for it to do so without first making directions clearly identifying the issues which needed to be addressed.

(3) Whether the F-tT had given adequate reasons for its conclusions on the rent cap issue.

Issue 1: the jurisdiction of the F-tT on a reference of an objection to a registered rent

24. On behalf of the appellant Ms Muir submitted that on a reference to it by the rent officer of a disputed fair rent registration the F-tT is neither required nor permitted to reconsider the appropriate fair rent afresh, but must only determine those issues specifically put in contention by the parties before the hearing. She pointed out that no objection to the rent registered by the rent officer had been received from Mrs Ledger and that the only matter to which the appellant had objected concerned the issue of scarcity. She referred to the F-tT's power to invite observations under para 7 of Schedule 11 to the 1977 Act, and submitted that these observations should be regarded as statements of each party's case which defined the subject of the dispute.

25. In support of her submission Ms Muir referred to the decision of the Tribunal in *Birmingham City Council v Keddie* [2012] UKUT 323 (LC) in which it was said that applications made under section 27A, Landlord and Tenant Act 1985 in relation to disputed service charges "set out the nature and scope of the issues in dispute" and "operate to limit the issues in respect of which the parties must adduce evidence in support of their respective cases." She suggested that the jurisdiction of the F-tT under Schedule 11 was similarly restricted by the matters specifically put in issue by the parties in advance of the hearing. The F-tT had therefore lacked jurisdiction to deal with the issue of rent capping at all, or alternatively, it was a breach of the rules of natural justice for it to do so without first having given the appellant notice that that was what was intended.

26. I reject this ground of appeal.

27. The jurisdiction of both the rent officer and the appropriate tribunal on applications for the registration of a rent under the 1977 Act is derived from section 67 and Schedule 11. The rent officer is not required to give reasons for his decision (although in this case he did) but is required by para 5A of Schedule 11 to refer any objection to the rent registered or confirmed by him to the appropriate tribunal. The Act does not refer to an "appeal" against the rent officer's determination but to an "objection" to the rent which has been registered which is then required to be "referred" by the rent officer to the tribunal. The scheme and the language in which it is framed indicate that the matter, or issue, which is referred to the appropriate tribunal is simply

the figure which has been registered as the fair rent, and not the basis on which that figure was arrived at.

28. The grounds on which a landlord or tenant objects to the rent which has been registered by the rent officer are irrelevant to the tribunal's jurisdiction. There is no requirement in Schedule 11 for a party who objects to a rent which has been registered to provide any reasons for doing so, and both the rent officer's duty to refer and the tribunal's jurisdiction to consider the matter are wholly engaged by the raising of the objection alone. Once a registered fair rent has been referred to the F-tT its task is not to consider the reasons which persuaded the rent officer to register a particular rent, but is simply to arrive at its own conclusion on what is the fair rent determined in accordance with section 70. The rent officer's figure is to be considered only to compare it with the F-tT's own conclusion, as para 9(1) of Schedule 11 requires that:

> "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."

While it may be true that, where a party raises reasoned objections, these will "frame the dispute" at a practical level, because the tribunal will be required to address those objections in reaching its decision, it is a misconception to regard such reasons as grounds of appeal, or as a statement of case, or as imposing any technical restriction on the scope of the inquiry.

29. The requirement to consider and apply the 1999 Order is made clear by para 9B of Schedule 11, which provides that:

> "This schedule has effect subject to Article 2 of the Rent Acts (Maximum Fair Rent Order) 1999 and accordingly –
>
> (a) the rent officer, in considering what rent ought to be registered, shall consider whether that article applies; and
>
> (b) where a matter is referred to them, the appropriate tribunal shall consider whether that article applies and, where it does apply, they shall not, subject to paragraph (5) of that article, confirm or determine a rent for the dwelling-house that exceeds the maximum fair rent calculated in accordance with that article."

The F-tT is therefore under an explicit duty to consider the application of the 1999 Order. The suggestion that it may only do so if the issue is specifically raised by one of the parties is unsustainable.

30. The restrictive view of the F-tT's function taken by the Tribunal in *Keddie* has no application in this field, in which the observations of the Tribunal in *Regent Management Ltd v Jones* [2012] UKUT 369 (LC), at para 29, are especially apt:

> "The LVT is perfectly entitled, as an expert tribunal, to raise matters of its own volition. Indeed it is an honourable part of its function, given that part of the purpose of the legislation is to protect tenants from unreasonable charges and the tenants, who may not be experts, may have no more than a vague and unfocussed feeling that they have been charged too much. But it must do so fairly, so that if it is a new point which the tribunal raise, which the respondent has not mentioned, the applicant must have a fair opportunity to deal with it."

Keddie was an extreme case in which a tribunal took it upon itself to raise and determine an issue which was not in dispute between the parties. It is relied on too frequently in support of technical submissions that a particular tribunal lacked jurisdiction, but it is more appropriately regarded simply as an example of a tribunal acting in breach of the rules of natural justice.

Issue 2: Should the F-tT have issued case management directions?

31. Ms Muir's second ground of appeal was that the F-tT erred in law by failing to give directions requiring both parties to state clearly which issues they wished to raise so that appropriate evidence could be obtained in advance of the hearing. She referred to the F-tT's powers under Schedule 11 to the 1977 Act and under rule 6(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 which would have allowed it to require that the parties provide further information, or statements of case to define the issues.

32. This appeal is brought under section 11 of the Tribunals, Courts and Enforcement Act 2007 and is an appeal on points of law only. A procedural irregularity may give rise to a point of law if it demonstrates that a tribunal acted in a manner which was beyond the scope of the very wide discretion it enjoyed in case management matters.

33. Rent determination cases are usually managed by the F-tT without formality, as befits the limited level of engagement often encountered and their relatively modest value (despite their importance to the parties). Ms Muir did not suggest that there is a general obligation on tribunals in rent cases to direct the exchange of statements of case; that is not, as I understand it, the practice of the F-tT. Ms Muir's point was that, when it became clear to the F-tT that issues not previously foreshadowed were live, it came under a duty to give directions designed to enable the parties to prepare properly to address those issues.

34. While it may be the case that the landlord was taken by surprise in this case by the breadth of the F-tT's interest, it ought not to have been, and I do not accept Ms Muir's submission. The F-tT had informed the parties in writing (see paragraph 14 above) that it would determine a fair rent for the property. It had invited them to submit any representations or information which they wished to rely. Both parties were therefore on notice that the matter in issue at the hearing would be the fair rent to be registered for the property. Both parties were aware of the position taken by the other in relation to the improvements because both had received copies of the correspondence exchanged with the rent officer. Thus Mrs Ledger was aware that the appellant claimed to have spent £15,000 on improvements and the appellant was aware that she disputed

that this had had any effect on the value of the property. Each party was in a position to adduce evidence to the F-tT in support of its position and to contradict that of the other.

35. With the benefit of hindsight it may have been better had the landlord's solicitor pressed the application for an adjournment which it is said he made (but of which the F-tT later said it had no recollection) when Mrs Ledger's written submissions were received on the day of the hearing, but I do not consider that the F-tT's usual approach to case management was inappropriate in this case, let alone that it involved a procedural irregularity sufficient to require that the decision be set aside. I therefore dismiss the second of the landlord's grounds of appeal.

Issue 3: The sufficiency of the F-tT's reasons for its decision

36. Ms Muir criticised the quality of the F-tT's reasoning on the maximum rent cap issue. She pointed out that the tribunal had identified a number of factual disputes between the parties which it had not resolved. In particular there had been disputes about the cavity wall, the number of radiators replaced since the previous registration, whether the landlord had replaced wiring installed by the tenant and who was responsible for damp said to have been caused by a water butt. There had also been an issue of law, namely whether insulation work paid for by a third party with the landlord's permission could be taken into account as an improvement "carried out by the landlord" for the purposes of regulation 2(7) of the 1999 Order. That issue had been identified in paragraph 31 of the F-tT's decision but it had not been resolved.

37. Miss Muir submitted that the F-tT had not properly explained the allowances it had made against the open market rent, and some had been made without evidence or on the basis of evidence received only at the inspection which the landlord had not attended. In paragraph 41 the F-tT had discounted the open market figure by £3.50 per week to reflect the "incomplete modernisation" of the kitchen but the suggestion that the new kitchen was incomplete had not been made at the hearing and was disputed. The tenant's improvements for which a deduction was said to be required included £3.50 per week for "upgrade bathroom" but nowhere in the decision or in the submissions of either party had it been suggested that Mrs Ledger had carried out improvements to the bathroom.

38. The F-tT's approach to assessing the value of improvements carried out by the landlord in order to determine whether they had added 15% to the rent was also criticised. Ms Muir did not object to the methodology of attributing a weekly rental value to individual items, but she complained that the tribunal had not explained why only four improvements were deemed to have an effect on rental value. The F-tT had not said whether it accepted that all of the improvements and repairs claimed by the landlord had in fact been carried out, nor had it explained why some items but not others had rental value. It was particularly puzzling that £3.50 per week had been deducted from the open market rent on account of the suggested incomplete modernisation of the kitchen, yet the replacement of the kitchen as a whole was said not to add anything to the rental value of the property. Similarly, it was not explained why the replacement of the boiler which Mrs Ledger had described as having broken down, with a new boiler did not add to the rental value of the property.

39. I have much greater sympathy with this aspect of the appeal. It is axiomatic that the F-tT was not required to give an elaborate explanation for its own valuation, but it had to provide reasons which were intelligible and dealt with the substantial points which had been raised.

40. There were clearly a number of disputes of fact between the parties which it was necessary for the F-tT to resolve before it could begin the task of considering the difference, if any, which improvements carried out by the landlord had made to the rental value of the property. It was necessary to resolve the dispute over the number of radiators replaced since the previous registration, to determine whether the wiring which had been replaced had been defective, and perhaps to consider the quality of the new floor surface in the kitchen and utility room which Mrs Ledger had criticised.

41. There are also a number of aspects of the F-tT's decision which are obscure. In particular no explanation is given for the allowance against the market rent of £3.50 per week for the "incomplete modernisation" of the kitchen, nor of the same amount to "upgrade bathroom". No evidence is recorded about any upgrading of the bathroom. In paragraph 46 the F-tT referred to evidence given to the 2013 rent assessment committee that a number of radiators had been purchased by the tenant's husband at a reduced price for the landlord, but it did not explain what significance it attributed to this evidence or what it understood it to mean; were these among the seven disputed radiators and at whose expense had they been purchased. The list of items said to have added to the rental value of the property is also puzzling. The landlord's case was that it had installed a new downstairs shower room including a shower, sink and toilet. It is at best unclear from paragraph 47 whether the F-tT took account of the shower alone, whether it considered the other fittings added no value to the property, or whether the figure of £11.50 per week was intended to cover the whole installation. No explanation was given for excluding the radiators, new boiler, new front door, insulation, new flooring and repairs to the roof which had been among the items listed in the landlord's list of repairs.

42. Without clear findings of fact and an explanation of the F-tT's thinking on the rental value of improvements and repairs it is not possible to tell whether the tribunal correctly applied Article 2(7) of the 1999 Order. It is first necessary to consider whether a change has taken place in the condition of the dwelling-house as a result of repairs or improvements carried out by the landlord since the previous registration. That requires a finding of what repairs and improvements have been carried out, and whether by the landlord or someone else. Where repairs and improvements have been carried out it is then necessary to consider whether, because of them, the rent that is determined exceeds the previous registered rent by at least 15%. This assessment requires consideration of the rent which would have been determined by the F-tT if the repairs and improvements had not been carried out, before comparing the difference between the two current rents with the previous registered rent to see if it exceeds 15%. It is a matter for the F-tT how it approaches that determination, and no objection was taken by Ms Muir to the technique of attributing a separate rental value to each individual repair and improvement, but the final focus should be on the rent from the premises as a whole in the condition it would have been in but for the works. Where a number of individual items of repair have been carried out it may be necessary to make some adjustment to their aggregate value to avoid either under or over estimating their collective significance.

43. The F-tT did not mention items of repair or specifically consider the significance of the replacement of existing defective fittings. It does seem to have regarded the condition of what was being replaced as significant as it described the new boiler as a "like for like" replacement of the old, and that may be why it considered the change had no effect on value. Nevertheless, it was clearly open to the idea that a property in a state of disrepair would be expected to command a lower rent than the same property in a state of proper repair as it had already made a deduction of £4.50 a week from the open market rent on account of "general disrepair". In 2013 the rent assessment committee had considered that the state of disrepair of the property (including defective gutters and downpipes) required an allowance against the open market rent. It is not clear why the F-tT did not accept that putting right some or all of those defects ought to have a positive effect on rental value.

44. To the extent that the F-tT was satisfied that the execution of repairs and the provision of improvements had made a difference to the rental value of the property it ought to have quantified that sum either collectively or in relation to each individual item. If the F-tT's view was that an improvement had been carried out, but had had no effect on the rental value of the property, it ought to have explained why it took that view. Such an explanation was particularly important in this case where the rent officer, who had inspected the property in 2013 and again in 2015 so had been aware of the difference which the repairs and improvements had made, had accepted the appellant's case that the work had enhanced the value of the property by more than 15%.

45. I am satisfied that in this case the F-tT did not do enough to resolve the issues between the parties or to explain its own conclusions. Since the effect of the escaping the 1999 Order is so significant (this rent would have been more than 15% higher had the cap not applied) it was necessary for the F-tT to explain clearly why it did not accept the landlord's case so that both parties could understand its decision. In this case I do not think the F-tT's decision provided sufficient reasons for its conclusions and for that reason only, it must be set aside.

46. I therefore allow the appeal on the third issue and I will remit the matter to the F-tT for the re-determination of the fair rent by a differently constituted tribunal.

Martin Rodger QC

Deputy President

5 February 2016