



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

**Case Reference** : **LON/00AG/F77/2019/0142**

**Property** : **Flat 17, Greenhill, Prince Arthur  
Road, London, NW3 5UB**

**Tenant** : **Mr D Merricks**

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

**Date of Objection** : **26 July 2019**

**Type of Application** : **Section 70, Rent Act 1977**

**Tribunal** : **Mrs H Bowers BSc(Econ) MRICS MSc  
Mrs J Hawkins**

**Date of Decision** : **27 September 2019**

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**DECISION**

**The sum of £4,400.00 per quarter will be registered as the fair rent  
with effect from 27 September 2019.**

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## REASONS

### Background

1. On 14 May 2019 the Landlord applied to the Rent Officer for registration of a fair rent of £4,464.58 per quarter for the above property.
2. The rent was previously registered on 20 July 2017 at £4,077.00 per quarter with effect from 25 July 2017. On 27 June 2019 the Rent Officer registered a fair rent of £4,400.00 per quarter with effect from 25 July 2019.
3. By a letter dated 26 July 2019 the Landlord objected to the rent determined by the Rent Officer and the matter was referred to the First-tier Tribunal.
4. The Tribunal issued Directions on 6 August 2019 setting out the timetable and the steps the parties were required to take in preparation for the determination of this case.

### The Law

5. When determining a fair rent the Tribunal, in accordance with section 70 of the Rent Act 1977 (the Act), had regard to all the circumstances including the age, location and state of repair of the property. It also disregarded the effect of (a) any relevant tenant's improvements and (b) the effect of any disrepair or other defect attributable to the tenant or any predecessor in title under the regulated tenancy, on the rental value of the property.
6. In *SpathHolme 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 similar 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. (These rents may have to be adjusted where necessary to reflect any relevant differences between those comparables and the subject property).

7. The Rent Acts (Maximum Fair Rent) Order 1999 (the 1999 Order) provides the framework that places a ceiling on the maximum rent that can be registered. The calculation is based upon a formula that applies an increase in the monthly United Kingdom Index of Retail Prices to the previously registered rent.

### **Inspection**

8. The Tribunal made its inspection of the subject property on 27 September 2019 in the company of the tenant.
9. The flat is situated in a purpose-built mansion block on a large estate and with communal grounds and some off-street parking. The block has an entry phone system and the block is served by a lift. Both the internal communal areas and the external grounds appear well maintained. The development is within a few minutes of walk of Hampstead station and the shopping and other facilities in that location.
10. The subject flat is situated on the third floor. The accommodation comprises a spacious hallway, a large reception room with a triple aspect, two bedrooms (one double and one that is a small double/large single) a kitchen, a bathroom and a separate WC. The flat has the benefit of central heating and hot water from the communal systems. The kitchen has a door giving access to an open rear stairwell. The kitchen has been replaced with modern units and white goods. In general, the flat is in good order, but it was noted that there was some peeling wallpaper in the living room.

### **Hearing and Evidence**

11. This case was set down for a hearing on 27 September 2019 at 10:15 am at 10, Alfred Place, London, WC1E 7LR. In attendance at the hearing was the tenant, Mr Merricks. The landlord did send a representative to the hearing.

### **Tenant's Submissions**

12. In his written representations to the Rent Officer Mr Merricks produced a table from the Office for National Statistics to show how house prices had changed in the year ending in May 2019 with London prices falling by 4.4%. In the submissions to the Tribunal he explained that whilst the landlord had paid for the installation of a new kitchen, he had paid for the white goods which amounted to £1,413.60. He explained that he was responsible for the internal decorations and furnishings in the flat. The tenant had paid for a new bath and wash hand basin a few years ago. Overall, he considered that his flat was

unmodernised. Reference was also made to rents that had been registered by the Rent Officer and Mr Merricks questioned why his flat was in the top few in terms of rent, when other flats were larger and had been modernised.

13. At the hearing Mr Merricks wanted to introduce evidence as to other fair rents that have been registered as a comparison to his flat. The Tribunal explained that the details of other registered rents was no of assistance to the Tribunal as the capping arrangements and indeed the terms of those tenancies could not be fully explored and therefore would not provide truly comparable evidence.
14. Mr Merricks explained the history of his tenancy and that he had previously had taken a long lease which appears to have expired and now he has a protected tenancy. He considered that the formula in the capping provisions was not binding and could be subject to some flexibility.
15. In respect of the condition of the flat the tenant stated that the only work done by the landlord was the replacement of the kitchen in 2018 but that he had paid for the white goods. He also stated that he had put in a new bath and wash hand basin. It was explained that although the flat had the benefit of communal heating and hot water, the heating was only available from 1 November to 1 May and to supplement the heating he had purchased an extra gas fire.
16. In responding to the landlord's comparables he stated that the Fitzjohn Avenue was a quieter location and that his flat does not have the benefit of a balcony. He considered that the flats in general were in a similar position being in NW3 but they were presented in a refurbished condition. He also explained that his flat had no porter and no underground parking. He considered that all of these were asking rents and that achieved rents would be about 10-15% lower. Mr Merricks referred to flats in his block that on Zoopla show rents at £2,400 per month, but the Tribunal noted that this was an automated valuation via the website, rather than any specific evidence.

#### Landlord's Submissions

17. There were written submissions from the landlord that provided details of three comparables. The letting particulars of those comparables were also provided and the details are summarised as follows:
  - a. The Panoramic, Pond Street, Belsize Park, NW3 – asking rent £685 per week and this equates to approximately £2,968 per

month. This property is described as having two bedrooms with one having an en-suite, a reception room, a kitchen, a family bathroom and a balcony. The flat also has the benefits of an underground parking space and concierge services.

- b. Fitzjohns Avenue, Hampstead, NW3 – asking rent £2,275 per month. The letting particulars show this flat to be located in a purpose-built mansion block. The plan on the particulars is not clear but shows a reception room, two bedrooms, a bathroom and a kitchen. It is described as having two balconies.
  - c. Finchley Road, NW3 – asking rent is £1,950.00 per month. This is described as being refurbished to a high standard with top quality furnishings. The development is described as being situated in communal gardens of three acres.
18. In the covering page to the landlord's submissions it is stated that having considered the comparable evidence the landlord is of the opinion that the fair rent determined by the rent officer of £4,400 per quarter is fair. Included with the papers submitted are several pages of invoices that show that the landlord has paid for the replacement kitchen

### **Determination and Valuation**

19. The Tribunal initially needs to determine 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. As explained at the hearing the Tribunal considers that the best position is to start from open market evidence of other rental values of comparable properties rather than consider capital values or other registered rents. Taking the evidence of Mr Merricks about the automated valuation for rental values in his block together with the evidence produced by the landlord the tribunal considers that an open market rental value of the flat would be in the region of £2,300 per month. This takes into account that some heating and the hot water is included in the rental payment. However, at this level of rent the property would be furnished with suitable floor coverings, curtains/window coverings and a range of kitchen appliances. In this case the tenant has provided these items. The flat would also been in a refurbished condition and whilst it is noted that the flat has a modern kitchen, the bathroom is dated. In the opinion of the Tribunal a prospective tenant would reduce their rental bid for a property without carpets, curtains and kitchen appliances and in an unmodernised condition and we consider such a reduction would be in the region of 20%.

20. Next aspect to be considered is the issue of scarcity. The Tribunal was not provided with any specific evidence on this issue. However, the issue of scarcity is considered on the basis of the number of properties available to let and also considering the demand for such properties and over a really large area. Therefore, using our knowledge and experience we consider that in the wide geographical area of Greater London there is an imbalance between supply and demand and this impacts upon rental values. Accordingly, we make a deduction for scarcity of approximately 20%. The full valuation is shown below.

		£/month
Market Rent		2,300.00
<i>Less</i>		
Lack of carpets, curtains and white goods	)	
Un-refurbished	)	
	20%	<u>460.00</u>
		1,840.00
<i>Less</i>		
Scarcity	approx. 20%	<u>370.00</u>
		1,470.00

21. The sum of £1,470.00 per month equates to approximately £4,410.00 per quarter.

### **Decision**

22. The uncapped fair rent initially determined by the Tribunal, for the purposes of section 70, was £4,410.00 per week. The capped rent for the property according to the provisions of the Rent Acts (Maximum Fair Rent) Order 1999 is calculated at £4,529.00 per quarter. In the circumstances the Tribunal confirms the Rent Officer's registration of £4,400.00 per quarter and this sum is to be registered as the fair rent or this property.
23. **Accordingly, the sum of £4,400.00 per quarter, including £956.73 for services will be registered as the fair rent with effect from 27 September 2019 being the date of the Tribunal's decision.**

**Chairman:**

***Helen Bowers***

**Date: 7 October 2019**

### **APPEAL PROVISIONS**

If either party is dissatisfied with this decision they may apply for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be made within 28 days of this decision (regulation 52 (2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rule 2013. Any appeal in respect of the Housing Act 1988 should be on a point of law.