



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

Case reference : LON/00AZ/F77/2019/0125

Property : Flat A, 13 Montpelier Vale, London SE3
0TA.

Applicant : Ms. P. Gifford.

Represented by : In person.

Respondent : C.W. Dixey & Son Limited.

Type of application : Referral of a Registration of Fair Rent
under the Rent Act 1977.

Tribunal : Ms. A. Hamilton-Farey LLB, FRICS
Mrs. A. Flynn MRICS

Date of Reasons : 19 October 2019.

REASONS FOR THE TRIBUNAL'S DECISION

The tribunal determines the fair rent for the premises at £600.00 per calendar month, effective from 20 September 2019.

Background and Reasons

1. By an RR1 dated 16 April 2019, the landlord sought an increase in the fair rent for the subject property. The Fair Rent passing at the date of the application was £576.00 per calendar month, and the landlord sought an increase to £720.00 per calendar month.
2. The Rent Officer set a fair rent of £642.50 with effect from 14 June 2019. The tenant objected to that increase.
3. On receipt of the referral to the tribunal, directions were issued on 18 July 2019 that required the parties to provide a statement of case and

details of any comparable rents on which they wished to rely in support of their case.

4. The landlord contended that the rent should be considerably higher and referred to a letting of another flat in the block (Flat 13B) which had been agreed at £1,200.00 per calendar month. The landlord also said that the new registered rent represented an 11.5% increase on the existing rent but that the figure produced was still far below the open market value of the property.
5. The landlord also said that two double-glazed windows had been installed in September/October 2019 at a cost of £5,200.00, and that the common parts had been recently painted and carpeted (where applicable) without any contribution by the tenant. The landlord said that this had not been made known to the rent officer during the application to the Rent Officer and that this should now be taken into account.
6. The tenant did not produce any comparables or other evidence on which they wished to rely.

The Inspection:

7. The tribunal inspected the property on 20 September. We found it to be a compact flat above shops, reached through a long hallway and staircase. The flat benefits from an entryphone that was not working at the time of our inspection.
8. The flat appears to have originally comprised two rooms with a shared bathroom W.C. on the landing outside, and potentially shared with other tenants. It appears that, since the grant of the tenancy, the tenant had installed a sleeping platform, with wardrobes under, a shower and W.C. and in effect created an open plan living space, with self-contained facilities. The flat is in a good decorative condition. The tenant had installed secondary double glazing, a fire surround to the sleeping area, the kitchen units had been replaced as had the floor tiles and flooring throughout the property. The tribunal must disregard any improvements made by the tenant when making their determination.
9. In addition, the bathroom which had originally been located on the landing outside the flat, has now been removed from the tenant's tenancy, we must also take this into consideration when setting the rent.

The Determination and valuation:

10. The tribunal has had regard to the evidence supplied by the landlord, and we use as a starting point the £1,200.00 which was the rent agreed for Flat 13B. However, Flat 13b is described by the landlord as a one-bedroom flat, presumably self-contained, with double glazing (at least to the front elevation). The tribunal is not aware whether the flat has

been recently modernised or whether it has central heating or white goods, as would be expected in a modern letting.

11. Having started at £1,200.00 we must make a deduction for the lack of bathroom, the lack of modern kitchen, central heating and white goods as well as the different tenancy terms. We consider that a deduction of 30% should be made from that starting figure.

Market rent:	£1,200.00
Less 37.5% to reflect differences identified (11) above and tenant's improvements:	<u>£ 450.00</u> £ 750.00
Less scarcity at 25%	<u>£ 150.00</u>
<u>Adjusted market rent:</u>	<u>£ 600.00.</u>

12. We must then take into consideration the improvements made by the landlord (re-decoration, carpeting, windows) and determine whether they would increase the current fair rent (£576.00) by more than 15% (£86.70), and although we consider that it might, we also find, on balance, that the rent would be reduced by the extensive tenant's improvements, and the lack of a bathroom, which would cancel out any additional rent reflected by the landlord's improvements. On balance we find that the improvements do not increase the rent by more than 15% and the maximum fair rent order should be applied.
13. The calculation for the maximum fair rent was appended to the original decision, and this produced a fair rent of £645.50 per month.
14. The fair rent is the lower of the adjusted market rent less scarcity, or the figure realised from the MFR calculation. In this instance the MFR produced a higher figure. Accordingly, the tenant is liable to pay the adjusted market rent of £600.00 per month.
15. The new rent takes effect from the date of our decision, that is 20 September 2019.

Name: Ms. A. Hamilton-Farey **Date:** 10 October 2019

The law.

When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70:

- (1) has regard to all the circumstances (other than personal circumstances) including the age, location and state of repair of the property;
- (2) disregards the effect on the rental value of the property of (a) any relevant tenant improvements and (b) any disrepair or other defect attributable to the tenant or any predecessor in title under the regulated tenancy;
- (3) assumes (as required by s.70(2)) that, whatever might be the case, the demand for similar rented properties in the locality does not significantly exceed the supply of such properties for rent. In other words that the effect of any such 'scarcity' on rental values is not reflected in the fair rent of the subject 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 that section 70 means

- (a) that ordinarily a fair rent is the market rent for the subject property discounted for 'scarcity' 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).

Thus, once the market rent for the property has been determined by the exercise in (2) above that rent must be adjusted, where necessary, for any scarcity.

The tribunal must then determine the fair rent using the Maximum Fair Rent Order ("MFR") indices. The rent to be registered is the lower of either the adjusted market rent, or the rent determined by the MFR.