



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

**Case reference** : **LON/00BD/F77/2019/0122**

**Property** : **Flat 3, 78 Forest Road, Richmond,  
Surrey TW9 3BZ**

**Applicant** : **Mr John Edwards**

**Respondent** : **Miss Marianne Barnard**

**Type of application** : **Determination of Fair Rent under  
s.70 Rent Act 1977 & the Rent Acts  
(Maximum Fair Rent) Order 1999**

**Tribunal member(s)** : **Judge N Rushton QC  
Mr J F Barlow JP FRICS**

**Date and venue of  
hearing** : **6 September 2019 at 10 Alfred  
Place, London WC1E 7LR**

**Date of decision** : **6 September 2019**

**Date of reasons** : **28 October 2019**

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**REASONS FOR DECISION**

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**Decision of the Tribunal**

- (1) On 6 September 2019 the Tribunal determined a Fair Rent for the Property of £1,104 per calendar month including services, to take effect from 6 September 2019. This was the uncapped figure.
- (2) The capped figure by reference to the Rent Acts (Maximum Fair Rent) Order 1999 (“the 1999 Order”) would be higher, being £1,202 p.c.m. as at 6 September 2019. The rent is therefore determined as £1,104 p.c.m., being the lower of the two figures, with effect from that date.

## **REASONS**

1. This is a determination of the Fair Rent for the Property pursuant to s.70 Rent Act 1977 (“the 1977 Act”) and the capping provisions in the the 1999 Order.
2. The Applicant, Mr John Edwards, is the landlord. The Respondent, Ms Marianne Barnard, is the tenant.

## **The Property**

3. The Property is 2-bedroom, self-contained converted flat on the first floor of a late Victorian/Edwardian house in Richmond, Surrey.
4. The accommodation comprises a kitchen/diner, bathroom and separate WC to the rear, with 2 bedrooms and a lounge at the front. It has central heating and mains electricity, gas, water and drainage. The windows are single-glazed throughout.
5. The tenant has use of a small locked area in the external side passage where the bins are kept and the front garden, shared with 2 other flats.

## **The tenancy**

6. The tenancy is a statutory regulated monthly tenancy which the tenant says commenced on 24 February 1982 and the landlord says commenced on 21 April 1984. The start date does not affect the Tribunal’s decision. No copy of any tenancy agreement was supplied.
7. The previous rent, effective from 30 June 2017, was £1,079.50 p.c.m., including £17.50 for services. This was set by the Tribunal following a referral by the tenant of a rent of £1,045 p.c.m. which had been registered by the rent officer on 11 April 2017. The present Tribunal has had sight of the previous Tribunal’s decision and of its reasons dated 7 August 2017, but the present decision is based on this Tribunal’s own inspection of the Property as outlined below and consideration of contemporaneous evidence as at September 2019.
8. The landlord is responsible for repairs and external decorations, subject always to his obligations under s.11 of the Landlord and Tenant Act 1985. The tenant is said to be responsible for internal decorations. Carpeting and flooring are provided by the landlord.

## **The referral**

9. On 11 April 2019 the landlord applied in the prescribed form for the registration of a fair rent of £1,190 p.c.m., including £17.50 for services.

10. On 4 June 2019 the rent officer registered a fair rent of £1,130 p.c.m., with effect from 30 June 2019 and notified the same to the landlord and the tenant. No sum was noted as attributable to services.
11. By a letter dated 20 June 2019 the landlord wrote to the rent officer at the Valuation Office Agency (“VOA”) objecting to the rent which had been registered. By letters to the landlord and to the tenant of 3 July 2019 the VOA notified them that it was referring the case to the Tribunal.
12. Directions were issued by the Tribunal on 11 July 2019. Paragraph 1 stated that the application would be determined by written representations unless either party requested a hearing. Neither party has requested a hearing, so this case has proceeded by way of written representations and inspection. The landlord was ordered to send written representations and details of any comparables relied on to the Tribunal by 5 August 2019. The tenant was ordered to send written representations including details of any repairs or improvements which the landlord had carried out and any comparables, by 19 August 2019. The landlord was permitted to provide a brief response to the points made by the tenant, by 27 August 2019.
13. The landlord sent a letter to the Tribunal dated 9 August 2019, received 12 August 2019, which included the objection previously sent to the VOA. This enclosed a letter from Halletts confirming that the other two flats at 78 Forest Road are currently let out at £1,100 pcm and £1,400 p.c.m.. It also enclosed marketing material for two 2-bedroom flats in TW9: one in Kew Road offered at £1,850 pcm and one in Lion Gate Gardens offered at £2,200 pcm. The landlord’s letter explained that it was submitted late because the directions had arrived while he was on holiday.
14. The tenant submitted her representations by a letter dated 17 August 2019 and received by the Tribunal on 19 August 2019. She made representations as to the condition of the Property, including that no repairs or improvements had been carried out since the last rent registration, except for the replacement of one kitchen tap and the application of sealant to the bath. She said there was disrepair at the Property including that the sash windows needed overhauling; two broken window panes; the kitchen window could not be opened and the sash cord was broken; heavy staining to the bath; lack of tiling and unsanitary surround to the wash basin; cracked basin; no EPC certificate and inadequate power points. All of the original furniture had had to be replaced by the tenant and she had provided the white goods. She also objected to the quality of the works for which service charges were charged. Her letter included photographs of what she said was the disrepair. By an email of 20 August 2019, the tenant also sent the Tribunal a copy of her letter to the rent officer of 29 April 2019 setting out her objections to the rent requested by the landlord.

15. The landlord sent the Tribunal a lengthy response to the tenant's letter, dated 21 August 2019 (received 23 August 2019), setting out his answers to the issues as to condition raised by her. He said she had been told the panes of glass would be replaced prior to external painting, due to take place in September 2019. He said he had not previously been told of the broken sash cord in the kitchen window. He said the bath was stained because a limescale remover for enamel baths had not been used. He said the basin was cracked because something had been dropped in it and it was the tenant's responsibility to replace it. He said the flat had passed an electrical safety check on 24 January 2018.
16. In that letter the landlord confirmed that he did not need to attend the inspection and did not require a hearing.
17. The Tribunal has also had sight of a further letter in response from the tenant dated 27 August 2019, repeating many of her complaints about the condition of the Property.
18. The Tribunal has taken into consideration all of these written representations from the landlord and the tenant, albeit that the landlord's statement was a few days late and there was no provision in the directions for a second set of representations from the tenant.
19. It is noted that the tone of the correspondence from landlord and tenant suggests that the relationship between them is a poor one.

### **The inspection**

20. The Tribunal inspected the Property in the presence of the tenant. The Tribunal's decision is based on the condition of the Property on the day when it was inspected. As he had indicated, the landlord did not attend. The landlord lives next door at number 80.
21. Externally the house as a whole appeared to be in reasonable condition. It is a substantial brick-built house with a tiled roof. The Property has wooden, single glazed sash windows which appeared to be in a state of some disrepair. It is on an attractive tree-lined street with unrestricted street parking, which was quiet apart from aircraft noise.
22. There was a neat front garden to which the tenant had access, with no front gate. The tenant also has access to a small locked area (5' x 10') in the side passage where bins were kept. She said that she had no access to any of the rear gardens (unlike the other 2 flats), although she had done in the past.
23. There was a communal front door for the 3 flats and a small shared lobby area. A flight of stairs inside the door to the Property led upstairs

to the accommodation. Overall it was quite a cramped 2-bedroom flat, laid out over one floor (with some steps up between the two halves).

24. There was a small, partially tiled bathroom, with a single-glazed window. The bath, which was old and cast iron, had a large, very obvious stain in the bottom which appeared to be of long standing and unlikely to be simply due to use of the incorrect cleaning product. The basin, in a vanity unit, was cracked. The tap was very wobbly. The basin surround had been painted, the tenant said by her. Opposite was a separate, old-fashioned WC. The plaster on the wall of the WC had blown. There was worn lino throughout the bathroom, WC and kitchen. Carpet in the hall was clearly worn.
25. To the rear of the Property, overlooking the gardens, was the kitchen. The kitchen units and cooker were supplied by the landlord; the white goods were the tenant's own. The units were basic but serviceable. There was a boiler for central heating and hot water. The sash window cord was broken and the bottom part could not be opened.
26. To the front of the Property on the right hand side was a large double bedroom, with windows to the rear and front. The windows had two broken panes. The tenant said that a pane of glass had fallen out of one front window because the putty had deteriorated. She said she had arranged for a friend to repair this but the landlord had refused to reimburse her for this cost. The putty on other panes appeared to be in need of repair.
27. There were insufficient power points in this bedroom and the carpets were old and worn.
28. To the left hand side at the back was a small double bedroom. This had only one double power-point.
29. To the front was a lounge with a bay window; 2 double power points and 2 radiators. Carpets throughout were old and worn.

### **The law**

30. The applicable law is section 70(1) of the Rent Act 1977 which states (so far as material):

“70.— Determination of fair rent.

(1) In determining, for the purposes of this Part of this Act, what rent is or would be a fair rent under a regulated tenancy of a dwelling-house, regard shall be had to all the circumstances (other than personal circumstances) and in particular to—

(a) the age, character, locality and state of repair of the dwelling-house,

(b) if any furniture is provided for use under the tenancy, the quantity, quality and condition of the furniture, ....

(2) For the purposes of the determination it shall be assumed that the number of persons seeking to become tenants of similar dwelling-houses in the locality on the terms (other than those relating to rent), of the regulated tenancy is not substantially greater than the number of such dwelling-houses in the locality which are available for letting on such terms.

(3) There shall be disregarded—

(a) any disrepair or other defect attributable to a failure by the tenant under the regulated tenancy or any predecessor in title of his to comply with any terms thereof;

(b) any improvement carried out, otherwise than in pursuance of the terms of the tenancy, by the tenant under the regulated tenancy or any predecessor in title of his; ...

(e) if any furniture is provided for use under the regulated tenancy, any improvement to the furniture by the tenant under the regulated tenancy or any predecessor in title of his or, as the case may be, any deterioration in the condition of the furniture due to any ill-treatment by the tenant, any person residing or lodging with him, or any sub-tenant of his. ...”

31. The rent capping provisions in the Rent Acts (Maximum Fair Rent) Order 1999 apply to any setting of the rent in this case.

### **The rent assessment**

32. The Tribunal assessed the rent for the Property as at the day of inspection taking into account the matters set out in s.70(1). The Tribunal has also considered the relevant case law including *Spath Holme Ltd v Greater Manchester Rent Assessment Committee* (1996) 28 HLR 107 (CA), *Curtis v The London Rent Assessment Committee* [1999 QB 92 (CA) and *BTE Ltd v Merseyside and Cheshire Rent Assessment Committee* (1992) 24 H.L.R. 514.

33. The Tribunal is required to determine the open market rental value for the Property, by reference to comparable properties let in the locality on assured shorthold tenancies, taking into account the age, character, locality and state of repair of the Property, but disregarding the matters

set out in s.70(3). It must then consider whether and if so what deduction should be made for scarcity.

34. The Tribunal took into account the rents currently achieved for the other two flats in the house, both of which are let on assured shorthold tenancies (£1,100 pcm and £1,400 pcm). Both are only one-bedroom, whereas the Property is two-bedroom, but both do have access to sections of the garden. The Tribunal also considered the other TW9 two-bedroom comparables provided by the landlord, all of which appeared more spacious than the Property. The rent officer had produced a list of comparables for 2-bedroom, self-contained flats which ranged from £1,200 to £2,250 pcm, with the majority between £1,400 and £1,800. Her starting point for market rent before making deductions for condition and scarcity had been £1,650 pcm.
35. The Tribunal determined that a flat comparable to the Property offered on the open market on an assured shorthold tenancy could expect to let for between £1,700 and £1,750. However, any potential tenant would expect such a flat to be in good decorative condition and repair, with modern bathroom and kitchen fittings and white goods and unworn floor coverings.
36. The Tribunal accordingly took as its starting point a rent of £1,725 pcm. From this is considered the following deductions should be made:

Old, old-fashioned and stained bathroom fittings and WC      7.5%

Tired, basic kitchen units; white goods provided by tenant      7.5%

Significantly worn floor coverings, lack of power points, poor condition of windows (all single glazed in an area with significant aircraft noise); blown plaster work      5%

Total deduction for condition and tenant provision of white goods: 20%

$$0.2 \times £1,725 = £345$$

$$£1,725 - £345 = £1,380$$

It should be noted that this deduction is not determined by a simple arithmetical calculation and is not based specifically on capital cost, but is the Tribunal's estimate of the amount by which the rent would have to be reduced to attract a tenant.

37. In addition, s.70(2) requires the Tribunal to consider scarcity. Assessing a scarcity percentage cannot be a precise arithmetical exercise because there is no way of knowing the exact number of people

looking for properties similar to the subject property. It is a judgment based on the experience of the Tribunal and consideration of properties available to let in the location at the time of the assessment.

38. Here, the Property is in a popular London location where there is high demand and significant scarcity which will affect the rent obtained by any comparables. The deduction applied for scarcity is therefore 20%.

$$0.2 \times \pounds 1,380 = \pounds 276$$

$$\pounds 1,380 - \pounds 276 = \pounds 1,104$$

39. Therefore the Tribunal determined that the uncapped fair rent for the Property was £1,104 pcm.

### **Capping calculation**

40. The provisions of the 1999 Order require that the registered rent is either the capped rent or the fair rent as determined by the Tribunal, whichever is lower. The capped rent is calculated in accordance with a statutory formula using the existing rent as a base. The formula is based on the change in RPI plus 5%.

41. The maximum fair rent calculation in the Notice of the Tribunal Decision of 6 September 2019 contained an error in that the figure used for the previous RPI was 270.6 (the RPI for April 2017) whereas it should have been £272.3 (the RPI for June 2017). In its Notice of Decision the Tribunal deducted the RPI figure which the previous Tribunal had used in its capping calculation (that is, the figure published in the month immediately before June 2017, i.e. the April 2017 RPI, published in May 2017). However the 1999 Order in fact requires the present Tribunal to deduct “*the published index for the month in which the rent was last registered*” (paragraph 2(2) of the 1999 Order), i.e. the RPI for June 2017, and not the April 2017 figure which the previous Tribunal used in setting the previous, capped rent.

42. The correct calculation is therefore:

$$\pounds 1,079.50 \times [1 + (289.5 - 272.3) / 272.3 + 0.05] = \pounds 1,201.66$$

Rounded up to the nearest 50p (as required by the Order) = £1,202.

43. Therefore the maximum cap to the rent is £1,202 p.c.m. and not £1,209 p.c.m. as stated in the Notice of Decision. This figure of £1,202 p.c.m. in any event exceeds the assessed Fair Rent of £1,104 p.c.m., so the Tribunal’s decision as to the fair rent is unaffected.



**Name:** Judge N Rushton QC

**Date:** 28 October 2019

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).