



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

Case Reference : **LON/00BK/F77/2019/0130**

Property : **Lower Ground Floor Flat, 52
Warrington Crescent, London W9
1EP**

Tenant : **Miss B Shulman**

Landlord : **Dorrington Residential Limited**

Type of Application : **Rent Act 1977**

Tribunal : **Andrew Sheftel
Kevin Ridgeway MRICS**

Date of Determination : **13 September 2019**

DECISION

1. The registered rent for Lower Ground Floor Flat, 52 Warrington Crescent, London W9 1EP, is determined at £16,500 per year (to include £222.06 for services).
2. The registration of the rent takes effect from 13 September 2019, being the date of the Tribunal's decision.

Reasons

The Background

3. The Applicant is the landlord of Lower Ground Floor Flat, 52 Warrington Crescent, London W9 1EP (the “Property”). Miss B Shulman is the Rent Act protected tenant of the Property.
4. On 11 April 2019, the Landlord applied under s.67 of the Rent Act 1977 for the registration of a fair rent of £19,417.63 per annum. The rent had previously been registered on 8 June 2017 at £16,181.50 per year (including £178.10 for services).
5. Pursuant to the application, the Rent Officer registered a rent of 16,690.00 per year (including £222.06 for services).
6. Subsequently, the Landlord’s representative appealed against the Rent Officer’s determination and accordingly, the matter has been referred to the First Tier Tribunal (Property Chamber).
7. A hearing was held on 13 September 2019. This was attended by Miss Shulman and Ms Natalie Radcliffe on behalf of the Landlord. The Tribunal inspected the Property later the same day in the presence of the Tenant.

The law

8. Section 70 of the Rent Act 1977 sets out the factors to be considered when determining a fair rent. In particular, and of relevance to this application, we are required to have regard to the age, character, locality and state of repair of the Property.
9. Further, s.70 requires the Tribunal to disregard:
 - a) The personal circumstances of the parties;
 - b) Any disrepair or other defect attributable to a failure by the tenant under the terms of the tenancy;

- c) Any improvements carried out by the tenant, other than as required under the tenancy.
10. Pursuant to section 70(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”*. In other words, we must make certain assumptions regarding scarcity and demand.
 11. In addition, further regulation of Rent Act rents is provided by the Rent Acts (Maximum Fair Rent) Order 1999 (‘the Maximum Fair Rent Order’), which places a cap on the permissible amount of the increase of a fair rent between one registration and the next. The cap is based upon the amount of increase in the Retail Prices Index between the dates of the two registrations.
 12. By virtue of section 72 of the Rent Act 1977, the registration of the rent takes effect from the date when the Tribunal reached our decision.

Inspection

13. As noted above, the Tribunal inspected the Property on 13 September 2019, at which the Tenant was present.
14. The Property comprises a lower-ground floor 2-bedroom flat located in Maida Vale.
15. The Property is located in a converted terrace property comprising four flats. It has its own entrance, accessed via stairs at the front of the Property. There is a garden to the rear. The flat has two bedrooms, a living room, bathroom (with bath, washbasin and WC) and kitchen. There are also two storage cupboards in the hall way. The Property has central heating and has its own boiler. Windows are single glazed throughout.
16. According to the Tenant, all furniture and furnishings in the Property has been provided by her. She has also maintained the decoration of the Property. In particular, she has redecorated and fitted a new kitchen and

supplied all units, white goods and cooker. She has also fitted a new bathroom, as well as cupboards and wardrobes and sanded and stained the floorboards. Miss Shulman also pointed out that she has fitted security bars to the doors and windows. In addition, she made various submissions as to the condition of the Property including: there had been a rat problem which the Landlord took considerable time to resolve (albeit this appeared to have been resolved by the date of inspection) and caused damage; there was damp in the hallway; the installation of the boiler by the Landlord had led to damage to floorboards in the hallway; the electrics were an old system which had not been updated since she moved in.

Determination

17. The starting point in assessing a fair rent under s.70 of the Rent Act 1977 is to establish the market rent for the property. To that rent, a number of adjustments are made, to reflect the requirements of s.70.
18. The Rent Officer had determined the market rent to be £25,740 per annum. However, the Rent Officer then made adjustments of £8,000 to reflect the condition of the Property and deducted 6% for scarcity.
19. At the hearing, Ms Radcliffe argued that the rent was too low. On the half of the Landlord, she provided various comparables and it was submitted that comparable properties of the same size and area are achieving £40,296 and £44,196 per annum. In response, Miss Shulman submitted that these properties were of completely different specification and were not all in the immediate locality.
20. In contrast, Miss Shulman produced comparables of Rent Act lettings in the locality. These showed rents ranging from a little over £7,400 per year to £14,600 per year. At the hearing, Ms Radcliffe accepted that potential comparables, although it is also true that the Tribunal has no knowledge of the condition of the properties or whether the rents were subject to capping under the Rent Acts (Maximum Fair Rent) Order 1999.
21. The Rent Officer had also provided information on a range of properties, showing rentals between £19,500 and £48,100 per annum. However,

aside from the number of bedrooms, there is little information about any of the properties.

22. Taking into account all of the evidence, using our own skill and expertise and having regard to the size and location of the property, we determine the market rent to be £27,500 per annum as a starting point. However, we consider there should be deductions to allow for the differences between the condition considered usual (including the responsibility of tenants to maintain decorations as opposed to decorate) for such a letting and the condition of the actual property, and to take account of the improvements carried out by the Tenant.
23. It should be noted that this figure cannot be a simple arithmetical calculation and is not based specifically upon capital cost but is the Tribunal's estimate of the amount by which the rent would have to be reduced to attract a tenant to this Property. In the circumstances, the Tribunal considers that a total deduction of 25% would be appropriate – this is made up of 10% in respect of the Tenant's improvements in relation to the kitchen as referred to above and 5% in respect of the bathroom. In addition, the Tribunal allows 5% in respect of the Tenant's additional furnishings and taking account of general condition of the Property as noted above, and a further 5% due to the fact that decorating is to be carried out by the Tenant.
24. Accordingly, the Tribunal determines the adjusted market rent to be £20,625 per annum. Of this sum, the Tribunal accepts the assertion of £222.06 for services, noting that there was no evidence to the contrary.
25. In assessing a fair rent for the Property, the Tribunal must also assume that the number of people seeking to become tenants of similar properties in the area on terms identical to the Tenant's tenancy (save as to rent) is not substantially greater than the number of such properties which are available to rent on such terms. In other words, we must make certain assumptions regarding scarcity and demand. The rent officer states that he has adjusted the market rent by 6% to take scarcity into account. On behalf of the Landlord, it was asserted that scarcity should be zero on the basis that there were 200 comparable properties to

rent within a half mile radius and 10,000 within 5 miles. However, crucially, no evidence was provided as to levels of demand.

26. In the Tribunal's experience and knowledge of the rental market, a deduction for scarcity is indeed required. In particular, having regard to the wider locality, social housing is still very much in demand with long waiting lists in London, no doubt aided by the fact that rents are generally lower than in the private sector. The shortage of available properties has the effect of increasing market rents and the fair rent regime was introduced with a view to counter-balancing this. Assessing the correct percentage for scarcity cannot be a precise arithmetical calculation, because there is no way of knowing the precise number of people seeking to become tenants of similar properties in the area. It is principally a judgment based on the knowledge and experience of the Tribunal and in the circumstances, the Tribunal considers that a figure of 20% would be more appropriate.
27. We therefore determine the rent at £16,500 per annum (deducting the sums attributable for services before applying scarcity and then adding them to determine the level of fair rent).
28. We are required to consider whether the provisions of the Rent Acts (Maximum Fair Rent) Order 1999 apply. As noted above, the existing rent, registered in June 2017, was £16,003.40 per year (excluding the amount attributable to services). The Retail Prices Index (RPI) published for June 2017 was 272.3. The RPI published for the month immediately preceding the month in which the determination of a fair rent is made was 289.5. The relevant increase in the RPI was 17.2. The appropriate enhancement factor in accordance with the Order is 0.05. To calculate the maximum fair rent we apply the formula as set out in the Order as follows:

$$\text{Maximum Fair Rent} = \text{£}16,003.40 \times (1 + 0.05 + (17.2/272.3)) + \text{£}222.06$$
$$\text{attributable to services} = \text{£}18,036.56$$
29. Accordingly, under the Maximum Fair Rent Order, the capped fair rent is £18,036.56 per year. As the rent we have determined does not exceed the maximum fair rent, the Order does not apply.

Chairman: *Andrew Sheftel*

Date: *15 October 2019*

APPEAL PROVISIONS

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) on a point of law must seek permission to do so by making written application to the First Tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.