



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

**Case Reference** : **KA/LON/00BK/F77/2019/0193**

**Property** : **Flat 22, Old Manor Court, 40-43  
Abbey Road, London SW8 0AR**

**Tenant** : **Mrs Irene Joan Osner**

**Representative** : **Not applicable**

**Respondent** : **Northumberland and Durham  
Property Trust Limited**

**Representative** : **Grainger Plc**

**Type of Application** : **To register a new fair rent**

**Tribunal Members** : **Ms N Hawkes  
Mrs A Flynn MA MRICS**

**Date and venue** : **13 December 2019 10 Alfred Place,  
London WC1E 7LR**

**Date of Decision** : **8 January 2020**

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**DECISION**

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**Background**

1. On 17 July 2019, the landlord applied to the rent officer for the re-registration of a fair rent of £5,616.60 per quarter (£22,466.40 per year) for the above property.

2. On 11 September 2019, the rent officer registered a fair rent of £23,374 per year for the property with effect from 11 September 2019.
3. By a letter dated 3 October 2019, the tenant objected to the rent determined by the rent officer and the matter was referred to the First-tier Tribunal.

## **Inspection**

4. The Tribunal inspected the property on 13 December 2019. The flat is situated on the fifth floor of an inter-war, pseudo-Georgian brick block. There is a passenger lift and a goods lift to all floors.
5. The living accommodation comprises five rooms, a kitchen, bathroom/WC and a WC. Two of the rooms are interconnected and the hallway is spacious enough to be used as a dining area. The windows are single glazed sash windows and there was no heating in the rear bedroom.

## **Evidence**

6. The Tribunal received written representations from the tenant dated 3 November 2019 (referring to a letter dated 3 October 2019). The Tribunal also received documents supplied by the rent officer.
7. A hearing was offered but neither party attended an oral hearing.

## **The law**

8. When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, must have regard to all the circumstances (other than personal circumstances) including the age, location and state of repair of the property. It must disregard 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.
9. Section 70(2) of the Rent Act 1977 states that “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.”
10. 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:

- (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).
11. When a fair rent is already registered and an application for a new fair rent to be determined by the Rent Officer is made on or after 1 February 1999, there is a limit on the amount that can be registered as the fair rent. This limit is sometimes referred to as the "capped rent". If the fair rent that the Tribunal would otherwise have determined is above the capped rent only the lower, capped figure can be registered as the fair rent.
  12. The capped rent is calculated in accordance with a formula set out in the Rent Acts (Maximum Fair Rent) Order 1999. It is arrived at by increasing the amount of the existing registered rent by the percentage change in the retail price index since the date of that earlier registration and then adding a further 7.5% or 5%. The 7.5% addition will apply in respect of the first application for re-registration of a fair rent since 1 February 1999 and the 5% addition will apply in the case of all subsequent applications.
  13. In all cases where the capping rule applies, the Tribunal will first decide what the fair rent would be irrespective of the statutory limit. It will then calculate the capped rent. If the figure reached by the Tribunal is above or the same as the capped rent, the capped rent will be registered as the fair rent. If it is below the capped rent, the lower figure will be registered and the cap will not apply.

## **Valuation**

14. In reaching its determination, Tribunal first determined the rent that the landlord could reasonably be expected to obtain for the property in the open market in the condition considered usual for a modern letting (that is on an assured shorthold tenancy). It did this by having regard to Tribunal's own general knowledge of market rent levels in the area of Haringey.
15. It did not do so by reference to specific comparable properties but rather the Tribunal had regard to its general knowledge obtained through regularly carrying out valuations in different areas of General London including Haringey.

16. Applying the law set out above, the Tribunal did not make comparisons with the rents payable in respect of other Rent Act 1977 tenancies in respect of which the capping provisions and deductions for tenant's improvements may be applicable. The Tribunal took into account matters raised by the tenant concerning the condition of her property which were observable at the time of the Tribunal's inspection.
17. The Tribunal concluded that the likely market rent would be £65,000 per year.
18. However, on the basis of the information available to the Tribunal, the actual property is not currently in the condition considered usual for a modern letting at a market rent. Therefore, it was first necessary to adjust that hypothetical rent to allow for the differences between the condition considered usual for such a letting and the condition of the subject property.
19. The Tribunal considered that a deduction 25% should be made to reflect the condition of the property observed by the Tribunal during its inspection, in particular, the partial central heating, and to reflect the tenant's improvements to the kitchen and bathroom and the fact that the kitchen and bathroom are otherwise dated.
20. Further, the Tribunal has deducted 10% to reflect differences between the usual terms of a market letting and the terms of a Rent Act 1977 tenancy under which the tenant is responsible for the provision of carpets, curtains and white goods.
21. Applying these deductions in the total sum of £22,750 to the hypothetical annual market rent, the adjusted market rent for the property is £42,250 per year.
22. The Tribunal is aware of judicial guidance relating to section 70(2) of the Rent Act 1977 including the decision of the High Court in Yeomans Row Management Ltd v London Rent Assessment Tribunal [2002] EWHC 835 (Admin) which required it to consider scarcity over a wide area rather than limit it to a particular locality.
23. Greater London is now considered to be an appropriate area to use as a yardstick for measuring scarcity and it is clear that there is a substantial measure of scarcity in Greater London. The Tribunal considers that, taking Greater London as the appropriate area and applying its knowledge and experience as an expert Tribunal, it is proper to apply a scarcity element in the region of 20% (£8,450) which must be deducted from the adjusted rent of £42,250 per year.
24. Applying these deductions to the hypothetical market rent, the uncapped fair rent is £33,800 per year.

## **6. Decision**

25. The capping provisions of the Rent Acts (Maximum Fair Rent) Order 1999 apply in the present case because the uncapped rent of £33,800 per year is higher than the capped rent of £23,443 per year.

**Accordingly, the sum of £23,443.50 per year will be registered as the fair rent with effect from 13.12.19 being the date of the Tribunal's decision.**

Judge Hawkes

8 January 2020