



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

Case Reference : **KA/LON/00AP/F77/2019/0195**

Property : **57 Harley House, Marylebone
Road, Westminster, London NW1
5HL**

Tenant : **Carol Richenberg**

Representative : **Not applicable**

Respondent : **Grainger Finance Company
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**

DECISION

Background

1. On 8 August 2019, the landlord applied to the rent officer for the re-registration of a fair rent of £15,175.45 per quarter for the above property.

2. The rent payable at the time of the application was £12,829 per quarter (£51,316 per year).
3. The rent was previously registered on 13 September 2017 with effect from 21 September 2017, following a determination by the rent officer.
4. On 27 September 2019, the rent officer registered a fair rent of £44,930 per year for the property with effect from 21 October 2019.
5. By a letter dated 8 October 2019, the landlord objected to the rent determined by the rent officer and the matter was referred to the First-tier Tribunal.

Evidence

6. The Tribunal has carefully considered the documents in the Tribunal file which include written representations provided by both parties and documents supplied by the rent officer.
7. A hearing took place on 13 December 2019, prior to the inspection. The tenant's solicitor, Mr Daniel Swimer, the tenant, and the tenant's son attended the hearing but the landlord did not attend.
8. Immediately prior to the commencement of the hearing, the case officer telephoned the landlord. She was informed that the landlord's representative had not received notice of the hearing but that they consented to the hearing taking place in the landlord's absence.
9. At the hearing, the Tribunal heard unchallenged evidence that the tenant has undertaken various improvements to the property since 1985.
10. The Tribunal was informed that the tenant has added an en-suite bathroom to main bedroom; that she has upgraded other bathrooms; she has installed secondary glazing in a number of rooms throughout the flat; she completely upgraded the kitchen in 1985; and that she has carried out extensive re-wiring and ad hoc redecoration (with the consent of the landlord).
11. The Tribunal was also informed that the tenant has supplied the white goods, oven, flooring and curtains at the property. The boiler was, however, replaced by the landlord.
12. Further, the tenant states that much of the property is in a poor state as a result of the applicant's failure to undertake significant remedial work and as a result of water damage (which is described in detail in the tenant's written submissions).

13. In addition to the oral evidence and submissions received at the hearing, in reaching this determination the Tribunal has considered the extensive written representations which have been provided by both parties and as well as the documents which have been supplied by the rent officer.
14. The parties have been provided with copies of each other's written submissions which should be read together with this determination.

Inspection

15. The Tribunal inspected the property on 13 December 2019. Harley House is a substantial Victorian mansion block with neo classical features. The exterior and common parts of the block are in very good condition.
16. The Tribunal inspected the interior of the property in the presence of the tenant's son who took great care to point to the matters which were referred to in oral evidence at the hearing and in the tenant's written representations. No representative of the landlord attended the inspection. The property is a maisonette on the lower and upper ground floors.

The law

17. 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.
18. 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."
19. 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).

20. 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.
21. 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.
22. 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

23. In reaching its decision, 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. It did this by having regard to the comparables which have been submitted and by having regard to Tribunal’s own general knowledge of market rent levels in the area of Westminster.
24. The Tribunal did not rely upon its own general knowledge 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 Greater London including Westminster.
25. The Tribunal concluded that the likely market rent would be £110,000 per year.

26. 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.
27. The Tribunal finds that a deduction 40% should be made in order to reflect the tenant's kitchen improvements; the tenant's bathroom improvements (including the installation of a new en-suite bathroom), the tenant's partial re-wiring; the provision of secondary glazing by the tenant; the other improvements carried out by the tenant; and the condition of the property. The parties are referred to the written submissions and to the account of the hearing which is set out above for further detail.
28. 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 that the tenant is responsible for the provision of carpets, curtains and white goods.
29. Applying these deductions in the total sum of £55,000 to the hypothetical annual market rent, the adjusted market rent for the property is £55,000 per year.
30. 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.
31. 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% (£11,000) which must be deducted from the adjusted rent of £55,000 per year.
32. Applying these deductions to the hypothetical market rent, the uncapped fair rent is £44,000 per year.

6. Decision

33. The capping provisions of the Rent Acts (Maximum Fair Rent) Order 1999 do not apply in the present case because the uncapped rent of £44,000 per year is below the capped rent of £56,730 per year.

Accordingly, the sum of £44,000 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