



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

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

Property : **3 Whittington Court, Aylmer Road,
Highgate, London N2 0BT**

Tenant : **Mr Leonard Day**

Representative : **Not applicable**

Respondent : **Bradford 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**

DECISION

Background

1. On 6 August 2019, the landlord applied to the rent officer for the re-registration of a fair rent of £2,844.47 per quarter for the above property.

2. The rent payable at the time of the application was £2,645.50 per quarter.
3. The rent was previously registered on 6 September 2017 with effect from 10 September 2017, following a determination by the rent officer.
4. On 27 September 2019, the rent officer registered a fair rent of £2,686 per quarter for the property with effect from 10 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.

Inspection

6. The Tribunal inspected the exterior of the block in which the property is situated on 13 December 2019. Whittington Court is a 1930s block, set back from the main road, which is part-brick and part-rendered. The block is in poor decorative condition externally. There are small communal gardens to the front of the block and a larger communal garden to the rear, which is overlooked by rear balconies.
7. The Tribunal made several unsuccessful attempts to contact the tenant via an answerphone at ground floor level but there was no reply. Accordingly, the Tribunal was unable to inspect the interior of the property.

Evidence

8. The Tribunal considered the documents in the Tribunal file which include documents supplied by the rent officer. The rent officer indicated that the flat comprises three rooms, kitchen, bathroom and WC.
9. A hearing was offered but neither party attended an oral hearing.

The law

10. 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.

11. 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.”
12. 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).
13. 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.
14. 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.
15. 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

16. 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. It did this by having regard to Tribunal's own general knowledge of market rent levels in the area of Haringey.
17. 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 Greater London including Haringey.
18. The Tribunal concluded that the likely market rent would be £320 per week.
19. 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.
20. The Tribunal considered that a deduction 10% should be made to reflect the lack of central heating which is noted on the rent register.
21. 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.
22. Applying these deductions in the total sum of £64 to the hypothetical annual market rent, the adjusted market rent for the property is £256 per week.
23. 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.
24. 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% (£51.20) which must be deducted from the adjusted rent of £256 per week.

25. Applying these deductions to the hypothetical market rent, the uncapped fair rent is £204.80 per week or £2,662.40 per quarter.

6. Decision

26. The capping provisions of the Rent Acts (Maximum Fair Rent) Order 1999 do not apply in the present case because the uncapped rent of £2,662.40 per quarter is below the capped rent of £2,925 per quarter.

Accordingly, the sum of £2,662.40 per quarter 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