



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

Case Reference : **LON/00AU/F77/2019/0114**

Property : **23B Yonge Park, London N4 3NU**

Applicant : **Peter Bedford Housing Association
(Landlord)**

Representative : **N/A**

Respondent : **Patricia Butlin (Tenant)**

Representative : **N/A**

Type of Application : **Objection to Fair Rent registered by
Rent Officer**

Tribunal Members : **Mr P M J Casey MRICS
Mr M Mullin**

**Date and venue of
Hearing** : **30 August 2019
10 Alfred Place, London WC1E 7LR**

Date of Decision : **30 October 2019**

REASONS FOR DECISION

Background

1. These Reasons for Decision” are in respect of a consideration of the landlord’s objection to the rent of £172.50 per week, registered by the Rent Officer on 6 June 2019 and effective from the same date in respect of 23B Yonge Park, London N43NU, (“the property”).
2. The landlord Peter Bedford Housing Association made an Application for Registration of Fair Rent to the Rent Officer on 28 January 2019. The fair rent sought was £223.54 per week and the passing rent at the time was given as £185.96 per week including £6.36 per week for water rates. The tenancy commenced 5 August 1992. A rent of the property of £149.50 per week had been registered previously by the Rent Officer on 29 March 2016 effective from the same date.
3. The Rent Officer received an email dated 12 June 2019 from Vanessa Morris an employee of the landlord objecting to the registration and the Rent Officer sent the objection to the First-tier Tribunal (Property Chamber) for determination.
4. Directions for the determination of the application were made by the tribunal which provided for the objection to be dealt with following a hearing and inspection.

The Evidence

5. The property is a self-contained flat on the raised ground floor of a former terraced house with basement and three upper floors built circa 1880. The accommodation comprises 2 rooms, kitchen and bathroom/WC. It has central heating. The interior decorative condition is fair at best but the exterior and common parts are shabby. Kitchen and bathroom fittings are a little dated.
6. The hearing on 30 August 2019 was attended by a Miss O’Connor for the landlord as her colleague, Ms Morris, was on leave. She relied however on Ms Morris’ written submissions received by the tribunal on 4 July 2019. In these it was explained that the landlord not only provided the accommodation but also housing related support to allow the tenant to live as independently as possible with a life-long condition affecting her daily living skills. The objection to the registered fair rent is that it was lower than the existing rent and did not match the rent they applied for in accordance with the 2016 regulations governing Housing Association rent increases. There was also an error in the service charge element in that £45.61 per week was attributed to this by the Rent Officer where as they had provided evidence that the service charge was £24.64 with an additional £20.97 in gas and electricity recharges which the Rent Officer had treated as services. She also said that a full upgrade of the flat including kitchen and bathroom replacement was included in their 2019/2010 programme. We asked Miss O’Connor if she could provide the tribunal with copies of the

tenancy agreement and Schedule of the services provided. She said she would try to have these supplied but despite two further reminders these had not been provided.

The Law

7. It is established by decisions of the Court of Appeal, and particularly by *Curtis v The London Rent Assessment Committee* [1999]QB92, that in accordance with S70 of the Act we are required to determine the fair rent for the property as being the rent at which we consider the property might reasonably be expected to let in the open market by a willing landlord under a tenancy on the same terms as the actual tenancy ignoring any increase in value attributable to tenant's improvements and any decrease in value due to the tenant's failure to comply with any terms of the tenancy, subject to any adjustment which may be required to reflect the assumption to be made under S70(2) of the Act.
8. S70(2) of the Act provides: "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".

Decision

9. The tribunal is required to determine the fair rent of "the subject property" as at the date of its decision taking into account the condition of the subject property as it is.
10. The Rent Officer has treated the gas and electricity charges paid by the landlord as part of the fixed service charge included in the rent and as such they have been subject to the rent capping provisions (see later) The Rent Register records that the Rent Officer has a schedule of such services. In 2016 they amounted to £13.42 per week including £4.18 for fuel charges not counting for rent allowance but in 2019 this had risen to £45.61 per week including £20.97 for fuel charges. In the absence of a copy of the tenancy agreement and/or the schedule we are unable to disagree with the Rent Officer's decision to treat the gas and electricity costs as part of the fixed service charge.
11. Neither party provided helpful rental evidence. From our own knowledge and experience of rent levels in N4 we are of the opinion that an appropriate starting point for the determination would be an open market rent of £400 per week including services if the subject property were let on an assured shorthold tenancy (AST) in a fully modernized condition. It is not believed that the nature of this letting imposes any repairing obligations on the tenant and it is thought that the landlord has provided all carpets, curtains and white goods so no

adjustment has been made to this figure to reflect terms of the tenancy. However the flat is in a somewhat shabby and dated condition and a 15% reduction is appropriate to reflect this leaving an adjusted rent of £340 per week.

12. It then falls to be considered if a further adjustment is required because of the assumption required to be made under S70(2) of the Act. We certainly believe that “the number of persons seeking ... etc does substantially exceed the number of such dwelling houses ... etc” and that an adjustment must be made for what is commonly referred to as scarcity. We consider that scarcity should be looked at across the whole of the Greater London Area and that “similar properties” embraces both purpose built and converted one and two bedroomed flats and maisonettes. In the absence of any evidence from the parties we can do no more than rely on own knowledge and experience gained from hearing a large number of objections to registered rents over the years. We consider that rents in the Greater London area as a whole are significantly higher than they would otherwise be as a consequence of scarcity and that in the case of accommodation such as the subject property it is appropriate to make an adjustment to reflect this fact of approximately 25% in assessing the fair rent. This adjustment does not however affect the services element of the rent. We accordingly make such a deduction from the market rent excluding services to reflect the effect of scarcity on the rent levels to give £220 per week to which the service element is to be added back to leave a fair rent of £266.40 per week. As a rent had previously been registered for the property it is necessary to consider whether or not this rent can be registered or if The Rent Acts (Maximum Fair Rent) Order 1999 applies to limit the maximum rent which can be registered.

The Rent Acts (Maximum Fair Rent) Order 1999

13. The provisions of the Order do not apply unless a fair rent has been previously registered. Nor do they apply if because of a change in the condition of a dwelling house since the last registration as a result of repairs or improvements carried out by the landlord the rent determined on the new application exceeds the previously registered rent by at least 15%. No such works have been carried out by the landlord and it is therefore necessary to apply the Order.
14. The maximum fair rent calculation is set out on the reverse of the Notice of the Tribunal Decision dated 30 October 2019. The maximum rent which can be registered is thus £174.50 per week including services of £45.61 per week.

Name: Patrick M J Casey

Date: 4 November 2019

First-tier Tribunal, Property Chamber Residential Property

GUIDANCE ON APPEAL

- 1) An appeal to the Upper Tribunal against a decision of a First-tier Tribunal (Property Chamber) can be pursued only if **permission to appeal** has been given. Permission must initially be sought from the First-tier Tribunal. If you are refused permission to appeal by the First-tier Tribunal then you may go on to ask for permission from the Upper Tribunal (Lands Chamber).
- 2) An application to the First-Tier Tribunal for permission to appeal must be made **so that it is received by the Tribunal within 28 days after the date on which the Tribunal sends its reasons for the decision.**
- 3) If made after the 28 days, the application for permission may include a request for an extension of time with the reason why it was not made within time. Unless the application is made in time or within granted extended time, the tribunal must reject the application and refuse permission.
- 4) You must apply for the permission **in writing**, and you must:
 - identify the case by giving the address of the property concerned and the Tribunal's reference number;
 - give the name and address of the applicant and any representative;
 - give the name and address of every respondent and any representative
 - identify the decision or the part of the decision that you want to appeal;
 - state the grounds of appeal and state the result that you are seeking;
 - sign and date the application
 - send a copy of the application to the other party/parties and in the application record that this has been done

The tribunal may give permission on limited grounds.

- 5) When the tribunal receives the application for permission, the tribunal will first consider whether to review the decision. In doing so, it will take into account the overriding objective of dealing with cases fairly and justly; but it cannot review the decision unless it is satisfied that a ground of appeal is likely to be successful.
- 6) On a review the tribunal can
 - correct accidental errors in the decision or in a record of the decision;
 - amend the reasons given for the decision;
 - set aside and re-decide the decision or refer the matter to the Upper Tribunal;
 - decide to take no action in relation to the decision.

If it decides not to review the decision or, upon review, to take no action, the tribunal will then decide whether to give permission to appeal.

- 7) The Tribunal will give the parties written notification of its decision. **If permission to appeal to the Upper Tribunal (Lands Chamber) is granted**, the applicant's notice of intention to appeal must be sent to the registrar of the Upper Tribunal (Lands Chamber) so that it is received by the registrar within **28 days** of the date on which notice of the grant of permission was sent to the parties.
- 8) **If the application to the Property Chamber for permission to appeal is refused**, an application for permission to appeal may be made to the Upper Tribunal. An application to the Upper Tribunal (Lands Chamber) for permission must be made within **14 days** of the date on which you were sent the refusal of permission by the First-tier Tribunal.
- 9) The tribunal can **suspend the effect of its own decision**. If you want to apply for a stay of the implementation of the whole or part of a decision pending the outcome of an appeal, you must make the application for the stay at the same time as applying for permission to appeal and must include reasons for the stay. You must give notice of the application to stay to the other parties.

These notes are for guidance only. Full details of the relevant procedural provisions are mainly in:

- the Tribunals, Courts and Enforcement Act 2007;
 - the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013;
 - The Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010.
- You can get these from the Property Chamber or Lands Chamber web pages or from the Government's official website for legislation or you can buy them from HMSO.

The Upper Tribunal (Lands Chamber) may be contacted at:

*5th Floor, Rolls Building, 7 Rolls Buildings
Fetter Lane, London WC4A 1NL*

*Tel: 0207 612 9710
Goldfax: 0870 761 7751*

Email: lands@hmcts.gsi.gov.uk

The Upper Tribunal (Lands Chamber) form (T601 or T602), Explanatory leaflet and information regarding fees can be found on www.justice.gov.uk/tribunals/lands.