



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

Case reference : **KA/LON/00BK/F77/2019/0161**

Property : **Flat 27 Luke House, 3 Abbey Orchard Street, London SW1P 2JJ**

Applicant : **Dr Geoffrey H Buchler**

Representative : **Not represented**

Respondent : **AO Investments Limited**

Representative : **C/o Residential Land Limited, 59 Grosvenor Street, London W1K 3HZ (Landlords Agent)**

Date of application : **28 August 2019**

Type of application : **Determination of the registered rent under section 70 Rent Act 1977**

Tribunal members : **Mr I B Holdsworth FRICS MCI Arb
Mr L G Packer**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **3rd December 2019**

DECISION

The sum that will be registered as a fair rent with effect from 3rd December 2019 is **£11,610 per annum**, inclusive of service charges and fuel allowance.

Background

1. The Landlord applied to the Rent Officer for registration of a fair rent on 18 June 2019. The fair rent was registered as £11,284 per annum on 21 August 2019, effective from the same date.
2. The Tenant subsequently challenged the revised registered rent by letter dated 28 August 2019 and the Rent Officer has requested the matter be referred to the Tribunal for a determination.
3. Directions were issued following receipt of the objection and are dated 24th September 2019. The Directions state that the application was suitable for determination on the basis of written submissions without an oral hearing unless requested.
4. The parties were invited to submit any information on Market Rents in the area for similar properties; they were also invited to offer any details of the repairs and improvements made to the property by the Landlord or Tenant. The Directions also invite the parties to submit details of any dilapidations, disrepair or other material valuation considerations.
5. Written submissions were received from both parties. The Tenant requested a hearing which was offered as a domiciliary hearing due to the Tenant being prevented from attending the Tribunal for medical reasons. The hearing was held in the foyer of the building. Mr Jonathan Smith, General Counsel from Residential Land Limited attended on behalf of the Landlords. The Tenant represented himself at the hearing.

Inspection

6. An inspection of the property was carried out on 1 December 2019. This revealed the property as a seventh floor studio flat with commercial office use at lower floors. The accommodation comprised: entrance hall, kitchen, bathroom/WC, bedroom/sitting room.
7. The dwellings had all mains services with gas fired central heating. The building is serviced by a lift.
8. The property was in good condition with no apparent defects.
9. The Tenant told the Tribunal that they he had carried out renewal of the all kitchen units during his tenancy and replaced some of the sanitary fittings.
10. The Tenant confirmed he had supplied all furniture, soft furnishings, floor coverings and white goods.

Hearing

11. The Tenant submitted oral evidence to the Tribunal to supplement the written submission made by himself on the market conditions in the locality. The Tenant explained to the Tribunal many of the tenants in the building were overseas students. He argued that these overseas tenants

were willing to pay an above market rent for the flats on assured shorthold tenancies.

12. He further told Tribunal that the commercial tenant occupying the lower floors planned to leave the premises over the next 12 months. The landlord's representative confirmed the office premises would be re-let to a new tenant. The Tenant claimed the removal and refitting works associated with the change in occupation would impact on his enjoyment of the premises and should be reflected in any new rent. He also argued that the disturbance caused by frequent construction works in the vicinity is a material rental valuation consideration.
13. Mr Jonathan Smith, the representative from the Landlord asked the Tribunal to rely on his written submission. He referred particularly to the recent comparable rental transactions. These are:
 - **Flat 28 Luke House** – a similar styled property to the subject. This studio flat is situated on the seventh floor and was let on 30 September 2018 at £22,361 per annum on an assured shorthold tenancy. The tenant is required to make a contribution of £35 per month towards communal heating and hot water.
 - **Flat 26 Luke House** – a seventh floor studio flat which was let on 28 May 2019 at £22,360 per annum on an assured shorthold tenancy. The Tenants are required to make a contribution of £49 per month towards communal heating and hot water.
 - **Flat 12 Luke House** – a seventh floor studio flat which was let on 12 February 2019 at £21,840 per annum on an assured shorthold tenancy. The Tenants are required to pay £49 per month towards communal heating and hot water.

The law

14. When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, 'the Act', it had regard to all the circumstances including the age, location and state of repair of the property. It also disregarded 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.
15. In **Spath Holme Ltd v Chairman of the Greater Manchester etc. Committee (1995)** and **Curtis v London Rent Assessment Committee [1999]** the Court of Appeal emphasised that ordinarily a fair rent is the market rent for the property discounted for 'scarcity'. This is 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.

16. The market rents charged for assured tenancy lettings often form appropriate comparable transactions from which a scarcity deduction is made.
17. These market rents are also adjusted where appropriate to reflect any relevant differences between those of the subject and comparable rental properties.
18. The Upper Tribunal in **Trustees of the Israel Moss Children's Trust v Bandy [2015]** explained the duty of the First Tier Tribunal to present comprehensive and cogent fair rent findings. These directions are applied in this decision.
19. **The Rent Acts (Maximum Fair Rent) Order 1999** applies to all dwelling houses where an application for the registration of a new rent is made after the date of the Order and there is an existing registered rent under part IV of the Act. This article restricts any rental increase to 5% above the previously registered rent. The article is not applied should the Tribunal assess that as a consequence of repairs or improvements carried out by the landlord the rent that is determined in response to an application for a new rent registration exceeds by at least 15% the previous rent registered.

Valuation

20. In the first instance the Tribunal determined what rent the Landlord could reasonably be expected to obtain for the property in the open market if it were let today in the condition that is considered usual for such an open market letting. It did this by having regard to their general knowledge of market rent levels in this area of Central London.
21. This hypothetical rent is adjusted as necessary to allow for the differences between the terms and condition considered usual for such a letting and the condition of the actual property at the date of the inspection. Any rental benefit derived from Tenant's improvements is disregarded. It is also necessary to disregard the effect of any disrepair or other defects attributable to the Tenant or any predecessor in title. Adjustments are made to the transaction evidence in assessment of rent for this property.
22. The provisions of section 70(2) of the Rent Act 1977 in effect require the elimination of what is called 'scarcity'. The required assumption is of a neutral market. Where a Tribunal considers that there is, in fact, substantial scarcity, it must make an adjustment to the rent to reflect that circumstance. In the present case neither party provided evidence with regard to scarcity.
23. The Tribunal then considered the decision of the High Court in **Yeomans Row Management Ltd v London Rent Assessment Committee [2002] EWHC 835 (Admin)** which required it to consider scarcity over a wide area rather than limit it to a particular locality. Central 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 Central London.

24. Assessing a scarcity percentage cannot be a precise arithmetical calculation. It can only be a judgement based on the years of experience of members of the Tribunal. The Tribunal therefore relied on its own combined knowledge and experience of the supply and demand for similar properties on the terms of the regulated tenancy (other than as to rent) and in particular to unfulfilled demand for such accommodation. In doing so, the Tribunal found that there was substantial scarcity in the locality of Central London and therefore made a further deduction of 20% from the adjusted market rent to reflect this element.
25. The valuation of a fair rent is an exercise that relies upon relevant market rent comparable transactions and property specific adjustments. The fair rents charged for other similar properties in the locality do not form relevant transaction evidence.
26. The Tribunal accepted the comparable rental transaction evidence provided by the Landlord as a fair representation of rents achievable for studio flats in the locality. This evidence is of completed open market assured shorthold lettings of matching property in the building. Based upon their experience and knowledge they did not accept the contention by the Tenant that the rents achieved at Luke House for studio flats were out of tone with the surrounding area.
27. The Tribunal were not persuaded that the anticipated disturbance likely to arise from future changes in the commercial occupation would be material to the achievable rent as at the date of the decision. They also thought the frequent construction works taking place in the surrounding area to the building were a constituent part of Central London living. The Tribunal decided any disturbance likely to be caused by the commercial relocation and/or construction works is already factored into the residential rental market and no further adjustment was considered necessary.
28. The Tribunal adopted a market rent of £22,500 per annum for similar styled flats let on an assured shorthold tenancy based upon their experience and knowledge of the rental market in that locality.
29. Table 1 below provides details of the fair rent calculation:

Property: Flat 27 Luke House 3 Abbey Orchard Street SW1P 2JJ			
Fair rent calculation in accordance with s(70) Rent Act 1977			
Market rent		£22,500.00	per annum
Disregards		Deduction per annum	as % per annum rent
Carpets , curtains white, goods, soft furnishing		£2,250.00	10.00%
Kitchen improvement		£3,375.00	15.00%
Dilapidations		£	-
	Total deductions	£5,625.00	
	Adjusted Rent balance	<u>£16,875.00</u>	
Less Scarcity 20.00%		£3,375.00	
Adjusted Market Rent		<u>£13,500.00</u>	per annum
Capped rent in accordance with <i>Rent Acts (Maximum Fair Rent) Order 1999</i>		<u>£ 11,610.00</u>	per annum
			Capped rent

Decision

30. The uncapped fair rent initially determined by the Tribunal for the purpose of section 70 was accordingly £13,500 per annum.
31. By virtue of The Rent Acts (Maximum Fair Rent) Order 1999, the Maximum Fair Rent that can be registered at this property is £11,610 per annum. This is based upon a statutory specified 5% increase on the previously registered rent. It is the opinion of the Tribunal there are no grounds for the Rent Acts Order to be relaxed for this dwelling.
32. The statutory formula applied to the previously registered rent to be calculated at the capped rent is at Annex A. Details of the Maximum Fair Rent calculation were provided in the original Notice of Decision.
33. Accordingly, the sum that will be registered as a fair rent with effect from 3 December 2019 is **£11,600 per annum**, inclusive of any service charges and fuel allowance.

Name: Ian Holdsworth **Date:** 7th January 2020
Valuer Chairman

Annex A : The Rents Act(Maximum Fair Rent) Order 1999

(1) Where this article applies, the amount to be registered as the rent of the dwelling-house under Part IV shall not, subject to paragraph (5), exceed the maximum fair rent calculated in accordance with the formula set out in paragraph (2).

(2) The formula is-

$$\text{MFR} = \text{LR} \left[1 + \frac{(x-y)}{y} + P \right]$$

where –

MFR is the maximum fair rent;

LR is the amount of the existing registered rent to the dwelling house;

x is the index published in the month immediately preceding the month in which the determination of a fair rent is made under Part IV;

y is the published index for the month in which the rent was last registered under Part IV before the date of the application for registration of a new rent; and

P is 0.075 for the first application for rent registration of the dwelling-house after this Order comes into force and 0.05 for every subsequent application.

(3) Where the maximum fair rent calculated in accordance with paragraph (2) is not an integral multiple of 50 pence the maximum fair rent shall be that amount rounded up to the nearest integral multiple of 50 pence.

(4) If $\frac{(x-y)}{y} + P$ is less than zero the maximum fair rent shall be the existing registered rent.

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).