



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

Case Reference : **LON/00AE/F77/2019/0113**

Property : **19a Townsend Lane
London NW9 7JG**

Applicant : **Mr Ross Dowling (Tenant)**

Representative :

Respondent : **Northumberland & Durham
Property Trust Ltd (Landlord)**

Representative : **Grainger PLC**

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 August 2019**

REASONS FOR DECISION

Background

1. These Reasons for Decision” are in respect of a consideration of the tenant’s objection to the rent of £450.50 per calendar month, registered by the Rent Officer on 29 May 2019 and effective from 19 June 2019 in respect of 19A Townsend Lane, London NW9 7JG, (“the property”).
2. The landlord’s agent, Grainer PLC, made an Application for Registration of Fair Rent to the Rent Officer on 8 April 2019. The fair rent sought was £469 per calendar month and the passing rent at the time was given as £408 per calendar month. The tenancy commenced 1st January 1987. A rent of the property of £408 per calendar month had previously been registered by the Rent Officer on 19 April 2017 effective from 19 June 2017.
3. The Rent Officer received an email dated 11 June 2019 from the tenant 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 an inspection. Neither party asked for a hearing.

The Evidence

5. The property is a self-contained purpose built first floor maisonette built in the 1930s. The accommodation comprises 3 rooms, kitchen and bathroom/WC. It has a share of the rear garden but no central heating. The tenant has fitted the kitchen and ½ tiled the bathroom. The interior decorative condition is fairly good but the exterior is shabby.
6. The tenant in his written representations said that the increase of 9.9% in the registered rent was high. Grainger had done nothing to the property since 1997. He had decorated inside and made garden improvements but there was no central heating and winters could be particularly cold. In the written submissions on behalf of the landlord Grainer briefly described the property and its location as well as providing a calculation of the uncapped fair rent. This showed a starting point rent of £1,250 per month if the property were modernized and let on an AST. From this deductions of £200 for terms of tenancy/lack of carpets and white goods, £50 for tenant’s improvements and £100 for lack of central heating were made. From the adjusted rent of £900 a further deduction of 10% was made to reflect scarcity to leave £810 as their opinion of the uncapped fair rent. To support the starting point Grainger gave brief particulars of three let properties said to be comparable to the subject property. These however were all in E13 a considerable distance away and of no direct assistance to the tribunal.

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. Neither party provided helpful rental evidence. From our own knowledge and experience of rent levels in NW9 we are of the opinion that an appropriate starting point for the determination would be an open market rent of £1,250 per calendar month if the subject property were let on an assured shorthold tenancy (AST) in a fully modernized condition which is the landlord's starting point.
11. An adjustment is then required to reflect the actual terms of the tenancy. Unlike an AST letting these terms make the tenant liable for internal decoration and minor repairs. The tenant also has to provide his own carpets and curtains and "white goods". In our opinion a 10% deduction should be made to reflect those differences and this reduces the starting point rent to £1,125 per calendar month. The flat has not been modernized save for the tenant's improvements and has no central heating and we made a further deduction from the open market rental value of £150 to reflect these matters to leave an adjusted open market rent of £925 per month.
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. Only Grainger addressed this issue but gave no evidence to support the 10% adopted. 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. We accordingly make such a deduction from the market rent to reflect the effect of scarcity on the rent levels to give £694 per calendar month. 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 was set out on the reverse of the Notice of the Tribunal Decision dated 30 August 2019. The maximum rent which can be registered is thus £457.50 per calendar month.

Name: Patrick M J Casey

Date: 31 October 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.