



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

Case reference : KA/LON/00AN/F77/2019/0110

Property : Flat 160, Latymer Court, Hammersmith Road, London W6 7JG.

Applicant : Dorrington Residential Limited

Represented by : Allsop Letting & Management Ltd

Respondent : Mrs. T. Daniel

Type of application : Referral of a registration of Fair Rent under the Rent Act 1977.

Tribunal : Ms. A. Hamilton-Farey
Mr. N. Miller

Date of Reasons : 9 August 2019.

REASONS FOR THE TRIBUNAL'S DECISION

The tribunal determines the fair rent for the premises at £13,835.16 per annum, inclusive of service charge of £2,580.90 per annum. The service charge includes an element for heating and hot water amounting to £298.24.

Background and Reasons

1. By an RR1 dated 19 March 2019, the landlord sought an increase in the fair rent for the subject property. The rent passing at the date of the application was £12,964.00 per annum, inclusive of service charge of £2,968.15 per annum, including £838.79 for fuel charges. The landlord sought an increase to £15,556.80 per annum, inclusive of service charges. The Rent Officer registered a rent of £13,300.00 per annum, inclusive of service charges of £2,580.90 per annum including £298.24 for fuel charges.
2. By a letter dated 31 May 2019, the landlord objected to the rent and the matter was referred to this tribunal. The tribunal issued directions on 17 June 2019, that required the parties to prepare for the tribunal's determination, including the provision of any comparable rents on which they wished to rely in support of their respective cases.

3. Neither party requested an oral hearing, and the tribunal inspected the property on the 9 August with the tenant, Mrs. Daniel in attendance.
4. The landlord's representatives relied on both the evidence submitted with the RR1 and comparable evidence of five properties, three of which were in the subject development and two in the vicinity. The landlord took an average of the rents passing for these properties to arrive at a market rent for the subject property at £23,431.20, inclusive of service charge.
5. The tribunal has noted the comparable rents and prefers those that are located in the subject block as providing the best evidence, the average of which totals to £22,756.00 per annum, and the tribunal has therefore adopted this figure as the starting point for its calculations.
6. Mrs. Daniel made representations to the effect that the flat required complete refurbishment, being very dated with a lack of modernisation. She also said that the heating system could not be properly controlled with it either being on full or off. We were also told that the lift was often non-functioning, and this caused problems due to the location of the flat on the 6th floor.
7. The tribunal inspected the property. We found it to be a two-bedroom flat on the sixth floor of a substantial development of flats above shops and around a courtyard with communal gardens. The blocks are located on the busy Hammersmith Road. The flat comprises two bedrooms, living room, kitchen and bathroom, and is accessed via a small passenger lift. The flat is in a good condition internally although the fixtures and fittings in the bathroom and kitchen are not to be standard that one would expect in a modern letting. Mrs Daniel had replaced worktops in the kitchen. All carpets, curtains and white goods are the property of the tenant, and the property was let unfurnished. Heating and hot water are provided through a communal system, and was operating at the time of our inspection. We noted the tenant's written comments regarding the ability to regulate the heating.
8. The tribunal has had regard to the evidence supplied by the landlord, tenant and the inspection of the property. We are satisfied that the average rent suggested by the landlord would be appropriate for a newly refurbished flat let on a standard assured shorthold tenancy agreement ("AST"), with white goods, flooring, window coverings and new kitchen/bathroom fittings.
9. However, the subject property is not in the condition that one would expect for a typical AST and would need upgrading to achieve the market rents suggested by the landlord. The landlord has suggested that a deduction from the market rent of £6,500.00 should be made to reflect those differences. We are satisfied that some deductions should be made, and those should include an element for the different terms of the tenancy. In this instance, we consider that a deduction of 5% from the market rent should be made to reflect the more onerous decorating liability of a fair rent tenant. We therefore calculate the adjusted market rent for this property as follows:

Market rent:	£22,756.00
Less 5% to reflect different terms of tenancy	<u>£ 1,137.80</u>
	£21,618.20

Less 20% to reflect condition of bathroom,

Kitchen, lack of white goods, carpets,

Curtains and heating problems: £ 4,323.64

£17,294.56.

Total adjusted market rent before scarcity: £17,294.56

Scarcity: 20% £ 3,458.91

Fair rent: £13,835.64.

10. Although the landlord submitted that there was no scarcity in London and that there were some 100 properties available to rent within a ½ mile radius, we are not convinced that this is in fact the case. No evidence of that list of properties has been supplied to us and we are therefore not aware of the details.
11. In addition, the landlord relied on the submission made to the rent officer with the RR1 form in which the agents said *‘we manage over 5000 tenancies throughout the United Kingdom and assist some of our clients with their contribution to the IPD index. One of our largest clients has noted a growth in rental levels of 7.5% for Assured Shorthold Tenancies over the past year with even greater increases achieved on Assured Tenancies. This trend shows every sign of continuing for the foreseeable future’*. Ms. Zevenster also said that fair rents continued to lag substantially behind market rents.
12. We are not persuaded by this submission. It has been repeated before this tribunal on several occasions and has certainly not changed in the last two years and has been referred to by the tribunal in decisions made in 2017. The tribunal cannot accept that the market has stagnated over the last two years without any evidence. There is also anecdotal evidence that rents are reducing in London due to market uncertainty, which we consider should be factored into the calculations.
13. The tribunal is also required to take into consideration a very wide area when considering scarcity, and we consider that there is an imbalance in the market for properties such as the subject, that warrants a deduction of 20% to reflect that imbalance. We have therefore applied a 20% deduction to reflect scarcity, and as shown in the calculations above.
14. Having calculated the market rent, the tribunal is then required to apply the Maximum Fair Rent Order (“MFR”) to the existing rent. The calculation for this produced a fair rent of £14,522.50 per annum. A copy of the calculation is appended to the decision template.
15. The tenant is only obliged to pay the maximum figure of either the adjusted market rent, or the fair rent. In this instance the MFR produced the higher figure, and the tribunal therefore registers the rent at the adjusted market rent shown above of £13,835.64, inclusive of service charges of £2,580.90 per annum, including £298.24 for fuel charges..

Name: Ms. A. Hamilton-Farey

Date: 9 August 2019

The law.

When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70:

- (1) has regard to all the circumstances (other than personal circumstances) including the age, location and state of repair of the property;
- (2) disregards the effect on the rental value of the property of (a) any relevant tenant improvements and (b) any disrepair or other defect attributable to the tenant or any predecessor in title under the regulated tenancy;
- (3) assumes (as required by s.70(2)) that, whatever might be the case, the demand for similar rented properties in the locality does not significantly exceed the supply of such properties for rent. In other words that the effect of any such 'scarcity' on rental values is not reflected in the fair rent of the subject property.

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 that section 70 means

- (a) that ordinarily a fair rent is the market rent for the subject property discounted for 'scarcity' 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).

Thus, once the market rent for the property has been determined by the exercise in (2) above that rent must be adjusted, where necessary, for any scarcity.

The tribunal must then determine the fair rent using the Maximum Fair Rent Order ("MFR") indices. The rent to be registered is the lower of either the adjusted market rent, or the rent determined by the MFR