



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

Case reference : KA/LON/00BK/F77/2019/0111

Property : 53c Randolph Avenue, Maida Vale,
London W9 1BQ.

Applicant : Dorrington Residential Limited

Represented by : Allsop Letting & Management Ltd

Respondent : Ms. C. Barwell.

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 £14,539.00 per annum, inclusive of service charges of £410.05 per annum with effect from 2 August 2019.

Background and Reasons

1. By an RR1 dated 1 April 2019, the landlord sought an increase in the fair rent for the subject property. The rent passing at the date of the application was £12,978.48 per annum, inclusive of service charges. The landlord sought an increase to £15,574.18 per annum, inclusive of service charges. The Rent Officer registered a rent of £13,330.00 per annum, inclusive of service charges of £410.05 per annum.
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. The landlord requested an oral hearing and the tribunal met on 9 August 2019 with Ms. Barwell, the tenant and Ms. J. Zevenster from Allsops in attendance.

4. Ms. Zevenster relied on both the evidence submitted with the RR1 and comparable evidence of three properties in the vicinity. At the hearing the tribunal informed the parties of a further property, located in the same road as the subject, that was available at £2,427.00 per calendar month. Ms. Zevenster knew of this property, but it had not been available when the evidence was submitted to the tribunal.
5. The other properties on which she relied were as follows: -

90 Delaware, W9 2LJ – 1bed, 1 bath 65m² let at £22,542.00 per annum.

Bloomfield Road, W9 – 1 bed, 1 bath, 52m² let at £25,740.00 per annum.

Warrington Crescent, W9 – 1 bed, 1 bath, 72m² let at £33,804.00 per annum.

Ms. Zevenster said that ‘in view of the above, we consider the market rent for the subject property to be £27,362.00 per annum’, this figure appears to have been arrived at from the average of the three rents relied on.
6. The tribunal had the benefit of Right Move papers in relation to the flats at Bloomfield Road and Warrington Crescent. The former was described as *‘brand new refurbished apartment, with fully integrated open plan kitchen, wood flooring throughout, stylish shower room and with access to the communal gardens. The papers confirmed that this was a ‘contemporary’ property situated on the first floor of the building.*
7. With respect to the property in Warrington Crescent, the agents’ details contained no description, but a plan showed that there was a mezzanine study in addition to the bedroom and reception room. This flat was also located on the first floor of the building.
8. Ms. Barwell did not produce any evidence but did not dispute that market rents in the vicinity were very high and said that they were generally unaffordable. She informed us that the flat below had been unoccupied for approximately six-months due to some structural problems and that major works had been required to enable the flat to be re-let.
9. The tribunal inspected the property at the end of the hearing. We found the property on the Top (third) floor of a substantial period conversion, and comprises one bedroom, reception room, kitchen and bathroom/WC. The property is in a generally good decorative order and displays the usual defects one would find with a property of this age (rattling double-hung sliding sash windows, sloping and creaky floors). The kitchen and bathroom fittings are dated; carpets, white goods and window coverings have been supplied by the tenant and the property is let unfurnished. Heating and hot water are provided through an individual boiler that appears to be in a fairly new condition. We noted signs of penetrating dampness to the front wall of the living room, and also some dampness in the communal hallway.
10. The tribunal has had regard to the evidence supplied by the landlord 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.

11. However, the subject property is not in the condition that one would expect for a typical AST and would need substantial upgrading to achieve the market rents suggested by the landlord. In addition, the comparable properties are all located on the first floor. This flat is located on the third floor at the top of an inconvenient staircase. The property does not benefit from a lift installation, and we consider that this would be taken into account by any potential tenant. We therefore calculate the adjusted market rent for this property as follows:

Market rent:	£27,350.00
Less 5% to reflect different terms of tenancy	<u>£ 1,369.00</u>
	£25,981.00
Less 20% to reflect condition of bathroom, Kitchen, lack of white goods.	<u>£ 5,196.20</u>
	£20,784.80.
Lack of lift 5% deduction	<u>£ 1,039.24</u>
<u>Total adjusted market rent before scarcity:</u>	<u>£19,745.56.</u>
<u>Scarcity: 20%</u>	<u>£ 3,949.11</u>
<u>Fair rent:</u>	£15,796.45.

12. Although Ms. Zevenster informed us that there was no scarcity in London and that there were some 701 properties available to rent within a ½ mile radius and over 27,000 properties available within a 5-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. Ms. Barwell informed us that she had contacted Westminster Council who informed her that there were 4,000 people on the waiting list for accommodation. We have no evidence to support this statement but are aware from the general information available in relation to the London Housing market that it is quite possible that a Local Authority would have a waiting list of this number.
13. In addition, Ms. Zevenster 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.
14. 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.

15. 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.
16. 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 £14,539.00 per annum. A copy of the calculation is appended to the decision template.
17. 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 lower figure, and the tribunal therefore registers the rent at that figure of £14,539.00, inclusive of service charges of £410.0 per annum.

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