



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

**Case reference** : **KA/LON/00AW/F77/2019/0105**

**Property** : **Flat 242, Cranmer Road, Whiteheads  
Grove, London SW3 3HD.**

**Applicant** : **Mr. Michael O'Brien**

**Respondent** : **River Edge Estates Limited**

**Represented by** : **Allsop Letting & Management Limited**

**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** :

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**REASONS FOR THE TRIBUNAL'S DECISION**

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The tribunal determines the fair rent for the premises at £12,768.00 per annum (£3,192.00 per quarter), inclusive of service charge of £511.44 per quarter. The service charge includes an element for heating and hot water amounting to £106.45 per quarter.

**Background and Reasons**

1. By an RR1 dated 28 February 2019, the landlord sought an increase in the fair rent for the subject property. The rent passing at the date of the application was £3,230.00 per quarter including service charge of £511.44, which also included an element for heating and hot water of £137.97. The landlord sought an increase to £15,504.00 per annum, inclusive of service charges. The Rent Officer registered a rent of £3,550.00 per quarter, inclusive of service charges of £522.44 per quarter effective from 18 May 2019.
2. By a letter received by the rent officer on 29 May 2019, the tenant objected to the rent and the matter was referred to this tribunal. The tribunal issued directions on 12 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 tenant requested a domiciliary hearing and one was undertaken in the presence of Ms. Zevenster of Allsops and the tenant. Following the hearing, the tribunal inspected the property.
4. The landlord's representatives relied on both the evidence submitted with the RR1 and comparable evidence of three particular properties, in the vicinity.
5. The rentals for these three properties averaged to £44,980.00 and this was the landlord's starting position. From that they deducted 20% to reflect the condition of the property, lack of carpets, white goods and lack of modernisation. It was the landlord's case that there was no scarcity for this type of property and said that there were 1,269 comparable properties available within a ½ mile radius.
6. The copies of Right Move details was incomplete and contained no details of the comparables', condition or facilities, but for the rentals suggested, and the deductions proposed by the landlord, the tribunal considers that they were in the condition one would expect for high-end rentals of this type in this area of London.
7. The tenant's case was that the property required modernisation and that his storage area, that had been located on the floor above, had been removed by the landlord, with the consequence that he had insufficient storage in the flat. The tenant also said that he considered the rent to be too high, and he knew of properties in the area which were let at lower rents. We were not provided with any details of these rentals, and therefore are unable to take this evidence into consideration.
8. Following the hearing we inspected the flat. We found it to be situated on the 6<sup>th</sup> floor of a purpose-built block, comprising two rooms, kitchen and bathroom/w.c. constructed in the early 1920's. The property is serviced by a passenger lift, the common parts are in good order and the block benefits from a concierge system. Heating and hot water are supplied via a communal system the cost of which is borne by the service charge.
9. The flat is in a very poor condition and appears to have deteriorated since the last tribunal inspection in May 2017. The fixtures and fittings in the bathroom and kitchen are to a poor unmodernised standard and are not of a standard that would be required in a modern letting. If this property were to be brought to the market today, it is clear that many tenants would not be willing to enter into a tenancy agreement without significant improvements being carried out.
10. The property has single glazing and appears to have the original heating system. White good have been supplied by the tenant, as have the floor and window coverings.
11. 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.

12. However, the subject property is clearly not in the condition that one would expect for a typical AST and would need considerable upgrading to achieve the market rents suggested by the landlord. The landlord has suggested that 20% deduction from the market rent those differences. We are satisfied that some deductions should be made, and those should include an element for the different terms of the tenancy. We also consider that, given the aged condition of the property a 20% deduction is insufficient, and we consider that 30% would be more appropriate given the very poor condition of the flat. We have also made a deduction of 5% from the market rent to reflect the more onerous decorating liabilities of the tenant under a fair rent such as this. We therefore calculate the adjusted market rent for this property as follows:

Market rent:	£24,000.00
Less 5% to reflect different terms of tenancy	<u>£ 1,200.00</u>
	£22,800.00
Less 30% to reflect condition of bathroom, Kitchen, lack of white goods, carpets, Curtains and old heating:	<u>£ 6,840.00</u>
	£15,960.00.
<u>Total adjusted market rent before scarcity:</u>	<u>£15,960.00</u>
<u>Scarcity: 20%</u>	<u>£ 3,192.00</u>
<u>Fair rent:</u>	£12,768.00.

13. Although the landlord submitted that there was no scarcity in London and that there were some 1,269 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.
14. 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.
15. 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.

16. 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.
17. 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 £3,376.00 per quarter (£13,504.00 per annum). A copy of the calculation is appended to the decision template.
18. 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 as per the calculation above at £3,192.00 per quarter (£12,768.00 per annum), the rent is inclusive of service charge of £511.44 per quarter. The service charge includes an element for heating and hot water amounting to £106.45 per quarter.

**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