



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

Case reference : KA/LON/00AG/F77/2019/0145

Property : Ground Floor Flat, 89 Iverson Road,
London NW6 2QY.

Applicant : Mrs. C. McNamee.

Represented by : Mrs. M. Byrne

Respondent : Dill Holdings.

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

Tribunal : Ms. A. Hamilton-Farey LLB, FRICS
Ms. J. Dalal

Date of Reasons : 19 October 2019.

REASONS FOR THE TRIBUNAL'S DECISION

The tribunal determines the fair rent for the premises at £306.00 per week, with effect from 11 October 2019. There are no service charges payable under the tenancy.

Background and Reasons

1. By an RR1 dated 10 May 2019, the landlord sought an increase in the fair rent for the subject property. The Fair Rent passing at the date of the application was £296.50 per week, although from the evidence supplied it appears that the landlord is charging £250.00 per week. The RR1 proposed a rent increase to £260.00 per week, and had been signed by the tenant's representative, Mrs. Byrne. It appeared on the face of it therefore that the parties had made a joint application for registration. Had this been the case, the rent officer would have registered the £260.00 as the new rent.

2. However, the rent officer confirmed to the tribunal that the tenant's representative had not signed the RR1 in agreement, but had done so, on the basis that they thought they had to. The rent officer took this to mean that the tenant had not agreed the rent, and therefore proceeded to register the rent on the basis that it was a landlord's application.
3. The rent was registered with effect from 26 July 2019 at £310.00 per week. The tenant raised an objection and the matter was referred to this tribunal. The tenant's objection was that the rent had increased by 24% and not the 4% proposed by the landlord.
4. The increase was in fact in the region of 4%, when taking into consideration the actual Fair Rent and not the rent actually being charged by the landlord.
5. Neither party requested a hearing and an inspection was undertaken on 11 October during which the tenant's representative Mrs. Byrne and the tenant's granddaughter were in attendance. They confirmed that no improvements had been carried out by the tenant during the tenancy, and none by the landlord since the last registration. Mrs. Byrne said that the windows to the front room were not openable and were in poor condition. The landlord responded to say that they wished to change the windows for double-glazed units, but this required planning permission because the flat was in a conservation area and this would take time. They said that they were not aware of the problem with the windows being unopenable and would address the problem.

The Inspection:

6. The tribunal inspected the property on 11 October 2019. We found it to be accessed via an entryphone on the ground floor of a mid-terrace house in a popular location, close to amenities. The flat comprises one bedroom, living room, dining room, kitchen, bathroom W.C. and private garden to the rear. The front double hung sliding sash windows were in a poor condition, however the other windows to the flat had been replaced with double-glazed units. The tenant had complied that the landlord had not decorated the flat during the tenancy, but the tribunal is aware that the landlord's repair and maintenance obligations do not extend to redecorating the flat, and this is the tenant's liability under the terms of the Fair Rent. The fixtures and fittings were dated and not to a modern standard, but the carpets and curtains although dated were in a good condition.

The determination:

7. Neither party produced evidence of comparable rentals on which they wished to rely.
8. Using its own general knowledge and experience of market rentals in the area, we consider that an open market rent for a flat of this size in this location would be £450.00 per week. However, the property is not in the condition that one would expect for an open market rental and

we must make deductions from that rent to reflect those differences. We must also take into consideration the fact that the supply and demand for property in the Greater London area is in imbalance and that a scarcity deduction should be made from the adjusted market rent.

Valuation:

9. The tribunal has started with that rental:

Open market rent:	£450.00
Less: 15% for different tenancy terms, Lack of modernisation, white goods:	<u>£ 67.50</u>
	£382.50
Less scarcity at 20%	<u>£ 76.50</u>
Adjusted market rent:	£306.00.

10. Having calculated the market rent, the tribunal is then required to calculate the maximum Fair Rent using the Maximum Fair Rent Order (“MFR”) to the existing rent. The calculation for this produced a fair rent of £332.00 per week. A copy of the calculation is appended to the decision template.
11. For clarity, the tribunal can only apply the MFR calculation to the existing Fair Rent (£296.50) and not the rent being charged by the landlord (£250.00). This is a similar calculation to that carried out by the Rent Officer but updated to reflect the change in RPI to the date of the tribunal’s decision. This does not mean that the landlord and tenant cannot agree to a lower rent payment, but that is not a matter for the tribunal, and is an arrangement between the parties.
12. The tenant is only obliged to pay the maximum figure of either the adjusted market rent, or the fair rent. In this instance the adjusted market rent is the lower of the two figures, and the tribunal therefore registered that lower figure of £306.00 per week, with effect from 11 October 2019.

Name: Ms. A. Hamilton-Farey **Date:** 11 October 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.