



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

<b>Case Reference</b>	:	LON/00AZ/F77/2019/0187
<b>Property</b>	:	185 Leahurst Road, Lewisham, London, SE13 5LW
<b>Landlord</b>	:	Bradford Property Trust Ltd
<b>Representative</b>	:	Grainger plc
<b>Tenant</b>	:	Mrs Roberts
<b>Type of Application</b>	:	Assessment of Fair Rent
<b>Tribunal Members</b>	:	Judge Robert Latham Mrs Alison Flynn MA MRICS
<b>Date and venue of Determination</b>	:	10 Alfred Place, London WC1E 7LR 6 December 2019
<b>Date of Reasoned Decision</b>	:	6 December 2019

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**EXTENDED REASONS**

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**Background**

1. On 11 August 2019, the landlord applied to the Rent Officer for re-registration of a fair rent of £244 pw for 185 Leahurst Road, Lewisham, London, SE13 5LW (“the property”) pursuant to Part IV of the Rent Act 1977 (“the Act”). The existing rent was £212.00 pw.
2. On 24 September 2019, the Rent Officer assessed a fair rent of £223 pw with effect from 12 November 2019. He first assessed the market rent to be £334.62 pw. He then made adjustments of £100 (30%), having regard to four factors:

tenants repair/decoration liability; no furniture; no white goods; no floor covering/curtains. He finally made a deduction of £12 pw (5%) for scarcity.

3. The landlord's agent, Granger plc, requested the Rent Officer to refer the matter to the First-tier Tribunal (Property Chamber) (the "Tribunal"). The landlord made written representations. Neither party requested an oral hearing.

### **The Inspection**

4. The Tribunal inspected the property. The tenant was present. She is aged 87. There was no representative from the landlord. The tenancy was granted on 10 September 1955.
5. The property is a two storey Late Victorian terraced house. It is brick construction under a pantile roof. There are splay bays to both storeys. On the ground floor, there is a through living room and a rear kitchen. On the first floor, there are two bedrooms and a utility room leading to the rear bathroom. The bathroom is extremely basic.
6. There is an external toilet. This was locked to prevent its use. The original window has not been replaced.
7. Some years ago, the landlord installed UPVC double glazed windows. The external cills were in an extremely poor condition at both the front and rear of the property. The two rear down pipes were in poor condition and appeared to be leaking. There is evidence of some recent re-pointing, but more work is required.
8. Internally, there was evidence of damp in all the rooms, save for the bathroom. There was extensive dampness in the kitchen. There was blown plaster in the middle bedroom.
9. In 2015, the landlord installed central heating and new kitchen units. These were reflected in the fair rent which was registered in 2015. At some stage, the property was partially rewired. However, some of the old wiring remains. There were exposed redundant pipes on the landing. The tenant has provided the fire in the front living room.

### **The Law**

10. When determining a fair rent in accordance with section 70 of the Act, the Tribunal:
  - (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.
11. 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 that:
- (a) ordinarily a fair rent is the market rent for the subject property discounted for 'scarcity' and
- (b) 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).
12. 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.
13. Having assessed a fair rent, a Tribunal must consider the effect of the Rent Act (Maximum Fair Rent) Order 1999. We annexe this as Appendix 2.
14. In reaching our determination, the Tribunal has taken into account the documents provided by the Rent Officer, the representations provided by the parties and our findings on viewing the property.

### Our Assessment of the Fair Rent

#### (i) The Market Rent

15. The Tribunal first determines the fair rent in accordance with section 70 of the Act. Our starting point is to determine the rent which the landlord could reasonably expect to obtain for the premises in the open market if it were let today in the condition that is considered usual for such an open market letting in this locality.
16. In their written representations, the landlord provided three comparables of £381, 386 and £390 pw. They suggest a range of £380 to £400 pw. The Rent Officer has provided particulars of the comparables upon which he relied in computing a market rent of £334.62. These range from £230.77 to £403.85 pw.
17. Applying our knowledge as an expert tribunal, we determine the market rent to be £380 pw. We consider the figure adopted by the Rent Officer to be too low and £400 pw to be at the top end of the range.

#### (ii) The Adjusted Rent

18. Secondly, this property is not let under the terms or in the condition considered usual for a modern letting at a market rent in this highly desirable area. Substantial adjustments must be made for this. The landlord suggests deductions of £130 pm (£30 pw). We consider these to be much too low.
19. We have decided to make a deduction of 30% (£114 pw) in respect of the following and determine an adjusted rent of £165 pw having regard to:
  - (i) Terms and conditions: 5%;
  - (ii) No modern bathroom: 7.5%;
  - (iii) No carpets or curtains and white goods: 5%;
  - (iv) Disrepair: 10%;
  - (v) State of Electrics: 2.5%.
20. We considered these factors separately and then considered whether the overall reduction is justified. We are satisfied that it is.

(iii) Scarcity

21. Finally, we must consider the issue of scarcity. The Rent Officer made a reduction of 10% in respect of this.
22. In *Yeoman's Row Management Ltd v London Rent Assessment Committee* [2002] All ER (D) 148 (Apr), Ousley J held that scarcity must be considered over a wider area than a particular locality. Greater London is now considered to be an appropriate area to use as a yardstick for measuring scarcity.
23. Applying our own general knowledge, and having regard to the collective knowledge of our expert members on Tribunals in London, we conclude that 20% is the appropriate reduction to make for scarcity in Greater London.
24. We therefore reduce the adjusted rent by £53 pw (20%). This results in our assessment of a fair rent of £213 per week.

The Capped Rent

25. It is then necessary for the Tribunal to compute the "capped rent" applying the Maximum Fair Rent Order. We annexe our calculation to our decision and computed a figure of £234.50 pw. As the capped rent is higher than the fair rent that we have determined, it is the fair rent that is payable.

Decision

26. The Tribunal determines a fair rent of £213 per week.

**Judge Robert Latham**  
**6 December 2019**

**Appendix 1: Calculation of fair rent**

1. Market rent in good condition with modern amenities	£380 pw
2. Less adjustments for the following (30%):	£114 pw
(i) Terms and conditions: 5%;	
(ii) No modern bathroom: 7.5%;	
(iii) No carpets or curtains and white goods: 5%;	
(iv) Disrepair: 10%;	
(v) State of Electrics: 2.5%;	
Adjusted Rent:	£266 pw
3. Less scarcity in locality (Greater London) (20%):	£53
Fair Rent:	<u>£213 pw</u>
 Rent limit provided for by the Rent Acts (Maximum Fair Rent) Order 1999	 £234.50pw
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Fair Rent Determined	£213 pw
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**Appendix 2**

**The Rent Acts (Maximum Fair Rent) Order 1999 (SI 1999 No.6)**

Article 2

(1) Where this article applies, the amount to be registered as the rent of the dwelling-house under Part IV shall not, subject to paragraph (5), exceed the maximum fair rent calculated in accordance with the formula set out in paragraph (2).

(2) The formula is:  $MFR = LR [1 + (x-y)/y + P$

where–

MFR is the maximum fair rent;

LR is the amount of the existing registered rent for the dwelling-house;

x is the index published in the month immediately preceding the month in which the determination of a fair rent is made under Part IV;

Y is the published index for the month in which the rent was last registered under Part IV before the date of the application for registration of a new rent; and

P is 0.075 for the first application for rent registration of the dwelling-house after this Order comes into force and 0.05 for every subsequent application.

(3) Where the maximum fair rent calculated in accordance with paragraph (2) is not an integral multiple of 50 pence the maximum fair rent shall be that amount rounded up to the nearest integral multiple of 50 pence.

(4) If  $(x-y)/y + P$  is less than zero the maximum fair rent shall be the existing registered rent.

(5) In applying this article no account shall be taken of any variable sum to be included in the registered rent in accordance with section 71(4) of the 1977 Act.

(6) Subject to paragraph (7), this article applies where an application for the registration of a new rent in respect of a dwelling-house is made after this Order comes into force and, on the date of that application, there is an existing registered rent under Part IV in respect of that dwelling-house.

(7) This article does not apply in respect of a dwelling-house if because of a change in the condition of the dwelling-house or the common parts as a result of repairs or improvements (including the replacement of any fixture or fitting) carried out by the landlord or a superior landlord, the rent that is determined in response to an application for registration of a new rent under Part IV exceeds by at least 15% the previous rent registered or confirmed.

(8) For the purposes of this article:

(a) references to Part IV are to be Part IV of the 1977 Act;

(b) “common parts in relation to a building, includes the structure and exterior of the building and common facilities provided for the occupiers of the dwelling-houses in the building;

(c) “index” means the monthly United Kingdom Index of Retail Prices (for all items) published by the Office for National Statistics.