



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

<b>Case Reference</b>	:	<b>LON/00AT/F77/2019/0123</b>
<b>Property</b>	:	<b>263a Chiswick High Road, London W4 4PU.</b>
<b>Type of Application</b>	:	<b>Decision following an objection to a registered rent, under the Rent Act 1977.</b>
<b>Date of Decision</b>	:	<b>29 November 2019</b>
<b>Tenant</b>	:	<b>Ms. L. Pemberton.</b>
<b>Landlord</b>	:	<b>W.X. Investments Ltd. Represented by Messrs Hamways.</b>
<b>Tribunal</b>	:	<b>Ms. A. Hamilton-Farey. Mr. L. Packer.</b>

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**Reasons for the decision**

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**Background**

1. By an RR1 dated 15 April 2019, the landlord made an application to register the rent of the property at £1,135.20 per calendar month, in place of the existing rent of £946.00 per calendar month.
2. On 24 May 2019 the Rent Officer registered the rent at £1,038.00 per calendar month, effective from 3 July 2019. A late referral was made to the tribunal and the admission of the tenant's objection to the registered rent was dealt with by the tribunal in a decision of 23 July 2019.
3. The matter came before this tribunal at a hearing on 29 November at which the tenant appeared and was represented by Ms. Ziya of Counsel. The landlord did not attend and was not represented. Both parties had produced evidence on which they wished to rely.
4. Ms. Ziya said that the primary case was the rent set by the rent officer was too high when the condition of the property was taken into consideration. It was alleged that the property suffered from external pollution of cooking smells, from the Subway food outlet immediately underneath the property. Ms. Ziya also said, and produced

photographs, of the accumulation of rubbish at the base of the metal access steps to the flat.

5. An environmental health officer had been contacted and had said that they would contact Subway regarding the pollution, but it appears that no environmental notices were served in relation to the premises.
6. Ms. Ziya also informed the tribunal that the policy had been called at least six times regarding either disputes at Subway, or noise nuisance.
7. The tribunal was also told that the property suffered from old wiring and the flat had not been inspected by the landlord for at least five years, and that due to a lack of electricity to the top floor, the room at that level was unusable.
8. Ms. Ziya considered that the market rent for the property would be in the region of £1,650.00 per month, as demonstrated by Rightmove evidence supplied to the tribunal.
9. The landlord's evidence was that the market rent for the property was in the region of £2,900.00 to £3,000.00 per calendar month. In their view, the registered rent set by the rent officer was less than that that could be achieved, when taking the statutory deductions from the market rent. They were satisfied that the amount registered was fair and reasonable in the circumstances.

### **The Inspection:**

10. The tribunal inspected the property after the hearing. We found the property to be located on the first and second floors above a Subway food outlet, situated on Chiswick High Road. The property is located within all of the usual amenities including transport and shopping facilities. The property is accessed from a metal staircase from the rear. The tenant says that originally there was a wooden staircase which rotted and was replaced at her expense. At the base of the staircase is the fire exit door from the Subway shop.
11. The property comprises three bedrooms, one of which is located in a dormer mansard roof, and does not have a working electrical supply. There is a small kitchen immediately accessed from the front door with a dining room and living room. Two bedrooms are provided. Windows throughout are a mixture of wooden double-hung sliding sash units and wooden casements, and although they were in a poor condition internally in the third bedroom, were in a reasonable condition to the remainder of the property.
12. The internal decorations of the property are the responsibility of the tenant and were in a reasonable condition. The wiring was surface mounted and some of the socket outlets had been installed by the tenant, who had also converted the access area into a kitchen. In addition to the external staircase there is an internal staircase accessed

from a door adjacent to the Subway shop, this is unused by the tenant due, she said, to the smells coming from Subway.

13. At the time of our inspection there was no significant smell from Subway, and although the tenant had produced photographs of rubbish accumulation at the base of the external metal staircase, there was none present during our inspection.
14. Overall, we consider the property to be in a reasonable condition, although externally would benefit from some redecoration, especially to the front elevation.

### **Valuation and Determination:**

15. The tribunal has been provided with several photocopies of agents' details from Rightmove. Those relied on by the tenant suggest a rent of £1,650.00 related to a two-bedroom flat in the area. The landlord produced a range of property details, from which we are persuaded by the evidence supplied of a two bedroom flat, virtually opposite the subject property offered at a rental of £2,700.00 per calendar month. We are not persuaded by the tenant's evidence, which we consider to represent a low rental and not in line with those that would be expected for a three-bedroom flat off Chiswick High Road.
16. We have therefore started our valuation at £2,700.00 for a two-bedroom flat and uplifted that rental by £300.00 to allow for the third loft room, which even though it does not have lighting, still provides good storage for the flat. This would be a habitable room if the landlord attended to the lighting circuit. We therefore consider the market rent for the subject property in its present condition to be £3,000.00 per calendar month.

### **The law**

17. When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, must have regard to all the circumstances including the age, location and state of repair of the property. It must also disregard the effect of (a) any relevant tenant's improvements and (b) the effect of any disrepair or other defect attributable to the tenant or any predecessor in title under the regulated tenancy, on the rental value of the property.
18. Case law informs the Tribunal;
  - a. That ordinarily a fair rent is the market rent for the property discounted for 'scarcity' (i.e. that element, if any, of the market rent, that is attributable to there being a significant shortage of similar properties in the wider locality available for letting on similar terms - other than as to rent - to that of the regulated tenancy) 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).

## **Valuation**

19. Thus, in the first instance the Tribunal as noted above the tribunal determined the market rent for the subject property at £3000.00 per month.
20. However, the rent referred to above is based on a modern open market letting, where the tenant has no liability to carry out repairs or decorations, has a modern kitchen and bathroom and the landlord supplies white goods, carpets and curtains. In this case the Tenant supplies white goods, carpets and curtains and although the bathroom and kitchen fittings are in good order, they would not be to the standard of a modern letting and would require modernisation. We must also take into consideration the fact that the tenant has carried out improvements, in the kitchen and dining room, and electrical installation.
21. In making its own adjustments to reflect the lower bid a prospective tenant would make to reflect the differences between the property in a modern lettable state and that as provided by the landlord, together with an adjustment for the additional repair and maintenance obligations of the tenant we make a global deduction of 40% arriving at a rent of £1,800.00 per calendar month..
22. We then considered the question of scarcity as referred to in paragraph 12a above and determined that taking into the very wide area required by case law for scarcity, and taking into consideration the whole of the Greater London area, we determine that there remains an imbalance in the supply and demand for property, and make a deduction of 20% to reflect that imbalance.
23. We therefore determined that the **uncapped Fair Rent is £1,440.00 per month.**
24. The tribunal is then required to carry out the calculation in accordance with the Maximum Fair Rent Order details of which are shown on the rear of the Decision Notice. We calculate the maximum fair rent at £1,058.50 per month.
25. As this figure is below the uncapped fair rent, we find the Maximum Fair Rent Order has the effect of limiting the rent to the lower figure and **we determine that the sum of £1,058.50 per month.**

**26. The new registered rent takes effect from 29 November 2019.**

Tribunal:  
Aileen Hamilton-Farey LLB, FRICS.  
Mr. L. Packer.

15 January 2020.

## **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
2. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
3. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.