



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

Case Reference : **LON/00BK/F77/2019/01178**

Property : **Basement Flat, 75 Sutherland Avenue, London W9 2HG.**

Type of Application : **Decision following an objection to a registered rent, under the Rent Act 1977.**

Date of Decision : **29 November 2019.**

Tenant : **Mr. M. S. Syed.**
Landlord : **Ms. A. Harvey.**

Reasons for the decision

Background

1. By an RR1 dated 23 July 2019, the landlord made an application to register the rent for the property at £850.00 per month instead of the rent previously registered of £770.00 per month.
2. On 4 September 2019 the Rent Officer registered the rent at £770.00 per calendar month, effective from 19 September 2019.
3. On 12 September 2019 the landlord objected, and the matter was referred to the First Tier Tribunal, Property Chamber.
4. On 1 October 2019 the Tribunal sent standard Directions to both parties requiring them to send copies of any comparable rents on which they wished to rely to support their relative positions.
5. Written representations were received from both parties, and the landlord requested an oral hearing. The hearing took place on 29 November 2019.
6. Ms. Harvey told the tribunal that her objection to the new rental was that there had not been an increase since the previous registration. That rents in the area had increased and there was no scarcity in her experience. She said that when she had a vacancy in the building it had

taken a month to re-let with 10 – 15 viewings. She said there was plenty of choice for tenants in the area.

7. In Ms. Harvey's opinion, the market rent for the property in its current state was £1,500.00, but if refurbished it would command a rent of between £1,650.00 and £1,700.00. She said that the flat benefitted from a private garden and that outside space was at a premium.
8. For comparable evidence she cited the third floor flat, that she had let less than a year previously at £1,650.00 on a 12-month AST. The flat had two bedrooms but no balcony space and was slightly smaller than the subject.
9. The tenants had complained of rising dampness in the hallway, but Ms. Harvey said that her builders had confirmed this to be the result of condensation. She said that she had told the tenant to contact her if there were further problems but had heard nothing. She also said that she had not been informed of the problem with the window cited by the tenant in his evidence. She disagreed with the tenant's view of the surrounding area but accepted that there were areas throughout the area where drugs were taken/dealt.
10. Finally, Ms. Harvey said that she had spent approximately £36,000 on the building in the last tax year and that £6,000.00 had been spent dealing with rising damp in the basement.
11. Mr. Syed sent in written representations in which he said that the flat was located in a notoriously violent area with gangland violence in the immediate vicinity. He said that the police had installed CCTV on the rear fence to capture drug dealing and other crimes.
12. He said that he had lived in the property since 1968 and that he had carried out the internal maintenance himself without reference to the landlord. He said that when the tenancy started, the property was an empty shell and he had installed the bathroom and kitchen, as well as carpets and white goods. He disputed the fact that the landlord said she had spent over £30,000 on the building and said that upgrading of the windows to all other flats had been undertaken, but not to theirs. He referred to the fact that the landlord had inherited the property, but for the purposes of our registration this is not a relevant consideration.
13. Finally, Mr. Syed said that the hallway was still damp, and the landlord was reluctant to fulfil her maintenance responsibilities.

The Inspection:

14. The tribunal inspected the flat on the same day as the hearing. We found the flat to be a one bedroom flat situated in the basement of a substantial terraced, stuccoed house on five floors. The external redecoration of the building was good.

15. The flat is accessed via an external staircase to a front door. There were signs of condensation in the under stairs cupboard and what appeared to be bubbling paintwork in the hallway.
16. The property is let without furnishings and all furniture, carpets and curtains are owned by the tenant. The flat benefits from central heating. There is a broken sash cord to the right-hand side of the rear bedroom window and grills to some windows, which were installed by the tenant.
17. The bathroom contains a shower and wash hand basin with tiled walls. The tenant removed the bath with the previous landlord's permission and replaced it with the shower and re-tiled the walls, approximately 20 years ago.
18. The kitchen is fairly basic and was installed by the tenant and leads to a lean-to constructed by the tenant with the previous landlord's approval.
19. The tribunal noted a leaking pipe at the rear of the building, and the tenant confirmed that the CCTV cameras had been removed by the police approximately 5 years previously.
20. Having completed our inspection, we walked to the area at the back of the building, where there is a children's playground enclosed by metal fencing. There is also a school at the rear of the road.

The law

21. 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.
22. 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

23. Thus, in the first instance the Tribunal must determine the market rent for the property. The landlord relied on the letting of a flat in the building at £1,650.00, whilst the tenant produced details of rentals in W9 ranging from £1,248 to £1,675.00 per month. On balance the tribunal prefers the evidence of a letting in the same building and we therefore start with a rental of £1,650.00.
24. However, the property is not in the condition that one would expect for a letting at that level, and the tribunal must take into consideration the significant tenant's improvements, as well as the fact that the tenant has supplied the white goods, carpets and curtains, which would be included in a modern letting.
25. We therefore assess the market rent for the property in its current condition, disregarding the tenant's improvements and the additional repair and maintenance obligations of a secure tenant as opposed to a tenant under an AST as follows: -

Open market Rent:	£1,650.00	
Less 5% for different terms:	£ 82.50	£1,567.50
Less 30% for lack of modernisation, Carpets, curtains and white goods, Plus, tenant's improvements:	£ 470.25	£1,097.25.

The tribunal does not agree that there is no scarcity in the Greater London area and we assess a deduction of 20% should be made to reflect the Scarcity deduction:

	£ 219.45	£ 887.80
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The tribunal therefore assesses the adjusted market rent (the uncapped rent) for the property at £887.80 per calendar month.

26. 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 £853.00 per calendar month.
27. 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 the maximum fair rent at £853.00 per calendar month, with effect from 29 November 2019.**

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

24 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.