



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

Case Reference : **FL/LON/00AW/F77/2019/0213**

Property : **Flat 1, 137A Kensington High St,
London W8 6SU**

Applicant : **Miss M Gregory**

Representative : **In person**

Respondent : **LGPS Nominee (Nightingale
House) and LGPS Nominee
(Canterbury) Ltd**

Representative : **Allsop Letting and Management Ltd**

Type of Application : **Determination of a fair rent under
section 70 of the Rent Act 1977**

Tribunal Members : **Mr Charles Norman FRICS (Valuer
Chairman)
Mr Alan Ring**

Date of Decision : **21 February 2020**

Date of Reasons : **15 April 2020**

REASONS

Background

1. On 6 September 2019 the landlord applied to the Rent Officer for registration of a fair rent of £9,047.95 per annum for the above property.
2. The rent payable at the time of the application was £145 per week (£7540 per annum).
3. On 30 October 2019 the rent officer held a consultation with the tenant at the premises. The landlord was not represented. A copy of the consultation notes was provided to the tribunal. Neither party provided a copy of any tenancy agreement.
4. On 31 October 2019 the Rent Officer registered a fair rent of £161 per week with effect from 28 November 2019.
5. By a letter received by the rent officer on 19 October 2019, the tenant objected to the rent determined by the Rent Officer and the matter was referred to the Tribunal.
6. On 4 December 2019, the Tribunal issued directions setting the matter down for determination by written representations unless either party requested a hearing which both parties did. The tenant was directed to serve any documents or evidence upon which she sought to rely by 10 January 2020 and the landlord likewise by 31 January 2020. The tenant was permitted to make a Reply by 7 February 2020. The Directions stated that the Tribunal would inspect the property after 10am on 21 February 2020. Both parties made written submissions.
7. The Tribunal made its determination on 21 February 2020 and both parties are subsequently requested Reasons.

The Hearing and Evidence

8. At the hearing the tenant appeared in person and the landlord was represented by Ms Tayla Bonwick and Ms Isabel Vieira of Allsop Letting and Management Ltd. At the hearing, it emerged from the tenant that on 25 November 2019 the London Fire Brigade had served an enforcement notice in relation to the property. This was not included with the tenant's submission but by agreement with the landlord's representatives this was admitted into evidence, as the landlord was fully aware of the report and therefore suffered no prejudice.

The tenant's case

9. The tenant's case may be summarised as follows. The kitchen did not meet minimum standards for rental property in law. There is no space for a washing machine refrigerator and freezer nor kitchen cupboards adequate for food storage. The kitchen is space below wooden communal staircase. The Chief

Fire Officer for the area and an environmental health officer had visited the premises and expressed concern in relation to the kitchen. The enforcement notice alleged that aspects of the Regulatory Reform (Fire safety) Order 2005 were being contravened. In essence the enforcement notice stated that the means of escape had not been suitably controlled or monitored, as a non-fire rated structure had been erected in the common parts staircase on the first floor and that this structure had caused a usable width in the escape stair to be reduced to 40 cm. The date for compliance was 17 February 2020, which had passed. This structure and the consequential reduction in width was a reference to the kitchen area in the flat. In addition, the tenant complained that as a result of refurbishment works being carried out in the flat above, there was much disturbance with construction work commencing at 5:30 AM. The tenant contended that the rent should be reduced.

The landlord's case

10. Miss Bonwick accepted that the landlord was refurbishing the flat above and that the Council had become involved. The issue with the kitchen was that it was situated within the communal hallway outside of flat one and the hallway was not big enough to accommodate this structure. Consequently, the kitchen would need to be moved. In relation to the enforcement notice, the landlord had applied for the completion date to be extended. In terms of comparables, Ms Bonwick referred to two properties managed by Allsop, flats 1 and 2, 135A Kensington High Street. These had been let respectively at £15,084 and £17,424 per annum on assured short hold tenancies. Miss Bonwick also referred to three comparables derived from Rightmove searches. Ms Bonwick contended that the starting point rent should be £16,484 per annum. From this, allowances of 10% should be made each in respect of carpets/white goods, bathroom and heating. There should be no allowance for scarcity because current demand for rented property in the area did not outstrip supply. Accordingly, her calculations gave rise to a fair rent of £11,538.80 p per annum. As this exceeded the maximum fair rent allowed as a result of the Rent Acts (Maximum Fair Rent) Order 1999, Ms Bonwick contended for a capped rent of £8,332.50 per annum (£160.50 per week).

Inspection

11. The Tribunal inspected the property on 21 February 2020, shortly after the hearing, in the presence of the tenant and her daughter. The landlord was not represented. The property comprises a small first floor studio flat over a shop. Access to the flat is via an internal staircase from a pedestrian pathway to the rear of the shops. The accommodation comprises a small triangular shaped kitchen, a bed sitting room and bathroom. The kitchen contains a gas hob, two small worktops, a sink and single glazed window. There is also a wall mounted hot water boiler. The bed sitting room gives access to a balcony and has a timber framed window and night storage heater. A timber mezzanine used as a sleeping area has been installed by the tenant. The bathroom is very basic and includes an old bath, wash hand basin and WC. There is a window. The flat includes an entry phone system

The Law

12. When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, had regard to all the circumstances (other than personal circumstances) including the age, location and state of repair of the property.
13. In *Spath Holme Ltd v Chairman of the Greater Manchester etc. Tribunal* (1995) 28 HLR 107 and *Curtis v London Rent Assessment Tribunal* [1999] QB 92 the Court of Appeal emphasised 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 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

14. The Tribunal considered that the best comparables were the lettings at 135 Kensington High St, which were immediately adjacent to the subject building. Having regard to those lettings the tribunal agreed with the Rent Officer that the starting point rent was £300 per week. The Tribunal determined that it was required to value the property as it found it and not speculate as to how the issue of the kitchen might be resolved in the future. This was consistent with the law as, should there be a material change in the circumstances of the property within the current registration period, the parties will be entitled to seek a re-registration from the Rent Officer, by virtue of section 67(3) of the Rent Act 1977, which matter lies in the discretion of the Rent Officer. Based on its inspection and all the evidence the Tribunal considered that the following downward adjustments were required to the starting point rent: condition of bathroom, 7.5%; condition of kitchen 7.5%; lack of central heating 10%; the tenant's curtains and white goods 5% and the presence of building works in the block, 5%. These adjustments therefore aggregated to 35% or £5,460 per annum (£105 per week). This therefore left an adjusted rent of £10,140 per annum (£195 per week).
15. The Tribunal did not accept the landlord's case that there was no scarcity as the tribunal was required to consider this over a wide area. In this respect it took judicial notice of the extensive waiting lists for local authority accommodation in the locality of Greater London. The Tribunal therefore made a deduction of 20% (£2,028 per annum, (£39 per week)) from the adjusted market rent to reflect this element.
16. It follows that the Tribunal found that the fair rent was £8,112 per annum (£156 per week). The Tribunal considered the evidence of services provided by the landlord but considered that the proportion of the rent attributable to services was negligible.

17. This amount was not limited by the Rent Acts (Maximum Fair Rent) Order 1999, which prescribed a higher maximum fair rent, the calculations for which were supplied with the Notice of the Tribunal's Decision.
18. Accordingly, the sum of £156 per week was determined as the fair rent with effect from 21 February 2020 being the date of the Tribunal's decision.

Mr Charles Norman FRICS
15 April 2020

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.