



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

Case Reference : **LON/00AC/F77/2020/0023**

HMCTS code : **P: PAPERREMOTE**

Property : **10A Albert Court, Kensington Gore,
London, SW7 2BL**

Landlord : **Northumberland and Durham Property
Trust Limited**

Representative : **In House**

Tenant : **Mr N J Savage**

Representative : **In Person**

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

Tribunal Members : **Mr Anthony Harris LLM FRICS FCIArb**

Date of Decision : **13 November 2020**

Date of Reasons : **9 December 2020**

REASONS

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers. The form of remote hearing was P:PAPERREMOTE. The Directions dated 1 September 2020 set out that the tribunal was not able to hold face to face hearings or carry out internal inspections. The documents that the tribunal was referred to are in a bundle of 99 pages, the contents of which have been noted. The decision made is described at the end of these reasons.

Background

1. On 25 September 2019, the Landlord applied for registration of a fair rent of £2011.87 per month.
2. The Rent Officer registered a rent of £5050.00 per quarter. The noted amount for services (not variable) is £237.30 per quarter with £63.30 recorded as the amount for fuel charges. The rent was registered on 20 November 2019 and is effective from 18 December 2019.
3. Accommodation is ground floor 3 rooms, kitchen, and bathroom/WC. There is no central heating.
4. The previous registered rent was £4632.00 per quarter registered on 10 November 2017 and effective from 18 December 2018. The uncapped rent was £5,800.00 per quarter
5. The Tenant objected to the registered rent by letter dated 17 December 2019 and the matter was referred to the tribunal.
6. On 1 September 2020, the tribunal issued Directions for proceeding by written representations. Both parties made written representations.

Evidence

The Landlord's Case

7. Written representations from the Landlord describe the location of the is close to public transport and other amenities.
8. The Landlord describes the flat as being a self-contained purpose built flat without central heating on the ground floor consisting of three rooms one kitchen one bathroom/WC. The Landlord speaks to a rent of £6035.61 per month although the rent is registered on a quarterly basis. This is presumably an error.
9. Three comparable properties are referred to with particulars attached taken from Rightmove. Firstly, a flat in Queens Gate South Kensington London SW7 to let at £2166 per month on a long-term fully furnished basis and consisting of two double bedrooms, one reception room, one bathroom and one kitchen. It is

described as having an airy reception room, fully equipped kitchen with all modern appliances included.

10. Another flat in Queens Gate is described as having two bedrooms one reception room two bathrooms and a modern kitchen and is to let at £2708 per calendar month on a long-term basis.
11. A third flat in Queens Gate is described as having two bedrooms one reception room two bathrooms and a lift and is let at £3250 per month. The details recorded as being refurbished to an exceptionally high specification. The flat has high ceilings wooden flooring throughout and benefits from 20 of natural light with a fully fitted modern kitchen with new appliances. A balcony runs the full length of the master bedroom and living room.
12. Taking these comparables into account the landlord submits that a fair rent for the property would be £6035.61 per month although this figure is not explained.

The Tenant's case

13. In a letter dated 12 August 2019 the tenant takes issue with the description of the premises included in the application for a registration which records the property as having two bedrooms at 1323 ft.² whereas it has one bedroom and a box room and is 1155 ft.² the next second bedroom is a box room of 54 ft.²
14. The Tenant submitted a comparison of registered rents for 10 a Albert Court, 10 b Albert Court and 14 b Albert Court at intervals from 1999 to the current registration. The comparison was made based on floor areas taken from energy performance certificates.
15. The three flats in Albert Court which have previously had registered rents will comprise two identical large rooms plus different ancillary spaces. 14b is the largest flat, 10b the next largest and 10a the smallest. All three face the same light well, 10a at ground level, 10b at first floor level and 14b at third floor level. 10a has no direct daylight while the higher flats have natural illumination. Flat 10b is no longer subject to a registered tenancy. Historically, 14b and 10 b have been at similar levels so 10a must be out of line.
16. Flat 14b was registered on 4 October 2019 at a rent of £4100.00 per quarter with services of £618.46 per quarter and £54.87 for fuel charges.
17. Albert Court was constructed in the 19th century poor insulation and isolation from noise, leaks and dust.
18. Flat 10a is a registered rent which is not aligned with the other flats and does not reflect the fact it is the smallest unit with the poorest daylight. It is requested 10a is brought into line with the other flats.
19. The Tenant has highlighted difficulties with the Landlord over the commissioning and payment for an Electrical Installation Condition Report.

20. The Tenant criticises the landlords comparables as all being furnished, to a high standard of finish and not being valid comparables.
21. In his submissions, the Tenant suggests that the service charge figure for his flat is wrong as it includes charges for a lift and being on the ground floor, his flat does not benefit from it. Companies House shows the Management Company is dormant. The accounts for the company only include a balance sheet.
22. The Tenant includes a calculation comparing the landlord's assessment of the monthly charge of £236.27 with his own assessment of £67.25 based on applicable services of electricity and lift, boiler, door entry and security, health and safety and repairs.
23. While requesting that the rent for the subject flat is brought in line with the others, no specific figure is put forward.

Inspection

24. In accordance with the directions the tribunal did not inspect the property. The tribunal took into account the photographs of condition of the property.

The Law

25. When determining a fair rent, the Tribunal, in accordance with section 70 of the Rent Act 1977, has regard to all the circumstances (other than personal circumstances) including the age, location and state of repair of the property.
26. 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 emphasized 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.
27. The rent has been previously registered, and the Rent Acts (Maximum Fair Rent) Order 1999 therefore applies unless there are significant improvements made by the Landlord which increase the rent which would be registered by more than 15%.

Discussion and Valuation

28. The Landlords evidence is not of great assistance to the tribunal. Simply listing three properties without any explanation as to how these justified the rent

applied for in excess of the capped rent does not greatly assist in the assessment of the section 70 rent.

29. Registered rents are of limited benefit as they can depend on their individual circumstances and whether or not capping applies.
30. Given the limited comparable information supplied by the parties, the tribunal also relied on its knowledge and experience.
31. The tribunal firstly has to consider the rent in accordance with section 70 of the Rent Act as a market rent less scarcity. The tribunal has considered all of the rental evidence and applied its knowledge and experience and considers that the subject flat in this location and in the condition which the market would expect would be £8125.00 per quarter. The tribunal has adjusted for the condition of the property, no central heating, lack of white goods and for the different terms of the tenancy as compared with a standard assured shorthold tenancy and makes a deduction of 35% for these factors.
32. The Tribunal found that there was substantial scarcity of letting property in the locality of Greater London and using its knowledge and experience made a deduction of 20% from the adjusted market rent. The calculation of the s70 rent is set out below.

		per quarter
Market rent		£ 8,125.00
less condition	35%	<u>-£ 2,843.75</u>
adjusted rent		£ 5,281.25
less scarcity off adj rent	20%	<u>-£ 1,056.25</u>
Fair rent		£ 4,225.00

33. The tribunal then considered the service charge element. The figures are taken from the service charge schedule supplied although the tribunal did not agree the calculation. The tribunal calculation is set out below:

services		
electricity /lift	£ 30,661.00	
boiler	£ 14,094.00	
door security	£ 11,031.00	
health & safety	£ 54,256.00	
repairs	£ 36,697.00	
	£146,739.00	
share	0.55%	
	£ 807.06	pa
	£ 201.77	pq

The amount for fuel is £63.60

Capped rent

34. In accordance with the Rent Acts (Maximum Fair Rent) Order 1999 the maximum rent is the previous registered rent increased in accordance with the Order which provides for the previous rent to be increased by the percentage increase in the retail prices index plus 5% if the application is a second or later application since 1 February 1999.
35. The retail prices index figure to be used is the figure published in the month before the decision. The decision was made in November, and the figure published in October is that for September which was 294.3. and which is the upper figure to be used. The index at the date of the last registration was 275.8. Applying the formula produces a maximum fair rent of £5174.50 per quarter which is above the s70 rent of £4225.00 per quarter.
36. The rent to be registered is the lower of the two figures and is the section 70 rent of £4225.00 per quarter. The noted amount for services is £201.77 per quarter and fuel charges £63.60
37. The effective date is the date of the decision.

**Anthony Harris LLM FRICS FCIArb
Valuer Chair**

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.