



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

**Case Reference** : **LON/00AC/F77/2020/0008**

**HMCTS code** : **P: PAPERREMOTE**

**Property** : **127A The Broadway, London, NW7 3TG**

**Landlord** : **Joseph Muscat**

**Representative** : **In House**

**Tenant** : **Mrs Ann Hewetson**

**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 FCI Arb**

**Date of Decision** : **13 November 2020**

**Date of Reasons** : **1 December 2020**

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**REASONS**

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## **Covid-19 pandemic: description of hearing**

This has been a remote hearing on the papers which has been consented to by the Tenant although the Landlord would have preferred an inspection. The form of remote hearing was P:PAPERREMOTE. The Directions dated 15 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 3 October 2019, the Landlord applied for registration of a fair rent of £1,800.00 per month.
2. The Rent Officer dealt with the case by holding a consultation at the premises. The Landlord was represented by the Managing Agent and the Landlord's son. The Rent Officer registered a rent of £5,460.00 per quarter (£1,820 per month). The rent was registered on 18 November 2019 and is effective from the same date. The certificate recorded substantial repair/improvement made by the Landlord.
3. Accommodation is five rooms, kitchen, bathroom and WC. The flat is described as a self-contained flat built between 1919 and 1944 and over commercial premises. These are now a Domino's Pizza shop but previously were a banking hall.
4. The previous registered rent was £2,260.50 per quarter (£753.50 per month) registered on and effective from 19 March 2014.
5. The Tenant objected to the registered rent by letter dated 22 November 2019 and the matter was referred to the Tribunal.
6. The Tribunal issued a Postponement Decision on 19 March 2020 deferring all decisions until after 29 May 2020 with further Directions to follow. On 15 September 2020 the tribunal issued Directions for proceeding on the basis of written representations. Both parties made written representations.

### **Evidence**

#### The Landlord's Case

7. Written representations from the Landlord set out the Landlord's concern that an internal inspection of the property may not lead to a fair Determination. The reason for this is that over £40,000 has been spent on improvements and these need to be seen to be fully taken into account. In addition to the improvements

the Landlord's taken on an increased degree of responsibility as set out in the agreement in the bundle.

8. The Landlord's interest is leasehold and service charges are payable to the freeholder of the building and excluding insurance this amounts to £500.08 for the year.
9. The tenancy also includes a private off-road parking space which is within the Landlords lease and is included in the tenancy, but the Rent Officer does not appear to have taken this into account. In response to the Tenant's representations which stated there is no off street parking as it is not in the tenancy agreement, the Tenant is subject to a regulated tenancy on terms to be found in legislation. The Landlord does not know of any tenancy agreement which excludes the parking demised under his leasehold title. He attaches an email the managing agent received from the Tenant stating she has used the car park since 1983. Maintenance of the car park forms part of the service charge paid by the Landlord.
10. Under the terms of an agreement dated 25 October 2018 the Landlord agreed to carry out various improvements to the property and to assume responsibility for provision and maintenance of white goods, floor coverings and internal decorations. Internal decorations to be carried out every seven years. The list of improvements is included in the case papers and includes refitting the kitchen and bathroom, rewiring, redecoration, alterations to the heating system and re-carpeting.
11. Rental evidence is provided in the form of a letter from Ellis and Co dated 20 September 2019 stating that if instructions were given to let the property now it would achieve a rent between £1600 and £1800 per month on an furnished or part furnished basis.
12. A further letter is from Absolute Property dated 20 September 2019 suggesting the rent would be in the region of £1700-£1800 per month for the property.

#### The Tenant's case

13. The Tenant objected to the registered rent on 22 November 2019. She stated she did not consider that the massive increase registered by the Rent Officer was a fair rent and while improvements and repairs have been carried out the increase is almost treble the existing rent which she cannot afford.
14. Looking at similar properties along the Broadway and regulated tenancies in and around the local area and even referring to letters from the agents referred to above suggesting a market rent of £1600-£1800 per month on a furnished/part furnished basis when her flat is unfurnished she was expecting an increase of perhaps 50% over the current rent of £753 per month.

15. As a regulated tenant since March 1983 the Tenant understood that a fair rent is usually lower than market rents private tenants pay. In comparison to previous rent increases which have been in the region of £50-£60 per month she expected an increase would be more than that due to the improvements but an increase of £1047 per month is not what she expected and is 8 times the amount the Landlord said he would seek when the agreement to carry out the improvements was made. The email dated 4 October states that the Landlord will ask for an increase of £125 per month but the rent will be what it is. If less is awarded that is fine.
16. Errors in the rent officer's inspection report are that the first floor living room and first floor bedrooms at the front of the property do not have timber framed casement windows as these are existing lead windows on stone which are single glazed. This also applies to the first floor living room at the side and all other windows were UPVC fitted approximately 15 to 20 years ago by the previous Landlord.
17. The combination boiler fitted by the previous Landlord was installed in 2014.
18. Rental comparisons used are not in NW7 and are in upmarket areas in North London such as N8, N10 and N13 and not even within the London Borough of Barnet.
19. The flat is unfurnished with fixtures such as curtain rails and blinds, wardrobes and furniture all belonging to the Tenant.
20. In terms of rental evidence, the Tenant submitted a letter from a local agent with examples of properties in the near vicinity many of which are newbuilds or refurbishments. Additionally, some rents from the rent register are included.
21. Firstly a letter from Cosway dated 18 February 2020 which suggests a rental price of £1400 per month for the property.
22. Two Sycamore Court Great North Way Hendon is a two-bedroom apartment for rent. Undated particulars show a two-bedroom two-bedroom flat with a modern fitted kitchen at a rent of £1450 per month.
23. The Broadway Mill Hill, undated particulars from Cosway are for a two-bedroom flat for rent which is a new flat with two double bedrooms at a rent of £1295 per month. The flat would be available from mid March 2020.
24. Marion Road Mill Hill is a two-bedroom ground floor maisonette to let at a rent of £1400 per month. The date is not shown.
25. Grenville Place Mill Hill is a newly refurbished two double bedroom terrace house at a rent of £1600 per month. As a house this is not comparable.
26. Riverdene, Edgware is a three-bedroom semi-detached house and again is not comparable.

27. Mount Grove Edgware is a two-bedroom flat for rent at £323 per week (£1399.67 per month) and available from mid April 2020.
28. Registered rents are for flat 2 Chadbury Court, Watford Way Mill Hill which is described as a self-contained flat consisting of three rooms, kitchen, bathroom/WC and registered at a rent of £412.50 per month from October 2018. The rent was capped.
29. 6 Hawkins Close, NW7 is a capped rent of a terraced house and not comparable.
30. 4 Gilda Court, Watford Way is a purpose-built flat consisting of three rooms, kitchen and bathroom/WC. Rent was registered at £7863.50 per year. The rent is capped.

### **Inspection**

31. In accordance with the directions the tribunal did not inspect the property. The stated refurbishment was considered along with the rent officer's inspection notes.

### **The Law**

32. 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.
33. 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.
34. 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**

35. The rent certificate records the rent as being quarterly. Both parties have requested this be changed to monthly to accord with the pattern of payments. This decision will be made on the basis of monthly rents.
36. The rental evidence supplied by both parties is mixed and generally of smaller properties. The evidence from the letting agents who have inspected the property come to very different conclusions with Cosway suggesting a rent of £1400 per month on unfurnished basis whereas Ellis and Co suggest a rent of £1600 per month to £1800 per month on a furnished/part furnished basis.
37. The evidence of registered rent supplied by the Tenants is of no assistance as these are all capped rents.
38. 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 to interpreting that evidence and accepts that a newly refurbished flat of this size in Mill Hill would attract a rent of £1800 per month on normal assured shorthold tenancy terms on a furnished/part furnished basis.
39. Relying on its knowledge and experience in the absence of any evidence from the parties the tribunal considers the appropriate deduction for the lack of furniture and curtains is 10%.
40. 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.

		monthly
Market rent		£ 1,820.00
less condition	10%	-£ 182.00
adjusted rent		£ 1,638.00
less scarcity off adj rent	20%	-£ 327.60
Fair rent		£ 1,310.40

Rounded to £1310.50

### **Capped rent**

41. 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.

42. 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. and which is the upper figure to be used. The index at the date of the last registration was 254.8. Applying the formula produces a maximum fair rent of £896.50 per month which is above the s70 rent of £2,723.50 per quarter (£907.3 per month).
43. Next it is necessary to consider whether the rent cap applies due to the effect of the Landlord's improvements. If the improvements increase the rent by more than 15% then the cap does not apply. In its unimproved state the tribunal considers the market rent would be £1250 per month. Deductions for the condition of the property and terms of the tenancy would amount to 30% and scarcity would then apply. The calculation is set below

	<b>without works</b>		<b>with works</b>	
Market rent		£1,250.00		£1,820.00
Total adjustments	30%	<u>£375.00</u>	10.00%	<u>£182.00</u>
adjusted market rent		£875.00		£1,638.00
less scarcity	20%	<u>£175.00</u>	20%	<u>£327.60</u>
Fair rent		£700.00		£1,310.40
Difference		£610.40		
15% previous registered rent		15%	£339.00	
Is the difference less than 15%				
If yes capping applies		capping does not apply		

44. Therefore, the s70 rent of £1310.50 per month is to be registered.

45. The effective date is the date of the decision.

**Anthony Harris LLM FRICS FCI Arb**

**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.