



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

Case reference : **LON/00BK/F77/2020/0016**

**HMCTS code
(paper, video,
audio)** : **P: Paper Remote**

Property : **31 Trevor Square, London , SW7 1DY.**

Applicant : **Grainger Residential Management
Limited.**

Representative : **Grainger PLC**

Respondent : **Mrs. M. Gorman**

Representative : **In person.**

Type of application : **Application for the determination of a
Rent under the Rent Act 1977.**

Tribunal members : **Ms. A. Hamilton-Farey**

Venue : **Remote.**

Date of Reasons : **4 January 2021.**

DECISION

Decision

£10,162.50 is to be registered as the fair rent for the above property with effect from 12 November 2020 being the date of the Tribunal's decision.

The reasons for this decision are set out below.

Reasons

Background

On 25th September 2019, the landlords Grainger Residential Limited applied to the Valuation Office Agency (Rent Officer) for registration of a fair rent of £10,580.00 per quarter for the property.

The rent payable at the time of the application was £9,208.00 per quarter, effective from 5 December 2017.

On 20 November 2019, the Rent Officer registered a fair rent of £9,400.00 per quarter, effective from 5 December 2019. The Rent Officer made no comments as to the uncapped rent, but it appears from the rent register that the rent had been capped in line with the Maximum Fair Rent Order (“MFR”).

By letter dated 18 December 2019, the landlord objected to the rent determined by the Rent Officer and the matter was referred to this Tribunal.

The law

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 also must disregard the effect of (a) any relevant tenant's improvements and (b) the effect of any disrepair or other defect attributable to the tenant, on the rental value of the property.

Section 70(2) of the Rent Act 1977 imposes on the Tribunal an assumption that the number of persons seeking to become tenants of similar dwelling house in the locality on the terms (other than those relating to rent) of the regulated tenancy is not substantially greater than the number of such dwelling houses in the locality which are available for letting on such terms. This is commonly called ‘scarcity’.

In *Spath Holme Ltd v Chairman of the Greater Manchester Council (1995) 28 HLR 107* and *Curtis v London Rent Assessment Tribunal [1999] QB 92* the Court of Appeal emphasised

- (1) 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
- (2) 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).

The Rent Acts (Maximum Fair Rent) Order 1999 places a “cap” on the permissible amount of the increase of a fair rent between one registration and the next, by reference to the amount of the increase in the United Kingdom Index of Retail Prices

between the dates of the two registrations. Where the cap applies the Rent Officer and the Tribunal is prevented from increasing the amount of the fair rent that it registers beyond the maximum fair rent calculated in accordance with the provisions of the Order and the mathematical formula set out in the Order.

By article 2(7) of the 1999 Order the capping provisions do not apply *“in respect of a dwelling-house if because of a change in the condition of the dwelling-house or the common parts as a result of repairs or improvements (including the replacement of any fixture or fitting) carried out by the landlord or a superior landlord, the rent that is determined in response to an application for registration of a new rent under Part IV exceeds by at least 15% the previous rent registered or confirmed.”*

Determination:

In view of the current pandemic, the Tribunal was unable to inspect the property, and instead relied on submissions by the parties and its own expert knowledge. In this instance, the tenant made representations as to the level of the increase but did not provide any comparable evidence of similar properties in the locality. The tenant did however confirm that the rewiring and heating to the property had been carried out by them, during the tenancy. The tribunal must therefore make a deduction in respect of the tenant's improvements.

The landlord produced a statement of comparable properties on which it wished to rely, including two properties in Rutland Street and Montpelier Place, which are in the locality of the subject property.

The property is a three storey terraced house, comprising 6 rooms, 2 x bathroom/w.c. and a kitchen, as well as a garden. The property is located in a very popular area of London, close to all the usual amenities and transport links. As already noted, the heating and re-wiring has been undertaken by the tenant.

Terms of the tenancy

It is understood that this tenancy began on 25 December 1956. It is agreed that the landlord is responsible for structural repairs and external decoration; the tenant is responsible for internal decorations. The property is let unfurnished.

Landlord's improvements

The landlord has not suggested that any improvements have been carried out to the property during the tenancy, or since the last registration, that should be taken into account by the tribunal.

Evidence

The Tribunal had copies of the Valuation Office Agency correspondence including the previous rent register.

The landlord provided three comparables. These were:

Rutland Street, let at £7,500.00 per month (three bed, two bath house)
Rutland Street, let at £9,100.00 per month (three bed, three bath house)
Montpelier Place - £8,666.00 per month (three bed, three bath house)

Rightmove details were appended to the landlord's submissions, and these showed that the comparables were in a good condition, some were furnished, and had modern fixtured and fittings.

Valuation

In the first instance the Tribunal determined what rent the landlord could reasonably be expected to obtain for the property in the **open market** if it were let today in the condition that is considered usual for such an open market letting.

We consider that the subject property, if finished to the standard required in this location, would be likely to attract a rent under an assured shorthold tenancy of £27,000.00 per quarter (£9,000.00 per month). This is the hypothetical market rent for the property.

However, we must **adjust that hypothetical rent** of £27,000.00 per quarter to allow for the differences between the terms of this tenancy, the lack of modernization, and white goods, and the tenant's improvements.

Using our own expertise we considered that deductions of 10% should be applied in order to take into account the terms of the tenancy, 10% for the lack of appliances, furniture and furnishings, and a further 20% to reflect the tenant's improvements. This provides for a deduction of £9,504.00 per quarter from the hypothetical rent. Giving an adjusted market rent of £17,406.00 per quarter.

It should be noted that this figure cannot be a simple arithmetical calculation and is not based upon capital costs but is the tribunal's estimate of the amount by which the rent would need to be reduced to attract a tenant.

Scarcity

Thirdly, the tribunal then went on to consider whether a deduction falls to be made to reflect scarcity within the meaning of section 70(2) of the 1977 Act. The tribunal followed the decision of the High Court in *Yeomans Row Management Ltd v London Rent Assessment Committee*, in which it was held that scarcity over a wide area should be considered rather than scarcity in relation to a particular locality. Greater London is considered to be an appropriate area to use as a yardstick for measuring scarcity and it is clear that there is a substantial measure of scarcity in Greater London.

We therefore made a further deduction of approximately 20% from the adjusted market rent to reflect this element to produce a figure of £13,906.60 per quarter.

Conclusion

The capping provisions of the Rent Acts (Maximum Fair Rent) Order apply and therefore the above figure does not apply. The capped fair rent in accordance with the calculations provided on the decision template is **£10,162.50 per quarter.**

Therefore, the fair rent to be registered is limited by the Rent Acts (Maximum Fair Rent) Order 1999 with effect from the 12 November 2020 being the date of the Committee's decision.

Tribunal: Ms. A. Hamilton-Farey

Date: 4 January 2021.