



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

Case Reference : LON/00BE/F77/2020/0053

Type of Determination : P (Paper) Remote.

Property : 61a Harlescourt Road, London SE15 3DA

Applicant : Mr. A. Moses.

Representative : In person.

Respondent : The Hyde Group

Representative : In person.

Type of Application : Rent Act 1977 (“the Act”) Determination of the fair rent of a property following an objection to the rent registered by the Rent Officer Ms. A. Hamilton-Farey

Tribunal Member(s) :

Date of Decision : 16 December 2020
Reasons 27 January 2021.

REASONS FOR THE TRIBUNAL’S DECISION

Covid-19 pandemic: description of hearing:

This has been a remote determination on the papers which has not been objected to by the parties. The form of remote hearing was P: PAPERRMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined on paper.

Background:

1. By an RR1 dated 29 November 2019 the landlord made an application to the Valuation Office Agency (the Rent Officer "RO") to re-register the rent of the property at £117.24 per week. The fair rent registered prior to this application was £143.00 per week. This rent had been set by a previous tribunal and was effective from 10 January 2018. It appears from the documents supplied that the landlord is not charging the tenant the registered rent, and the rent actually charged by the landlord at the time of the application for re-registration was £110.51.
2. The tribunal is unable to take into consideration any that the landlord may have applied to the registered rent, and for the purposes of the Maximum Fair Rent Order calculation, the tribunal must start with the actual registered rent.
3. On 17 January 2020, the Rent Officer registered the rent at £158.99 per week, with effect from that date.
4. The tenant objected and the matter was referred to the First Tier Tribunal, Property Chamber.
5. The Tribunal gave directions that required the parties to supply copies of any evidence on which they wished to rely in support of a rent increase. With the exception of the original statement by the tenant to say that the increase was too high, no other evidence was supplied. The landlord provided copies of Right Move details of two properties, one with a rent of £1,450 per month and the other £1800 per month. These are considered below.
6. In addition, the tribunal is unable to take into consideration the circumstances of the landlord or tenant and must apply the legislation.

Inspection

7. In accordance with the directions already given, the tribunal did not inspect the property due to the COVID-19 restrictions, but was able to use Google Earth for location purposes, and the applicants photographs and submissions.
8. The property is a three-bedroom, one reception room, kitchen/diner, bathroom/w.c. and shared garden flat situated on the first floor. It has full gas central heating. It is accepted by the parties that no modernisation has been undertaken. Under the terms of the tenancy, the landlord is liable for the external repairs and redecoration, and the tenant liable for internal

decorations. The landlord is also responsible for the maintenance of the apparatus providing heating and hot water, all in accordance with S.11 of the Landlord and Tenant Act 1985.

The tenant's submission:

9. The tribunal has taken into consideration the tenant's statement to the Rent Officer. It does not appear that any improvements have been carried out by the tenant, that should be disregarded by the tribunal. Similarly, no improvements have been carried out by the landlord that would negate the Maximum Fair Rent Order.

The landlord's submission:

10. As noted above, the landlord provided RightMove evidence of two properties they consider to be comparable. These were both converted flats, similar to the subject, but modernised and in the condition/with the usual amenities that one would find in an open market letting,

The law

11. When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, must have regard to all the circumstances, except the personal circumstances of the tenant, but 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.
12. 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).

Consideration and Valuation

13. In the first instance the tribunal must determine what rent the Landlord could reasonably expect 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, i.e., with carpets, curtains, white goods and in a good decorative condition, and with the tenant having little repairing obligation internally.

14. The Tribunal did this by having regard to the data provided by the rent officer, and the comparable rent details supplied by the landlord. From this the tribunal assessed that the market rent for the property in good condition on the usual AST would be in the region of **£375.00** per week.
15. However, the rent referred to in the above paragraph is on the basis of a modern open market letting where the tenant has no liability to carry out repairs or decorations, that there are up to date bathroom and kitchen fittings, the landlord supplies white goods, carpets and curtains and there are no wants of repair. In my view a deduction from the market rent should be made to reflect the differences of the terms of tenancy, and the hypothetical market letting.
16. The tribunal adjusts the market rent by 15%, to reflect the different terms of the tenancy, and the lack of modernisation, white goods, flooring etc. The tribunal arrived at an adjusted market rent of **£318.75** per week.
17. The tribunal then considered the question of scarcity as referred to in paragraph 9a above and determined that there remained significant levels of demand over supply in this area and therefore make a deduction from the adjusted market rent of 20% to reflect this scarcity, leaving a balance in the region of **£255.00**.
18. The tribunal therefore determines that the uncapped Fair Rent for this property would be in the region of £250 - £255 per week.
19. This would be the rent that, in the tribunal' opinion would be payable by the tenant, if the capping mechanism either did not apply, or produced a higher rent.
20. The capping mechanism of the Maximum Fair Rent Order must be applied to the fair rent that existed prior to the registration in December 2020 (£143.00 per week). The mechanism produced a rent of £142.50 per week, and a copy of the calculation was appended to the decision.
21. Under the MFR Order, the tenant is liable for the lower of either the adjusted market rent, in this case £250.00 per week, or the capped rent under the MFR (£142.50), in this instance the MFR rent is lower than the adjusted market rent, and accordingly the rent was registered at £142.50 per week with effect from 16 December 2020.
22. It may well be that the landlord will not charge the full registered rent, as it has not done so in the past, however, this is not a matter for the tribunal, and is between the landlord and tenant.

Name: Ms. A. Hamilton-Farey
Date 26 January 2021.

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.
2. 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.
3. 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.
4. 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