



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

Case Reference : **LON/00AG/F77/2020/0021
P:PAPERREMOTE**

Property : **Flat 14 Warwick Lodge Shoot up Hill
London NW2 3PE**

Applicant : **Anston Investments Limited**

Respondent : **Mr H D Soffer**

Date of Application : **27 November 2020**

Type of Application : **Determination of the registered rent
under Section 70 Rent Act 1977**

Tribunal : **Mrs E Flint DMS FRICS**

**Date and venue of
hearing** : **23 December 2020
remote hearing on the papers**

DECISION

The registered rent with effect from 23 December 2020 is £2800 per quarter.

This has been a hearing on the papers which has been consented to by the parties. The form of remote hearing was P:PAPERREMOTE, a paper determination which is not provisional. A face to face hearing was not held because it was not practicable and all the issues could be determined on the papers. The documents that I was referred to are in a bundle, the contents of which I have recorded.

Background

1. On 23 September 2020 the landlord applied to the rent officer for registration of a fair rent of £3,150 per quarter for the above property.
2. The rent payable at the date of the application was £2,862.50 per quarter which had been registered by the rent officer on 30 October 2017 with effect from 4 December 2017.
3. On 13 November 2019, the rent officer registered a fair rent of £2,704 per quarter with effect from 4 December 2019.
4. On 27 November 2020 the landlord objected to the registered rent.
5. Owing to the Covid 19 restrictions the parties were asked if they would consent to the application being dealt with on the papers. Neither party objected. Written representations were received from the landlord's agent, Stock Page Stock and from the tenant.

The Evidence

6. The premises comprise a third floor flat in a 5/6 storey purpose built block situated on a main road close to local shops and on bus routes. The accommodation which comprises three rooms, bathroom and wc is centrally heated.
7. The landlord's agent asked for the full increase allowed under the Rent Acts (Maximum Fair Rent) Order 1999. Stating that the tenant's health prevented him from looking after the flat in a tenant like manner and that any consequential failure on the tenant's part should be ignored.
8. The tenant stated that the kitchen, bath and wc were the originals dating from pre the second world war. Damp and mould in the flat were longstanding issues. The lift was often out of order, the communal gardens were not well maintained.

Valuation

9. 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. As neither party provided any comparable open market rental evidence the Tribunal relied on its own general knowledge of market rent levels in Cricklewood and surrounding areas. Having done so, it concluded that the likely market rent for the flat would be £4,800 per quarter.

10. However, it was first necessary to adjust the hypothetical rent of £4,800 per quarter to allow for the differences between the terms and condition considered usual for such a letting and the condition of the actual property at the valuation date, ignoring any tenant's improvements, (disregarding the effect of any disrepair or other defect attributable to the tenant or any predecessor in title). The Tribunal noted that flats available on the open market were generally modern or modernised, with white goods, floor and window coverings. The Tribunal considered that these differences plus the terms and conditions of the tenancy required a deduction of £1300 per quarter.
11. This leaves an adjusted market rent for the subject property of £3500 per quarter. The Tribunal's uncapped fair rent is £700 per month. The Tribunal was of the opinion that there was substantial scarcity in London for similar properties and therefore made a deduction of 20% from the market rent to reflect this element. The Tribunal's uncapped fair rent is £2800 per quarter.

Decision

12. The uncapped fair rent initially determined by the Committee, for the purposes of section 70, was accordingly £2,800 per quarter.
13. This is below the maximum fair rent that can be registered by virtue of the Rent Acts (Maximum Fair Rent) Order 1999 (Details are provided on the back of the decision form).
14. **Accordingly the sum of £2,800 per quarter will be registered as the fair rent with effect from 23 December 2020 being the date of the Tribunal's decision.**

Chairman: Evelyn Flint

Dated: 16 February 2021



First-tier Tribunal Property Chamber (Residential Property)

The Law Relating to the Assessment of Fair Rents

INTRODUCTION

1. This is a brief summary of the law applied by the Tribunal (formerly call a Rent Assessment Committee) when reaching its decision. It is an integral part of the decision.
2. The definition of **Fair Rent** is contained in the Rent Act 1977 i.e.:-

70(1) In determininga fair rent under a regulated tenancy of a dwelling house, regard shall be had to all the circumstances (other than personal circumstances) and in particular to:-

- a) the age, character, locality and state of repair of the dwellinghouse
- b) if any furniture is provided for use under the tenancy, the quantity, quality and condition of the furniture, and
- c) any premium, or sum in the nature of a premium.....

70(2) For the purposes of the determination it shall be assumed that the number of persons seeking to become tenants of similar dwellinghouses 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 dwellinghouses in the locality which are available for letting on such terms

70(3) There shall be disregarded:

- a) any disrepair or other defect attributable to a failure by the tenant under the regulated tenancy or any predecessor in title of his.....
- b) any improvement carried out, otherwise than in pursuance of the terms of the tenancy, by the tenant under the regulated tenancy or any predecessor in title of his
- e) **if any furniture is provided for use under the regulated tenancy, any improvement to the furniture by the tenant under the regulated tenancy or any predecessor in title of his or, as the case may be, any deterioration in the condition of the furniture due to any ill-treatment by the tenant, any person residing or lodging with him or any sub-tenant of his**

3. The Tribunal also has to take into account the Human Rights Act 1998. However, when interpreting the Rent Act 1977 (primary legislation) the Tribunal will have to follow the wording of the Act if it cannot be read or given effect in a way which is compatible with rights contained in the European Convention on Human Rights. Any party dissatisfied will then have to refer the matter to the High Court for the making of a Declaration of Incompatibility.
4. All other rights granted by the Convention such as the right to a fair and public hearing by an independent tribunal and the right to respect for a person's private and family life are to be observed by the Tribunal
5. There have been a number of cases decided over the years most of which have been either unreported or reported only in professional journals. However in 1997 a Court of Appeal decision was reported as *Curtis v London RAC (No. 2) [1997] 4 AER 842* where the Court reviewed the various authorities and provided guidance to Tribunals to assist them in reaching decisions.
6. The Court confirmed that a Tribunal must first find an open market rent for the property taking into account evidence before it from the parties and the Rent Officer. It will not consider other registered rents unless there are very exceptional circumstances which will be set out in the decision if appropriate.
7. A Tribunal can use such factors as comparable rents being paid for similar properties in the locality, capital values and return on expenditure as well as the experience and expertise of its members.
8. Having established an open market rent the Tribunal then has to consider the deductions and allowances referred to above
9. In all cases the Tribunal will try its best to give the parties details of its calculations. The *Curtis* case (above) made it clear that a Tribunal's decision must be supported by some workings out, but precise arithmetical calculations are not possible in all cases. There are many properties where the deductions and allowances are of such proportions that a Tribunal must simply take a view as to how much a rent would have to be reduced in order to obtain a tenant. This may not be the same as the sum total of the Statutory deductions/allowances.
10. If the Tribunal considers that the demand for similar properties in the locality is substantially greater than the supply then a deduction has to be made in accordance with Section 70(2) Rent Act 1977. This is the so-called "scarcity factor". The Tribunal is obliged to look at scarcity in terms of people wanting regulated tenancies. However the reality is that no new regulated tenancies are created nowadays and scarcity is therefore considered using the types of tenancy currently in use.
11. The word "locality" in Section 70(2) has a different meaning to that in Section 70(1). In the case of *Metropolitan Property Holdings Limited v Finegold [1975] 1 WLR 349* it was decided that the "locality" for this purpose should be a really large area. A Tribunal must define the extent of that "locality" when reaching its decision.
12. In determining scarcity, Tribunals can look at local authority and housing association waiting lists but only to the extent that people on such lists are likely to be genuine seekers of the type of private rented accommodation in question if the rent were to exclude the scarcity element.
13. The Tribunal must apply the Rent Acts (Maximum Fair Rent) Order 1999 – known as the "capping" provision – unless there is an exemption.

