



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

**Case reference** : **LON/00AW/F77/2020/0020**

**HMCTS code (paper, video, audio)** : **P: PAPERREMOTE**

**Property** : **First Floor Flat, 47 Redcliffe Square  
London SW10 9HG**

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

**Representative** : **Ms Deborah Caslaw, Property  
Management Assistant**

**Respondent** : **Mrs Harriet F.Newall**

**Representative** : **In person**

**Type of application** : **Section 70, Rent Act 1977**

**Tribunal member** : **Mr Charles Norman FRICS  
Valuer Chairman**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of decision** : **16 March 2021**

**Date of Reasons** : **31 March 2021**

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**REASONS**

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

This has been a remote determination on the papers which has been consented to by the parties. The form of remote determination was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable, and no-one requested the same. The documents to which the Tribunal were referred comprised 33 pages, the contents of which the Tribunal has noted.

### **Background**

1. On 26 September 2019, the landlord applied to the Rent Officer for registration of a fair rent of £336.83 per week for the above property.
2. The rent payable at the time of the application was £273.80 per week.
3. On 28 October 2019, the Rent Officer registered a fair rent of £1256.67 per calendar month with effect from 18 December 2019.
4. By letter dated 27 November 2019, the landlord objected to the rent determined by the Rent Officer and the matter was referred to the Tribunal.
5. On 19 March 2020, the Tribunal issued directions postponing the matter owing to the Coronavirus pandemic. Subsequently, further directions were issued on 6 November 2020 setting the matter down for determination by written submissions, unless either party requested a hearing, which neither did. The landlord was directed to complete a Reply form and supply documents upon which it wished to rely by 27 October and the tenant likewise by 10 November 2020. The landlord was permitted to serve a Reply by 17 November 2020.
6. The Tribunal made its determination on 16 March 2021 and the landlord subsequently requested Reasons.

### **The Property**

7. The Tribunal viewed images of the property from Google Street View and considered all documents supplied by the parties. It noted that this is a Victorian converted house. The subject flat is a first floor suite of rooms comprising two bedrooms, one living room and kitchen, and a separate bathroom/WC on a half landing. The dwelling is non self-contained. The property is situated in West Brompton.

### **Evidence**

#### **The Landlord's Case**

8. The landlord's case was set out in written representations to the Tribunal. The landlord's case was that the fair rent application reflected £1459.59 per month for which it took into account three comparables. These were a two bedroom flat in Kemsford Gardens SW10 at £2249 per month, a two bedroomed flat at Old Brompton Road SW10 at £1993 per month and a two bedroom, two bathroom flat in Finborough Road at £2145 per month. Agents' details were provided.

### The Tenant's Case

9. The tenant stated that the Rent Officer had carried out a thorough inspection. The tenant pointed out that when the property was let in 1968 the kitchen was fitted only with a gas water heater and sink. There were no wall units. The bathroom was also basic. The tenant did not refer to comparables.
10. The tenant also referred to her personal circumstances. The Tribunal has not taken these into account in considering the fair rent, by virtue of section 70(1) of the Rent Act 1977. This is set out in the Appendix below.

### **The Law**

11. When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, had regard to all the circumstances (other than personal circumstances) including the age, location and state of repair of the property.
12. In *Spath Holme Ltd v Chairman of the Greater Manchester etc. Tribunal* (1995) 28 HLR 107 and *Curtis v London Rent Assessment Tribunal* [1999] QB 92 the Court of Appeal emphasised 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).

### **Valuation**

13. The Tribunal accepted the landlord's comparables as a starting point, had the property been in modern condition with central heating and had it been self-contained. The landlords comparables averaged £2130 per month which the Tribunal adopted as a starting point. However, from this the Tribunal considered that the following adjustments were necessary:

Lack of central heating 10%  
No fitted kitchen 7.5%  
Basic bathroom 7.5%  
Non self-contained 10%

This aggregated to 35% or £745.15 per month leaving an adjusted market rent of £1384.85 per month.

14. The Tribunal found that there was substantial scarcity in the locality of Greater London and therefore made a deduction of 20% (£276.97 per month) from the adjusted market rent to reflect this element.
15. It follows that the Tribunal found that the fair rent was £1,107.88 per month, say £1,108 per month.
16. This amount was not limited by the Rent Acts (Maximum Fair Rent) Order 1999, which prescribed a higher maximum fair rent, the calculations for which were supplied with the Notice of the Tribunal's Decision. The amount attributed to services of £42.86 per month was not in dispute and the Tribunal accepted this.
17. Accordingly, the sum of £1,108 per month was determined as the fair rent with effect from 16 March 2021 being the date of the Tribunal's decision.

Mr Charles Norman FRICS  
31 March 2021

#### **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.

**Appendix**

**Rent Act 1977**

Section 70 Determination of fair rent.

(1) In determining, for the purposes of this Part of this Act, what rent is or would be a 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 dwelling-house, . . . F1

(b) if any furniture is provided for use under the tenancy, the quantity, quality and condition of the furniture [F2, and]

[F2(c) any premium, or sum in the nature of a premium, which has been or may be lawfully required or received on the grant, renewal, continuance or assignment of the tenancy.]

(2) For the purposes of the determination it shall be assumed that the number of persons seeking to become tenants of similar dwelling-houses 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.

(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 to comply with any terms thereof;

(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;

(c)(d). . . . . F3

(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.

F4[(3A)In any case where under Part I of the Local Government Finance Act 1992 the landlord or a superior landlord is liable to pay council tax in respect of a hereditament (“the relevant hereditament”) of which the dwelling-house forms part, regard shall also be had to the amount of council tax which, as at the date on which the application to the rent officer was made, was set by the billing authority—

(a)for the financial year in which that application was made, and

(b)for the category of dwellings within which the relevant hereditament fell on that date,

but any discount or other reduction affecting the amount of council tax payable shall be disregarded.

(3B)In subsection (3A) above—

(a)“hereditament” means a dwelling within the meaning of Part I of the Local Government Finance Act 1992,

(b)“billing authority” has the same meaning as in that Part of that Act, and

(c)“category of dwellings” has the same meaning as in section 30(1) and (2) of that Act.]

(4)In this section “improvement” includes the replacement of any fixture or fitting.

[F5(4A)In this section “premium” has the same meaning as in Part IX of this Act, and “sum in the nature of a premium” means—

(a)any such loan as is mentioned in section 119 or 120 of this Act,

(b)any such excess over the reasonable price of furniture as is mentioned in section 123 of this Act, and

(c)any such advance payment of rent as is mentioned in section 126 of this Act.]

(5). . . . .

(emphasis added)