

Notice of the Tribunal Decision

Rent Act 1977 Schedule 11

Address of Premises

First Floor Flat, 62A Wisteria Road,
London, SE13 5HN

The Tribunal members were

Judge N Hawkes
Michael J F Donaldson FRICS

Landlord

The Hyde Group

Tenant

Miss Evelyn Lamptey

1. The fair rent is

£100.50

Per

week

(excluding water rates and council tax
but including any amounts in paras
3&4)

2. The effective date is

13th April 2021

3. The amount for services is

Nil

Per

negligible/not applicable

4. The amount for fuel charges (excluding heating and lighting of common parts) not counting for rent allowance is

Nil

Per

negligible/not applicable

5. The rent is not to be registered as variable.

6. The capping provisions of the Rent Acts (Maximum Fair Rent) Order 1999 apply (please see calculation overleaf)

7. Details (other than rent) where different from Rent Register entry

Not applicable

8. For information only:

(a) The fair rent to be registered is the maximum fair rent as prescribed by the Rent Acts (Maximum Fair Rent) Order 1999. The rent that would otherwise have been registered was £ 191.22 per week.

Chairman

Judge N Hawkes

Date of decision

13th April 2021

MAXIMUM FAIR RENT CALCULATION

LATEST RPI FIGURE X

PREVIOUS RPI FIGURE Y

X Minus Y = (A)

(A) Divided by Y = (B)

First application for re-registration since 1 February 1999 YES/NO

If yes (B) plus 1.075 = (C)

If no (B) plus 1.05 = (C)

Last registered rent* Multiplied by (C) =

*(exclusive of any variable service charge)

Rounded up to nearest 50p =

Variable service charge **NO**

If YES add amount for services

MAXIMUM FAIR RENT = Per

Explanatory Note

1. The calculation of the maximum fair rent, in accordance with the formula contained in the Order, is set out above.
2. In summary, the formula provides for the maximum fair rent to be calculated by:
 - (a) increasing the previous registered rent by the percentage change in the retail price index (the RPI) since the date of that earlier registration and
 - (b) adding a further 7.5% (if the present application was the first since 1 February 1999) or 5% (if it is a second or subsequent application since that date).

A 7.5% increase is represented, in the calculation set out above, by the addition of 1.075 to (B) and an increase of 5% is represented by the addition of 1.05 to (B).

The result is rounded up to the nearest 50 pence.
3. For the purposes of the calculation the latest RPI figure (x) is that published in the calendar month immediately before the month in which the Tribunal's fair rent determination was made.
4. The process differs where the tenancy agreement contains a variable service charge and the rent is to be registered as variable under section 71(4) of the Rent Act 1977. In such a case the

variable service charge is removed before applying the formula. When the amount determined by the application of the formula is ascertained the service charge is then added to that sum in order to produce the maximum fair rent.



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

Case reference : **LON/00AZ/F77/2020/0111**

HMCTS code (paper, video, audio) : **P: PAPER REMOTE**

Property : **First Floor Flat, 62A Wisteria Road,
London SE13 5HN**

Applicant : **Miss Evelyn Lamptey**

Respondent : **The Hyde Group**

Type of application : **To register a new fair rent**

Tribunal members : **Judge N Hawkes
Mr M J F Donaldson FRICS**

Venue : **10 Alfred Place, London WC1E 7LR
(Remote Hearing)**

Date of decision : **13 April 2021**

DECISION

Covid-19 pandemic: description of determination

This has been a remote paper determination which has not been objected to by the parties. The form of remote hearing was P: PAPER REMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined on the papers. The Tribunal has not been supplied with a determination bundle but has considered the application, directions and the other documents on the Tribunal file which include the documents which were before the Rent Officer, the contents of which we have noted. The order made is described below.

The Tribunal's determination

Background

1. On 29 November 2019, the landlord applied to the rent officer for the re-registration of a fair rent of £86.30 per week for the above property.
2. The rent payable at the time of the application was said to be £81.35 per week (see section 12 of the application form).
3. However, the rent was previously registered on 29 August 2014 with effect from 29 August 2014, in the sum of £83 per week following a determination by the rent officer.
4. On 23 January 2020, the rent officer registered a fair rent of £98.50 per week for the property with effect from 23 January 2020.
5. By letter dated 29 April 2020, received by the rent officer on 7 May 2020, the tenant objected to the rent determined by the rent officer. The rent officer accepted this late objection and the matter was referred to the First-tier Tribunal.

Inspection

6. Due to the coronavirus pandemic, the Tribunal is not generally carrying out physical inspections and no inspection was requested in this case.
7. However, directions dated 18 November 2020 provide:

“The Tribunal may use Google Street View to gather some information about the location, type and external appearance of the property. However, the parties are encouraged to complete the attached reply form to provide the Tribunal additional information regarding the property.”

Evidence

8. The Tribunal considered the documents in the Tribunal file which include documents supplied by the rent officer.
9. Neither party requested an oral hearing and but the tenant set out her position in her letter of objection, which was supported by a letter from her GP dated 21 April 2020, and the landlord submitted written representations dated 24 November 2020. The tenant has a number of health conditions and she wishes to be relocated to housing closer to her family.
10. The statutory test described below enables the Tribunal to take into account the condition of the property but it does not enable the Tribunal to take into account the personal circumstances of the tenant, including the state of her health and her wish to be relocated.

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 (other than personal circumstances) including the age, location and state of repair of the property. It 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, or any predecessor in title under the regulated tenancy, on the rental value of the property.
12. Section 70(2) of the Rent Act 1977 states that “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.”
13. 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 emphasised:
 - (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).
14. When a fair rent is already registered and an application for a new fair rent to be determined by the Rent Officer is made on or after 1 February 1999, there is a limit on the amount that can be registered as the fair rent. This limit is sometimes referred to as the “capped rent”. If the fair rent that the Tribunal

would otherwise have determined is above the capped rent only the lower, capped figure can be registered as the fair rent.

15. The capped rent is calculated in accordance with a formula set out in the Rent Acts (Maximum Fair Rent) Order 1999. It is arrived at by increasing the amount of the existing registered rent by the percentage change in the retail price index since the date of that earlier registration and then adding a further 7.5% or 5%. The 7.5% addition will apply in respect of the first application for re-registration of a fair rent since 1 February 1999 and the 5% addition will apply in the case of all subsequent applications.
16. In all cases where the capping rule applies, the Tribunal will first decide what the fair rent would be irrespective of the statutory limit. It will then calculate the capped rent. If the figure reached by the Tribunal is above or the same as the capped rent, the capped rent will be registered as the fair rent. If it is below the capped rent, the lower figure will be registered and the cap will not apply.

Valuation

17. In reaching its determination, Tribunal first determined the rent that the landlord could reasonably be expected to obtain for the property in the open market in the condition considered usual for a modern letting. It did this by having regard to Tribunal's own general knowledge of market rent levels in the area of Lewisham.
18. It did not do so by reference to specific comparable properties but rather the Tribunal had regard to its general knowledge obtained through regularly carrying out valuations in different areas of General London including Lewisham.
19. The Tribunal concluded that the likely market rent would be £1,150.00 per month and therefore agrees with the rent officer's determination of £265.58 per week.
20. However, the Tribunal has deducted 10% to reflect differences between the usual terms of a market letting and the terms of a Rent Act 1977 tenancy under which that the tenant is responsible for the provision of carpets, curtains and white goods.
21. Applying this deduction in the total sum of £26.55 to the hypothetical annual market rent, the adjusted market rent for the property is £239.03 per week.
22. The Tribunal is aware of judicial guidance relating to section 70(2) of the Rent Act 1977 including the decision of the High Court in Yeomans Row Management Ltd v London Rent Assessment Tribunal [2002] EWHC 835 (Admin) which required it to consider scarcity over a wide area rather than limit it to a particular locality.

23. Greater London is now 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. The Tribunal considers that, taking Greater London as the appropriate area and applying its knowledge and experience as an expert Tribunal, it is proper to apply a scarcity element in the region of 20% (£47.81) which must be deducted from the adjusted rent of £239.03 per week.
24. Applying these deductions to the hypothetical market rent, the uncapped fair rent is £191.22 per week.

6. Decision

25. The capping provisions of the Rent Acts (Maximum Fair Rent) Order 1999 apply in the present case because the uncapped rent of £191.22 is above the capped rent of £100.50.

Accordingly, the sum of £100.50 per week will be registered as the fair rent with effect from 13 April 2021 being the date of the Tribunal's decision.

Name: Judge N Hawkes

Date: 13 April 2021