



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

**Case Reference** : **LON/00AG/F77/2021/0236  
V: REMOTE**

**Property** : **Flat D 17 Well Walk, London NW3 1BY**

**Applicant** : **Mrs E Brennan, supported by Mr T  
Brennan (Son)**

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

**Respondent** : **Hollstead Limited**

**Representative** :

**Type of Application** : **Determination of a fair rent under  
section 70 of the Rent Act 1977**

**Tribunal Members** : **Mr Mark Taylor MRICS**

**Date of Decision** : **27<sup>th</sup> September 2021**

**Date of Hearing** : **27<sup>th</sup> September 2021  
V: Remote**

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**DECISION**

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**The sum of £285.00 per week will be registered as the fair rent with effect from 27th September 2021 being the date of the Tribunal's decision.**

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was V: REMOTE with all participants joining from elsewhere. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the tribunal were referred to are in the application and tenant's submissions the contents of which have been noted. The order made is described below.

## **FULL REASONS**

### **Background**

1. The landlord applied for registration of a fair rent of £1404 Per calendar month (£324.00 per week) on 10<sup>th</sup> May 2021. The rent was previously registered on 3<sup>rd</sup> May 2019 by the tribunal at £270.00 per week effective from that date.
2. The Rent Officer made a registration of £295.00 per week on 24<sup>th</sup> June 2021. The applicant had made representations in a letter dated 23<sup>rd</sup> May 2021 requesting a consultation and setting out problems in the property including windows requiring replacement, rotting timber, remedial works to the kitchen and bathroom carried out by the tenant, damp and moisture ingress the bedrooms on the 2<sup>nd</sup> floor and loft room causing cracking to plaster finishes, 18 pages in total. It also included an Energy Performance Certificate demonstrating the property has a rating of E which has potential to be improved to D.
3. The applicant objected to the registered rent by letter dated 12<sup>th</sup> July 2021 and the matter was referred to the Tribunal on 27<sup>th</sup> July 2021, 8 pages in total.
4. On 28<sup>th</sup> July 2021 the tribunal issued directions to the parties seeking information on the property and whether they were happy for the matter to be determined on papers without an inspection.
5. No further representations were received from the landlord but the tenant requested a hearing and inspection.

### **Hearing**

6. Because of the Covid pandemic no inspection was possible. A remote video hearing was held attended by the tenant. Prior to the hearing the tribunal received written representations with a number of photographs from the tenant, no written representations were made by or on behalf of the landlord.
7. The tribunal also had access to Google Street view and maps which allowed an external view of the property.
8. It comprises an attractive red brick and decorative moldings, end of terrace property, constructed in late Victorian period, almost with a mansion block feel, but obviously with smaller scale. It appears to have

been converted into 4 flats on Lower ground to 3<sup>rd</sup> floor. The property is bay fronted to the 1st floor which provides, to its roof, a small balcony at 2<sup>nd</sup> floor level enclosed in low decorative railings. The roof is of pitched construction with a small section of dormer.

9. The Hearing was held remotely on the 27<sup>th</sup> September 2021.
10. The respondent did not attend the hearing.
11. Mrs Brennan, the applicant, was accompanied by her son Mr Tom Brennan.
12. The applicant relied on her earlier submissions but amplified the very basic nature of the facilities in the property, as originally let. In particular describing the improvements that were undertaken by her, poor current condition due to damp and the dangerous staircase, as a result of no handrail. The arrangement of the accommodation was also confirmed being Living room, Bedroom, Kitchen and Bathroom on the 2<sup>nd</sup> floor with two further bedrooms on the 3<sup>rd</sup> floor. There is a loft space above, but was concerned to point out, that the loft space whilst having limited natural light was not habitable given this, the significant damp and that it housed three large water tanks, serving other flats in the building in addition to her own. It is also suspected that there are vermin present, but due to its infrequent use, this was not supported by evidence.
13. The central heating bathroom and kitchen fittings have all been installed /upgraded by the tenant. There is damp throughout the property which has caused cracking to areas of plaster, getting worse on the 3<sup>rd</sup> floor bedrooms and in the loft area, to the extent that some areas have failed.
14. Mrs. Brennan confirmed that there is a small balcony to the front of the property, on top of the bay window of the flat below, but she is not able to utilise this due to concerns over cracks in the ceiling of the downstairs flat. In addition, access is gained via an openable window as there is no door.
15. Various doors in the property are now difficult to close/open due to potential movement in the floor.
16. All white goods, floor coverings, curtains and furniture have been provided by the tenant.
17. The property does have a gas supply which is safety tested. The electrical wiring is now old but still functional but no testing certificates were provided to the tenant
18. Internal decorations are of mixed standard due to damp penetration and are the responsibility of the tenant. White goods in the kitchen belong to the tenant.

19. Essentially the landlord has never undertaken any works of repair to the property.
20. Mrs Brennan did not believe that a rent increase was justified due to the lack of attention that the landlord had paid to the property and that rents had declined in London due to the effects of the pandemic.

## **Evidence**

### The Landlord's Case

21. No written representations were received from the landlord.

### The Tenant's case

22. The Tribunal had the benefit of the tenant's letter dated 23<sup>rd</sup> May 2021 addressed to the rent officer, 18 pages in total and 12<sup>th</sup> July 2021 8 pages in total, which was amplified in the Hearing particularly in terms of condition. The applicant considers that rents have declined since the previous registration and referenced an article from the Evening Standard dated 3<sup>rd</sup> of March 2021 referencing a fall in rental demand of up to 43% in Central London with contributing commentators suggesting that this resulted in a 20% fall in rent levels. This fall combined with the fact that the landlord has not undertaken any repairs or improvements since the last rent registration, or for that matter over the 30 years plus period of occupation, supports the applicants view that there should be no rent increase. However, no specific rental evidence was put forward.
23. There was also some discussion on the applicant's personal financial situation being a pensioner and that the landlord makes offer from time to time of re-location to alternative property. Whilst noting this the tribunal outlined its remit in considering the level of fair rent and that appropriate independent professional advice should be sought on the question of re-location.

## **The Law**

24. When determining a fair rent, the Tribunal, in accordance with section 70 of the Rent Act 1977, has regard to all the circumstances (other than personal circumstances) including the age, location and state of repair of the property.
25. 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 emphasized 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.

26. The additional factor in this case is whether the rent should be capped under the Maximum Fair Rent Order.
27. The rent to be registered is the lower of the rent under s70 and the capped rent.

### **Discussion and Valuation**

28. The 17 Well Walk is located within approximately half a mile of Hampstead Tube station and a couple of minutes' walk away from Hampstead Heath. The applicants' position in terms of a general fall in rents in London has merit. Certainly, the rental market was in a difficult period during the pandemic but this would now appear to be stabilising as the Country/City emerges from lockdown and a return to work normalises. However, what is equally certain is that any decline has not been uniform and the tribunal has no doubt that if the subject property was in a refurbished condition, it would still be in strong demand on the market.
29. The assumption that the starting point for our valuation is that the property is refurbished raises the question of the effect on valuation of the loft space. This area, if incorporated into the refurbished flat could effectively provide an additional bedroom and/or bathroom. However, as this area is not currently habitable the tribunal considers that the correct starting point is as a three-bedroom flat.
30. The tribunal relied on its knowledge and experience and considers that this supports a market rent for the subject property of £675.00 per week if let on normal terms in the open market in the condition that the market would expect. The tribunal then adjusted for the condition, tenant's own carpets, curtains and white goods and the terms of the tenancy by making a deduction of 45%.
31. The tribunal found that there was a scarcity of letting property and using its knowledge and experience made a deduction of 20% from the adjusted market rent. The calculation of the s70 rent is set out below.

Market rent per week	£675.00
Less condition 25%	£ 170.00
Less White Goods, Terms & Basic Kitchen and Bathroom 20%	£140.00

	£355.00
Less scarcity 20%	<u>£ 70.00</u>
<b>Fair rent</b>	<b>£ 285.00</b>

### **Decision**

32. The section 70 fair rent to be registered is £285 per week as it is below the maximum fair rent as prescribed by the Rent Acts (Maximum Fair Rent) Order 1999 of £300.50. Details are provided on the back of the decision form.

33. The effective date is the date of the decision.

**Accordingly, the sum of £285.00 per week will be registered as the fair rent with effect from 27th September 2021 being the date of the Tribunal's decision.**

**Mark Taylor MRICS**

**Valuer Chair**

**1<sup>st</sup> October 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 determining .....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 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.

## **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.