



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

Case reference : **JM/LON/00AY/F77/2022/0002**

Property : **121 Sternhold Avenue London SW2
4PF**

Applicant : **Mr Sher Rajah**

Respondent : **Arugol Co Ltd**

Representative : **None**

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

Tribunal members : **Mr D Jagger MRICS**

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

Date of Decision. : **28th February 2022**

Decision

£116.00 per week is to be registered as the fair rent for the above property with effect from 28th September 2022 being the date of the Tribunal's decision.

The reasons for this decision are set out below.

Reasons

Background

On 20th October 2021 Arugol Co Ltd the landlord, applied to the Valuation Office Agency (Rent Officer) for registration of a fair rent of £250.00 per week for the property.

The rent payable at the time of the application was £161 per week, effective from 9th August 2017

On 7th. December 2021 the Rent Officer registered a fair rent of £95 per week. The significant rent reduction imposed by the Rent Officer had therefore been “uncapped” or unlimited by the operation of the Rent Acts (Maximum Fair Rent) Order 1999 (the Order).

By letter dated 20th December 2021 the landlord objected to the rent determined by the Rent Officer and the matter was referred to this Tribunal.

The law

When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, must have regard to all the circumstances including the age, location and state of repair of the property. It also 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, on the rental value of the property.

Section 70(2) of the Rent Act 1977 imposes on the Tribunal an assumption that the number of persons seeking to become tenants of similar dwelling house 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. This is commonly called ‘scarcity’.

In *Spath Holme Ltd v Chairman of the Greater Manchester Council (1995) 28 HLR 107* and *Curtis v London Rent Assessment Tribunal [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).

The Rent Acts (Maximum Fair Rent) Order 1999 places a “cap” on the permissible amount of the increase of a fair rent between one registration and the next, by reference to the amount of the increase in the United Kingdom Index of Retail Prices between the dates of the two registrations. Where the cap applies the Rent Officer and the Tribunal is prevented from increasing the amount of the fair rent that it registers beyond the maximum fair rent calculated in accordance with the provisions of the Order and the mathematical formula set out in the Order.

By article 2(7) of the 1999 Order the capping provisions do not apply “*in respect of a dwelling-house if because of a change in the condition of the dwelling-house or the common parts as a result of repairs or improvements (including the replacement of any fixture or fitting) carried out by the landlord or a superior landlord, the rent that is determined in response to an application for registration of a new rent under Part IV exceeds by at least 15% the previous rent registered or confirmed.*”

Facts found including Inspection

In view of the current restrictions the Tribunal did not inspect the property and relied on information provided by the parties together with its expert knowledge.

The property is a converted ground floor self contained flat located in an established residential area amongst properties of a comparable type and age convenient to local amenities and Streatham Hill station.

The property forms part of a Victorian mid terrace building and is located on the first floor approached via a communal hall with staircase to upper floor flats

The accommodation comprises: living room, bedroom, bathroom and kitchen/diner and enclosed utility room

There is gas a central heating system to radiators originally installed by the tenant. The boiler is not operational and there is no hot water. The property has a private garden at the rear which is completely overgrown.

Terms of the tenancy

It is understood that this tenancy began in 1974 although the precise date of the tenancy agreement is not known. It is agreed that the landlord is responsible for structural repairs and external decoration; the tenant is responsible for internal decorations. The property was let unfurnished.

Tenant's improvements

The tenant has provided information regarding improvements made to the property by him

Evidence

The Tribunal had copies of the Valuation Office Agency correspondence including the rent registers effective 6th July 2017 and 15th January 2020.

Valuation

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.

We consider that the subject property, if finished to a reasonable standard would be likely to attract a rent let on an assured shorthold tenancy, for around £323 per week

Next, we need to **adjust that hypothetical rent of £323 per week** to allow for the differences between the terms of this tenancy and the lack of white goods (disregarding the effect of tenant's improvements and any disrepair or other defect attributable to the tenant).

The Tribunal has considered very carefully the inspection notes together with consultation and consideration notes prepared by the Rent Officer at a meeting 24th November 2021.

Using our own expertise we considered that deductions of 60% should applied in order to take into account the terms of the tenancy, significant dilapidation, collapsed ceilings, extensive mould and damp problems which principally seem to be emanating from the flat above. The Tribunal are aware the flat was refurbished by the Landlord to a basic standard some five years ago following a court order. The flat has been left uninhabited for the past four years which of course has contributed to the damp issues. This provides a deduction of £194 from the hypothetical rent.

It should be noted that this figure cannot be a simple arithmetical calculation and is not based upon capital costs but is the tribunal's estimate of the amount by which the rent would need to be reduced to attract a tenant.

Scarcity

Thirdly, the tribunal then went on to consider whether a deduction falls to be made to reflect scarcity within the meaning of section 70(2) of the 1977 Act. The tribunal followed the decision of the High Court in *Yeomans Row Management Ltd v London Rent Assessment Committee*, in which it was held that scarcity over a wide area should be considered rather than scarcity in relation to a particular locality. Greater London is 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.

We therefore made a further deduction of approximately 10% (£13) from the adjusted market rent of £129 to reflect this element to produce a figure of £116 per week.

Conclusion

The capping provisions of the Rent Acts (Maximum Fair Rent) Order do not apply (see calculations) and therefore the uncapped fair rent is **£116.00 per week**.

Therefore, the fair rent to be registered limited by the Rent Acts (Maximum Fair Rent) Order 1999 with effect from the 28th February 2022 being the date of the Committee's decision.

Detailed calculations are provided on the back of the decision form already issued and dated 28th February 2022).

D Jagger MRICS
28th February 2022