



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

Case reference : **LON/00AY/F77/2022/0041**

Property : **28 Valley Road, London SW16
2XN**

Applicant : **Mr D C Kent**

Respondent : **BPT (Bradford Property Trust 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. : **9th June 2022**

Decision

£804 per month is to be registered as the fair rent for the above property with effect from 30th May 2022 being the date of the Tribunal's decision.

The reasons for this decision are set out below.

Reasons

Background

On 18th January 2022 BPT (Bradford Property Trust) Ltd the landlord, applied to the Valuation Office Agency (Rent Officer) for registration of a fair rent of £774.52 per month for the property.

The rent payable at the time of the application was £673.50 per month, effective from 18th April 2020

On 23rd. February 2022 the Rent Officer registered a fair rent of £765 per month which was effective from the 18th April 2022. The rent increase imposed by the Rent Officer had been “capped” or limited by the operation of the Rent Acts (Maximum Fair Rent) Order 1999 (the Order) and the ‘uncapped’ rent was stated to be £1295 per month.

By letter dated 4th March 2022 the tenant 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

The Tribunal inspected the property on the 30th May 2022 with Mr and Mrs Kent in attendance. In addition, the Tribunal relied on information provided by the parties together with its expert knowledge.

The property is a purpose built ground floor self contained flat located in an established residential area amongst properties of a comparable type and age convenient to local amenities in the Streatham area

The property forms part of a Victorian mid terrace two storey building with brick elevations under a re-tiled pitched roof. The windows are a mixture of units.

The accommodation comprises: living room, 3 bedrooms, bathroom and small kitchen.

There is no central heating system. The property has a private garden at the rear.

Terms of the tenancy

It is understood that this tenancy began on the 1st January 1964. 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 not provided any information regarding significant improvements made to the property by him

Evidence

The Tribunal had copies of the Valuation Office Agency correspondence including the rent registers effective 18th April 2020 and 18th April 2022.

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 £1900 per month

Next, we need to **adjust that hypothetical rent of £1900 per month** 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 condition of the property following the inspection.

Using our own expertise we considered that deductions of 35% should applied in order to take into account the terms of the tenancy, extensive mould and damp problems which principally seem to be emanating from the flat above. The original double hung sash units are in need of overhaul, There is no central heating. The kitchen and bathroom fittings are dated. This provides a deduction of £665 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% (£123) from the adjusted market rent of £1235 to reflect this element to produce a figure of **£1,112 per month**

Conclusion

The capping provisions of the Rent Acts (Maximum Fair Rent) Order apply (see calculations) and therefore the uncapped fair rent is **£804.00 per month**. For the parties information this increase is due to the significant change in the RPI figures, particularly over the past 3/4 months.

Therefore, the fair rent to be registered limited by the Rent Acts (Maximum Fair Rent) Order 1999 with effect from the 30th May 2022 being the date of the Committee's decision.

Detailed calculations are provided on the back of the decision form already issued and dated 30th May 2022.

D Jagger MRICS
10th June 2022