



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

Case Reference : **LON/00AE/F77/2022/0082**

Property : **Flat 2, 19 Exeter Road, London NW2 4SJ**

Tenant : **Silvia Balducci**

Landlord : **James Alexander Henry Stonehill**

Date of Objection : **9 May 2022**

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

Tribunal : **Judge D Brandler
Marina Krisko FRICS**

**Date and venue of
determination** : **4 July 2022
10 Alfred Place, London WC1E 7LR**

Date of written reasons: **4 July 2022**

DECISION

The sum of £910.00 per month will be registered as the fair rent with effect from 4 July 2022.

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FULL REASONS

Background

1. In an application dated 01/02/2022 the landlord applied to the Rent Officer for a registration of the fair rent to be increased to £929.40 per month in

relation to Flat 2, 19 Exeter Road, London NW2 4SJ (“the flat”). The rent had previously been registered on 15/08/2014 by the Rent Officer at £836.00 per month (which is said to include services charged at £40.25 pcm) on 15/08/2014. This was subject to a determination by the First Tier Tribunal on 24/10/2014. That Tribunal determined the fair rent to be £774.52 per month with effect from 24/10/2022. There is no mention of service charges in that decision. Nor is there any mention of service charges in the tenancy agreement or in the landlord’s application for a registration of a fair rent.

2. The Tribunal issued directions on 17/05/2022.
3. Silvia Balducci has occupied the property since 13/02/1988 under a tenancy agreement dated 10/02/1988. The parties to that agreement included two other tenants who have since vacated the property. By clause 3(m) of the agreement, the tenant must not “(i) assign underlet charge or part with possession or share occupation or any part thereof”.
4. On 13/04/2022 the Rent Officer registered a fair rent of £1001.50 per month with effect from the same day.
5. By an email dated 09/05/2022 Ms Balducci objected to the rent determined by the Rent Officer and the objection was referred to the Tribunal.

The Law

6. When determining a fair rent the Tribunal, in accordance with section 70 of the Rent Act 1977 (the Act), had regard to all the circumstances including the age, location and state of repair of the property. It also disregarded 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.
7. 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).

8. The Rent Acts (Maximum Fair Rent) Order 1999 (the 1999 Order) provides the framework that places a ceiling on the maximum rent that can be registered. The calculation is based upon a formula that applies an increase in the monthly United Kingdom Index of Retail Prices to the previously registered rent.
9. A summary of the law is attached to this decision

Inspection

10. The Tribunal inspected the property on 04/07/2022 at approximately 11.10 a.m. Ms Balducci was present. The landlord did not attend.
11. During the inspection, the Tribunal noted that the property is a flat on the first floor of a semi-detached house converted into 3 flats. The house is circa 1800-1918. The flat contains 2 bedrooms, 1 living room, 1 very small kitchen, 1 small bathroom containing a bath and hand basin, and a separate WC with no hand basin. Within the WC room, the radiator is not attached to the wall by a bracket and is therefore somewhat unsteady. The WC flush handle shows some corrosion. Other radiators in the flat show signs of corrosion. The original blinds remain in the flat and were observed to be broken. The original carpets remain on the floor and are reported to be moth infested. The window frames externally are exposed wood that appears to be rotting and which requires repair/re-decoration. The window in the living room lacks putty and therefore allows in drafts and rain. Ms Balducci uses a cloth to try to reduce this. Most of the internal doors do not close properly, and of particular concern was the kitchen door that did not close. The light fitting in the hallway is loose. The flat generally is dated with old white goods and original bath and basin, and WC.

Evidence

12. Neither party requested a hearing. Therefore, this matter was considered on the papers.

Tenant's Representations

13. These were made in a letter dated 10/06/2022 from Shelter. In their submissions Shelter asks that the 'shared accommodation restriction' in the tenancy agreement is taken into account. They refer to a 1999 RAC case in which a deduction of 12.5% was made due to restriction on sharing accommodation. They further refer to condition items in the property including cracks to the living room ceiling, broken windows in the living room and bathroom, bending floorboards which crack and move in the small

bedroom and damp and mould in the bathroom caused by the lack of ventilation. Photographs were included.

14. Shelter further refers to the FTT decision of 20/10/2014, paragraph 16 stating that the property is “*not in a condition considered usual for a modern letting at a market rent*”, and paragraph 18 which states that the FTT determined that they would deduct 32.5% for partially improved kitchen, unmodernised bathroom and WC, lack of curtains and other usual fittings and the terms and conditions which differ to those associated with an AST.
15. The comparables referred to by Shelter refer to a FTT decision of a property in Shoot Up Hill in 2020, and the outcome of their research of fair rents registered in the locality of Brent of the same property size. They concluded that the proposed rent of £1001.50 is higher than their comparables.
16. Whilst addresses and brief descriptions of the property from the rent register are provided of the various comparables no other details are provided.
17. Shelter submits that scarcity should be calculated at 20% and not 9% as calculated by the rent officer.
18. In terms of furniture, the landlord’s assertion that the flat has been let unfurnished is disputed and provide the first page of the tenancy agreement which describes the “*Agreement for letting furnished Flat*”.

Landlord’s Representations

19. None were made by the landlord other than what appears on the application form dated 01/02/2022. In that application form at paragraph 8 it states that no services are provided under the tenancy, at paragraph 10 that no furniture is provided under the tenancy, and at paragraph 11 that the tenant is responsible for internal decorations. The landlord confirms at paragraph 14 that no major works or improvements have been carried out at the property since the rent officer registered a fair rent for the property previously.

Determination and Valuation

20. In the first instance the Tribunal needs to determine 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. In doing this, the Tribunal considers the rental value of the property and not the personal circumstances of the Tenant, as that is not a factor envisaged by the Act.

21. The parties have not provided any helpful comparable evidence. Those referred to in Shelter’s submissions refer to other fair rents in NW10 without providing any detail about the condition of the properties and a 2020 decision which does not reflect the current market.
22. In determining 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. The Tribunal considered the market in and around the area where the property is situated from its own general knowledge, rather than any specific knowledge of market rent levels in the area. The Tribunal relied upon their expert knowledge and experience and concluded that an open market rent for a two-bedroom flat with a very small kitchen, a small bathroom and a separate WC, in the vicinity would be in the region of £1625.00 per month. This level of rent assumes a property in a refurbished condition.
23. The Tribunal then must consider any deduction to reflect the condition of the property and the terms and conditions. The issues noted by the Tribunal are described in paragraph 11 above. The Tribunal having considered the dated condition of the flat with the additional problems referred to above, found that these issues would have an adverse effect on the open market rent level. Taking these matters into account we consider that a reduction in the open market rent of 30%. This reduction fairly reflects the issues.
24. Next the Tribunal must consider the issue of scarcity. This was touched upon by Shelter for the tenant. The issue of scarcity is considered on the basis of the number of properties available to let and also considering the demand for such properties and over a really large area. Therefore, using our general, rather than any specific knowledge and experience, we consider that in the wide geographical area being the area around Greater London, there is an imbalance between supply and demand and this impacts upon rental values. Accordingly, we make a deduction of approximately 20% for scarcity. The full valuation is shown below.

	£/month
Market Rent	1625.00
Less 30% for <i>The dated condition of the property and terms and conditions</i>	<u>487.50</u> 1137.50
Less Scarcity 20%	227.50
Fair rent	£910.00

Decision

25. The section 70 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 £1052.00 per month. Details are provided on the back of the decision form.

Accordingly the sum of £910.00 per month will be registered as the fair rent with effect from 4 July 2022 being the date of the Tribunal's decision.

D. Brandler

Judge Brandler

Date: 4 July 2022



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 called 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 determininga 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

1. If a party wishes to appeal 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.
2. 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.
3. 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.
4. 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.