



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

Case reference : **KA/LON/00AJ/F77/2022/0068**

Property : **15B Burlington Gardens, London, W3
6BA**

Applicant : **Mr D. and Mrs M Donovan**

Respondent : **A2 Dominion Group**

Type of application : **Referral of a registration of Fair Rent
under the Rent Act 1977.**

Tribunal : **Mr Charles Norman FRICS
Valuer Chairman
Mr John Naylor MRICS**

Date of Decision : **27 June 2022**

Date of Reasons : **18 July 2022**

REASONS

Background

1. On 18 February 2022, the landlord sent an RR1 application for re-registration of a fair rent to the Rent Officer. The landlord sought a rent of £182.07 per week, including £11.82 per week in respect of services provided. The previous rent was determined by the Rent Officer on 14 November 2019 Tribunal on 29 January 2019 at £173.00 per week including 11.07 per week in respect of services.
2. On 13 April 2022, the Rent Officer registered a Fair Rent of £199.00 per week, with effect from the same date. Of this £11.82 per week were attributable to services.
3. By an email of 23 April 2022, the tenant objected to that rent. The grounds may be summarised as follows: (i) the registered rent exceeded that sought by the landlord, (ii) this was the largest increase in 40 years (iii) the tenants were two pensioners affected by the cost of living crisis (iv) the tenants had previously received notification of rent review from the landlords (v) the services element was challenged as the grass was only cut twice a year and cleaning did not take place.
4. On 4 May 2022, the Tribunal issued directions to the parties requiring them to produce any evidence on which they wished to rely in support of their respective cases, by using a Reply Form. The matter was set down for a determination on the papers unless either party requested a hearing, which neither did. The tenants completed a Reply Form but did not supply evidence of market rents on which they wished to rely. The landlord did not respond to the appeal.
5. The Tribunal carried out an inspection of the property on 27 June 2022. On the same day it determined, on the papers without a hearing, the fair rent at £209.50 per week including £11.82 per week for services. Subsequently, the tenant requested Reasons.

The Law

6. When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, had regard to all the circumstances (other than personal circumstances) including the age, location and state of repair of the property. Section 70 is set out in the Appendix below.
7. In *Spath Holme Ltd v Chairman of the Greater Manchester etc. Tribunal* (1995) 28 HLR 107 and *Curtis v London Rent Assessment Tribunal* [1999] QB 92 the Court of Appeal emphasised 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).

Inspection

8. The Tribunal found as follows. The property comprises a first floor flat in a converted mid-Victorian house dating from around 1860. The house is of brick construction under a pitched tiled roof. The external condition of the house shows recent redecoration. Burlington Gardens is a pleasant tree lined street close to shops in Churchfield Road and Action Central Overground Station.
9. Internally the flat comprises two double bedrooms, one single bedroom, a fairly large living room with bay window, an old non-fitted kitchen and bathroom. There is central heating, supplied via a Worcester gas boiler in the kitchen. The bathroom is old bathroom with bath, WC and wash hand basin being at least 50 years old. Bathroom walls were part tiled with a tiled floor. The Tribunal noted a relatively modern electric consumer unit. Windows were double glazed sliding sash.

Valuation

10. The Tribunal must firstly determine the market rent for a property of this size, in this location and in its current condition. It must also disregard the personal circumstances of either party. Using its own general knowledge of the Greater London property market, the Tribunal agrees with the Rent Officer considers that the market rent for a property of this size and in this location, in good condition, with the usual white goods, carpets and decorated to a good condition would be £425 per week.
11. However, the property is not in the condition that would be necessary for the landlord to obtain such a rental. All white goods, carpets and curtains are the property of the tenant, and the bathroom and kitchen would require improvements to meet modern market requirements. In addition, a tenant of a Rent Act property has more onerous repairing obligations than those under an Assured Shorthold Tenancy.
12. The Tribunal therefore made the following deductions from the market rent of £425 per week to reflect those differences:
13. Market rent: £425 per week.
 - Less 5% for different tenancy terms:
 - Less 5% for lack of white goods, carpets and curtains;
 - Less 10% for the poor kitchen:
 - Less 10% for the poor bathroom: under Part VII of the Social Security Contributions and Benefits Act 1992 [For to assist the Secretary of State in the administration of universal credit]

This aggregated to 30% or £127.50 per week, leaving a net rent of £297.50 per week.

14. The Tribunal found that there was substantial scarcity in the locality of Greater London having taken Judicial Notice of long housing association and local authority waiting lists in Greater London. It therefore made a deduction of 20% (£59.50 per week) from the adjusted market rent to reflect this element. This left an adjusted rent of £238 per week.
15. The Tribunal is then required to apply the Rent Acts (Maximum Fair Rent) Order 1999. The calculation was included on the decision sheet and produced a maximum fair rent of £209.50 per week.
16. The Tribunal must register the lower of the adjusted market rent or Maximum Fair Rent as the fair rent for the property. In this instance the Maximum Fair Rent produces the lower figure, and the Tribunal therefore registered the rent of £209.50 per week for this property, with effect from 27 June 2022, being the date of the Tribunal's decision.
17. As to the amount of rent attributable to services, the Tribunal noted a detailed breakdown of the costs provided by the landlord and preferred that evidence. Further, the Tribunal would point out that in this case the attribution of services to rent does not affect the amount of rent payable by the tenant. The purpose of the attribution is for the Tribunal to comply with section 72A of the Rent Act 1977 which states:

“In order to assist authorities to give effect to the benefit scheme under Part VII of the Social Security Contributions and Benefits Act 1992 or to assist the Secretary of State in the administration of universal credit where a rent is registered there shall be noted on the register the amount of the registered rent which ...is fairly attributable to the provision of services...”

Name: Mr Charles Norman FRICS **Date:** 18 July 2022

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.

Appendix

Rent Act 1977

Section 70 Determination of fair rent.

(1) In determining, for the purposes of this Part of this Act, what rent is or would be 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 dwelling-house, . . . F1

(b) if any furniture is provided for use under the tenancy, the quantity, quality and condition of the furniture [F2, and]

[F2(c) any premium, or sum in the nature of a premium, which has been or may be lawfully required or received on the grant, renewal, continuance or assignment of the tenancy.]

(2) 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.

(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 to comply with any terms thereof;

(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;

(c)(d). F3

(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.

F4[(3A)In any case where under Part I of the Local Government Finance Act 1992 the landlord or a superior landlord is liable to pay council tax in respect of a hereditament (“the relevant hereditament”) of which the dwelling-house forms part, regard shall also be had to the amount of council tax which, as at the date on which the application to the rent officer was made, was set by the billing authority—

(a)for the financial year in which that application was made, and

(b)for the category of dwellings within which the relevant hereditament fell on that date,

but any discount or other reduction affecting the amount of council tax payable shall be disregarded.

(3B)In subsection (3A) above—

(a)“hereditament” means a dwelling within the meaning of Part I of the Local Government Finance Act 1992,

(b)“billing authority” has the same meaning as in that Part of that Act, and

(c)“category of dwellings” has the same meaning as in section 30(1) and (2) of that Act.]

(4)In this section “improvement” includes the replacement of any fixture or fitting.

[F5(4A)In this section “premium” has the same meaning as in Part IX of this Act, and “sum in the nature of a premium” means—

(a)any such loan as is mentioned in section 119 or 120 of this Act,

(b)any such excess over the reasonable price of furniture as is mentioned in section 123 of this Act, and

(c)any such advance payment of rent as is mentioned in section 126 of this Act.]

(5).....