



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

Case reference : **LON/00AC/F77/2022/0073**

HMCTS code (paper, video, audio) : **P: PAPERREMOTE**

Property : **985A High Road
North Finchley
London N12 8QR**

Applicant : **Miss Rita Winch**

Representative : **None**

Respondent : **Sandra Estates Limited &
The Executors of Mrs M J Bena**

Representative : **Arthur Benabo Estate Agents**

Date of application : **5th May 2022**

Type of application : **Fair Rent determination under s70 Rent
Act 1977 (as amended)**

Tribunal members : **Mr I B Holdsworth MSc MCI Arb FRICS
RICS Registered valuer 0079475**

Venue : **Remote**

Date of decision : **22 July 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote Hearing on the papers which has not been objected to by the parties. The form of remote hearing was P: PAPERREMOTE. A face-to-face Hearing was not held because it was not practicable. It was agreed between the parties that all issues could be determined in a remote Hearing or on paper. The documents that the Tribunal was referred to are supplied in a bundle, the contents of which have been noted.

Background

- 1 The Landlord applied to the Rent Officer for the registration of a fair rent for this property on 16 March 2022.
- 2 The fair rent was previously registered on 17 September 2019 at £697.50 per month by the Rent Officer.
- 3 A fair rent of £785 per month was registered on 19 April 2022 and, following the application, Miss Rita Winch the Applicant challenged the registered rent and the Rent Officer has requested the matter be referred to the Tribunal for determination.
- 4 Directions were issued on 5th May 2022. The Directions stated that the application was suitable for determination on the basis of a paper determination.
- 5 The parties were invited to submit any relevant information and submissions and relevant information was received from both the Landlord and the Tenant.

Inspection

- 6 No inspection of the property was carried out due to covid restrictions.

The property

- 7 The Tribunal relies upon the description provided in the written submissions.
- 8 The property is a first-floor flat above commercial premises with lounge, two bedrooms, WC, utility room, shower room.
- 9 The Tribunal are told in written submission that the Landlord installed double glazing in 2012-14, and a thermostatic controlled shower in 2018 and upgraded the electrical wiring in 2022.
- 10 The Tenant in written submission provided photograph of internal dampness and reported open brickwork mortar joints to exterior. The Tenant claimed she has paid for electrical upgrading and met the costs of kitchen improvements. She also emphasised the flat is located above commercial premisses and that no white goods are provided by the Landlord.

The law

- 11 When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, s.70, 'the Act', it 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.
- 12 In **Spath Holme Ltd –v– Chairman of the Greater Manchester etc. Committee (1995)** and **Curtis –v– London Rent Assessment Committee [1999]** the Court of Appeal emphasised that ordinarily a fair rent is the market rent for the property discounted for 'scarcity'. This is 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.
- 13 In **Curtis –v– London Rent Assessment Committee (1999)** the authority also states that where good market rental comparable evidence of recently let assured shorthold tenancies is available this evidence be used to identify market rent as a starting point. It is wrong in those instances to rely on registered rents. The decision stated: *'If there are market rent comparables from which the fair rent can be derived why bother with fair rent comparables at all.'*
- 14 The market rents charged for assured tenancy lettings often form appropriate comparable transactions from which a scarcity deduction is made.
- 15 These market rents are also adjusted where appropriate to reflect any relevant differences between those of the subject and comparable rental properties.
- 16 The Upper Tribunal in **Trustees of the Israel Moss Children's Trust –v– Bandy [2015]** explained the duty of the First Tier Tribunal to present comprehensive and cogent fair rent findings. These Directions are applied in this decision.
- 17 **The Rent Acts (Maximum Fair Rent) Order 1999** applies to all dwelling houses where an application for the registration of a new rent is made after the date of the Order and there is an existing registered rent under part IV of the Act. This article restricts any rental increase to 5% above the previously registered rent plus retail price indexation (RPI) since the last registered rent. The relevant registered rent in this matter was registered on 17 September 2019 at £697.50 per month. The rent registered on 19 April 2022 subject to an Objection and subsequent determination by Tribunal is not relevant to this calculation.

Valuation

- 18 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. It did this by having regard to their general knowledge of market rent levels in this area of north London. The Tribunal determine the open market rent as at the date of the determination is £1,200 per month.
- 19 This hypothetical rent is adjusted as necessary to allow for the differences between the terms and condition considered usual for such a letting and the condition of the actual property at the date of the inspection. Any rental benefit derived from Tenant's improvements is disregarded. It is also necessary to disregard the effect of any disrepair or other defects attributable to the Tenant or any predecessor in title. Appropriate adjustments are made to the transaction evidence in assessment of the rent for this property.
- 20 The responsibility for internal and external maintenance of this property under the tenancy agreement is that of the Landlord.
- 21 The Tribunal then considered the decision of the High Court in **Yeomans Row Management Ltd –v– London Rent Assessment Committee [2002] EWHC 835 (Admin)**, which required it to consider scarcity over a wide area rather than limit it to a particular locality. North London is now considered to be an appropriate area to use as a yardstick for measuring scarcity and it is clear there is a substantial measure of scarcity in north London.
- 22 Assessing a scarcity percentage cannot be a precise arithmetical calculation. It can only be a judgement based on the years of experience of members of the Tribunal. The Tribunal therefore relied on its own combined knowledge and experience of the supply and demand for similar properties on the terms of the regulated tenancy (other than as to rent) and in particular to unfulfilled demand for such accommodation. In doing so, the Tribunal found that there was substantial scarcity in the locality of north London and therefore made a further deduction of 20% from the adjusted market rent to reflect this element.
- 23 The valuation of a fair rent is an exercise that relies upon relevant market rent comparable transactions and property specific adjustments. The fair rents charged for other similar properties in the locality do not form relevant transaction evidence.
- 24 Table 1 below provides details of the fair rent calculation:

Property:		985A High Road, London, N12 8QR			
Fair rent calculation in accordance with s(70) Rent Act 1977					
Market rent			£1,200.00	per month	
Disregards				Deduction per month	as % monthly rent
Carpets , curtains white, goods, soft furnishing			£30.00		2.50%
Dilapidations				Deduction per week	as % monthl rent
Penetrating dampness to lounge			£30.00		2.50%
Improvements undertaken by tenant					
Upgraded the electrical wiring			£90.00		7.50%
Installed replacement kitchen units			£90.00		7.50%
			Total deductions	£240.00	20.00%
			Adjusted Rent balance	£960.00	
Less Scarcity 20.00%	adjusted market rent		£192.00		
Adjusted Market Rent			£768.00	per month	Uncapped rent
Capped rent in accordance with			£ 850.00	per month	Capped rent
<i>Rent Acts (Maximum Fair Rent) Order 1999</i>					

Decision

- 25 The Rent Acts (Maximum Fair Rent) Order will not apply to this determination. The rent is below the capped rent in accordance with the Rent Act (Maximum Fair Rent) Order 1999. The capped rent under the Rent Order is **£850 per month**.
- 26 The statutory formula applied to the previously registered rent is at Appendix A.
- 27 Details of the maximum fair rent calculations were provided with the original notice of Decision.
- 28 Accordingly, the sum that will be registered as a fair rent with effect from 22 July 2022 is £768 per month.

Name: Ian Holdsworth
Valuer Chairman

Date: 5th September 2022

Appendix A

The Rents Act (Maximum Fair Rent) Order 1999

(1) Where this article applies, the amount to be registered as the rent of the dwelling-house under Part IV shall not, subject to paragraph (5), exceed the maximum fair rent calculated in accordance with the formula set out in paragraph (2).

(2) The formula is:

$$\text{MFR} = \text{LR} \left[1 + \frac{(\text{x}-\text{y})}{\text{y}} + \text{P} \right]$$

where:

- 'MFR' is the maximum fair rent;
- 'LR' is the amount of the existing registered rent to the dwelling-house;
- 'x' is the index published in the month immediately preceding the month in which the determination of a fair rent is made under Part IV;
- 'y' is the published index for the month in which the rent was last registered under Part IV before the date of the application for registration of a new rent; and
- 'P' is 0.075 for the first application for rent registration of the dwelling-house after this Order comes into force and 0.05 for every subsequent application.

(3) Where the maximum fair rent calculated in accordance with paragraph (2) is not an integral multiple of 50 pence the maximum fair rent shall be that amount rounded up to the nearest integral multiple of 50 pence.

(4) If $\frac{(\text{x}-\text{y})}{\text{y}} + \text{P}$ is less than zero the maximum fair rent shall be the y existing registered rent.