



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

Case reference : **LON/00BK/F77/2022/0092**

Property : **1st & 2nd Floor Maisonette, 172 Ebury Street, London SW1W 8UP**

Applicant : **Grosvenor Estates Belgravia**

Representative : **Ms Lauren Makin**

Respondent : **Mr D Fraser**

Representative : **None**

Date of application : **24 February 2022**

Type of application : **Determination of the registered rent under Section 70 Rent Act 1977**

Tribunal member(s) : **Mr Ian B Holdsworth MSc FRICS
RICS Registered Valuer 0079475
Oliver Dowty MSc MRICS
RICS Registered Valuer**

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

Date of decision : **3 August 2022**

DECISION

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Background

1. The Landlord applied to the Rent Officer for the registration of a fair rent for this property on 18 March 2022.
2. A fair rent of £29, 241.50 per annum was registered on 14 April 2022 following the application. The Tenant Mr Fraser subsequently challenged the registered rent and the Rent Officer has requested the matter to be referred to the tribunal for determination.
3. Directions were issued on 8th June 2022 by the tribunal.
4. The parties were invited to submit any relevant information and submissions. Written submissions were received from both the Tenant and the Landlord's representative.
5. The Landlord was represented by Ms Lauren Makin from Grosvenor Estates Belgravia, assisted by Ms Victoria Austin her associate. Mr Fraser was a litigant in person.

Hearing

6. This was a face-to-face hearing held on 3 August 2022.
7. Mr Fraser described to the tribunal the defects present at the property which included aged plumbing, water penetration through a defective roof, failed render to the rear of the property, damaged windows, defective guttering and a damaged front door. He also mentioned that the narrow staircase does not comply with current Building Regulations. He said that the Landlord carried out little or no maintenance.
8. He described to the tribunal the improvements he had undertaken during his tenancy which included upgrading the first floor bathroom and comprehensive redecoration throughout the property. He offered no comparable rental information.
9. Ms Makin contended that Grosvenor Estates Belgravia maintained the property to a reasonable standard and had recently replaced the combi boiler.
10. Ms Makin advised that the premises are held by the tenant on a full internal repairing and insuring lease. The tribunal were not provided with a copy of the lease. She said that the water penetration caused by the defective roof was being addressed at the time of the hearing.
11. Ms Makin offered recent transaction evidence from comparable property which included 53 Pimlico Road, a 1,300 sq ft, 3 bedroom house which was let on a assured shorthold tenancy in June 2022 at £1,750 per month. She claimed that this presented a good rental comparable to the subject dwelling. She also offered the tribunal two properties in Ebury Street, numbers 176c and 176b Ebury Street. These are of a similar size of approximately 900 sq ft to the subject and were let at £1,275 and £1,150 per week respectively.
12. Ms Makin contended that a fair rent for this property is £49,900 per annum equivalent to around £959.62 per week.

Inspection

13. The tribunal inspected the property following the hearing.
14. The property is a mid-terraced 2/3 bedroom dwelling in a row of similar style properties. It is located within the proximity of the usual amenities and in a particularly desirable area of West London. It has a large self-contained rear garden.
15. The inspection revealed penetrating dampness to internal walls, metal windows to bedroom 3, damage to other window fittings and dated electrical wiring.

The law

16. When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 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.
17. 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.
18. The Tribunal are aware that **Curtis v London Rent Assessment Committee (1999) QB.92** is a relevant authority in registered rent determination. This authority states where good market rental comparable evidence i.e., assured shorthold tenancies is available enabling the identification of a market rent as a starting point it is wrong 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*".
19. The market rents charged for assured tenancy lettings often form appropriate comparable transactions from which a scarcity deduction is made.
20. These market rents are also adjusted where appropriate to reflect any relevant differences between those of the subject and comparable rental properties.
21. 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.

22. **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 4 February 2020 at £27,569 per annum. The rent registered on 28 April subject to an Objection and subsequent determination by Tribunal is not relevant to this calculation.

Valuation

23. 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 West London.

24. 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. No adjustments are made to the transaction evidence in assessment of the rent for this property.

25. The responsibility for internal maintenance of this property under the tenancy agreement is the responsibility of the Tenant. The Tribunal are told this includes all service provision.

26. The provisions of section 70(2) of the Rent Act 1977 in effect require the elimination of what is called "scarcity". The required assumption is of a neutral market. Where a Tribunal considers that there is, in fact, substantial scarcity, it must make an adjustment to the rent to reflect that circumstance. In the present case neither party provided evidence with regard to scarcity.

27. 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. West London is now 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 West London.

28. 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 West London and

therefore made a further deduction of 20% from the adjusted market rent to reflect this element.

29. 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.

30. Table 1 below provides details of the fair rent calculation:

Property: 1/2nd Maisonette, 172 Ebury Street, SW18UP			
Fair rent calculation in accordance with s(70) Rent Act 1977			
Market rent		£78,000.00	per annum
Disregards			Deduction per annum as % annum rent
Carpets , curtains white, goods, soft furnishing		£5,850.00	7.50%
Full internal repairing lease		£11,700.00	15.00%
Summerhouse			
Dilapidations			Deduction per annum as % annum rent
Penetrating dampness to lounge and kitchen		£1,950.00	2.50%
Poor quality window fittings		£1,950.00	2.50%
No central heating at commencement of tenancy		£5,850.00	7.50%
Improvements undertaken by tenant			
Installed replacement kitchen units		£ -	
Installed Ensuite bathroom		£1,950.00	2.50%
		Total deductions	£29,250.00 35.00%
		Adjusted Rent balance	<u>£48,750.00</u>
Less Scarcity 20.00%	adjusted market rent	£9,750.00	
Adjusted Market Rent		<u>£39,000.00</u>	per annum Uncapped rent
Capped rent in accordance with		<u>£ 30,970.75</u>	per annum Capped rent
<i>Rent Acts (Maximum Fair Rent) Order 1999</i>			

Decision

31. The Rent Acts (Maximum Fair Rent) Order will apply to this determination. The uncapped fair rent initially determined by the Tribunal for the purposes of Section 70 is £39,000 per annum by virtue of the rent acts maximum fair order 1999 the maximum fair rent that can be registered for this property is £30,970.75 per annum. **This is based on a specific 5% increase plus any retail price increases on the previously registered rent of £25,386 per annum.**

32. The statutory formula applied to the previously registered rent is at Annex A.

33. Details of the maximum fair rent calculations were provided with the original notice of decision.

34. Accordingly, the sum that will be registered as a fair rent with effect from 3 August 2022 is **£30,970.75 per annum**.

Valuer Chairman: Ian B Holdsworth

Dated: 27 October 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:

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

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