



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

**Case reference** : **LON/00AW/F77/2022/0181**

**Property** : **First Floor Flat, 1 Finborough Road,  
Chelsea, London, SW10 9DA**

**Applicant** : **Grainger Bradley Limited**

**Representative** : **In person**

**Respondent** : **Ms Sharon A Morton**

**Representative** : **In person**

**Date of application** : **1 September 2022**

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

**Tribunal members** : **Mr I B Holdsworth FRICS MCI Arb  
Alan Ring**

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

**Date of decision** : **21 November 2022**

---

**DECISION**

---

## **Background**

1. An application was made to the Rent Office for the registration of a fair rent. The registered rent was challenged by the Tenant and the Rent Officer has requested the matter be referred to the Tribunal for determination.
2. Directions were issued to both parties following receipt of the objection.
3. The Tribunal informed the parties of their rights to request an oral hearing. The Tenant requested a hearing.
4. A video hearing was held but the Tenant failed to attend.
5. An inspection of the property was carried out. The dilapidations noted are listed in the table at paragraph 25 below.
6. Prior to the hearing, the parties were invited to submit relevant information on market rents in the area for similar properties. They were also invited to offer any details of property dilapidation, repairs or improvements made to the property by either the Landlord or Tenant.
7. The Tenant provided a detailed description of the property.

## **Property Description**

8. The property is a Flat. The accommodation comprises:

Entrance hall, lounge, galley kitchen, bedroom 1, bathroom/WC.

## **Reported defects and obsolescence**

9. The Tenant reported several specific defects to the property in their submission.
10. The condition of the property is a material consideration when carrying out a fair rent determination. The Tribunal has also had regard for any dilapidation and obsolescence at the property.

## **Market rental evidence**

11. The parties provided no details of comparable market rents of similar property in the locality. The Tribunal has had regard for any relevant information submitted.

## **The Law**

12. 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.

13. 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.
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 ( The “Rents Acts Order”)** 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 after taking account of any movement in the retail price index during the intervening period. The article is not applied should the tribunal assess that as a consequence of repairs or improvements carried out by the landlord the rent that is determined in response to an application for a new rent registration exceeds by at least 15% the previous rent registered.

## **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 levels in this area West London.
19. This hypothetical rent is adjusted as necessary to allow for the differences between the terms and conditions 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.
20. 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.

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. 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.
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 there was substantial scarcity in the locality of West London and, therefore, made a further deduction of 20%.
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. The Tribunal has had regard for any comparable transaction rental evidence presented by the parties. It has relied upon its knowledge and experience of the Market Rents in the locality to determine the appropriate Market Rent for this property to be used in the fair rent calculation.
25. Table 1 below provides details of the fair rent calculation:

<b>Table 1</b>						
<b>Property: FFF 1 Finborough Road, SW10 9DA 4</b>						
Fair rent calculation in accordance with s(70) Rent Act 1977						
Market rent				£500.00	per week	
<b>Disregards</b>				Deductions	per week	% per week
Carpets , curtains white, goods, soft furnishing					£25.00	5.00%
Furniture						
<b>Dilapidations</b>					per week	% per week
No central heating					£50.00	10.00%
Defective hot water system					£37.50	7.50%
Dated and damaged kitchen fittings					£25.00	5.00%
Older style sanitary fittings					£25.00	5.00%
Ill fitting windows					£12.50	2.50%
Defective sink and waste					£12.50	2.50%
Aged electrical wiring					£25.00	5.00%
				Total deductions	£212.50	42.50%
				Adjusted Rent balance	£287.50	
Less Scarcity 20.00%		adjusted market rent			£57.50	
Adjusted Market Rent					£230.00	per week
						Uncapped rent
Capped rent in accordance with					£ 320.50	per week
						Capped rent

## **Decision**

26. The Rent Acts Order will not apply to this determination. The uncapped fair rent initially determined by the Tribunal for the purposes of Section 70 is £230.00 per week. This is below the rent calculated in accordance with the Order that can be registered for this property as a maximum fair rent, which is £302.50 per week.

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

28. Details of the maximum fair rent calculations were provided with the original notice of decision. That notice was issued in error and is now replaced by the notice of decision accompanying this document.

29. Accordingly, the sum that will be registered as a fair rent with effect from 21 November 2022 is **£230 per week**.

**Name:** Ian Holdsworth  
Valuer Chairman

**Date:**  
**14 December**  
**2022**

## **Appendix A**

### **The Rents Act (Maximum Fair Rent) Order 1999**

2 (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.