



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

Case reference : **LON/00BD/F77/2022/0218**

Property : **102 Fulwell Road Teddington Middlesex
TW11 0RQ**

Applicant : **Mr W Prior (Edward)**

Respondent : **Capital Land Holdings Ltd**

Representative : **Hamways Ltd**

Type of application : **Section 70 of the Rent Act 1977**

**Tribunal
member(s)** : **Judge Lumby
Richard Waterhouse FRICS**

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

Date of decision : **30 November 2022**

DECISION

Decision

£652.80 per month is to be registered as the fair rent for the above property with effect from 30th November 2022 being the date of the Tribunal's decision.

The reasons for this decision are set out below.

Reasons

Background

On 18th July 2022 Hamways Ltd on behalf of the landlord, applied to the Valuation Office Agency (Rent Officer) for registration of a fair rent of £712.80 per month for the property.

The rent payable at the time of the application was £594 per month, effective from 9th October 2020. It was noted a rent of £620 had been registered by the Rent Officer and the rent of £594 per month was a First Tier Tribunal decision.

On 14th September 2022 the Rent Officer registered a fair rent of £720 per month. The Rent Officer commented in the Remarks section of the Rent Register that this was a former protected tenant of the same landlord. The increase imposed by the Rent Officer had not been “capped” or limited by the operation of the Rent Acts (Maximum Fair Rent) Order 1999 (the Order).

The tenant objected to the rent determined by the Rent Officer and the matter was referred to this Tribunal on 4th October 2022.

The law

When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, must have regard to all the circumstances including the age, location and state of repair of the property. It also must disregard the effect of (a) any relevant tenant's improvements and (b) the effect of any disrepair or other defect attributable to the tenant, on the rental value of the property.

Section 70(2) of the Rent Act 1977 imposes on the Tribunal an assumption that the number of persons seeking to become tenants of similar dwelling house 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. This is commonly called ‘scarcity’.

In *Spath Holme Ltd v Chairman of the Greater Manchester Council (1995) 28 HLR 107* and *Curtis v London Rent Assessment Tribunal [1999] QB 92* the Court of Appeal emphasised

1. (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
2. (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).

The Rent Acts (Maximum Fair Rent) Order 1999 places a “cap” on the permissible amount of the increase of a fair rent between one registration and the next, by reference to the amount of the increase in the United Kingdom Index of Retail Prices between the dates of the two registrations. Where the

cap applies the Rent Officer and the Tribunal is prevented from increasing the amount of the fair rent that it registers beyond the maximum fair rent calculated in accordance with the provisions of the Order and the mathematical formula set out in the Order.

By article 2(7) of the 1999 Order the capping provisions do not apply *“in respect of a dwelling-house if because of a change in the condition of the dwelling-house or the common parts as a result of repairs or improvements (including the replacement of any fixture or fitting) carried out by the landlord or a superior landlord, the rent that is determined in response to an application for registration of a new rent under Part IV exceeds by at least 15% the previous rent registered or confirmed.”*

Facts found including Inspection

The Tribunal inspected the property on 30th November 2022. The applicant was present in the property, no one on behalf of the respondent attended.

The property is a Victorian mid terrace house located in an established residential area amongst properties of a comparable type and age convenient to local amenities and station.

The accommodation comprises: five rooms, kitchen, outside WC and garden.

There is no central heating system and no internal bathroom or lavatory.

The property was in a poor state of repair.

Terms of the tenancy

It is understood that this tenancy began in 1963. It is agreed that the landlord is responsible for structural repairs and external decoration; the tenant is responsible for internal decorations. The property is let unfurnished.

Tenant's improvements

The tenant has not provided any information regarding improvements made to the property. None were apparent.

Evidence

The Tribunal had copies of the Valuation Office Agency correspondence including the rent registers effective 9th November 2017, 16th March 2020 and 14th September 2022.

Valuation

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.

We consider that the subject property, if finished to a reasonable standard would be likely to attract a rent let on an assured shorthold tenancy, for around £2,040 per month

Next, we need to **adjust that hypothetical rent** of £2,040 per month to allow for the differences between the terms of this tenancy, the lack of internal washing facilities, lavatory, central heating and general dilapidated condition.

Using our own expertise we considered that a significant deduction of 60% should be applied in order to take into account the terms of the tenancy, no internal washing facilities, no internal lavatory, no central heating and a general dilapidation to the fabric of the property. This provides a deduction of £1,224 from the hypothetical rent.

It should be noted that this figure cannot be a simple arithmetical calculation and is not based upon capital costs but is the tribunal's estimate of the amount by which the rent would need to be reduced to attract a tenant.

Scarcity

Thirdly, the tribunal then went on to consider whether a deduction falls to be made to reflect scarcity within the meaning of section 70(2) of the 1977 Act. The tribunal followed the decision of the High Court in *Yeomans Row Management Ltd v London Rent Assessment Committee*, in which it was held that scarcity over a wide area should be considered rather than scarcity in relation to a particular locality. Greater London is 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 Greater London.

We therefore made a further deduction of approximately 20% (£163.20) from the adjusted market rent to reflect this element to produce a figure of £652.80 per month.

Conclusion

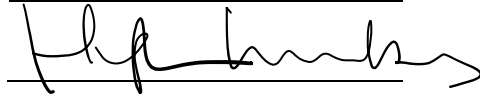
If we apply the capping provisions of the Rent Acts (Maximum Fair Rent) Order. The capped fair rent in accordance with the calculations is £731.50.

Therefore, the fair rent to be registered is not limited by the Rent Acts (Maximum Fair Rent) Order 1999 and a rent of **£652.50 per month** is effective from the 30th November 2022 being the date of the Tribunal's decision.

Detailed calculations are provided on the back of the Tribunal's decision form already issued and dated 30th November 2022).

Name: Tribunal Judge Lumby **Date:** 22nd December 2022

Signed:



Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have. 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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).