



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

Case reference : **LON/00AU/F77/2022/0207**

Property : **Flat 10, 23 Bunhill Row,
London EC1Y 8LP**

Landlord : **Honourable Artillery Company**

Representative : **Daniel Watney LLP; Marie
Bultitude**

Tenant : **Mr Ian Shelley**

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

Tribunal members : **Mr D Jagger MRICS**

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

Date of Reasons : **13th February 2023**
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Decision

£13,464 per annum is to be registered as the fair rent for the above property with effect from 6th December 2022 being the date of the Tribunal's decision.

The reasons for this decision are set out below.

Reasons

Background

On 8th December 2021 Daniel Watney LLP on behalf of the landlord, applied to the Valuation Office Agency (Rent Officer) for registration of a fair rent of £13,884 per annum which equates to £1,157 per month for the property.

The rent payable at the time of the application was £12,470 per annum effective from 29th November 2019

On 18th. February 2022 the Rent Officer registered a fair rent of £12,428 per annum. The rent reduction imposed by the Rent Officer had been “uncapped” or unlimited by the operation of the Rent Acts (Maximum Fair Rent) Order 1999 (the Order).

By email dated 3rd March 2022 the landlords agent objected to the rent determined by the Rent Officer and the matter was referred to this Tribunal.

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

- (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
- (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 without Inspection

The Tribunal did not inspect the property and relied on information provided by the parties together with its expert knowledge. An inspection of the property by the Tribunal was not requested by the parties.

The property is a self contained flat forming part of a Victorian building located in an established residential area. Bunhill Row runs north to south from the City to Old Street, convenient to local amenities and stations.

The accommodation comprises two bedrooms, living room, kitchen and bathroom.

Terms of the tenancy

It is understood that the current tenancy began on the 5th October 1993. It is agreed between the parties that there was a previous tenancy which offered the tenant protection under the Rent Act 1977. The property was let unfurnished. (See tenants improvements)

Tenant's improvements

Following a telephone consultation with the parties and the Rent Officer on the 16th February 2022, the tenant confirmed *‘everything in the flat was provided by the tenant’*. It is evident that the tenant has refurbished the property during the term of tenancy. The tenant has installed kitchen fittings, sanitary fittings and floor coverings.

Evidence

The Tribunal had copies of the Valuation Office Agency correspondence including the rent registers effective 7th August 2019 and 18th February 2022.

The Landlords agent Daniel Watney LLP did not provide any comparable evidence or submissions. In a letter dated 16th February 2022 the Tenant provided the Rent Officer a schedule of 12 properties which indicate rental values have increased 0.5% between 2019 and 2022. The Tribunal could only place minimal weight on this evidence as there were barely sufficient information provided, such as accommodation, specification, type of property etc.

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.

Based upon the evidence provided together with its expert knowledge, the Tribunal 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 £26,400 per annum.(£2,200 per month)

Next, we need to **adjust that hypothetical rent of £26,400 per annum** to allow for the differences between the terms of this tenancy and complete disregard of the effect of any tenant's improvements.

The Tribunal has considered very carefully the parties submissions and the notes prepared by the Rent Officer.

Using our own expertise we considered that deductions of 40% should applied in order to take into account the terms of the tenancy, and condition of the property at the commencement of the tenancy. This provides a deduction of £10,560pa from the hypothetical rent. This reduces the figure to £15,840.

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 15% (£2,376) from the adjusted market rent of £15,840 to reflect this element to produce a figure of **£13,464 per annum** including £429 pa for services prescribed by the order.

Conclusion

The capping provisions of the Rent Acts (Maximum Fair Rent) Order do not apply (see calculations) and therefore the uncapped fair rent is **£13,464 per annum**

The Maximum Fair Rent Calculation is based upon a mathematical formula set out in the Rent Act 1977 and an Explanatory Note is provided with the Decision. The reason for the significant increase in Maximum Fair Rent is due to the particularly sharp increase in the Retail Price Index (RPI) in the past 12 months, as the calculation is based upon such a percentage change in the Index.

Therefore, the fair rent to be registered is not limited by the Rent Acts (Maximum Fair Rent) Order 1999 and takes effect from the 6th December 2022 being the date of the Tribunals decision.

Detailed calculations are provided with the decision.

D Jagger MRICS

13th February 2023

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).