



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

Case Reference	:	JM/LON/00AZ/F77/2022/0292
Property	:	133 Boundfield Road, Catford, London, SE6 1PF
Landlord	:	The Hyde Group
Tenant	:	Ms Jane Kerr
Type of Application	:	Assessment of Fair Rent
Tribunal Members	:	Judge Robert Latham Mr Oliver Dowty MRICS
Date and venue of Determination	:	28 March 2023 at 10 Alfred Place, London WC1E 7LR
Date of Reasoned Decision	:	28 March 2023

EXTENDED REASONS

Background

1. On 15 September 2022, the landlord applied to the Rent Officer for the registration of a fair rent of £133.54 per week for 133 Boundfield Road, Catford, London, SE6 1PF ("the property") pursuant to Part IV of the Rent Act 1977 ("the Act"). The landlord was charging a rent of £123.23 pw. On 13 January 2020, a Rent Officer had registered a fair rent of £152 pw. The Hyde Group is a registered social landlord. It seems that it charges social rents which are set at a level below a fair rent.
2. On 7 November 2022, the Rent Officer registered a fair rent of £189.50 per week. He first assessed the market rent to be £369.23 per week. He then made adjustments of £75 (20%), having regard to three factors: no white goods, no floor coverings/curtains and tenants decorating liability. He finally made a deduction of £30 pw (10%) for scarcity. He assessed the fair rent at £189.50 pw.

3. He then computed the “capped rent” to be £264 pw. As the fair rent was lower than the fair rent, it was the fair rent of £189.50 pw which was registered.
4. The tenant requested the Rent Officer to refer the matter to the First-tier Tribunal (Property Chamber) (the “Tribunal”). She complained that there had been outstanding repairs to the property which have been ongoing for many years. Both parties made written representations. Neither requested an oral hearing. Ms Kerr complained that the bathroom and toilet were pulling away from the back of the house. The Tribunal was satisfied that an inspection was required.

The Inspection

5. The Tribunal inspected the property. Ms Kerr's partner, Mr Howard, was present. Mr Kenneth Rowe, a surveyor, attended on behalf of the landlord. He had not previously inspected the property.
6. There are three bedrooms on the first floor and a living room and kitchen on the ground floor. There is a separate bathroom and toilet. The house has gas central heating. The tenant has sole use of the garden.
7. The property is a three bedroom house at the end of a terrace of four houses. It seems to have been constructed shortly after World War 2. The house is not in a good structural condition. There is evidence of structural movement to the front of the property, but this may be historic. The state of the tiled roof is poor, particularly when compared with the condition of the roofs to the three other properties in the terrace.
8. The bathroom and toilet are situated in an extension to the rear of the property. This extension is not properly tied into the rear of the building and is now pulling away. The tenant has provided a number of photographs. The whole of the extension has pulled away, and it is only the lead work which prevents rain from penetrating through the gaps. It is possible to put a hand into the space that has been created. The tenant has covered this gap with tape. It is not entirely clear whether this extension was original or was added at a later date. A window has been inserted in the rear kitchen where there had been a door. A low quality panel has been inserted below the left of the window where the lower part of the door had been. In her written submissions, Ms Kerr states that she complained about this disrepair two years ago and that no action had been taken. Mr Rowe was unaware of the problem.
9. Ms Kerr's tenancy commenced on 14 September 1998. The Rent Register wrongly records this as being 19 June 1989. Prior to the commencement of the tenancy, UPVC windows were installed. These were installed to a poor standard. The ventilation arrangements to the first floor are poor. There is an old ventilation grill. The windows do not seem to have trickle vents.
10. The tenant has upgraded the kitchen. She has replaced the plasterboard in the bathroom with tiles attached to plywood. She has installed a shower attachment. Mr Howard suggested that there was some damp in the rear bedroom, but the

Tribunal was unable to confirm this. There is some cracking to the ceiling in the front bedroom. However, these seem to be settlement cracks. The front door is ill fitting and this seem to reflect the structural movement.

11. The state of the internal decorations is poor. The stair carpets are worn. These are the responsibility of the tenant.

The Law

12. When determining a fair rent in accordance with section 70 of the Act, the Tribunal:
 - (1) has regard to all the circumstances (other than personal circumstances) including the age, location and state of repair of the property;
 - (2) disregards the effect on the rental value of the property of (a) any relevant tenant improvements and (b) any disrepair or other defect attributable to the tenant or any predecessor in title under the regulated tenancy;
 - (3) assumes (as required by s.70(2)) that, whatever might be the case, the demand for similar rented properties in the locality does not significantly exceed the supply of such properties for rent. In other words that the effect of any such 'scarcity' on rental values is not reflected in the fair rent of the subject property.
13. In *Spath Holme Ltd v Chairman of the Greater Manchester etc. Committee* (1995) 28 HLR 107 and *Curtis v London Rent Assessment Committee* [1999] QB 92 the Court of Appeal emphasised that section 70 means that:
 - (a) ordinarily a fair rent is the market rent for the subject property discounted for 'scarcity' and
 - (b) 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).
14. Thus, once the market rent for the property has been determined by the exercise in (2) above that rent must be adjusted, where necessary, for any scarcity.
15. Having assessed a fair rent, a Tribunal must consider the effect of the Rent Act (Maximum Fair Rent) Order 1999. We annexe this as Appendix 2.
16. In reaching our determination, the Tribunal has taken into account the documents provided by the Rent Officer, the representations provided by the parties and our findings on viewing the property.

Our Assessment of the Fair Rent

(i) The Market Rent

17. The Tribunal first determines the fair rent in accordance with section 70 of the Act. Our starting point is to determine the rent which the landlord could reasonably expect to obtain for the premises in the open market if it were let today in the condition that is considered usual for such an open market letting in this locality.
18. The Rent Officer has provided a schedule of rents for three bedroom houses in the area. These range from £207.69 to £507.69 pw. He adopted a figure of £369.23 which is midpoint in the schedule.
19. Applying our knowledge as an expert tribunal, we are satisfied that the figure adopted by the Rent Officer is slightly low and we assess the market rent at £400 pw.

(ii) The Adjusted Rent

20. Secondly, this property is not let under the terms or in the condition considered usual for a modern letting at a market rent. Substantial adjustments must be made for this and for the disrepair that we have identified. The Rent Officer made a deduction of 20%.
21. We are satisfied that a substantially larger deduction, say 20%, should be made given the condition of the house. We are satisfied that a reduction of 40% (£160 pw) should be made in respect of the following:

(i) The substantial disrepair affecting the property;

(ii) Terms and conditions;

(iii) No carpets, curtains or white goods;

22. We considered these factors separately and then considered whether the overall reduction is justified. We are satisfied that it is. We determine an adjusted rent of £240 pw.

(iii) Scarcity

23. Finally, we must consider the issue of scarcity. The Rent Officer made a reduction of 10% in respect of this.
24. In *Yeoman's Row Management Ltd v London Rent Assessment Committee* [2002] All ER (D) 148 (Apr), Ousley J held that scarcity must be considered over a wider area than a particular locality. Greater London is now considered to be an appropriate area to use as a yardstick for measuring scarcity.
25. Applying our own general knowledge, and having regard to the collective knowledge of our expert members on Tribunals in London, we conclude that 20% is the appropriate reduction to make for scarcity in Greater London.

26. We therefore reduce the adjusted rent by £48 pw (20%). This results in our assessment of a fair rent of £192 per week.

The Capped Rent

27. It is then necessary for the Tribunal to compute the “capped rent” applying the Maximum Fair Rent Order. We annexe our calculation to our decision and computed a figure of £196.50 pw. We note that the capped rent which we have computed is higher than that determined by the Rent Officer (£189.50). We are computing the capped rent some four months later over which period there has been a significant increase in the RPI.
28. As the capped rent is higher than the fair rent that we have determined, it is the fair rent that is payable.

Decision

29. The Tribunal determines a fair rent of £192 per week.
30. We have noted that the Hyde Group is a registered social landlord which charges social rents which are set at a level below a fair rent. The fair rent is the maximum rent that the landlord can charge. The landlord may decide to charge a lower rent, as it has in the past. We expect the landlord to address the disrepair that we have confirmed.

Judge Robert Latham
28 March 2023

Appendix 2

The Rent Acts (Maximum Fair Rent) Order 1999 (SI 1999 No.6)

Article 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: $MFR = LR [1 + (x-y)/y + P$

where—

MFR is the maximum fair rent;

LR is the amount of the existing registered rent for 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 $(x-y)/y + P$ is less than zero the maximum fair rent shall be the existing registered rent.

(5) In applying this article no account shall be taken of any variable sum to be included in the registered rent in accordance with section 71(4) of the 1977 Act.

(6) Subject to paragraph (7), this article applies where an application for the registration of a new rent in respect of a dwelling-house is made after this Order comes into force and, on the date of that application, there is an existing registered rent under Part IV in respect of that dwelling-house.

(7) This article does 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.

(8) For the purposes of this article:

(a) references to Part IV are to be Part IV of the 1977 Act;

(b) “common parts in relation to a building, includes the structure and exterior of the building and common facilities provided for the occupiers of the dwelling-houses in the building;

(c) “index” means the monthly United Kingdom Index of Retail Prices (for all items) published by the Office for National Statistics.