



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

Case Reference	:	LON/00BF/F77/2022/0289
Property	:	10A Albert Court, Kensington Gore, London, SW7 2BL
Landlord	:	Northumberland and Durham Property Trust Limited
Tenant	:	Mr Nicholas Savage
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 2 September 2022, the landlord applied to the Rent Officer for the registration of a fair rent of £5,366.22 per quarter for 10A Albert Court, Kensington Gore, London, SW7 2BL (“the flat”) pursuant to Part IV of the Rent Act 1977 (“the Act”). The existing rent was £4,225 per quarter.
2. On 31 October 2022, the Rent Officer registered a fair rent of £5,180.50 per quarter, with effect from 13 November 2022. He first assessed the market rent to be £750 per week. He then made adjustments of £300 (40%), having regard to four factors: no white goods, tenants' decoration liability; no floor coverings/curtains and unmodernised kitchen. He finally made a deduction of £45 pw (10%) for scarcity. He assessed the fair rent at £5,265 pq.

3. He then computed the “capped rent” to be £5,180.50 pq. As the capped rent was lower than the fair rent, it was the capped rent of £5,180.50pq which was registered. He assessed the amount for fuel charges at £20.25 pq and the sum attributable to services to be £151.31 pq.
4. The tenant requested the Rent Officer to refer the matter to the First-tier Tribunal (Property Chamber) (the “Tribunal”). Neither party made written representations or requested an oral hearing.

The Inspection

5. The Tribunal inspected the property. The tenant was present. There was no representative from the landlord. The tenancy was granted on 10 February 1969.
6. The flat is in Kensington Gore in a prime central London location close to the Royal Albert Hall. The mansion block was built in the 1880s with a number of large apartments. It was constructed with steel beams between the flats. The construction incorporated clinker bricks. Both the thermal insulation and the noise insulation between flats is poor.
7. After the 1914-18 War, a number of the apartments were divided to provide much smaller flats for single people. The subject flat has three living rooms. However, one of the rooms has large panel doors which open onto the living room. It might therefore be more accurately considered to be a one bedroom flat with two living rooms, rather than as a two bedroom flat. The Rent Register records it as having "3 rooms, 1 kitchen and 1 Bath/wc". There is no central heating. Although the flat is on the ground floor, it has a poor view, looking out onto a lightwell.
8. In 1969, the flat was let to Mr Savage in 1969 in a very basic condition. Mr Savage described how it was let with "bare boards". There was no gas supply or central heating. There was a single socket for a cooker in the kitchen.
9. Over the subsequent years, the tenant has carried out substantial improvements. The kitchen was extremely basic. The tenant installed a new kitchen. The hand wash basin and toilet in the bathroom were cracked. The tenant installed new units. The tenant has put down teak flooring. He has also replaced a number of the windows with leaded frames. In 1989, the tenant installed a new fuse box and upgraded the wiring in the kitchen. In the kitchen and bedroom there were open coal fireplaces. The tenant has installed gas units. The tenant has maintained the flat to a high standard.

The Law

10. 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.
11. 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).
 12. 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.
 13. 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.
 14. In reaching our determination, the Tribunal has taken into account the documents provided by the Rent Officer, the limited representations provided by the parties and our findings on viewing the property.

Our Assessment of the Fair Rent

(i) The Market Rent

15. 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.
16. The Rent Officer has provided a schedule of rents for two bedroom units in SW7 ranging from £379.85 to £2,575.00. He adopted a market rent of £750 pw. This is a difficult flat to value. The rentals at the top end of the market would be let to an extremely high standard. This flat has an unusual configuration. Applying our knowledge as an expert tribunal, we are satisfied that the figure adopted by the Rent Officer is slightly low and assess the market rent for this flat at £800 pw.

(ii) The Adjusted Rent

17. Secondly, this property is not let under the terms or in the condition considered usual for a modern letting at a market rent in this highly desirable area. Substantial adjustments must be made for this. The Rent Officer made a deduction of 40% for these.
18. We have also agreed to make a deduction of 40% (£320 pw) in respect of the following and determine an adjusted rent of £480 pw having regard to:
 - (i) The very basic condition in which the flat was let and the substantial improvements carried out by the tenant, particularly to the kitchen;
 - (ii) Terms and conditions;
 - (iii) No carpets, curtains or white goods;
 - (iv) No central heating;
19. We considered these factors separately and then considered whether the overall reduction is justified. We are satisfied that it is.

(iii) Scarcity

20. Finally, we must consider the issue of scarcity. The Rent Officer made a reduction of 10% in respect of this.
21. 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.
22. 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.
23. We therefore reduce the adjusted rent by £96 pw (20%). This results in our assessment of a fair rent of £384 per week, or £4,992 per quarter.
24. The Rent Officer has recorded that £20.25 per quarter should be recorded as the amount for fuel charges and £151.32 per quarter for services. These figures have not been challenged and we confirm them.

The Capped Rent

25. 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 £5,398 per quarter. We note that the capped rent which we have computed is higher than that determined by the Rent Officer

(£5,180.50). We are computing the capped rent some five months later over which period there has been a significant increase in the RPI.

26. As the capped rent is higher than the fair rent that we have determined, it is the fair rent that is payable.

Decision

27. The Tribunal determines a fair rent of £4,992 per quarter.
28. We note that on 13 November 2020, a Tribunal determined a fair rent of £4,225 per quarter. We are satisfied that the approach that we have adopted is consistent with that adopted by that Tribunal. The Tribunal determined the rent during the Covid-19 lock-down when tribunals were not carrying out inspections. We have had the benefit of inspecting the flat.

Judge Robert Latham
28 March 2023

Appendix 1: Calculation of fair rent

1. Market rent in good condition with modern amenities	£800 pw
2. Less adjustments for the following (40%):	£320 pw
(i) The very basic condition in which the flat was let and the substantial improvements carried out by the tenant, particularly to the kitchen;	
(ii) Terms and conditions;	
(iii) No carpets, curtains or white goods;	
(iv) No central heating;	
Adjusted Rent:	£480 pw
3. Less scarcity in locality (Greater London) (20%):	£96
Fair Rent:	<u>£384 pw or £4,992 pq</u>
 Rent limit provided for by the Rent Acts (Maximum Fair Rent) Order 1999	 £5,398 pq
 Fair Rent Determined	 £4,992 pq
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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.