



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

Case Reference	:	FL/LON/00BJ/F77/2022/0246
Property	:	Flat Third Floor, 42 Tooting High St. Wandsworth London SW17 0RG
Applicant	:	Mrs. Susan Faragher (Tenant)
Representative	:	None
Respondent	:	Fairdale Property Trading Ltd. (Landlord)
Representative	:	None
Type of Application	:	S.70 Rent Act 1977 – Determination of a new fair rent
Tribunal Member	:	Mr N Martindale FRICS
Date and venue of Meeting	:	6 February 2023 10 Alfred Place, London WC1E 7LR
Date of Decision	:	6 February 2023 31 March 2023 (reasons)

REASONS FOR DECISION

Background

- 1 The landlord applied to the Rent Officer for registration of a fair rent. The rent registered as already payable at the time of the application was £658 pcm, capped, with effect from 15 September 2020 (£728 pcm uncapped).
- 2 Although the Rent Officer set a rent in late 2022, subsequently a party (it is unclear from the correspondence available the Tribunal) objected and sought a re-hearing of the application, by the Tribunal.

Inspection

- 3 The Tribunal did not inspect the Property owing to the department's ongoing health restrictions imposed and arising from Covid 19. The Property appears from Google Streetview (@July 2022), to be part of a substantial mid Edwardian mid terrace building. Retail on ground level near the busy retail centre and tube line station at Tooting. There are three floors of self contained residential accommodation above. This flat being on the Third Floor. Although convenient for many services the flat is in a very busy location and above commercial retail premises.
- 4 The Property has 2 rooms, kitchen, bathroom & WC. It is assumed judging from the exterior appearance and existing records that there is no double glazing to windows, no full gas fired central heating. It appears to have been refurbished some time in 1970's. The main roof appears to be double pitched tiled but it is not possible to see beyond the eaves from ground level photography. The front elevation of the building within which the Property lies, appears in fair condition.
- 5 The Tribunal made the assumption common in older established tenancies such as this one, that there were no carpets or curtains, or white goods included in the letting by the landlord and that the kitchen and bathroom were functional but basic only. The tenant did not report to the Tribunal any improvements which they had carried out or any items of disrepair which the landlord had not.

Evidence

- 6 Directions, for the progression of the case were issued. The Tribunal received brief representations. Neither party requested a hearing. The case was determined only on the papers.

Law

- 7 When determining a fair rent the Committee, in accordance with the Rent Act 1977, section 70, 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.
- 8 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 emphasized
 - (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).

Decision

9. The condition of a property is inferior of that of comparable properties, so that the rents of those comparables are towards twice that proposed rent for the subject property, it calls into question whether or not those transactions are truly comparable. Would prospective tenants of modernized properties in good order consider taking a tenancy of an unmodernised house in poor repair and with only basic facilities or are they in entirely separate lettings markets? The problem for the Tribunal is that the only evidence of value levels available to us is of modernised properties. We therefore have to use this but make appropriate discounts for the differences, rather than ignore it and determine a rent entirely based on our own knowledge and experience, whenever we can.
10. On the evidence of the Tribunal's general knowledge of market rent levels in this location, the subject property if modernized and in good order would let on normal Assured Shorthold Tenancy (AST) terms, for £1,700 pcm.
11. Tribunal makes allowance for the absence of carpet and curtains, for the lack of white goods, only a basic kitchen and bathroom, no central heating and no double glazing, located directly above retail premises at a busy commercial location. These adjustments total a £650 pcm deduction, producing a market rent of £1050 pcm, prior to considering scarcity.
12. The Tribunal also has to consider the element of scarcity and whether demand exceeded supply. The Tribunal found that there was a substantial scarcity in the locality of Greater London and therefore makes a further deduction of 20% from the adjusted market rent to reflect this element. This deduction results in an uncapped fair rent of £840 pcm.
13. The Tribunal is also required to calculate the Maximum Fair Rent Cap (MFRCap) which serves to limit the extent of increase in a fair rent on review. The cap is determined by a formula under statutory regulation, which whilst allowing for an element of inflation may serve to prevent excessive increases. The cap as the date of the Tribunal's determination produces a figure of £806.50 pcm. This figure is a combination of the previously registered rent being subject to the change in RPI between registration dates rounded up to the nearest

50p. There is no service charge element. In this case the cap did apply according to the MFRCap regulations.

14. As the cap applies, the new rent calculated above is capped. The fair rent is £806.50 pcm. It takes effect from and including the date of determination, 6 February 2023.

Chairman N Martindale FRICS

Dated 31 March 2023