



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

**Case reference** : **LON/00AE/F77/2023/026**

**Property** : **27 Esmond Road London NW6 7HF**

**Applicant  
(Landlord)** : **Northumberland & Durham Property  
Trust Ltd**

**Representative** : **None**

**Respondent  
(Tenant)** : **Mrs Violeta Dizon**

**Representative** : **None**

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

**Tribunal members** : **Mr D Jagger MRICS**

**Venue** : **Paper determination**

**Date of Reasons** : **30<sup>th</sup> June 2023**

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**DECISION**

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**The Tribunal determines £532 per week is to be registered as the fair rent for the above property with effect from 5th June 2023 being the date of the Tribunal's decision.**

The reasons for this decision are set out below.

## **Reasons**

### **Background**

On the 2nd September 2022 the landlord, applied to the Valuation Office Agency (Rent Officer) for registration of a fair rent of £614.80 per week for the property. (£2664.13 per month)

The rent registered at the time of the application was £530 per week effective from 17<sup>th</sup> November 2020.

On 17th November 2022 the Rent Officer registered a fair rent of £500 per week, effective from the 17th November 2022. The rent increase imposed by the Rent Officer does not appear to have been “capped” or limited by the operation of the Rent Acts (Maximum Fair Rent) Order 1999 ( the Order).

By a letter dated 24th November 2022 from Grainger Trust plc, the Landlord 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

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 parties did not request the Tribunal to inspect the property and the Tribunal were satisfied this was not required and relied on information provided by the parties together with its expert knowledge.

The property is a Victorian mid terrace house located in an established road in the Queens Park area convenient to local amenities and Kilburn Park underground station.

The accommodation comprises: 2 reception rooms, kitchen, 3 bedrooms, bathroom, lavatory, rear garden.

There is gas central heating to radiators.

### **Terms of the tenancy**

The Periodic Protected Tenancy commenced on the 1st January 1978, although a copy of the agreement is not attached to the bundle of documents. It is assumed that the landlord is responsible for structural repairs and external decoration; the tenant is responsible for internal decorations. The property was let unfurnished.

### **Tenant's improvements and Condition**

The tenant has not stated any improvements have been undertaken during the term of the tenancy. However, the Rent Officer confirms carpets, curtains and any white goods were provided by the tenant. There is evidence of damp to the ground floor accommodation.

## **Evidence**

The Tribunal had copies of the Valuation Office Agency correspondence and including the rent registers effective 17th November 2020 and 17th November 2022 together with the calculations for the most recent registration.

The parties provided very limited information in connection with the property. The Reply forms were not completed and as previously mentioned there was no tenancy agreement provided. Neither party provided any comparable evidence to support their case.

## **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 generic list of comparable evidence provided by the landlord 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 **£831** per week.

We now need to **adjust that hypothetical net rent of £831 per week** to allow for the differences between the terms of this tenancy and the lack of white goods, carpets and curtains, the tenants decorating responsibilities and dated bathroom fittings (disregarding the effect of tenant's improvements and any disrepair or other defect attributable to the tenant).

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 20% should applied to take into account the terms of the tenancy, and the condition of the property at the commencement of the tenancy. This provides a deduction of £165 per month from the hypothetical rent. This reduces the figure to £665 per week.

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.

In the Tribunals opinion there should be a deduction of 20% for scarcity as it is considered demand outweighs supply of rented properties in the area. This provides a figure of £133 and therefore reduces the rent to £532 per week.

## **Conclusion**

The capping provisions of the Rent Acts (Maximum Fair Rent) Order do not apply and therefore the capping figure shown in the calculations sheet does not apply. For information, the fair rent in accordance with the attached calculations is **£700 per week**.

Therefore, the fair rent of £532 per week is to be registered limited by the Rent Acts (Maximum Fair Rent) Order 1999 with effect from the **5<sup>th</sup> June 2023** being the date of the Tribunals decision.

Detailed calculations for the capped maximum fair rent are provided on the back of this decision form.

Detailed calculations for the capped maximum fair rent are provided attached this decision. This calculation for this figure is based upon the indexation of the Retail Price Index (RPI) during the period of the two rent assessments. During the past 12 months, the RPI has increased dramatically due to the cost-of-living crisis and therefore this rental calculation has escalated significantly.

**D Jagger MRICS Valuer Chair**

**30<sup>th</sup> June 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).