



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

**Case reference** : **Lon/00AG/F77/2023/0017**

**Property** : **Flat 1, 1 Minster Road, London NW2  
3SD**

**Applicant  
(Landlord)** : **BPT (Bradford Property Trust) Ltd**

**Representative** : **None**

**Respondent  
(Tenant)** : **Ms Heather Edwards**

**Representative** : **None**

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

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

**Venue** : **Paper determination with inspection**

**Date of Reasons** : **28th July 2023**

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**DECISION**

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**The Tribunal determines £300 per week is to be registered as the fair rent for the above property with effect from 29<sup>th</sup> June 2023 being the date of the Tribunal's decision.**

The reasons for this decision are set out below.

## **Reasons**

### **Background**

On the 4th October 2022 the landlord, applied to the Valuation Office Agency (Rent Officer) for registration of a fair rent of £342.18 per week for the property.

The rent registered at the time of the application was £310 per week effective from 29<sup>th</sup> December 2020.

On the 1st December 2022 the Rent Officer registered a fair rent of £260 per week (£1,126 per month), effective from the 29th December 2022. The rent increase imposed by the Rent Officer has not been “capped” or limited by the operation of the Rent Acts (Maximum Fair Rent) Order 1999 (the Order).

By a letter dated 16th December 2022 from Grainger 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

- (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 with Inspection.**

The property was inspected by the Tribunal on the morning of the 29<sup>th</sup> of June 2023 in the presence of the tenant’s son.

The property is a converted ground floor purpose built flat forming part of a three storey Victorian end of terrace property in an established road convenient to local amenities. The property lies adjacent The Mulberry House School.

The accommodation comprises: living room, kitchen, three bedrooms, bathroom, private garden.

The property is in need of general refurbishment with unmodernised kitchen and bathroom fittings. There is evidence of defective plaster, mould staining and damp penetration.

### **Terms of the tenancy**

The Tribunal prepared Directions on the 24<sup>th</sup> January 2023 which requested the Landlord to submit a copy of the tenancy agreement upon which they rely on. Unfortunately, there was no proper engagement from either party, therefore, this was not forthcoming. The landlord’s application stated the tenancy agreement commenced on the 1<sup>st</sup> January 1983. It is assumed the Periodic Protected Tenancy made the landlord responsible for structural repairs and external decoration; the tenant is responsible for internal decorations. Once again, it is assumed the property was let unfurnished.

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

The tenant has not stated improvements have been undertaken to the kitchen during the term of the tenancy. The Rent Officer confirms no carpets, curtains and white goods were provided by the landlord. The Rent Officer states the kitchen and bathroom is unmodernised which is confirmed by the Tribunal.

## **Evidence**

The Tribunal had copies of the Valuation Office Agency correspondence including the rent registers effective from 29<sup>th</sup> December 2020 and 29<sup>th</sup> December 2022 together with the calculations for the most recent registration.

In a very limited bundle of documents, both the tenant and landlord did not provide any information in connection with the property in the form of a completed Reply forms, no tenancy agreement, or comparable evidence for rental values in the area.

## **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.

In the absence of any comparable evidence provided by the parties, the Tribunal used its expert knowledge in the area, The Tribunal considers that the subject property, if finished to a reasonable standard would be likely to attract a rent let on an assured shorthold tenancy, for **£577** per week. (£2,500 per month)

The landlord has confirmed that the sum of £4.86 per week is attributed to fixed services which is considered negligible.

We now need to **adjust that hypothetical net rent of £577 per week** to allow for the differences between the terms of this tenancy and the lack of white goods, carpets and curtains, dated fittings, mould, damp to walls and the tenants decorating responsibilities (disregarding the effect of tenant's improvements and any disrepair or other defect attributable to the tenant).

The Tribunal has considered very carefully the information prepared by the Rent Officer in the absence of evidence from the parties.

Using our own expertise, we considered that a deduction of 35% should be applied to take into account the terms of the tenancy, and the condition of the property at the commencement of the tenancy, the lack of white goods, carpets, curtains and central heating. This provides a deduction of £202 per week from the hypothetical rent. This reduces the figure to £375 per month.

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**

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 £75 and therefore reduces the rent to **£300 per week**.

### **Conclusion**

The capping provisions of the Rent Acts (Maximum Fair Rent) Order do not apply and therefore the capping figure in accordance with the attached calculations does not pertain.

Therefore, **£300.00 per week** is the fair rent to be registered limited by the Rent Acts (Maximum Fair Rent) Order 1999 with effect from the **29th June 2023** being the date of the Tribunals decision.

Detailed calculations for the capped maximum fair rent are provided attached to 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**

**28th July 2023**

## **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to: [London.RAP@justice.gov.uk](mailto:London.RAP@justice.gov.uk) to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.