



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

Case reference : **LON/00AL/F77/2023/0015**

Property : **Flat 4B Eastcombe Avenue, London SE7
7JE**

Applicants (Tenant) : **Mr Michael Hynes**

Representative : **None**

**Respondent
(Landlord)** : **The Hyde Group Ltd**

Representative : **None**

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

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

Venue : **Paper Determination**

Date of Reasons : **16th August 2023**

Reasons

The Tribunal determines £162 per week is to be registered as the fair rent for the above property with effect from 21st July 2023 being the date of the Tribunal's decision.

The reasons for this decision are set out below.

Reasons

Background

On 26th August 2022 the landlord, applied to the Valuation Office Agency (Rent Officer) for registration of a fair rent of £111.28 per week (inclusive of a service charge of £1.96 per week) for the property.

The rent payable at the time of the application was £105.80 per week, inclusive of service charge effective from 4th April 2022

On 23rd November 2022 the Rent Officer registered a fair rent of £165 per week, effective from that date. The rent increase imposed by the Rent Officer had not been “capped” or limited by the operation of the Rent Acts (Maximum Fair Rent) Order 1999 (the Order).

By an email dated 25th December 2022 (Christmas Day) from Mr Hynes, the tenant objected to the rent determined by the Rent Officer and the matter was referred to this Tribunal. In an email dated 12th August 2023 to the Tribunal, the Tenant requested a detailed decision regarding the matter and the Tribunal are providing reasons in connection with the decision dated 21 July 2023

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.

At the Tenants request an inspection of the property took place on the morning of 21st July 2023 in the presence of the Tenant.

The property is a converted flat which forms part of mid terrace Victorian property with access via a communal hallway. The property is located in an established road close to local amenities and the A102 (Blackwall Tunnel approach)

The accommodation comprises: living room kitchen/diner, bedroom, bathroom/WC.

The Landlord has installed a gas central heating system to radiators (new boiler in 2017) and double glazed window units.

Terms of the tenancy

The Tribunal issued Directions on the 23rd January 2022 which requested the Tenant to submit a copy of the

tenancy agreement upon which it relies on. The Periodic Protected Tenancy, which commenced on the 17th March 1986 made the landlord responsible for structural

repairs and external decorations. the tenant is responsible for internal decorations. It is assumed the property was let unfurnished.

Tenant's improvements

In his completed Reply Form the tenant sets out a number of improvements undertaken by him during the tenancy which included: redecoration of the flat and communal areas, replastering and repairs to internal walls, building of a cabinet in the living room, gutter cleaning and maintenance of common parts.

Evidence

The Tribunal had copies of the Valuation Office Agency correspondence including the rent registers effective 24th January 2020 and 23rd November 2022 together with the calculations for the most recent registration.

In his letter of objection, the tenant submitted a statement challenging the proposed increase in rent together with photographic evidence. A completed Reply Form and various emails addressed to the Landlord. A further email dated 25th July 2023 was received by the Tribunal from the Tenant which primarily concerned service charge matters. The Tribunal is unable to take this into account as it was evidence received after the Tribunal had made its decision. The Landlord did not engage with this appeal from the Tenant.

No comparable rental evidence was provided by the parties.

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 evidence provided by the Tenant together with its expert knowledge of the Blackheath Standard area, 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, of £312 per week. (£1,350 per month)

Next, the Tribunal needs to **adjust that hypothetical rent of £312 per week** to allow for the differences between the terms of this tenancy, the unmodernised condition cracking to external render over front window opening, dated sanitary fittings and kitchen units, damp issues in the bedroom, possible electrical faults, the lack of white goods, carpets and curtains, 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 Tenant.

Using its own expertise, the Tribunal considers that deductions of 35% should be applied in order to take into account the terms of the tenancy, the condition of the property and the lack of carpets, curtains and white goods. This provides a deduction of £109 per week from the hypothetical rent. This reduces the figure to £203 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 Tribunal's 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 £41 and therefore reduces the rent to **£162.00 per week**.

Conclusion

The capping provisions of the Rent Acts (Maximum Fair Rent) Order do not apply and therefore the above figure applies. The fair rent in accordance with the attached calculations is **£162.00 per week**.

Therefore, this is the fair rent to be registered limited by the Rent Acts (Maximum Fair Rent) Order 1999 with effect from the 21st July 2023 being the date of the Tribunal's decision.

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

D Jagger MRICS Valuer Chair

16th August 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 rpslondon@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.