



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

Case reference : **LON/00AM/F77/2023/0192**

**HMCTS code
(paper, video,
audio)** : **V: CVPREMOTE**

Property : **23 Fremont Street, London, E9 7NQ**

Applicant : **Friends of Achiezer Arad**

Representative : **Mr. Ezra Moscovitz**

Respondent : **Mrs. Quintero**

Representative : **None**

Date of application : **31 March 2023**

Type of application : **Determination of the registered rent
under Section 70 Rent Act 1977**

**Tribunal
member(s)** : **Tribunal Judge Sarah McKeown
S Phillips MRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **1 September 2023**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been not objected to by the parties. The form of remote hearing was, V: CVPREMOTE. A face-to-face hearing was not held because a request was made by the landlord for the hearing to be via CVP. The documents that the tribunal were referred to are supplied in a bundle, the contents of which have been noted.

Background

1. The Landlord applied to the Rent Officer for the registration of a fair rent for this property on 31 March 2023.
2. A fair rent of £385 per week was registered on 13 June 2023 following the application. The Tenant (Ms Quintero) subsequently challenged the registered rent on 16 June 2023 and the Rent Officer has requested the matter to be referred to the tribunal for determination.
3. Directions were issued by Tribunal on 6 July 2023.
4. The parties were invited to submit any relevant information and submissions. Relevant information was received from the Landlord.
5. The Landlord was represented by Mr. Moscowitz from Avon Estates at the hearing. Ms. Quintero was a litigant in person.

Inspection

6. An inspection of the property was carried out by the Tribunal on 1 September 2023, as the Tenant requested one in her Reply form. The Landlord did not attend the inspection.

The property

7. The property is a terraced house with garden with outside WC. The accommodation comprises a bathroom/WC and bedroom on the lower ground floor, a kitchen and living room on the ground floor and two bedrooms on the first floor.

Hearing

8. The Tribunal heard from Mr. Moscowitz, on behalf of the Landlord, and from the Tenant in person.
9. It was agreed that works to the premises were carried out in 2019 by the Landlord. There was an issue as to whether the Landlord or the Tenant had installed the central heating: the Tenant said that she had put the central heating in in about 1996. The Landlord said that he did not know about the central heating, as it was put in before the

Landlord's involvement in the premises, but said that a lot of work was carried out to the premises in 2019. He relied on an invoice in relation to that work which he said showed that a new boiler was installed – the invoice referred, among other things, to “new boiler/flue piping as needed”. The Tenant disagreed in relation to the alleged installation of a new boiler and said that the boiler was about 15 years old.

10. There was also an issue about whether the Landlord did the annual gas safety checks and who had provided the CO₂ alarms. The tenant told the Tribunal that she paid for Homecare, who did the gas safety checks. After some investigation, the Landlord produced an email from 2012 from an agent reporting that the company instructed to do a gas safety check had not been granted access by the Tenant.
11. The Landlord said that it was entitled to an increase in line with inflation. He relied on the comparables he had provided to the Tribunal. He said, in relation to one, that it was for a three-bedroom flat, which was smaller than the premises, which was let by the Landlord for £3,200 pcm.
12. The Tenant told the Tribunal that, with the high cost of living, and an increase in the price of utilities, she felt that she could have some “leeway” on the rent. She said that she had done a lot of work on the property and had been there since 1984.

The law

13. When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, “the Act”, 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.
14. In **Spath Holme Ltd v Chairman of the Greater Manchester etc. Committee (1995)** and **Curtis v London Rent Assessment Committee [1999]** the Court of Appeal emphasised that ordinarily a fair rent is the market rent for the property discounted for 'scarcity'. This is 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.
15. The Tribunal is aware that **Curtis v London Rent Assessment Committee (1999) QB.92** is a relevant authority in registered rent determination. This authority states where good market rental comparable evidence i.e., assured shorthold tenancies is available enabling the identification of a market rent as a starting point it is

wrong to rely on registered rents. The decision stated: *“If there are market rent comparables from which the fair rent can be derived why bother with fair rent comparables at all”*.

16. The market rents charged for assured tenancy lettings often form appropriate comparable transactions from which a scarcity deduction is made.
17. These market rents are also adjusted where appropriate to reflect any relevant differences between those of the subject and comparable rental properties.
18. The Upper Tribunal in **Trustees of the Israel Moss Children’s Trust v Bandy [2015]** explained the duty of the First Tier Tribunal to present comprehensive and cogent fair rent findings. These directions are applied in this decision.
19. **The Rent Acts (Maximum Fair Rent) Order 1999** applies to all dwelling houses where an application for the registration of a new rent is made after the date of the Order and there is an existing registered rent under part IV of the Act. This article restricts any rental increase to 5% above the previously registered rent plus retail price indexation (Rpi) since the last registered rent. The relevant registered rent in this matter was registered on 3 March 2021 at £365 per week.

Valuation

20. 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. It did this by having regard to its general knowledge of market rent levels in this area of East London.
21. This hypothetical rent is adjusted as necessary to allow for the differences between the terms and condition considered usual for such a letting and the condition of the actual property at the date of the inspection. Any rental benefit derived from Tenant’s improvements is disregarded. It is also necessary to disregard the effect of any disrepair or other defects attributable to the Tenant or any predecessor in title.
22. The responsibility for internal maintenance of this property under the tenancy agreement is the responsibility of the Tenant.
23. The provisions of section 70(2) of the Rent Act 1977 in effect require the elimination of what is called “scarcity”. The required assumption is of a neutral market. Where a Tribunal considers that there is, in fact, substantial scarcity, it must make an adjustment to the rent to reflect that circumstance. In the present case neither party provided evidence with regard to scarcity.

24. The Tribunal then considered the decision of the High Court in **Yeomans Row Management Ltd v London Rent Assessment Committee [2002] EWHC 835 (Admin)** which required it to consider scarcity over a wide area rather than limit it to a particular locality. East London is now considered to be an appropriate area to use as a yardstick for measuring scarcity and it is clear that there is a substantial measure of scarcity in East London.
25. Assessing a scarcity percentage cannot be a precise arithmetical calculation. It can only be a judgement based on the years of experience of members of the Tribunal. The Tribunal therefore relied on its own combined knowledge and experience of the supply and demand for similar properties on the terms of the regulated tenancy (other than as to rent) and in particular to unfulfilled demand for such accommodation. In doing so, the Tribunal found that there was substantial scarcity in the locality of East London and therefore made a further deduction of 20% from the adjusted market rent to reflect this element.
26. The valuation of a fair rent is an exercise that relies upon relevant market rent comparable transactions and property specific adjustments. The fair rents charged for other similar properties in the locality do not form relevant transaction evidence.
27. The Tribunal assessed the fair rent on the basis, among other things, that the tenant had installed the central heating in about 1996 and that no new boiler was installed in or about 2019. It did not affect the Tribunal's valuation, but the Tribunal also proceeded on the basis that the tenant was the one carrying out (or arranging) the annual gas safety checks and who had provided the CO2 alarms.
28. Table 1 below provides details of the fair rent calculation:

Property: 23 Fremont Street, London E9 7NQ		
Market Rent		£875 per week
Deductions:	As a % of the weekly rent	
Dated condition of the property	15%	
Tenant's repair liability on the tenancy	5%	
No white goods provided by Landlord	5%	
No floor coverings provided by Landlord in parts of the property	5%	
Location of the bathroom in the basement of the property	5%	
Second toilet located outside of the	5%	

property		
Central heating installed by the Tenant	5%	
Total deductions	45%	£393.37
Adjusted rent per week		£481.25
Less scarcity at	20%	£96.25
Final adjusted market rent		£385 per week

Decision

29. The Rent Acts (Maximum Fair Rent) Order will not apply to this determination as the fair rent determined by the Tribunal **is less than the capped rent.**
30. The uncapped fair rent determined by the Tribunal for the purposes of Section 70 is **£478.50 per week.** By virtue of the Rent Acts Maximum Fair Rent Order 1999 the maximum fair rent that can be registered for this property is **£478.50 per week.**
31. The statutory formula applied to the previously registered rent is at Annex A. The Maximum Fair Rent Calculation attached to our decision of 1 September 2023 contained an error in terms of the RPI figure used in respect of the previously registered rent. The Tribunal has now corrected this and attaches an amended decision. The amendment did alter the maximum fair rent that could be registered for the property, but did not change our ultimate decision as to the weekly amount that was registered as a fair rent. The amended decision and these reasons contained the correct figures.
32. Details of the maximum fair rent calculations were provided with the original notice of decision.
33. Accordingly, the sum that will be registered as a fair rent with effect from 1 September 2023 is **£385 per week.**

Tribunal Judge: Sarah McKeown
Dated: 25 September 2023

Appendix A
The Rents Act (Maximum Fair Rent) Order 1999

(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:

$$\text{MFR} = \text{LR} \left[1 + \frac{(\text{x}-\text{y}) + \text{P}}{\text{y}} \right]$$

where:

- 'MFR' is the maximum fair rent;
- 'LR' is the amount of the existing registered rent to 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 $\frac{(\text{x}-\text{y}) + \text{P}}{\text{y}}$ is less than zero the maximum fair rent shall be the y existing registered rent.