



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

Case Reference : **LON/00BJ/F77/2023/0230**

Property : **104 Clapham Common North Side,
London SW4 9SQ**

Applicant : **Northumberland & Durham Property
Trust Ltd**

Representative : **Grainger Residential Management Ltd**

Respondent : **Alan Scott**

**Type of
Application** : **Fair rent under Rent Act 1977**

Tribunal Members : **Judge Nicol
Mr JA Naylor MRICS**

Date of Decision : **18th September 2023**

Date of Reasons : **4th October 2023**

REASONS FOR DECISION

Decision

The Tribunal determined that the fair rent for the subject property is £120 per week with effect from 18th September 2023.

Reasons

1. On 3rd May 2023 the Applicant landlord applied for a determination of the fair rent under section 70 of the Rent Act 1977 (see the excerpts set out in the Appendix to this decision). The Applicant asserted that the weekly rent should be £142.20 instead of the existing registered fair rent of £118.50.

2. On 29th June 2023 the Rent Officer registered a new fair rent of £122.89 per week, effective from 13th July 2023. By email dated 13th July 2023 the Applicant objected and asked for the matter to be referred to the Tribunal.
3. Neither party requested a hearing but the Tribunal did inspect the property. Only the Respondent was in attendance.
4. The subject property is part of an end-terrace building on the corner of Clapham Common North Side and Sugden Road. There is a BP petrol station on the opposite corner. The property is accessed through a door on the ground floor and up stairs to the first floor. The door to the property itself opens up into a small hall off which are a shower room/WC to the right and the main room straight ahead. The main room contained what passed for a kitchen within a fitted wardrobe, with barely any room for food preparation. The room also contained the bed, above which there were signs of damp. There is no central heating but there was a wall heater in the living room and a water heater above the kitchen sink. The main feature of the property as a whole is that it is an unusually small studio flat.
5. In *Curtis -v- London RAC* [1997] 4 AllER 842 the court held that the calculation of a fair rent starts with the open market rental value which is then adjusted for statutory disregards under s.70(1) and (3) and scarcity, if any, under s.70(2). The first matter to look at is the market rental value of the subject property if let on an assured shorthold tenancy in the open market in a fully refurbished state.
6. To do this, the Tribunal must look at any available comparable properties currently let on such tenancies. Neither party provided details of any such comparable properties and even the list used by the Rent Officer's was unusually short. There are simply few properties this small. However, based on its own expert knowledge and experience, the Tribunal determined that the subject property, if let on an assured shorthold tenancy in the open market in a fully refurbished state, would command a weekly rent of around £250.
7. This figure must then be adjusted to take account of the differences between the terms of tenancy and amenities of those properties let on such market rents and those of the subject property. A tenant in the open market would not be prepared to pay the same price for an unrefurbished property, such as the subject property, as for a refurbished one and these adjustments take into account the fact that the market rent would be lower for a property suffering from the disadvantages listed below. The Tribunal took account of:-
 - (a) The condition of the property;
 - (b) The lack of a modern bathroom or kitchen;
 - (c) Non-provision of white goods;

- (d) Non-provision of floor coverings and curtains; and
 - (e) The difference in repairing and decoration obligations.
8. The Tribunal's conclusion is that the market rent figure given in paragraph 10 above should be reduced by 40% to take account of the matters set out in paragraph 7 above, producing a weekly figure of £150.
 9. The next consideration is whether there should be any deduction for scarcity in accordance with s.70(2) of the Rent Act. The Tribunal acknowledges that, since the introduction of the Housing Act 1988, there have been more properties to rent, i.e. there has been an increase in supply. However, scarcity is not just a matter of looking at supply but demand as well. The pressures on the London housing stock are well-documented and have persisted throughout the post-war period. They show no signs of improvement as demand increases from various sources, including immigration into London from other parts of the UK and from abroad and the trend for more separate households. Also, changes in supply and demand since the introduction of the Housing Act 1988 and over the last few years have not been evenly spread over the whole of London or all parts of the market.
 10. Further, the real rental market is regulated by price, i.e. by rents, so that supply and demand should always be reasonably close to equilibrium as a result. However, as Ouseley J. remarked in *Yeoman's Row Management Ltd -v- Chairman of the London Rent Assessment Cttee* (2002) (at paragraph 75 of the judgment), "Where 'scarcity' exists, the purpose of the phrase is to eliminate the effect of an aspect of the real world market and to require the assumption instead of a partly theoretical or idealised market." He based this comment on the fact that s.70(2) requires the Tribunal to consider those seeking to become tenants of similar dwelling-houses in the locality on the same terms *other than those relating to rent*. This means considering a hypothetical market which is not regulated by price in the same way as the real market. The assumption is not that rents are ignored as if all properties are free but that the level of rents is not a factor limiting demand. The Tribunal is then required to consider whether this hypothetical market is in equilibrium or not.
 11. In considering this hypothetical market, the Tribunal feels that the "waiting lists" held by local authorities and registered social landlords such as housing associations are relevant. Judicial notice can be taken of the fact that these waiting lists are lengthy at local authorities throughout London with many waiting, for up to years at a time, more in hope than expectation. Those who apply for such social housing include many different groups, including those wanting to transfer from what they regard as unsatisfactory social housing, people with special needs due to old age, disability or illness, people on low incomes and public service workers such as teachers and police who find it hard to afford private sector rents. There can be no doubt that some of these people would not try to enter the private market even if rents were at more affordable

levels. However, there can equally be no doubt that some of them would. Many apply for social housing simply because they cannot access elsewhere the kind of housing they want at a price they can afford. There are also people who do not appear on social housing or any other waiting lists because they put up with housing that they regard as unsatisfactory for the same reason – sometimes referred to as “the hidden homeless”, these include, for example, young adults who wish to leave the family home but cannot. These factors indicate the existence of demand which is hidden in the real market due to the regulating effect of rental levels but would appear in the hypothetical market envisaged in s.70(2). In quantifying this demand, the Tribunal is aware it must be limited to those genuinely seeking to become market tenants of similar accommodation or whose accommodation needs would affect the level of rents. For these reasons, the Tribunal considers that this demand is substantial.

12. In considering scarcity, the Tribunal acknowledges the need to look, as Ouseley J. put it (at paragraph 67 of the *Yeoman’s Row* judgment), at “an area large enough, not just to eliminate the rental impact of the immediate area’s particular attraction and amenity, but large enough for a broad and general appraisal of whether there is a shortage of similar accommodation which is affecting rents payable by potential tenants of the subject accommodation; the area to be examined is that over which reasonable alternatives are available to potential tenants of the subject property.” The Tribunal feels it can achieve a sufficiently accurate assessment by looking at a large part of south London, including the Boroughs of Wandsworth, Lambeth, Southwark and Merton and areas bordering them. While some might regard this area as geographically insufficiently large, that is not the relevant test rather than the density of dwellings and the size of the rental market within the area.
13. There is no completely scientific or mathematical method for calculating scarcity. As Ouseley J. also said (at paragraph 75), “the theoretical nature of the exercise and the imprecision inherent in establishing both the existence of ‘scarcity’ and its effect on rent in a theoretical world, preclude there being a realistic expectation of detailed reasoning.” The Tribunal has used its own knowledge and experience of the factors listed above and concludes that the number of persons seeking to become tenants of dwelling-houses similar to the subject property in the locality referred to in the paragraph above on the terms (other than those relating to rent) of the regulated tenancy is substantially greater than the number of dwelling-houses which are available for letting on such terms. The Tribunal considers the imbalance between supply and demand on the basis defined above would be very substantial in the locality identified, placing the deduction in the higher level of the range of such deductions for the London area, and would put the figure at 20%, thereby reducing the weekly market rent figure of £150 to a fair rent figure of £120.
14. The last matter to consider is the application of the Rent Acts (Maximum Fair Rent) Order 1999 which limits rises in fair rents by a strict

mathematical calculation and, according to Art.2(6), “applies where an application for the registration of a new rent in respect of a dwelling-house is made after this Order comes into force and, on the date of that application, there is an existing registered rent under [the Rent Act 1977] in respect of that dwelling-house.” In accordance with the mathematical calculation set down under the Order, the details of which have already been supplied to the parties, the maximum fair rent which may be registered is limited to £151.50 per week. The actual fair rent determined by the Tribunal is lower than that maximum and so it does not bite.

Name: Judge Nicol

Date: 4th October 2023

APPENDIX

Rent Act 1977

S70 Determination of fair rent.

- (1) In determining, for the purposes of this Part of this Act, what rent is or would be a fair rent under a regulated tenancy of a dwelling-house, regard shall be had to all the circumstances (other than personal circumstances) and in particular to—
 - (a) the age, character, locality and state of repair of the dwelling-house,
 - (b) if any furniture is provided for use under the tenancy, the quantity, quality and condition of the furniture, and
 - (c) any premium, or sum in the nature of a premium, which has been or may be lawfully required or received on the grant, renewal, continuance or assignment of the tenancy.
- (2) For the purposes of the determination it shall be assumed that the number of persons seeking to become tenants of similar dwelling-houses 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.
- (3) There shall be disregarded—
 - (a) any disrepair or other defect attributable to a failure by the tenant under the regulated tenancy or any predecessor in title of his to comply with any terms thereof;
 - (b) any improvement carried out, otherwise than in pursuance of the terms of the tenancy, by the tenant under the regulated tenancy or any predecessor in title of his;
 - ...
 - (e) if any furniture is provided for use under the regulated tenancy, any improvement to the furniture by the tenant under the regulated tenancy or any predecessor in title of his or, as the case may be, any deterioration in the condition of the furniture due to any ill-treatment by the tenant, any person residing or lodging with him, or any sub-tenant of his.