



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

Case reference : LON/00AN/F77/2023/0094

Property : 51 Gunterstone Road, London, W14 9BS

Tenant : Mr F Hassanjee

Landlord : Arndale Securities Limited

Date of application : 4 February 2023

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

Tribunal member(s) : Mr O Dowty MRICS
Mr N Miller

Venue : 10 Alfred Place, London, WC1E 7LR

Date of decision : 27 July 2023

REASONS FOR DECISION

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Background

1. The Landlord applied to the Rent Officer for the registration of a fair rent for this property on 25 November 2022.

2. A fair rent of £1,266 per calendar month was registered on 18 January 2023 following the application, such rent to have effect from that date. The tenant subsequently challenged the registered rent on 4 February 2023, and the Rent Officer has requested the matter be referred to the tribunal for determination.
3. Directions were issued on 14 March 2023 by the Tribunal.
4. The parties were invited to submit any relevant information and submissions. Both parties provided a reply form to the Tribunal with details of the property and its features.
5. In addition, the landlord provided photographs of the subject property and details of asking rents on apparently comparable properties. The tenant provided a response to this saying that the rental evidence the landlord had provided came from non-comparable properties.
6. Neither party requested a hearing in this matter, and the Tribunal did not consider that one was necessary. The Tribunal therefore determined this matter on the basis of the information provided to it in writing, combined with its inspection of the property.

Inspection

7. The inspection was carried out on 26 July 2023. The tenant was present, however the landlord did not attend.
8. The property comprises a 2 bedroom maisonette on the 2nd and 3rd floors of a larger period building.
9. At the date of inspection the property was generally in a fair condition, the responsibility for internal decoration in any case resting on the tenant. There was noticeable damage from water ingress to some ceilings, and in particular around the left hand party wall of the front bedroom on the top floor.
10. The tenant provided the kitchen and the white goods at the property. The bathroom is dated.
11. The property benefits from central heating and double glazing. The landlord has recently carried out some works of rewiring.

The law

12. When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, “the Act”, it 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.

13. 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.
14. The Tribunal are 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"*.
15. The market rents charged for assured tenancy lettings often form appropriate comparable transactions from which a scarcity deduction is made.
16. These market rents are also adjusted where appropriate to reflect any relevant differences between those of the subject and comparable rental properties.
17. 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.
18. **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 23 May 2019 at £982 per calendar month. The rent registered on 18 January 2023 subject to an Objection and subsequent determination by the Tribunal is not relevant to this calculation.

Valuation

19. 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.

20. The Tribunal was provided with asking rents and accompanying brochures for four properties as evidence of value. The Tribunal considered that:

- The property on Bramber Road (asking rent £600pw/£2,600pcm) was located on the other side of the A4 and is too far away from, and is not otherwise comparable with, the subject.
- Without knowing the location of the property on North End Road (asking rent £550pw/£2,384pcm), which is a very long road, the Tribunal could not adequately weight this evidence. The particulars provided were also very sparse.
- The property on Castletown Road (£692.31pw/£3000pcm) is again on the other side of the A4, though is nearer to the subject. However, it is of a higher quality than the subject property.
- The property on Edith Road (asking rent £600pw/£2,600pcm) is nearby, though it has a balcony and an open plan lower floor which the subject does not.

21. Due to the fact the only evidence of value provided was of asking rents, of which the Tribunal felt none were directly comparable, the Tribunal also considered the value of the property in the context of their general knowledge of rental levels in this area of west London.

22. The Tribunal determined that a rent of £2,340 per calendar month (PCM) for the subject property, were it let on the open market in the condition considered usual for such a letting, would be appropriate.

23. This hypothetical rent is adjusted as necessary to allow for the differences between the terms and conditions considered usual for such a letting and the condition of the actual property at the date of the determination. 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.

24. The Tribunal made a deduction of 5% from the market rent to account for the tenant's providing white goods, carpets, curtains and other furnishings at the property.

25. The responsibility for internal fixtures, fittings and decoration at the property under the tenancy agreement is borne by the Tenant. This is a material valuation consideration and a deduction of 7.5% from the market rent is made to reflect this liability.

26. The kitchen at the property was installed by the tenant, to account for which the Tribunal made a 5% adjustment from the hypothetical market rent.

27. The Tribunal made a deduction of 2.5% to reflect the dated bathroom at the property.
28. The Tribunal made a further deduction of 5% to reflect the water ingress issues at the property.
29. 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.
30. 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. West 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 West London.
31. 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 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 West London and therefore made a further deduction of 20% from the adjusted market rent (excluding the amount attributable to services) to reflect this element.
32. 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.
33. Table 1 over-page provides details of the fair rent calculation:

Property:	51 Gunterstone Road, London, W14 9BS		
Fair rent calculation in accordance with s(70) Rent Act 1977			
Market Rent	£2,340 per month		
Disregards			
	Deduction per month	as % of monthly rent	
White Goods, Floor Coverings, Curtains, etc	£117.00	5%	
Lease terms	£175.50	7.50%	
Dated Bathroom	£58.50	2.50%	
Water Ingress	£117.00	5%	
Improvements Undertaken by Tenant			
Kitchen	£117.00	5.00%	
	Total deductions	£585.00 25.00%	
	Market rent less deductions	£1,755.00 per month	
	LESS £16.63 per month services	£1,738.37	
Less Scarcity	20.00% of Market rent less deductions and services	£347.67	
Adjusted Market Rent excluding services	£1,390.70		
	PLUS £16.63 per month services	£1,407.33 per month Uncapped rent	
Maximum capped rent in accordance with Rent Acts (Maximum Fair Rent) Order 1999	£1,323.50	per month Maximum capped rent	
	Fair Rent	£1,323.50 per month	

Decision

34. As the value of £1,407.33 per calendar month (including £16.63 per calendar month for services) arrived at by the Tribunal is higher than the maximum rent prescribed by The Rent Acts (Maximum Fair Rent) Order of £1,323.50 per calendar month (including £16.63 per calendar month for services), the Fair Rent that can be registered is capped at that **lower** figure. **This is based on a specific 5% increase plus any retail price increases on the previously registered rent of £982 per calendar month.**
35. The statutory formula applied to the previously registered rent is at Appendix A.
36. Details of the maximum fair rent calculations were provided with the original notice of decision.
37. Accordingly, the sum that will be registered as a fair rent with effect from 27 July 2023 is **£1,323.50 per calendar month, including £16.63 per calendar month for services.**

Valuer Chairman: Mr Oliver Dowty MRICS

Dated: 21 August 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:

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

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 $\frac{(x-y)}{y} + P$ is less than zero the maximum fair rent shall be the y existing registered rent.

ANNEX - 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. Any appeal in respect of the Housing Act 1988 should be on a point of law.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).