



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

Case reference : LON/00AP/F77/2023/0165

Property : Flat 1, 429 Green Lanes, London, N4
1HA

Landlord : Cytonick Ltd

**Landlord's
Representative** : Roundtree Real Estate

Respondent : Ms Chanchala Rakshit

Date of application : 26 April 2023

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

**Tribunal
member(s)** : Mr O Dowty MRICS
Ms H Bowers MRICS

Venue : 10 Alfred Place, London, WC1E 7LR

Date of decision : 14 September 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 13 February 2023.

2. A fair rent of £902.50 per calendar month was registered on 31 March 2023 following the application, such rent to have effect from 6 May 2023. The tenant subsequently challenged the registered rent on 26 April 2023, and the Rent Officer has requested the matter be referred to the tribunal for determination.
3. Directions were issued on 16 June 2023 by the Tribunal.
4. The parties were invited to submit any relevant information and submissions. The tenant indicated in her reply form that she wished the Tribunal to inspect and hold a hearing in this matter, and provided written submissions upon which she expanded at the hearing.
5. Both parties also provided additional submissions beyond their respective reply forms. The landlord provided an email from Alex at Roundtree Real Estate to the tenant, disputing the tenant's assertion that the external areas were never cleaned, and stating that "The flat directly above you, which is both much smaller and a floor above and not at all as nice as your flat, was let on the first viewing at £1,500 PCM unfurnished which would demonstrate the clear rental value of your property without any question". The landlord also stated that whilst they appreciated there had been historic issues at the property, since they had taken over they had managed the building well, improving the communal areas and carrying out other work.
6. The tenant, for her part, provided various photographs and a video to support some of her statements about the property.

The Hearing

7. A face-to-face hearing was held at 10 Alfred Place, London, WC1E 7LR on 14 September 2023. The tenant appeared at the hearing in person, accompanied by her daughter Mrs Lee. The landlord did not attend.
8. At the hearing, the tenant set out a number of issues, both historic and current, she said she had experienced at the property – largely in expansion on the content of her written submissions. In particular, the tenant indicated that there had been a number of changes at the property over the years, including a new method of access and the stopping up of the old one, the changing of the rent from an all inclusive one to one for which all bills except the water were payable in addition and the commercial unit below being used for what the tenant submitted was a restaurant rather than its former use as a shoe shop.
9. Whilst the Tribunal was sympathetic to what the tenant had to say regarding historic issues, the Tribunal explained that its role in these proceedings was simply to determine a fair rental value for the property in its present condition, and not to determine any other disputes.
10. The tenant also expanded upon the condition of the property, including the presence of mice in the kitchen, and the behaviour of the upstairs tenants. The tenant submitted that the landlord was responsible for all repairs at the

property, but that there were a number of items of disrepair which had not been remedied.

11. The tenant submitted that the flat was originally fully furnished; however, following damage caused by a historic ceiling collapse, the furniture was not in a usable state and was removed by a previous landlord. The tenant subsequently refurnished the flat at her expense. The tenant provided the curtains at the property, but not the carpet. The tenant provided all of the white goods at the property with the exception of the cooker.
12. In terms of rent, the tenant did not provide any indication of what she felt the market rent should be and offered no submissions regarding what rental value should be adopted, save for those things she had noted that she wished the Tribunal to take into account.

The Inspection

13. Following the hearing, on the same day, the Tribunal inspected the property. As at the hearing, the tenant and her daughter Mrs Lee were in attendance, but the landlord did not attend.
14. The property is located on the corner of Green Lanes and Cavendish Road. It is situated on the first floor above a commercial unit occupied by The Dusty Knuckle Bakery, which advertises itself as a 'Bakery Cafe Pizzeria' and appears to offer internal seating for patrons.
15. The access to the subject property is unusual, provided by entering what used to be a separate building to the rear of the property on Cavendish Road, walking up a flight of stairs and exiting onto an external walkway. The subject property is located on that level, accessed via a large step down, with another flat above accessed by further external metal stairs. Part of the external accessway has a covered portion, but this was observed to be in a poor condition.
16. The subject property itself provides an entrance hall, 1 bedroom, a bathroom, a kitchen and a large front reception. It is double glazed and benefits from central heating.
17. The property is generally in a fair condition, with some minor cracking to ceilings and walls and evidence of historic water ingress. The property has a modern bathroom and kitchen, both of which are of a fair to good standard. The tenant complained of a mouse infestation in the kitchen, which the Tribunal was not able to verify – save for noting that the tenant had ceased to use some kitchen cupboards apparently due to it. The Tribunal also noted that there was material covering the base of the kitchen units and the plinths below.

The Law

18. 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.
19. 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.
20. 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”*.
21. The market rents charged for assured tenancy lettings often form appropriate comparable transactions from which a scarcity deduction is made.
22. These market rents are also adjusted where appropriate to reflect any relevant differences between those of the subject and comparable rental properties.
23. 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.
24. **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 6 May 2021 at £725.50 per calendar month. The rent registered on 31 March 2023 subject to an Objection and subsequent determination by the Tribunal is not relevant to this calculation.

Valuation

25. 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.

26. The only piece of comparable evidence referred to by either party was the apparent letting of the flat above the subject property at £1,500 per calendar month. As that flat is said to be smaller than the subject, and accessed via further unattractive external stairs, at face value this might suggest a higher value for the subject property. However, the only information the Tribunal had regarding this rent was in brief, summary form provided in both an email from the landlord and their reply form. This did not provide sufficient detail for the Tribunal to place significant weight on that evidence alone.
27. Accordingly, the Tribunal considered the rent in line with its expert knowledge of rents in the local area of the subject. The Tribunal determined that a rent of £1,500 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.
28. 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.
29. The access to the property is significantly worse than might be expected, and is a material valuation consideration. The Tribunal made a deduction of 10% to reflect the method of access to the property and the related issues caused by it.
30. The Tribunal made further deductions of 2.5% to account for items of minor disrepair at the property, including staining on the ceiling from the upper flat, small defects to the walls and 2.5% to account for the tenant's partial provision of white goods and curtains (the cooker and carpets having been provided by the landlord).
31. The Tribunal did not make any deduction in regard to the tenant's complaints of a mice infestation at the property. No evidence had been submitted in support of an infestation and it was not possible, on inspection, to verify that there was one. In any event, a mouse infestation can equally be caused by the actions of a tenant as much as it can by a failure on the landlord's part to repair. In light of the lack of evidence of its existence or its cause, the Tribunal did not feel it was appropriate to deduct from the rent to account for it.
32. 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.

33. 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. North 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 North London.
34. 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 North London and therefore made a further deduction of 20% from the adjusted market rent to reflect this element.
35. 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.
36. Table 1 over-page provides details of the fair rent calculation:

Property:	Flat 1, 429 Green Lanes, London, N4 1HA		
Fair rent calculation in accordance with s(70) Rent Act 1977			
Market Rent		£1,500 per month	
Disregards		Deduction	as % of monthly rent
Access		£150.00	10.00%
Partial White Goods, Curtains, etc		£37.50	2.5%
Minor Items of Disrepair		£37.50	2.5%
	Total deductions	£225.00	15.00%
	Market rent less deductions	£1,275.00	per month
Less Scarcity	20.00% of Market rent less deductions	£255.00	
Adjusted Market Rent		<u>£1,020.00</u>	per month Uncapped rent
Maximum capped rent in accordance with Rent Acts (Maximum Fair Rent) Order 1999		£936	per month Maximum capped rent
	Fair Rent	<u>£936.00</u>	per month

Table 1

Decision

37. As the value of £1,020 per calendar month arrived at by the Tribunal is higher than the maximum rent prescribed by The Rent Acts (Maximum Fair Rent) Order of £936 per calendar month, 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 £725.50 per calendar month.**
38. The statutory formula applied to the previously registered rent is at Appendix A.
39. Details of the maximum fair rent calculations are provided with the attached notice of decision.
40. Accordingly, the sum that will be registered as a fair rent with effect from 14 September 2023 is **£936 per calendar month.**

Valuer Chairman: Mr Oliver Dowty MRICS

Dated: 27 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:

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

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 $(x-y) + P$ 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).