



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

**Case reference** : LON/00AE/F77/2023/0236

**Property** : 6A Sidmouth Parade, Sidmouth Road,  
London, NW2 5HG

**Tenant** : Mr P.G. O'Neil

**Landlord** : Mountview Estates PLC

**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  
Mr J Francis QPM

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

**Date of decision** : 24 October 2023

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**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 6 March 2023.

2. A fair rent of £742 per calendar month was registered on 19 April 2023 following the application, such rent to have effect from that date. 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 8 August 2023 by the Tribunal.
4. The parties were invited to submit any relevant information and submissions. The tenant provided a reply form containing submissions. The landlord did not provide either a reply form or submissions, save for an email dated 10 August 2023 from Geraldine Bliss (Rental Manager of the landlord), in which the landlord said they had “nothing further to add to this and agree with the rent officer”, and that they would await the Tribunal’s decision.
5. The tenant requested, in his reply form, both that a hearing be held and that the Tribunal inspect the property.
6. The Tribunal therefore held a face-to-face hearing in this matter on 24 October 2023 at 10 Alfred Place, London, WC1E 7LR. The Tribunal inspected the property later that same day.

### **The Hearing**

7. The tenant, Mr O’Neil, attended in person at the hearing. The landlord did not attend.
8. At the hearing, the tenant provided submissions further to the points they had raised in their reply form. The tenant particularly focussed upon the difficulties in heating the property, of obtaining an appropriate temperature of water (which is either too hot or too cold), the presence of defective double glazing causing drafts and occasional condensation between the panes. In addition, the tenant submitted that he had rewired the property some years ago, following a poor quality rewiring carried out by the landlord.
9. The tenant also clarified an element of their reply form, in which they had indicated via tick-box that the property did not have carpets and curtains. The property does not have carpets, it has other floor coverings, which – along with the curtains – were installed by the tenant in the usual way.
10. When asked about the market rental value of the property, the tenant indicated that they believed the property could let in the open market, under a standard tenancy, for between £1,500 per month and £1,800 per month depending on the condition it was in at the point of rental. This was not based on specific evidence, but on local knowledge.

## The Inspection

11. As at the hearing, the tenant was present at the Tribunal's inspection, but the landlord was not.
12. The property is a 2 bed flat, consisting of a large bedroom, a smaller bedroom used as a child's bedroom, a living room, hallway, kitchen and bathroom with good sized ancillary storage areas. The property is generally in a fair decorative condition, the responsibility for decoration in any case being the tenant's. The property does not have access to a garden or a balcony.
13. The property is located on the first floor of a larger, solid brick-built interwar building, with commercial units at ground floor level and residential accommodation above.
14. The Tribunal noted that some of the seals for the windows at the front of the property appeared to be damaged, and the tenant had clearly taken steps to try and prevent drafts from penetrating parts of those window frames.
15. The bathroom and kitchen at the property are reasonably modern, having been installed by the tenant.
16. The Tribunal felt that what it had seen on inspection accorded with the submissions the tenant had made at the hearing and in their reply form – which were in any case not contested by the landlord.

## The Law

17. 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.
18. 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.
19. 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”*.

20. The market rents charged for assured tenancy lettings often form appropriate comparable transactions from which a scarcity deduction is made.
21. These market rents are also adjusted where appropriate to reflect any relevant differences between those of the subject and comparable rental properties.
22. 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.
23. **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 13 January 2021 at £666.50 per calendar month. The rent registered on 19 April 2023 subject to the present objection and determination by the Tribunal is not relevant to this calculation.

## **Valuation**

24. The landlord has said in their brief email that they agree with the Rent Officer, who made a determination of £742 per calendar month for the property.
25. The tenant, for his part, submitted that he did not see that the rent should increase, but in doing so stated that was a lay person’s view. When asked by the Tribunal what he felt the open market rent for the property in a good condition might be, he indicated that he felt it could be let for £1,500 per calendar month, or up to £1,800 per calendar month if the landlord did the property up nicely.
26. The Tribunal was not provided with any direct evidence of value. Accordingly, the Tribunal considered the value of the subject property in light of its general knowledge of rental levels in this area of North-West London.
27. In the first instance the Tribunal determined what rent the Landlord could reasonably be expected to obtain for the subject property in the open market if it were let today in the condition that is considered usual for such an open market letting.

28. The Tribunal determined that a rent of £1,750 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.
29. 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.
30. 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.
31. The Tribunal made a deduction of 5% from the market rent to account for the tenant's providing white goods, floor coverings, curtains and other furnishings at the property.
32. In consideration of the water temperature issues, the Tribunal considered that this was an issue a prospective tenant would consider important and it therefore made a deduction of 10% from the market rent to account for it.
33. The Tribunal made a deduction of 10% to account for the lack of central heating at the property and the faulty windows taken together.
34. In light of the tenant's having rewired the property, the Tribunal made a deduction of 10%.
35. The Tribunal made a further deduction of 5% to account for the tenant having modernised the bathroom and kitchen.
36. 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.
37. 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-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 North-West London.

38. 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-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.

39. 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.

40. Table 1 below provides details of the fair rent calculation:

Property:	6A Sidmouth Parade, Sidmouth Road, London, NW2 5HG		
Fair rent calculation in accordance with s[70] Rent Act 1977			
Market Rent		£1,750	per month
Disregards		Deduction per month	as % of monthly rent
White Goods, Floor Coverings, Curtains, etc		£87.50	5%
Lease terms		£131.25	7.50%
Water temperature issues		£175.00	10.00%
No central heating and faulty double glazing		£175.00	10.00%
<b>Improvements Undertaken by Tenant</b>			
Rewiring		£175.00	10.00%
Bathroom & Kitchen		£87.50	5.00%
	Total deductions	£831.25	47.50%
	Market rent less deductions	£918.75	per month
	LESS £26.92 per month services	£891.83	
Less Scarcity	20.00% of Market rent less deductions and service	£178.37	
Adjusted Market Rent excluding services		£713.46	
	PLUS £26.92 per month services	£740.38	per month
	SAY	£740.00	per month
Maximum capped rent in accordance with Rent Acts (Maximum Fair Rent) Order 1999		£885.50	per month
	Fair Rent	£740.00	per month

Table 1

## Decision

41. As the value of £740 per calendar month arrived at by the Tribunal is less than the maximum rent prescribed by The Rent Acts (Maximum

Fair Rent) Order of £885.50 per calendar month, the fair rent that can be registered is not restricted by that Order.

42. The statutory formula applied to the previously registered rent is at Appendix A.
43. Details of the maximum fair rent calculations are provided in the separate notice of the Tribunal's decision.
44. Accordingly, the sum that will be registered as a fair rent with effect from 24 October 2023 is **£740 per calendar month**.

Valuer Chairman: Mr Oliver Dowty MRICS  
Dated: 31 October 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).