



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

Case reference : **HS/LON/00AW/F77/2023/0281**

Property : **Flat A, 21 Colville Road, London, W11
2BT**

Tenant : **Ms A MacDonald**

Landlord : **Notting Hill Genesis**

Date of application : **25 August 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 : **20 November 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 6 June 2023.
2. A fair rent of £257.50 per week was registered on 8 August 2023 following the application, such rent to have effect from that date. The

tenant subsequently challenged the registered rent on 25 August 2023, and the Rent Officer has requested the matter be referred to the tribunal for determination.

3. Directions were issued on 21 September 2023 by the Tribunal.
4. The parties were invited to submit any relevant information and submissions. Both parties provided a reply form, with the tenant also providing a further brief written submission.
5. In their reply form, the tenant had indicated both that they wished a hearing be held in this matter, and that they wished the property be inspected by the Tribunal. Accordingly, a face-to-face hearing was held in this matter on 20 November 2023 at 10 Alfred Place, London, WC1E 7LR, with an inspection taking place later that same day.

The Hearing

6. The tenant, Ms Anne MacDonald, appeared in person at the hearing alongside her (adult) daughter Ms Sophie MacDonald. The landlord was represented by Mr Hashi, an employee of the landlord.
7. The hearing was a cordial affair, with very little dispute between the parties. There had been some discrepancies between the information provided by the tenant and the landlord in their reply forms, however the parties had now discussed the matter and the landlord was content that they had been mistaken when completing their form – and that the tenant’s reply form was entirely correct. The Tribunal is grateful to the parties for narrowing the issues so effectively in advance of the hearing.
8. As put forward by the tenant, the only real dispute between the parties for the Tribunal to consider was whether the property was a 2 bedroom one or a 3 bedroom one. The tenant submitted that the ‘third bedroom’ the landlord believes there to be at the property was in fact not one. It was simply that they had put a small bed in an area of the house that did not even have a door separating it from the corridor, and in any case what partitioning there was had been installed by the tenant.
9. The landlord did not oppose the tenant’s submissions regarding the bedroom, but indicated that at present that space was classified as a third bedroom for their purposes as a housing association, and they had sent a surveyor to the property who had confirmed it was sufficient to count as a third bedroom. In any case, this was something there was an internal process to resolve. The Rent Officer had valued the property as a 2 bedroom property when carrying out the registration, and whilst the landlord didn’t necessarily agree entirely with that they had no objection to it as the rent officer had registered a rent significantly in excess of the ‘target rent’ amount the landlord could charge, the landlord being a housing association.

10. There was further discussion at the hearing of the further restrictions on housing associations as regards rents, the tenant having made reference in their paper submissions to government policy concerning restrictions on registered providers increasing rents by more than 7%. They submitted that the increase in the registered rent was much higher than this, and therefore appeared to be in error.
11. As was discussed at the hearing, the registered rent which the Tribunal is to determine under the Rent Act is the maximum figure any landlord might charge, including a private sector landlord. Whilst there may be other restrictions on a specific landlord that require them to charge a lower rent, such as appears to be the case in the present instance, this is not a matter for the Tribunal to consider when determining a fair rent registration.
12. At the hearing, the tenant submitted – unopposed by the landlord – that when they had first taken the tenancy of the property, the property was in a very poor condition, effectively a ‘shell’ as the tenant put it. The tenant has carried out extensive works over the years, including the removal and replacement of asbestos contaminated materials, the replacement of the kitchen due to disrepair and tiling to the bathroom amongst other works. A number of the sockets at the property do not work, and have not worked since a flood in 2021.

The Inspection

13. The property is a maisonette located over lower ground and raised ground floors within a larger period building.
14. Whether the property offers 2 or 3 bedrooms is a matter of dispute. The claimed third bedroom is located to the rear on the raised ground floor. It does not have a door separating it from the hallway (being located adjacent to the top of the stairs down to the lower ground floor), and were it not for the tenant installing partitioning it would merely be an open area in the hallway; which, to a large extent, it remains in spite of that partitioning.
15. As it is, the tenant has chosen to put a bed in this area, however this is a highly unusual use for such a space and the Tribunal considered that this area was clearly not a bedroom. It is a small, largely open storage area in which a bed has been placed, to say nothing of the fact that it is only enclosed to the extent that it is because of tenant’s improvements which fall to be disregarded for the purposes of this determination.
16. Accordingly, the Tribunal found as a fact that the property is a 2 bedroom maisonette. As the Tribunal made clear at the hearing, this is not a determination that is binding for all purposes, and whatever weight anyone might place on the Tribunal’s findings of fact is a

matter for their discretion. The Tribunal's jurisdiction in this matter is to determine the rent which should be registered for the purposes of the Rent Act 1977, and its findings of fact are made purely to serve that purpose.

17. The property therefore offers a living room, a large kitchen with basic fixtures, a hallway and a storage area on the raised ground floor. On the lower ground floor the property offers 2 good size bedrooms, a bathroom with basic fixtures, a corridor and a further storage/utility area. There is also a medium sized garden to the rear, with a large shed installed by the tenant.
18. The property benefits from central heating installed by the landlord (albeit the tenant avers it does not work adequately), and has single-glazed windows. Floor coverings, curtains, white goods and other similar furnishings were provided by the tenant. A number of the sockets in the property do not function, and small power to some areas is therefore provided by means of extension plugs.

The Law

19. When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, "the Act", had regard to all the circumstances (other than personal 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.
20. 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.
21. 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*".
22. The market rents charged for assured tenancy lettings often form appropriate comparable transactions from which a scarcity deduction is made.

23. These market rents are also adjusted where appropriate to reflect any relevant differences between those of the subject and comparable rental properties.
24. 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.
25. **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 10 May 2018 at £185 per week. The rent registered on 8 August 2023 subject to the present objection and determination by the Tribunal is not relevant to this calculation.

Valuation

26. 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.
27. Neither party provided any comparable evidence to the Tribunal regarding the value of the property. Accordingly, the Tribunal considered the value of the property in light of its local knowledge and experience.
28. The Tribunal determined that a rent of £690 per week (approximately £2,990 per calendar month (PCM)) for the subject property would be appropriate, were it let unfurnished on the open market in the condition considered usual for such a letting.
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 effect on value of the condition of the property at the start of the tenancy, the works of improvement carried out by the tenant since then, the lease terms of the tenancy (which require internal decorations be carried out by the tenant) and the general condition of the property now are all interlinked. Accordingly, seeking to split out these various factors to individual deductions would be a wholly

artificial task. Instead, the Tribunal felt it was appropriate to consider the deduction that should be made from the hypothetical market rent to account for these factors in the round in its valuation. The Tribunal therefore determined that a deduction of 45% from the hypothetical market rent should be made to reflect all of these factors.

31. 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.
32. 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.
33. 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.
34. 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.
35. Table 1 over-page provides details of the fair rent calculation:

Property:	Flat A, 21 Colville Road, London, W11 2BT						
Fair rent calculation in accordance with s(70) Rent Act 1977							
Market Rent				£690	per week		
LESS				Deduction per week		as % of weekly rent	
	Condition, tenant's works of improvement, lease terms, etc			£310.50		45%	
		Total deductions		£310.50		45.00%	
		Market rent less deductions		£379.50	per week		
Less Scarcity	20.00%	of Market rent less deductions		£75.90			
Adjusted Market Rent				£303.60	per week		
			SAY	£304	per week	Uncapped rent	
	Maximum capped rent in accordance with Rent Acts (Maximum Fair Rent) Order 1999			£259.00	per week	Maximum capped rent	
		Fair Rent		£259.00	per week		

Table 1

Decision

36. As the value of £304 per week arrived at by the Tribunal is higher than the maximum rent prescribed by The Rent Acts (Maximum Fair Rent) Order of £259 per week, the fair rent that can be registered is restricted by that Order to the **lower** amount.
37. The statutory formula applied to the previously registered rent is at Appendix A.
38. Details of the maximum fair rent calculations are provided in the separate notice of the Tribunal's decision.
39. Accordingly, the sum that will be registered as a fair rent with effect from 20 November 2023 is **£259 per week**.

Valuer Chairman: Mr Oliver Dowty MRICS

Dated: 21 December 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:

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

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 $\frac{(\text{x}-\text{y})}{\text{y}} + \text{P}$ 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).