



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

Case reference : **TR/LON/00BK/F77/2023/0415**

**HMCTS code
(paper, video,
audio)** : **P: PAPERREMOTE**

Property : **Flat 41 Burleigh Mansions, 20 Charing
Cross Road, London, WC2H 0HU**

Applicant : **Gascoyne Holdings**

Representative : **Natalie Carroll**

Respondent : **Ms. P. McMahon**

Representative : **In person**

Date of application : **11 September 2023**

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

**Tribunal
member(s)** : **Tribunal Judge Sarah McKeown
S Phillips MRICS**

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

Date of decision : **12 February 2024**

DECISION

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Description of hearing

This has been a remote hearing on the papers which has been not objected to by the parties. The form of remote hearing was P: PAPERREMOTE. A face-to-face hearing was not held because no request was made for a hearing.

Background

1. The Landlord applied to the Rent Officer for the registration of a fair rent for this property on 11 September 2023.
2. A fair rent of £14,040 per annum was registered on 7 November 2023 (effective from 18 November 2023 and including £1,918.72 for services) following the application. The Landlord subsequently challenged the registered rent on 17 November 2023 and the Rent Officer has requested the matter to be referred to the tribunal for determination.
3. The landlord's objection, in summary, was that since its involvement, the rents of its properties had been increased by same % increase each review, but in the most recent reviews, each flat had a different % increase and in a number of cases, similar flats had different % increases, which, it was said, made no sense. The landlord set out a table of increases, showing that the increase for this property was 12.4%.
4. Directions were issued by Tribunal on 19 December 2023.
5. The parties were invited to submit any relevant information and submissions. Relevant information was received from both parties.
6. In summary, the Landlord submitted that there was no central heating or double-glazing, the white goods had been provided by the tenant, the landlord had made an improvement of communal high-speed broadband/Wi-Fi and that the Property was in a prime residential area and similar properties were worth £22,000 per annum.
7. The Tenant, in summary, said the following:
8. The Property had been let as unfurnished and the repairing and decorating covenants were different to those in the current open market. The Property was maintained to a good standard, there was regular cleaning and repairs were carried out. Services were provided but it was said that these services should not alter the valuation. Issues were taken concerning the various services as set out above and it was said that lift depreciation and allowance for administration and profit should be taken into account. Further, that repairs were not a service unless they were a repair to something used to provide a

service. The following was also said (in relation to the Property and other properties):

9. The attractiveness of the West End location was agreed, but it was said that there were negative consequences as a result of living in the West End: most of the ground floor premises are now occupied by bars, pubs (many now have late licences until midnight and later at weekends) and restaurants which are served in the early mornings by food and drink delivery lorries. Most of these lorries park up before 6 a.m. to avoid ULEZ and community charges and their drivers sit in their cabs with engines and refrigerator units (which emit a sooty discharge) running noisily until the premises open (usually after 7am but some later) when they can make their deliveries. Two bottle collections are made in the evenings (the latest at midnight). The number of noisy customers leaving late-opening licensed premises has increased considerably. Unlicensed pedicabs emit recorded music even in the early hours of the morning. Intruder alarms and parked car alarms ring regularly for long periods and getting a full night's sleep is difficult. Street level noise is reflected by the "canyon effect" (so described in recent local planning appeals) because of the narrow streets and tall buildings and can be heard equally well on the upper floors. The flats have windows (some with replacement war-time thin glass) which are draughty and which are not double glazed.
10. Further, it was said that there were current physical differences between open market rented flats and regulated tenancies. The flats were unfurnished and tenants are responsible for internal decorations. Open market rented flats are often redecorated before they are let and have new carpets and new white goods where necessary. All bathrooms and most kitchens in the Burleigh Mansions flats have been modernised by the tenants at their own expense or by charitable or social institutions (i.e. not at the expense of the landlord). The valuation tribunal should imagine bathroom fittings dating from the 1920s/30s at best, with high-level cast iron water cisterns and bare boarded floors. Flats let on assured tenancies have modernised bathrooms and kitchens and are furnished.
11. It was said that despite the Bank of England's "aggressive" cycle of interest rate rises in decades, high inflation has fuelled an explosion in mortgage costs making it difficult for many people to obtain a mortgage who then seek rented accommodation. Many landlords have sold off properties to offset their own borrowing costs or due to the removal of tax allowance advantages. Another factor is the lack of national investment in the creation of affordable homes available to rent and the general increase in the numbers of the population. This means that there are more people looking to rent a home in a market where there are fewer flats available. It was said that in the past, the Rent Officer had reduced the market rent by about 50% for all these valuation adjustments and it was suggested that this valuation appeal is an opportunity to re-address these adjustments.

12. The Property (a single aspect flat which faces Cecil Court) has smaller rooms than other Properties, the ceilings are lower, the layout is different and it was said that the rent should be lower than other flats.
13. In terms of services, the services (total, rather than just for the Property) are as follows, with the tenant's comments added in:

Cleaning	£26,000	
Electricity	£80,000	Tenant says is high
Lift	£10,000	
Fire alarm	£4,500	Tenant says is a requirement
Entryphone	£4,500	
Security	£19,500	Tenant says split 80/20
Lighting	£7,000	
Pest control	£2,500	
Health & safety	£10,000	Tenant says is a requirement
Repairs/replacement common parts:		
Internal	£20,000	Tenant says to exclude
External	£25,000	As above
Internal floors	£3,500	As above
Window cleaning	£5,500	
Gutters	£4,000	Tenant says to exclude
Insurance	£30,000	Tenant says it is not a service
High-speed Internet/Wifi	£13,500	Tenant says can be included

Inspection

14. No inspection of the property was carried out by the Tribunal as none was requested.

The property

15. The property is a self-contained flat over commercial premises (built C1800-19618) situated on the third floor. The Property comprises two rooms, a kitchen and a bathroom/WC.

The law

16. 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.

17. 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.
18. 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"*.
19. The market rents charged for assured tenancy lettings often form appropriate comparable transactions from which a scarcity deduction is made.
20. These market rents are also adjusted where appropriate to reflect any relevant differences between those of the subject and comparable rental properties.
21. 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.
22. **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.

Valuation

23. 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. It did this by having regard to its general knowledge of market rent levels in this area of Central London.
24. This hypothetical rent is adjusted as necessary to allow for the differences between the terms and condition considered usual for such a letting and the condition of the actual property at the date of the inspection. 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.

25. 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.
26. 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. Central 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 Central London.
27. 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 combined 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 Central London and therefore made a further deduction of 20% from the adjusted market rent to reflect this element.
28. 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.
29. The Tribunal assessed the fair rent on the basis, among other things, that:
 - (a) No furniture or white goods were provided when the Property was let;
 - (b) No floor coverings/curtains were provided by the Landlord;
 - (c) The kitchen was unmodernised;
 - (d) There was no central heating, and no double-glazing;
 - (e) The repairing obligations are in line with s.11 Landlord and Tenant Act 1985;
 - (f) The previous registered rent was £12,492.50 per annum (with £1,744.90 for services), registered on 18 November 2021;
 - (g) Since the last registration: the tenant had not carried out any improvements; the landlord had not carried out any major works or improvements, there was no disrepair.

30. In respect of the services, the Tribunal has allowed £1,918.72 which is the Tenant's share of the total sum due for the services provided by the Landlord (£265,500). The Tribunal notes the comments of the Tenant, but has used the proportion due from the Tenant which is believed to be due under the terms of the tenancy. This Tribunal is not determining the validity and/or reasonableness of service charges due under the terms of the tenancy.

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

Property: Flat 41 Burleigh Mansions, 20 Charing Cross Road, London, WC2H 0HU		
Market Rent		£500 per week
Deductions:	As a % of the weekly rent	
Tenant's repair liability on the tenancy	5%	
No white goods provided by Landlord	5%	
No floor coverings/curtains provided by Landlord	5%	
Unmodernised kitchen	5%	
No central heating	5%	
Total deductions	25%	£125 per week
Adjusted rent per week		£375 per week
Less scarcity at	20%	£75
Final adjusted market rent		£300 per week or £15,600 per annum
Plus services of £1,918.72		£17,518.72 per annum

Decision

32. The Rent Acts (Maximum Fair Rent) Order will apply to this determination as the fair rent determined by the Tribunal **is more than the capped rent.**

33. The uncapped fair rent determined by the Tribunal for the purposes of Section 70 is **£17,518.72 per annum**. By virtue of the Rent Acts Maximum Fair Rent Order 1999 the maximum fair rent that can be registered for this property is **£15,417.22 per annum**.
34. The statutory formula applied to the previously registered rent is at Annex A.
35. Accordingly, the sum that will be registered as a fair rent with effect from 12 February 2024 is **£15,417.22 per annum**.

Tribunal Judge: Sarah McKeown
Dated: 12 February 2024

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 should be made on Form RP PTA available at <https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

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.

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

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:

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

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