



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

Case reference : **LON/00AF/F77/2023/0391**

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

Property : **Flat 13 Graham Court, Cooden Close,
Bromley, Kent, BR1 3TT**

Applicant : **The Riverside Group**

Representative : **None**

Respondent : **Mrs. M. Holsgrove**

Representative : **None**

Date of application : **14 July 2023**

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

**Tribunal
member(s)** : **Tribunal Judge Sarah McKeown
Mr. K. Ridgeway MRICS**

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

Date of decision : **26 February 2024**

DECISION

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 Applicant Landlord applied to the Rent Officer for the registration of a fair rent for this property on 14 July 2023. It had sought a rent of £201.04 per week and stated that services to the value of £50.76 per week were provided.
2. The Rent Officer registered a rent of £214 per week, which included £36.71 per week for services. The Applicant objected by letter dated 27 October 2023 on the basis that the net rent was £12.71 lower than the previous registration of 11 March 2021.
3. A fair rent of £190 per week was registered on 11 March 2021, which included £27.45 per week for services (but did not include £12.89 for fuel charges).
4. As the objection was late, the Tribunal had to decide whether to accept the late objection. It was accepted on or about 20 December 2023.
5. Directions were issued by Tribunal on 20 December 2023.

6. In terms of services, the services are as follows (being 1/28th of the total costs), and charged per week:

COMMUNAL CHARGES

Tree works	£0.06
Water Hygiene Maintenance & Servicing	£0.12
TV Aerial Usage Charge	£0.21
Building Safety & Inspection	£0.41
Call System Maintenance and Servicing	£0.50
Admin Fee	£0.54
Auto Access Door Maintenance & Servicing	£0.73
CCTV Usage Charge	£0.81
Management Fees	£1.03
Fly Tipping/Bulk Waste Removal	£1.13
Fire Equipment Usage Charge	£1.27
Fire Safety Servicing & Maintenance	£1.54
Communal Gardening & Landscaping	£1.56
Communal Cleaning	£1.93
Communal Electricity	£4.85
Balancing Charge	£8.67

PERSONAL CHARGES

Administration Fees Ineligible	£0.60
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Tenant's Own Gas/Heating	£11.91
Surplus Ineligible	£12.89
Total	£50.76

Inspection

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

The property

8. The property is a two-bedroom flat.

The law

9. 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.
10. 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.
11. 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*".
12. The market rents charged for assured tenancy lettings often form appropriate comparable transactions from which a scarcity deduction is made.
13. These market rents are also adjusted where appropriate to reflect any relevant differences between those of the subject and comparable rental properties.

14. 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.
15. **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

16. 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 Kent.
17. Having consideration of our own expert, general knowledge of rental values in the area, we consider that the open market rent for the property in the condition and with the amenities the market would expect to be in the region of £325 per week.
18. 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.
19. 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.
20. 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. It is clear that there is a substantial measure of scarcity in Kent.
21. 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 Kent and therefore made a further deduction of 20% from the adjusted market rent to reflect this element.

22. 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.
23. The Tribunal assessed the fair rent on the basis, among other things, that:
- (a) The landlord is responsible for repairs and external decorations, the tenant is responsible for internal decorations and the tenancy is subject to s.11 Landlord and Tenant Act 1985;
 - (b) No furniture or white goods were provided when the Property was let;
 - (c) No floor coverings/curtains were provided by the Landlord.
24. The Applicant asserts that the rent as assessed by the Rent Officer has gone down, but this appears to misunderstand the position in respect of services: the rent of £190 per week (previous registered rent) and £214 per week (set by the Rent Officer), both included services. Stripping out the services element, the previous registered rent was £162.55 and the rent registered recently by the Rent Officer was £177.29 (i.e. there had been increase).
25. In respect of the services, the Tribunal has allowed £50.76 per week. This Tribunal is not determining the validity and/or reasonableness of service charges due under the terms of the tenancy.
26. Table 1 below provides details of the fair rent calculation:

Property: Flat 13 Graham Court, Cooden Lane, Bromley, BR1 3TT		
Market Rent		£325 per week
Deductions:	As a % of the weekly rent	
No decorating & internal repairing obligations on the landlord	10%	
No white goods provided by Landlord	5%	
No floor coverings/curtains provided by Landlord	10%	

Total deductions	25%	£81.25 per week
Adjusted rent per week		£243.75 per week
Less scarcity at	20%	£48.75
Final adjusted market rent		£195 per week
Plus services of £50.76		£245.76 per annum

Decision

27. The Rent Acts (Maximum Fair Rent) Order will not apply to this determination as the fair rent determined by the Tribunal **is less than the capped rent.**

28. The uncapped fair rent determined by the Tribunal for the purposes of Section 70 is **£245.76 per week.** By virtue of the Rent Acts Maximum Fair Rent Order 1999 the maximum fair rent that can be registered for this property is **£266.26 per week.**

29. The statutory formula applied to the previously registered rent is at Annex A.

30. Accordingly, the sum that will be registered as a fair rent with effect from 12 February 2024 is **£245.76 per annum.**

Tribunal Judge: Sarah McKeown
Dated: 26 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.