



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

Case reference : **TR/LON/00AM/F77/2023/0394**

Property : **75A Brooke Road, London, N16 7RD**

Landlord : **Mountview Estates PLC**

Respondent : **Ms T Dopson**

Date of application : **3 November 2023**

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

**Tribunal
member(s)** : **Mr O Dowty MRICS
Mr A Parkinson MRICS**

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

Date of decision : **8 February 2024**

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 31 August 2023.
2. A fair rent of £213.50 per week was registered on 23 October 2023 following the application, such rent to have effect from 28 November

2023. The tenant subsequently challenged the registered rent on 3 November 2023, and the Rent Officer has requested the matter be referred to the tribunal for determination.

3. Directions were issued on 5 December 2023 by the Tribunal.
4. The parties were invited to submit any relevant information and submissions. The tenant provided a reply form and copies of two letters she had sent the landlord in 2021 regarding the property. The landlord did not provide a reply form nor submissions, instead emailing the Tribunal on 5 December 2023 to say:

Many thanks for sending this through we have nothing further to add and await for your decision on this matter.

5. The tenant, in her reply form, indicated that she wished the Tribunal both to hold a hearing in this matter and to inspect the property. Accordingly, the Tribunal arranged a hearing in this matter for 8th February 2024, with an inspection later that day.

The Hearing

6. A face-to-face hearing was held at 10 Alfred Place, London, WC1E 7LR on 8 February 2024. The tenant attended the hearing in person, accompanied by her husband Mr Dopson. The landlord did not attend the hearing.
7. The Tribunal considered that sufficient notice of the hearing had been provided to the landlord, and noted that the only contact the Tribunal had received from the landlord was an express statement that they did not have anything they wished to add to proceedings. Accordingly, having allowed a few minutes after the listed start time of 10am to allow for potential late-running, the Tribunal considered it was appropriate to continue the hearing in the absence of the landlord.
8. At the hearing, the tenant submitted that the rent officer's registration was significantly too high, and resulted in an increase of £44 per week as against the previous rent of £169.50 per week. The tenant had kept the property well decorated, re-decorating every few years. The tenant had installed two new kitchens over the years, the original kitchen when they moved in consisting of only a single cabinet and a gas cooker. Similarly, the tenant had installed the shower in the bathroom (which is located above the existing bath) and had resurfaced the bath. The tenant had put a lot of work into the garden over the years, which had involved digging out rubble and laying the patio area.

9. The tenant averred that there was a void underneath the bedroom, which led to that area becoming cold as it was not sufficiently insulated.
10. The landlord had provided central heating, but the tenant provided the white goods. The bedroom and kitchen were double glazed, but the living room was not. In addition, the frames of the living room windows were, in the words of the tenant, rotten and there was a slight damp issue in the bedroom, caused by the guttering above over-flowing.
11. In terms of rent, the tenant was aware of a flat in the building that had let for £1,400 per calendar month some time ago. Whilst unclear on exactly what level of rent the subject property might fetch on the market if it were let in a good condition and on the terms considered usual, the tenant thought it would be higher than £1,400pcm.

The Inspection

12. Following the hearing, on the same day, the Tribunal inspected the property. As at the hearing, the tenant and her husband Mr Dopson were present, but the landlord was not.
13. The property is located nearby to Rectory Road TFL station on Brooke Road, a predominantly residential road in the London Borough of Hackney. It is situated on the lower ground floor of a larger period building, with a private entrance door.
14. Internally, the property offers a living room, kitchen, bathroom, a good size bedroom and 2 storage areas - one under the stairs which lead up to the door to the rest of the building, and where a now removed internal staircase used to provide access to the subject flat from the communal hall. The property is well-decorated, decoration being the responsibility of the tenant.
15. As submitted by the tenant, the bedroom is elevated compared with the rest of the property, and appears to have a significant void area below it.
16. Externally, the property offers a garden which is well maintained by the tenant with a patio area they installed.
17. The building, externally, is in a slightly poor condition, with cracks to rendering, some window cills and lintels. In addition, the guttering of the building appears poor. Whilst the Tribunal did not consider the single glazed window frames to the front of the subject flat were rotten, as the tenant had described, they were certainly in a slightly poor condition.

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 12 October 2021 at £169.50 per week. The rent registered on 23 October 2023 subject to the current 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 and on the terms that are 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 a flat in the same building as the subject property at £1,400 per calendar month some time ago. No further details were provided regarding this, and the tenant averred that it was let some time ago.
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 £350 per week (approximately £1,516 per calendar month) for the subject property, were it let on the open market in the condition and on the terms 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 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 hypothetical rent is made to reflect this liability.
30. The Tribunal made a deduction of 5% from the hypothetical rent to account for the tenant's providing white goods, floor coverings, curtains and other similar furnishings at the property.
31. The Tribunal made a deduction of 5% to account for the tenant's installing the kitchen at the property, and the condition of the kitchen when the property was let.
32. The Tribunal made a deduction of 2.5% to account for the basic nature of the bathroom and the works the tenant had carried out to it.
33. The Tribunal made a deduction of 2.5% to account for the void under the bedroom, the Tribunal - considering the evidence provided to it and its own observations on inspection - accepting the tenant's submissions that this caused that room to be colder than it otherwise would be.

34. The Tribunal made a deduction of 2.5% to account for the works the tenant had carried out to the garden, including the laying of the patio area.
35. The Tribunal made a further 5% deduction to account for the external condition of the property and the wider building within which it is situate, including the fact the living room windows are single glazed and the frames are in a slightly poor condition.
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 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.
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 London and therefore made a further deduction of 20% from the adjusted market rent 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 over-page provides details of the fair rent calculation:

Property:	75A Brooke Road, London, N16 7RD						
Fair rent calculation in accordance with s(70) Rent Act 1977							
Market Rent			£350	per week			
Disregards					Deduction per week	as % of weekly rent	
Lease terms			£26.25			7.5%	
White goods, carpets, curtains, etc			£17.50			5.00%	
Tenant installed kitchen			£17.50			5.00%	
Basic bathroom			£8.75			2.50%	
Void under bedroom			£8.75			2.50%	
Tenant works to garden			£8.75			2.50%	
External condition (inc partial single glazing and condition thereof)			£17.50			5.00%	
			Total deductions		£105.00	30.00%	
			Market rent less deductions		£245.00	per week	
Less Scarcity	20.00%	of Market rent less deductions			£49.00		
Adjusted Market Rent					£196.00	per week	Uncapped rent
Maximum capped rent in accordance with Rent Acts (Maximum Fair Rent) Order 1999					£214.50	per week	Maximum capped rent
			Fair Rent		£196.00	per week	

Table 1

Decision

41. As the value of £196 per week arrived at by the Tribunal is lower than the maximum rent prescribed by The Rent Acts (Maximum Fair Rent) Order of £214.50 per week, the Fair Rent that can be registered is not capped 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 with the attached notice of decision.
44. Accordingly, the sum that will be registered as a fair rent with effect from 8 February 2024 is **£196 per week**.

Valuer Chairman: Mr O Dowty MRICS

Dated: 15 March 2024

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:

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

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

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. **Please note that if you are seeking permission to appeal against a decision made by the Tribunal under the Rent Act 1977, the Housing Act 1988 or the Local Government and Housing Act 1989, this can only 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).