



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

Case reference : **LON/00AE/F77/2023/0273**

Property : **8 Olive Road, London, NW2 6DB**

Tenant : **Mrs M Steinberg**

Landlord : **Area Estates Ltd**

Landlord's Representative : **Hamways Limited**

Date of application : **5 August 2023**

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

Tribunal member(s) : **Mr O Dowty MRICS
Mr C Simons**

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

Date of decision : **26 January 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 23 June 2023.

2. A fair rent of £950 per calendar month was registered on 27 July 2023 following the application, such rent to have effect from 20 September 2023. The tenant subsequently challenged the registered rent on 5 August 2023, and the Rent Officer has requested the matter be referred to the tribunal for determination.
3. Directions were issued on 22 September 2023 by the Tribunal. The parties were invited to submit a reply form and any other submissions they wished to make.
4. The tenant provided a reply form. The landlord provided no submissions.
5. The Tribunal's Directions provided that:
 4. *If no hearing is requested, the Tribunal will make its decision based on the documents received and if appropriate will apply the capping mechanism to the last registered rent and will try to issue a decision within 28 days of the determination date shown above.*
6. In her reply form, the tenant requested a hearing. Accordingly, the Tribunal arranged a hearing for 26 January 2024. On 22 January 2024, the tenant advised the Tribunal that she would not be able to attend the hearing, but that she wished the Tribunal to continue to make a decision in this matter despite her not attending.
7. Due to the short notice that would have been needed to be provided to the landlord, the Tribunal did not cancel its hearing. Instead, the Tribunal made itself available for that hearing at the time specified, however neither party attended.
8. The Tribunal considered that the landlord had not indicated that they required a hearing; and that the tenant had confirmed she wished the Tribunal to proceed with its decision despite her non-attendance. In addition, the Tribunal had sought to hold a hearing, and was only prevented from doing so by both parties' failure to attend it.
9. Accordingly, the Tribunal considering that sufficient notice of that hearing had been provided to the parties, the Tribunal continued to make its decision on the basis of the submissions provided to it in writing. The Tribunal notes for completeness that, whilst not strictly relevant as the Tribunal did in fact attempt to hold a hearing, the Tribunal considered this was nevertheless a case that did not require a hearing and was suitable for a decision on the papers.

The Property

10. The property is a 2 bed flat located on the first floor of a larger, period building. The property is located on Olive Road, a residential street in the Cricklewood area of north-west London.

11. The property benefits from double glazing, but does not have central heating. Carpets, curtains and white goods were provided by the tenant. The Tribunal understands that the bathroom and kitchen at the property are dated.

The Law

12. 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.
13. The Tribunal's role under a section 70 application is to determine the maximum fair rent that may be charged for a property. Whilst the Tribunal notes the tenant's submissions, that determination is not restricted by the amount the landlord indicates they wish the rent officer to register on their application form – and may be the same, higher or lower than it.
14. 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.
15. 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*".
16. The market rents charged for assured tenancy lettings often form appropriate comparable transactions from which a scarcity deduction is made.
17. These market rents are also adjusted where appropriate to reflect any relevant differences between those of the subject and comparable rental properties.
18. 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.

19. **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 20 September 2021 at £750 per calendar month. The rent registered on 27 July 2023 subject to the present objection and determination by the Tribunal is not relevant to this calculation.

Valuation

20. 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 and on the terms that are considered usual for such an open market letting.
21. Neither party provided any evidence of value for the Tribunal to consider. Accordingly, the Tribunal considered the value of the property in light of its local knowledge and experience of general rental levels.
22. The Tribunal considered that a rent in the region of £2,000 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.
23. 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.
24. The responsibility for internal 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.
25. The Tribunal made a deduction of 5% from the hypothetical rent to account for the tenant's providing white goods, carpets, curtains and other similar furnishings at the property.
26. The Tribunal made a further deduction of 5% to account for the lack of central heating at the property.
27. The Tribunal made a 2.5% deduction each (a 5% deduction in total) to account for the bathroom and kitchen at the property being dated.
28. 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.

29. 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.

30. 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.

31. 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.

32. Table 1 over-page provides details of the fair rent calculation:

Property:	8 Olive Road, London NW2 6DB		
Fair rent calculation in accordance with s(70) Rent Act 1977			
Market Rent		£2,000	per month
Disregards		Deduction per month	as % of monthly rent
Lease terms		£150.00	7.5%
White goods, carpets, curtains, etc		£100.00	5.00%
No central heating		£100.00	5.00%
Dated bathroom		£50.00	2.50%
Dated kitchen		£50.00	2.50%
		Total deductions	£450.00 22.50%
		Market rent less deductions	£1,550.00 per month
Less Scarcity	20.00%	of Market rent less deductions	£310.00
Adjusted Market Rent		£1,240.00	per month Uncapped rent
Maximum capped rent in accordance with Rent Acts (Maximum Fair Rent) Order 1999		£954.50	per month Maximum capped rent
		Fair Rent	£954.50 per month

Table 1

Decision

33. As the value of £1,240 per calendar month arrived at by the Tribunal is higher than the maximum rent prescribed by The Rent Acts (Maximum Fair Rent) Order of £954.50 per calendar month, the fair rent that can be registered is restricted by that Order to the lower, capped amount of £954.50.
34. The statutory formula applied to the previously registered rent is at Appendix A.
35. Details of the maximum fair rent calculations are provided in the separate notice of the Tribunal's decision.
36. Accordingly, the sum that will be registered as a fair rent with effect from 26 January 2023 is **£954.50 per month**.

Valuer Chairman: Mr Oliver Dowty MRICS

Dated: 21 February 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:

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

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.

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).