



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

Case reference : **MAM/LON/00AW/F77/2023/0348**

Property : **Room 6, 98 Kensington Church Street,
London, W8 4BU**

Landlord : **Mr Anthony Dodds**

Tenant : **Mr Simon Worth**

Date of application : **24 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 : **21 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 6 June 2023.
2. A fair rent of £194 per week was registered on 2 August 2023 following the application, such rent to have effect from 31 August

2023. The landlord subsequently challenged the registered rent on 24 August 2023, and the Rent Officer has requested the matter be referred to the tribunal for determination.

3. Directions were issued on 14 November 2023 by the Tribunal.
4. The parties were invited to submit any relevant information and submissions. The landlord provided a reply form, a bank statement showing apparent payments of rent in the building (with annotations for room numbers) and a further letter. The tenant provided neither a reply form nor any other submissions.
5. In his reply form, the landlord requested the Tribunal both hold a hearing in this matter and inspect the property. Accordingly, the Tribunal arranged for a face-to-face hearing in this matter followed by an inspection on 20 February 2024.

The Hearing

6. A face-to-face hearing was held at 10 Alfred Place, London, WC1E 7LR on 20 February 2024. The landlord Mr Dodds attended the hearing in person, however the tenant did not attend. The Tribunal was informed by Mr Dodds, who also lives in the building within which the subject room is situated, that Mr Worth would not be attending the hearing. In any case, Mr Worth had not provided any submissions regarding this matter at all, and the Tribunal considered that sufficient notice of the hearing had been given to the parties. Accordingly, the Tribunal considered it was appropriate to continue in the absence of the tenant.
7. At the hearing, the landlord was entirely forthright throughout. Whilst the inspection had not yet happened when the hearing took place, having observed the interaction between the landlord and the tenant in this matter at the inspection later that day it is clear that they have a very good relationship – and, as Mr Dodds suggested at the hearing, this was simply a matter of achieving what he considered to be the right fair rent registration.
8. The landlord raised two points. First, it was his understanding that fair rent registrations increased by RPI + 5%. Second, the subject room had always been registered at 10% higher than room 7, but that was no longer the case since the last registration (room 7 having been re-registered in October last year). In addition, the landlord wished to make clear that the property had the benefit of 2 bathrooms, the landlord having converted a formerly let room into an additional bathroom. The landlord averred that this provision of bathrooms was above legal requirements – and that this should be reflected in the valuation.
9. The Tribunal explained the way in which fair rent registrations are arrived at, and asked the landlord at what value he thought the room

might be let if it were let on the market now in the condition that would be expected of a room in the market. The landlord averred that Room 4, which is smaller than the subject room, was let for £1,120 per month recently, and that the subject would be worth more. The landlord said he would realistically expect a 20% uplift.

10. The landlord had tried to find comparable evidence in the area online, but had failed to find anything he considered was comparable to the subject room.
11. The subject room, the landlord averred, was in a dated condition – and the landlord hadn't done much to it since 2003. This was said to be because the tenant does not wish there to be any improvements as it would be an inconvenience and they are perfectly happy with the property as it is.
12. The landlord said that he had provided the majority of the furniture at the subject room, with the tenant providing a few extra items, and the landlord is responsible for all repairs and decorations.

The Inspection

13. Following the hearing, on the same day, the Tribunal inspected the property. The tenant Mr Worth was present, as was the landlord Mr Dodds. The Tribunal introduced themselves to Mr Worth, and made sure that he was aware of who the Tribunal were and why they were there. It was clear that Mr Worth was, and that – as the Tribunal has observed above – the relationship between Mr Worth and Mr Dodds was an entirely positive one.
14. The subject room is a relatively large room on the second floor of a larger period building which had been divided into several separate rooms. The room offers a basic kitchenette (which is not separated from the rest of the room). It has an electric radiator, and is single glazed. The carpet and general decorative standard is quite basic, and there is some minor cracking to the ceiling and walls.
15. The Tribunal was also shown the bathrooms at the property, which are slightly basic but appear clean and fit for purpose.

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 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"*.
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. The relevant registered rent in this matter was registered on 22 July 2021 at £182 per week. The rent registered on 2 August 2023 subject to the current objection and subsequent determination by the Tribunal is not relevant to this calculation.

Valuation

23. The landlord made reference to the fact he thought fair rents increased by RPI +5% and that historically the property had been registered 10% higher than Room 7. Neither of these submissions is helpful in the valuation of the subject, as explained by the Tribunal at the hearing. The former is an apparent misunderstanding of the operation of the capping mechanism (which the registered rent on this property appears to have historically been); the latter involves a

percentage adjustment from a registered rent on a different property. Whilst that property is a room in the same building, in line with the Tribunal's remarks at paragraph 18 of these reasons the registered rents on other properties do not provide good evidence of value in this case.

24. Instead, 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.
25. The landlord submitted that, were the property let on the market in the condition considered usual, he would expect a value of around £1,120 per calendar month + 20%, based on an uplift from Room 4 at the property, which had been let relatively recently on the open market. This would equate to £1,344 per calendar month, or approximately £310 per week.
26. The landlord had not been able to find any good comparable evidence from outside the building, and had therefore not provided any to the Tribunal. Accordingly, the Tribunal considered the rent in line both with the submissions of the landlord and in light of its own expert knowledge of rents in the local area to the subject.
27. The Tribunal considered that the landlord's suggested hypothetical market valuation was a good one, and matched with what the Tribunal would expect. The Tribunal therefore determined that were the property let on the market in the condition and on the terms considered usual for such a letting, it would fetch in the region of £310 per week.
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. In this instance, the Tribunal made a deduction of 10% to account for the condition of the room, it being single glazed, tired decoratively and with some cracking to the walls and ceilings.
30. 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.

31. 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.
32. 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 to reflect this element.
33. 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.

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

Property:	Room 6, 98 Kensington Church Street, London, W8 4BU				
Fair rent calculation in accordance with s(70) Rent Act 1977					
Market Rent			£310 per week		
Disregards			Deduction per week	as % of weekly rent	
Condition			£31.00	10.00%	
		Total deductions	£31.00	10.00%	
		Market rent less deductions	£279.00	per week	
		Market rent less deductions & £21.85 services and fuel charges	£257.15		
Less Scarcity	20.00%	of Market rent less deductions, services and fuel charges	£51.43		
		Adjusted market rent less services and fuel charges	£205.72		
Adjusted Market Rent		INCLUDING £21.85 services and fuel charges	£227.57	per week	
		SAY	£228	per week	Uncapped rent
Maximum capped rent in accordance with Rent Acts (Maximum Fair Rent) Order 1999			£235.00	per week	Maximum capped rent
		Fair Rent	£228.00	per week	

Table 1

Decision

35. As the value of £228 per week arrived at by the Tribunal is lower than the maximum rent prescribed by The Rent Acts (Maximum Fair Rent) Order of £235 per week, the Fair Rent that can be registered is not capped by that order.
36. The statutory formula applied to the previously registered rent is at Appendix A.
37. Details of the maximum fair rent calculations are provided with the attached notice of decision.
38. Accordingly, the sum that will be registered as a fair rent with effect from 21 February 2024 is **£228 per week**.

Valuer Chairman: Mr O Dowty MRICS

Dated: 22 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:

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

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).