



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

Case Reference : LON/00AW/F77/2023/0364.

Property : Flat C, 4 Earls Court Square, London SW5
9DP.

Applicant : Mrs. B. Fitzgerald.

Representative : In person.

Respondent : Peabody Trust (Registered Charity)

Representative : In person.

Type of Application : Rent Act 1977 (“the Act”) reasons for the
determination of the fair rent of a property
following an objection to the rent
registered by the Rent Officer

Tribunal Member(s) : Tribunal Judge Aileen Hamilton-Farey.

Date of Decision : 19 January 2024.
Date of Reasons: 19 January 2024.

REASONS FOR THE DECISION

1. By an RR1 dated 17 July 2023, the landlord made an application to re-register the rent of the subject property. At the time of the application the rent charged by the landlord was £141.13 per week, exclusive of council tax, but inclusive of service charge. At the time the rent register showed a registered fair rent of £186.00 per week again inclusive of service charges of £1.81 per week. The previous registration was effective from 3 January 2018.
2. I conclude from the evidence before me that the rent had therefore not been increased since 2018 and that the landlord, in common with many social landlords, was not charging the actual maximum fair rent of £186.00.
3. The landlord sought an increase in rent to £173.11 from the £141.13 being charged.
4. On 14 September 2023, the Rent Officer registered the rent at £261.50 per week including services of £2.64. The tenant objected to that figure by letter of 21 September 2023 and the matter was referred to this tribunal.
5. The documents sent to the tribunal by the Rent Officer included the Rent Register of 2018 and the new Register for 2023, together with the objection letter from the tenant, and the RR1 application form.
6. The tenant's objection was based on the fact that in their view the increase was too high.
7. The Tribunal issued directions that informed the parties that the application would be dealt with on the papers, without a hearing in accordance with Rule 31 of the Tribunal Procedure Rules. No objections to this were received and the tribunal therefore proceeded to set the rent.
8. The directions also requested that the parties provide details of any repairs or improvements carried out by either the landlord or tenant, and to provide details of any rents for similar properties that they wished the tribunal to consider. The parties were provided with a form to complete giving details of the property, improvements etc to be relied on.
9. No other correspondence was received from the parties, and I have proceeded on the basis of the documents provided by the Rent Officer and the tenant's objection letter.

Inspection

10. The property was not inspected, and the tribunal used the documents provided to it.

The law

11. When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, must have regard to all the circumstances including the age, location and state of repair of the property, but excluding any personal circumstances of either the landlord or tenant. The tribunal must also disregard 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. In this case, no evidence was provided of either disrepair or improvement by the tenant.
12. Case law informs the Tribunal.
 - a. That ordinarily a fair rent is the **market rent** for the property discounted for 'scarcity' (i.e., 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 - other than as to rent - to that of the regulated tenancy) and
 - b. That for the purposes of determining the market rent, assured tenancy (market) rents are usually appropriate comparables. (These rents may have to be adjusted where necessary to reflect any relevant differences between those comparables and the subject property).

Consideration and Valuation

13. The tribunal must therefore disregard the fact that the landlord is a 'social landlord' and at the time of the original application, was charging less than the registered rent. The starting point for the tribunal must be the existing registered rent (in this case £186.00, and not the £141.13 being charged).
14. The tribunal is required to apply a statutory 'capping' formula to the existing registered rent, which is designed to ensure that the Registered Rent is the lower of either the existing rent plus the formula, or the market rent adjusted for scarcity and the differences between a market rent tenancy and the current tenancy. The case law prohibits the tribunal from considering other registered rents in the vicinity.
15. In this case neither party produced evidence of market rents that the tribunal should consider. As noted above, the tribunal must take a starting point of the market rent for the property in its current location and condition, make adjustment to reflect that condition and the terms of the tenancy, and then make an adjustment for scarcity.
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. The Tribunal did this by having regard to its wide general knowledge and experience of the letting marketed in Greater London. The tribunal arrived at a market rent **of £600.00 per week.**

17. However, the rent referred to in the above paragraph is on the basis of a modern open market letting where the tenant has no liability to carry out repairs or decorations, that the property has been modernised to a reasonable standard to achieve that letting and that white goods, carpets (or floor coverings) and curtains or blinds are provided as part of the tenancy.
18. The tribunal must therefore make adjustments to reflect the lower bid a prospective tenant would make to reflect the differences between the property in a modern lettable state and that as provided by the landlord. In this instance the tribunal made a deduction of **£141.00 (50%)** to reflect the different terms of the tenancy, the lack of modernisation, lack of carpets, curtains and white goods that would normally be present in an open market letting, to achieve the **adjusted market rent of £459.00 per week.** The tribunal is then required to make further adjustments to reflect the scarcity of properties in the Greater London area. In this case a deduction of 20% was made, resulting in a **fair rent of £367.20 per week.**
19. The tribunal then applied the statutory formula to the existing registered rent. The calculation for this which was appended to the decision form and produced a capped fair rent of **£265.00 per week.**
20. This tribunal must register whichever of the two rents produced in 18 and 19 above is the lower. In this case the lowest rent is **£265.00 per week. This was therefore the sum that was registered by the tribunal as the registered rent. The effective date for the registration was 19 January 2024, and this was noted on the decision form.**
21. In many cases where the landlord is a social landlord and the full rent is not being charged when the application for a Registered Rent is made, as explained above, the tribunal must disregard that fact, and start by using the registered rent. In addition, as already noted, the tribunal is unable to consider the financial circumstances of the tenant/landlord in this matter and this is between the landlord and tenant.
22. However, the parties should be aware that the registered rent is the maximum rent that can be charged by the landlord, and social landlord's often do not charge the full rent, but again this is a matter between the landlord and tenant.

Name: Ms. A. Hamilton-Farey
Date 19 January 2024.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.