



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

Case reference : **TR/LON/00AG/F77/2023/0284**

Property : **58D Fellows Road
Belsize Park
London NW3 3LJ**

Applicant : **Mr Elliot Stranger**

Representative : **N/a**

Respondent : **Northumberland & Durham Property
Trust Limited**

Representative : **N/a**

Date of application : **7 June 2023**

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

Tribunal members : **Mr I B Holdsworth MSc FRICS MCI Arb
RICS Registered Valuer 0079475
Mr Alan Ring**

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

Date of decision : **8 March 2024**

DECISION

Background

- 1 An application was made to the Rent Office by the Landlord for the registration of a fair rent on 17 March 2023. The registered rent was challenged by the Tenant to this application and the Rent Officer has requested the matter be referred to the Tribunal for determination.
- 2 Directions were issued to both parties following receipt of the objection.
- 3 The Tribunal informed the parties of their rights to request an oral hearing. The Tenant requested a hearing.
- 4 A face-to-face hearing was held on 27 November 2023 to discuss the application.
- 5 Prior to the hearing, the parties were invited to submit relevant information on market rents in the area for similar properties. They were also invited to offer any details of property dilapidation, repairs or improvements made to the property by either the Landlord or Tenant.
- 6 The parties were invited to submit a full description of the property on a reply form provided to them by the Tribunal. The Tenant provided a detailed description of the property.
- 7 Following the hearing the Tribunal decided an inspection of the property was necessary to determine many of the matters raised at the hearing and made in the written submissions. The inspection was carried out on 8 March 2024.
- 8 The Tribunal tried to arrange an inspection on a mutually convenient date and time on several occasions following the hearing. The Tribunal were told that due to the Tenants work and family commitments he was unable to agree to a property inspection without a minimum of two weeks' notice. Satisfying this requirement imposed by the Tenant provided administratively difficult and consequently delayed the date of the inspection.

Property Description

- 9 The property is a first floor flat. The accommodation comprises:

First floor: Entrance hall, kitchen, living room, two bedrooms, bathroom/
WC, stairs leading to two attic storage rooms.

Hearing

- 10 A hearing was held on 27 November 2023 at which the Tenant, Mr Stranger made oral and written submissions about the property.
- 11 The Tenants representations included details of tenant improvements, the poor thermal efficiency of the dwelling, comments on disruption of his tenancy from ongoing building works, the obsolescence of numerous internal fittings and the dilapidation of the property.
- 12 The Landlord did not attend the hearing, nor make any written submissions.

Inspection

- 13 At the Tribunal's inspection on 8 March 2024, Mr Stranger and his daughter were in attendance. The Landlord was not present.
- 14 The Tribunal noted that the roof space had been converted to create two attic spaces, with rooflight windows. At the time of inspection both spaces were being used for storage.
- 15 The inspection also revealed some dilapidation and obsolescence to the kitchen and sanitary fittings. There was also evidence of historic movement to the building, with surface cracking visible to internal wall surfaces.
- 16 The internal joinery was damaged and ill fitting. The internal decoration was dated with defective wall surface visible.

Reported defects and obsolescence

- 17 Mr Stranger reported several specific defects to the property in his submissions. He also emphasised the poor thermal efficiency of the dwelling, identifying for the Tribunal several Tenant improvements, including the supply and fitting of kitchen units, sanitary fittings and the conversion of the roof space to a usable storage facility.

Condition

- 18 The condition of the property is material and Tribunal has had regard to any dilapidation or obsolescence to the flat.

Market rental evidence

- 19 Neither party provided details of comparable market rents of similar property in the locality.
- 20 Mr Stranger told the Tribunal at the hearing that the property is unique and comparable evidence was not therefore available.

The law

- 21 When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, (**'the Act'**), it 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.
- 22 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.

- 23 The Market Rents charged for assured tenancy lettings often form appropriate comparable transactions from which a scarcity deduction is made.
- 24 These Market Rents are also adjusted where appropriate to reflect any relevant differences between those of the subject and comparable rental properties.
- 25 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.
- 26 **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 Order restricts any rental increase to 5% above the previously registered rent. The Order is not applied should the Tribunal assess that as a consequence of repairs or improvements carried out by the Landlord the rent that is determined in response to an application for a new rent registration exceeds by at least 15% the previous rent registered.
- 27 The Upper Tribunal in **Peabody Trust – v – Welstead [2024]** UKUT 41 (LC) addressed the reliance upon the experience and knowledge of a tribunal following an application to the Tribunal. Judge Martin Rodger KC, Deputy Chamber President said:

*'The FTT is a specialist tribunal whose members are appointed because of their experience and professional backgrounds in residential property matters. Whilst sitting on the FTT its members will acquire further relevant experience and familiarity with general levels of value or costs in a particular area. This is one of the key strengths of the Tribunal system and it particularly important in dealing with the numerous cases of modest value in which a decision has to be made on very limited information. **Rent assessments are typical of those types of cases.***

Although this decision was concerned with management charges it also specifically addressed the role of the Expert Tribunal when little or no evidence is provided by the parties. The Deputy Chamber President said:

'It was entitled to rely on its general experience of management charges; that is what it was appointed to do and, in the absence of assistance from the parties, there was no other source on which it could rely.'

In this matter comparable rental information or scarcity data was not proffered by either party and the Tribunal had to rely upon their general knowledge and expertise. They did not rely upon specific rental transactions or property scarcity data sets. This approach accords with the Upper Tribunal guidance on the appropriate role of the Tribunal in such situations.

Valuation

- 28 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 their general knowledge of market levels in this area of North-West London.
- 29 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 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.
- 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 about scarcity, although the tenant said at the hearing that he considered it was very high for this type of property in this particular locality.
- 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. The Greater 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 across that area.
- 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 combined knowledge and experience of 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 there was substantial scarcity in the London area and, therefore, made a further deduction of 20%.
- 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 The Tribunal has relied upon their knowledge and experience of Market Rents in the locality to determine the appropriate Market Rent for this property to be used in the fair rent calculation.
- 35 Table 1 below provides details of the fair rent calculation:

| | | | | | | |
|--|--|--|-----------------------|---------------------|------------------------|---------------|
| Property: 58D Fellows Road, London, NW3 3LJ | | | | | | |
| Fair rent calculation in accordance with s(70) Rent Act 1977 | | | | | | |
| Market rent | | | | £2,800.00 | per month | |
| Disregards | | | | Deduction per month | as % of rent per month | |
| Carpets , curtains white, goods, soft furnishing | | | | £70.00 | 2.50% | |
| Internal decoration liability | | | | £70.00 | 2.50% | |
| Dilapidations and obsolescence | | | | Deduction per month | as % of rent per month | |
| No Central heating | | | | £420.00 | 15.00% | |
| No double glazing | | | | £210.00 | 7.50% | |
| Low water pressure | | | | £70.00 | 2.50% | |
| Improvements undertaken by tenant | | | | Deduction per month | as % of rent per month | |
| Rewiring | | | | £70.00 | 2.50% | |
| Upgrade to sanitary fittings and water heaters | | | | £70.00 | 2.50% | |
| Supply of internal doors and fitting of roof windows | | | | £70.00 | 2.50% | |
| | | | | | | |
| | | | Total deductions | £1,050.00 | 37.50% | |
| | | | Adjusted Rent balance | £1,750.00 | | |
| | | | | | | |
| Less Scarcity 20.00% | | | | £350.00 | | |
| | | | | | | |
| Adjusted Market Rent | | | | £1,400.00 | per month | Uncapped rent |
| | | | | | | |
| Capped rent in accordance with Rent Acts (Maximum Fair Rent) Order 1999 | | | | £ 1,464.00 | per month | Capped rent |

Decision

- 36 The rent calculated in accordance with the Rent Acts (Maximum Fair Rent) Order is £1,464 per month. Details of the maximum fair rent calculations were provided with the original Notice of Decision. The statutory formula applied to the previously registered rent is at Appendix A. The uncapped fair rent determined by the Tribunal for the purposes of Section 70 is £1,400 per month.
- 37 Accordingly, as the lower amount, the sum to be registered as the fair rent with effect from 8 March 2024 is **£1,400 per month**, being the date of the Tribunal's decision.

Name: Ian Holdsworth **Date:** 24 April 2024
Valuer Chairman

Appendix A

The Rents Act (Maximum Fair Rent) Order 1999

- 2 (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 $\frac{(x-y)}{y} + P$ 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.

You can only appeal this determination if the First-tier Tribunal decision was wrong on one or more points of law and you must say why the First-tier Tribunal was wrong in law.

Any subsequent application for permission to appeal should be made on Form RP PTA.

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 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 (ie, 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).