



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

**Case reference** : **LON/00AN/F77/2024/0017**

**Property** : **4A Barclay Road, London SW6 1EH**

**Applicants  
(Landlord)** : **Lissa Napolitano**

**Representative** : **None**

**Respondent  
(Tenant)** : **Mr and E. Green**

**Representative** : **None**

**Type of application** : **Section 70 of the Rent ACT 1977**

**Tribunal members** : **Mr D Jagger MRICS  
Mr A Ring**

**Date of Reasons** : **29<sup>th</sup> April 2024**

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**Reasons**

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**The Tribunal determines £840 per month is to be registered as the fair rent for the above property with effect from 19<sup>th</sup> March 2024 being the date of the Tribunal's decision.**

This decision was notified to the parties following the decision. On the 3<sup>rd</sup> April 2024 the Tribunal received a request from Landlord to provide extended reasons. The Tribunal have therefore set out below full reasons for their decision prior to any application either party wishes to pursue for permission to appeal.

## **Reasons**

### **Background**

On 4th September 2023 the landlord, applied to the Valuation Office Agency (Rent Officer) for registration of a fair rent of £1,092 per month (inclusive of a service charge of £77.00 per month)

The rent payable at the time of the application was £792 per month, inclusive of service charge of £66.66 per month effective from 17 November 2021.

On 15 November 2023 the Rent Officer registered a fair rent of £630 per month, inclusive of a service charge of £64.53 per month effective from the 17 November 2023. The rent increase imposed by the Rent Officer had not been “capped” or limited by the operation of the Rent Acts (Maximum Fair Rent) Order 1999 (the Order).

By a letter dated 6 December 2023 from Mr Marin Band, the Landlord objected to the rent determined by the Rent Officer and the matter was referred to this Tribunal.

### **The law**

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. It also must disregard the effect of (a) any relevant tenant's improvements and (b) the effect of any disrepair or other defect attributable to the tenant, on the rental value of the property. Section 70(2) of the Rent Act 1977 imposes on the Tribunal an assumption that the number of persons seeking to become tenants of similar dwelling house in the locality on the terms (other than those relating to rent) of the regulated tenancy is not substantially greater than the number of such dwelling houses in the locality which are available for letting on such terms. This is commonly called ‘scarcity’.

In *Spath Holme Ltd v Chairman of the Greater Manchester Council* (1995) 28 HLR 107 and *Curtis v London Rent Assessment Tribunal* [1999] QB 92 the Court of Appeal emphasised

- (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).

The Rent Acts (Maximum Fair Rent) Order 1999 places a “cap” on the permissible amount of the increase of a fair rent between one registration and the next, by reference to the amount of the increase in the United Kingdom Index of Retail Prices between the dates of the two registrations. Where the cap applies the Rent Officer and the Tribunal is prevented from increasing the amount of the fair rent that it registers beyond the maximum fair rent calculated in accordance with the provisions of the Order and the mathematical formula set out in the Order.

By article 2(7) of the 1999 Order the capping provisions do not apply *“in respect of a dwelling-house if because of a change in the condition of the dwelling-house or the common parts as a result of repairs or improvements (including the replacement of any fixture or fitting) carried out by the landlord or a superior landlord, the rent that is determined in response to an application for registration of a new rent under Part IV exceeds by at least 15% the previous rent registered or confirmed.”*

### **Hearing and Inspection**

It had been agreed with the parties in advance that there would be a hearing held at 10 Alfred Place, London WC1E 7LR, to be followed by an inspection of the premises later in the day.

### **The Hearing**

A hearing took place at 10.15am on the 19 March 2024 which was attended by the Landlord and her husband Mr Martin Band. The Landlord lives in the adjoining property No 4 Barclay Road. The Tribunal has consideration of the comprehensive evidence provided by the Landlord which included calculations with a clear methodology and comparable evidence of two flats rented out by them in the same building, being 4B and 4C, located on the second floor. The current passing rent for these properties is £2100 and £2300 respectively.

### **Facts found with Inspection.**

The Tribunal inspected the property on the 19 March 2024 in the presence of the Tenants and a family friend.

The property is a converted lower ground floor flat which forms part of a Victorian five storey (including lower ground floor) semi-detached building with brick and stucco elevations with a loft conversion.

The property is located in an established road close to local amenities in Fulham Broadway.

The accommodation comprises: living room, kitchen, bedroom, shower room, lavatory and cellar. Outside, there is a small courtyard garden.

### **Terms of the tenancy**

The Tribunal issued Directions on the 26 January 2024 which set out a timescale for the proceedings. The Landlord's Application for Registration of Fair Rent states the agreement commenced in 1961, but no agreement was submitted. It is assumed such an agreement made the landlord responsible for structural repairs and external decorations. The tenant is responsible for internal decorations. It is assumed the property was let unfurnished.

### **Condition of the Property**

The property is in need of general refurbishment and modernisation. The windows are single glazed, poorly fitting and require redecoration. The bathroom and kitchen fittings are dated, and the cellar is damp. There is no central heating and insulation qualities are poor.

### **Written Evidence**

The Tribunal had copies of the Valuation Office Agency correspondence including the previous rent registration together with the calculations for the most recent registration.

The tenant provided a completed Reply Form with submissions in connection with the condition of the property and lack of natural light to the kitchen and living room following refurbishment and extension works undertaken by the Landlord in approximately 2019.

### **Valuation**

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.

Based upon the evidence provided by the Landlord together with its expert knowledge of the Fulham Broadway area, the Tribunal considers that the

subject property, if finished to a reasonable standard would be likely to attract a rent let on an assured shorthold tenancy, of £2,100 per month.

Next, the Tribunal needs to **adjust that hypothetical rent of £2,100 per month** to allow for the differences between the terms of this tenancy, the unmodernised condition, dated sanitary fittings and kitchen units, damp issues in the cellar, defective windows, no central heating, the lack of white goods, carpets and curtains, and the tenant's decorating responsibilities (disregarding the effect of tenant's improvements and any disrepair or other defect attributable to the tenant).

The Tribunal has considered very carefully the information prepared by the parties.

Using its own expertise, the Tribunal considers that a deduction of 50% should be applied in order to take into account the terms of the tenancy, the condition of the property and the lack of carpets, curtains and white goods. This provides a deduction of £1,050 per month from the hypothetical rent. This reduces the figure to £1,050 per month.

It should be noted that this figure cannot be a simple arithmetical calculation and is not based upon capital costs but is the Tribunal's estimate of the amount by which the rent would need to be reduced to attract a tenant.

## **Scarcity**

Thirdly, the Tribunal then went on to consider whether a deduction falls to be made to reflect scarcity within the meaning of section 70(2) of the 1977 Act. The tribunal followed the decision of the High Court in *Yeomans Row Management Ltd v London Rent Assessment Committee*, in which it was held that scarcity over a wide area should be considered rather than scarcity in relation to a particular locality.

In the Tribunal's opinion there should be a deduction of 20% for scarcity as it is considered demand outweighs supply of rented properties in the area. This provides a figure of £210 and therefore reduces the rent to £840 per month.

## **Conclusion**

The capping provisions of the Rent Acts (Maximum Fair Rent) Order do not apply and therefore the above figure applies. [Yes, the MFR does apply, but its calculation – which should be referred to here - demonstrates that the s70 rent is the one to be registered] Therefore, the fair rent to be registered is **£840 per month**. This includes a small amount for services, which do not affect the rent calculation and are therefore regarded as “negligible” for the purposes of recording them on the Notice of determination. In accordance with the statutory provisions, this takes effect from the **19 March 2024** being the date of the Tribunal's decision.

Detailed calculations for the capped maximum fair rent are provided on the back of the decision form.

**D Jagger MRICS Valuer Chair**

**29<sup>th</sup> April 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 by email to [rpslondon@justice.gov.uk](mailto:rpslondon@justice.gov.uk) 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.