



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

Case reference : **TR/LON/00AG/F77/2023/0396**

Property : **Flat D, 17 Well Walk, London, NW3 1BY**

Tenant : **Mrs E Brennan**

Landlord : **Hollstead Ltd**

Landlord's Representative : **Hamways**

Date of application : **2 October 2023**

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

Tribunal member(s) : **Mr O Dowty MRICS
Mr A Parkinson MRICS**

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

Date of decision : **22 March 2023**

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 in an application received by the Rent Officer on 18 July 2023.

2. A fair rent of £342 per week was registered on 26 September 2023 following the application, such rent to have effect from 27 September 2023. The tenant subsequently challenged the registered rent on 2 October 2023, and the Rent Officer has requested the matter be referred to the tribunal for determination.
3. Directions were issued on 5 December 2023 by the Tribunal. Those directions were subsequently amended on 14 December 2023 to extend the time limits for responses by the parties, following a request by the tenant.
4. The parties were invited to submit any relevant information and submissions. Both parties provided reply forms, with the tenant also providing 4 photographs of the property.
5. In their reply form, the tenant had indicated that they wished a hearing be held in this matter. Accordingly, a face-to-face hearing was held in this matter on 8 February 2024 at 10 Alfred Place, London, WC1E 7LR.
6. Neither party had requested that the property be inspected, however at the hearing in this matter it became clear that such an inspection was needed due to the purported disrepair, and the tenant's disagreement with the rent officer's assessment of the number of rooms at the property. When asked by the Tribunal at the hearing why the tenant had not indicated an inspection was necessary, the tenant averred (correctly) that the Tribunal's reply form in fact asked whether she "required" one. She did not, and had assumed the Tribunal would arrange one if it thought it necessary. The Tribunal therefore arranged to inspect the property on 22 March 2024.
7. The Tribunal notes for completeness that the landlord emailed the Tribunal on 11 March 2024 to indicate that they would not attend the Tribunal's inspection. In that email the landlord also sought to make observations regarding the condition and arrangement of the property, and repairs they planned to carry out. These observations were uninvited, made after the hearing in this matter and a copy was not apparently provided to the tenant – despite the Tribunal's clear directions in this regard. The purpose of the Tribunal's inspection was that it might see the property itself, before making its decision in light of the evidence provided to it in advance of, and at, the hearing; not to allow a further, post-hearing timeframe to provide written submissions. Accordingly, the Tribunal did not consider the observations made by the landlord in that email – save as to their confirmation they would not attend the inspection.

The Hearing

8. The tenant, Mrs Brennan, attended the hearing in person – accompanied by Ms Astrid Smitham, whom the Tribunal understands

to be the partner of one of her children. The landlord did not attend. The Tribunal considered that sufficient notice of the hearing had been provided to the landlord, and that – in the absence of any contact from the landlord to indicate a reason for their non-attendance – it was appropriate to continue with the hearing in their absence.

9. The tenant began her submissions by discussing the matter of the room off one of the bedrooms at the property. This room, the tenant averred, is not really a room – it is effectively a cupboard which is accessed via a bedroom. It doesn't have its own fire escape and has no separate access. The landlord's agent, the tenant averred, had said it should have a fire corridor. The (now obsolete) water storage tanks for the remainder of the building are located in a cupboard off of it, and the tenant has to provide access through that room whenever works are required on the roof. The condition of the room, and the light levels in it, mean that it is not habitable.
10. Turning to the remainder of the property, the tenant described the layout and accommodation and listed several items of disrepair. The tenant submitted that there is no handrail on the stairs, there are damp patches around the property and the windows are 'so-so'.
11. The tenant averred that when she moved in there was practically nothing in the property. The tenant had fitted the kitchen, fridge, washing machine and all the cupboards – the kitchen previously only consisting of a sink and a water heater. The tenant had installed all of the floor coverings at the property, as well as curtains. In addition, the tenant had installed the central heating system at the property. That system was previously entirely separate from the landlord's hot water system, however the landlord has now installed a 'combi' boiler which covers both the landlord's hot water system and the tenant's central heating system as they apparently considered this would be more expedient than simply repairing the hot water system in isolation when it developed a now historic fault.
12. The bathroom, the tenant submitted, was the original bathroom (save for the tenant's works to the floor), which the tenant thought had been installed in the 1950s.
13. The tenant also suggested that, as she had been a tenant at the property for a long time, the rent should be reduced to account for advantages to the landlord from having a stable tenant over the years.
14. Turning to the rental value, Ms Smitham, on the tenant's behalf, submitted that she had looked at local rental levels and considered that a hypothetical starting point for the open market rent of £675-£680 per week, the lower of which she averred had been arrived at by a previous Tribunal panel, was still reasonable. The increase of 20% in the registration was not – ONS data showing an only an 8.4%

increase in rents over the period and when restricted to Camden only showing a fall of 3.3%.

15. From that hypothetical figure, Ms Smitham had made deductions of 25% for condition and 20% for white goods, kitchen and bathroom. A further 20% deduction for scarcity, Ms Smitham averred, would result in a rent of £285 per week.

Inspection

16. The Tribunal inspected the property on 22 March 2024, accompanied by the tenant Mrs Brennan. The landlord did not attend the inspection, having confirmed to the Tribunal that they would not do so in advance.
17. The property is a 3-bedroom maisonette, located on the 2nd and 3rd floors of the wider period building within which it is situated – accessed via a door on the 1st floor which leads to an internal staircase to gain access to the flat proper. The subject property does not have access to any outside space. Externally the building is in a generally fair condition, and it does not offer a lift.
18. On the 2nd floor, the property offers an entrance area with a storage cupboard, a bedroom, a living room, kitchen and bathroom. On the 3rd floor, the property offers 2 further bedrooms and an additional area accessed solely via the front bedroom. That area consists of an entrance space (above which is a skylight used by workmen to gain access to the roof of the wider building), a small room which contains the (now apparently redundant) water tanks for the building, and a further, slightly larger room – being the “fifth room” that is the subject of the tenant’s dispute with the rent officer’s assessment of the number of rooms at the property. That “fifth room” is in a poor condition, with plasterwork severely damaged and cracked, and lath exposed. In addition, the light levels in that room are relatively low, as the skylight in the roof of this area is small.
19. The property is single glazed, the windows generally being in a fair condition, but offers central heating (that was installed by the tenant). The bathroom at the property is basic and dated, and the kitchen was installed by the tenant.
20. The condition of the property is generally slightly poor, with various damp patches throughout (particularly around the top floor bedroom windows) and staining to some ceilings from historic water damage.
21. In addition, the internal staircase from the 2nd to 3rd floors does not have a handrail, and instead is bounded only by the internal walls of the property.

The Law

22. 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.
23. 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.
24. 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”*.
25. The market rents charged for assured tenancy lettings often form appropriate comparable transactions from which a scarcity deduction is made.
26. These market rents are also adjusted where appropriate to reflect any relevant differences between those of the subject and comparable rental properties.
27. 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.
28. **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 27 September 2021 at £285 per week. The rent registered on 26 September 2023 subject to the present objection and determination by the Tribunal is not relevant to this calculation.

Valuation

29. 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 that is considered usual for such an open market letting.
30. The landlord did not provide any evidence of value for the Tribunal to consider.
31. Whilst the Tribunal was grateful for, and noted the rarity of, Ms Smitham having worked through the valuation to arrive at an opinion of fair rent – the evidence on which that opinion was based was limited. Whilst Ms Smitham had had regard to what she considered general rental levels in the area from her research, no comparable evidence was provided for the Tribunal to consider. In addition, Ms Smitham had referred to two indices, but had not followed either index in particular. In any case, indexation is not a good method of valuation, and other than potentially indicating general market sentiment – of which the Tribunal is already aware in its expert capacity – the Tribunal did not consider that it added any weight to the current exercise.
32. Accordingly, the Tribunal considered the value of the property in light of its local knowledge and experience in combination with the tenant's submissions.
33. As regards the disputed "5th room" (as referred to in paragraph 18 above), the Tribunal considered that it was not suitable for use as a bedroom, either in its present condition or if properly maintained. The light level is relatively low, and it is accessed exclusively via another bedroom.
34. However, the Tribunal did not feel that that space was entirely unusable. It could easily be used as a study, or additional storage area, and whilst it is certainly in a poor condition at present that is not to say that it is uninhabitable as the tenant averred.
35. Whilst the evidential basis for the tenant's valuation may have been sparse, the Tribunal felt that a hypothetical rent of £680 per week – were the property let in the condition and on the terms considered usual for such a letting - was a good one, and matched with what it would expect. Accordingly, the Tribunal adopted a hypothetical market rent of £680 per week.
36. 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.

37. The tenant had apparently based their adjustments on the decision of a prior Tribunal, adopting a deduction of 25% for condition and 20% for white goods, kitchen and bathroom. However, different Tribunals come to different decisions based on the evidence before them and their own assessment of it – and the deductions adopted by a previous Tribunal do not assist the Tribunal in making its determination now.
38. The responsibility for internal fixtures, fittings and 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.
39. The Tribunal made a deduction of 5% from the hypothetical rent to account for the tenant's providing white goods, floor coverings, curtains and other furnishings at the property.
40. The Tribunal made a deduction of 5% to account for the tenant's having installed the kitchen at the property.
41. The Tribunal made a 2.5% deduction to account for the bathroom being dated.
42. The Tribunal made a deduction of 10% to account for the installation of the central heating by the tenant, and the fact that the property was single glazed.
43. The Tribunal made a deduction of 5% to account for the condition of the "fifth room", which is poor with cracked plasterwork and exposed lath.
44. The Tribunal made a further deduction of 5% to account for more minor and general items of disrepair in the property, such as the absence of a handrail for the stairs, the damp patches at the property and the staining to some ceilings from apparent historic water damage.
45. The Tribunal made no deduction to account for the fact that the tenancy was one that had existed for a number of years. The Tribunal considered that the fact the tenant had lived at the property for a long time was a personal circumstance, which therefore fell to be disregarded in accordance with Section 70 of the Rent Act 1977; regardless of this point in any case appearing to be more concerned with purported advantages to the landlord in the past rather than the value of the property now. Accordingly, the Tribunal made no deduction from the market rent to account for this.

46. 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.
47. 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 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 London.
48. 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 London and therefore made a further deduction of 20% from the adjusted market rent (excluding the amount attributable to services) to reflect this element.
49. 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.
50. Table 1 over-page provides details of the fair rent calculation:

Property:	Flat D 17 Well Walk, London, NW3 1BY		
Fair rent calculation in accordance with s(70) Rent Act 1977			
Market Rent	£680 per week		
Disregards		Deduction per week	as % of weekly rent
Lease terms		£51.00	7.5%
White goods, carpets, curtains, etc		£34.00	5.00%
Tenant's Kitchen		£34.00	5.00%
Dated bathroom		£17.00	2.50%
Single glazing and tenant installed central heating		£68.00	10.00%
Condition of "fifth room"		£34.00	5.00%
Damp, water staining, lack of handrail, etc		£34.00	5.00%
	Total deductions	£272.00	40.00%
	Market rent less deductions	£408.00	per week
Less Scarcity	20.00% of Market rent less deductions	£81.60	
Adjusted Market Rent		£326.40	per week
	SAY	£325	per week Uncapped rent
Maximum capped rent in accordance with Rent Acts (Maximum Fair Rent) Order 1999		£363.50	per week Maximum capped rent
	Fair Rent	£325.00	per week

Table 1

Decision

51. As the value of £325 per week arrived at by the Tribunal is lower than the maximum rent prescribed by The Rent Acts (Maximum Fair Rent) Order of £363.50 per week, the fair rent that can be registered is not restricted by that Order.
52. The statutory formula applied to the previously registered rent is at Appendix A.
53. Details of the maximum fair rent calculations are provided in the separate notice of the Tribunal's decision.
54. Accordingly, the sum that will be registered as a fair rent with effect from 22 March 2024 is **£325 per week**.

Valuer Chairman: Mr Oliver Dowty MRICS

Dated: 3 May 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:

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

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