

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

Case Reference : **HS/LON/00AG/F77/2024/0073**

Hearing Type : **By Way of Written Representation**

Property : **Flat 2, 124 Boundary Road, London, NW8 0RM**

Applicant : **Mr Eddie King (Tenant)**

Respondent : **Cheek Developments Ltd (Landlord)
(Nicholas Cheek)**

Type of Application : **Referral of a Registration of Fair Rent under the
Rent Act 1977**

Tribunal Member : **Mr John A Naylor FRICS, FIRPM
Valuer Chairman**

Date of Decision : **18th May 2024**

FULL REASONS

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Background

1. The landlord by way of an RR1 application dated 8 November 2023 applied for registration of a fair rent to the Rent Officer. The previous rent was determined by the Rent Officer at £746 per calendar month effective from 17 January 2022.
2. On 13th December 2023, the Rent Officer registered a fair rent of £924.50 per calendar month with effect from 17 January 2024.
3. Following objection from the tenant the Rent Officer then made an application to the Tribunal for rent to be reviewed.
4. On 26th February 2024 the Tribunal issued Directions to the parties requiring them to produce any evidence on which they wished to rely in support of their respective cases, including by use of a reply form. The matter was set down for determination on the papers unless either party requested a Hearing, which neither did. The landlord was directed to return the reply form with any other documents and submissions upon which it wished to rely by 11 March 2024. The tenant was directed to do likewise by 25 March 2024 with the landlord given the opportunity to respond by 1 April 2024. Nicholas Cheek, on behalf of the landlord, returned the reply form with appendices showing copies of tenant statements showing payments towards fairly extensive Section 20 works to the building.
5. The tenant relied upon previous correspondence. In their email dated 22 December 2023, the tenant submitted that the rental increase was exceptionally high and that in the past the percentage of increase had been approximately 12% whereas now this was more than 25% and £90 more than the landlord had requested. The tenant stated that they could simply not afford the increase proposed.
6. On 18th May 2024, on the basis of papers and without Hearing, the Tribunal determined the fair rent of the above property at £936.50 per calendar month.

The Law

7. When determining a fair rent, the Tribunal, in accordance with the Rent Act 1977, Section 70, had regard to all circumstances (other than personal

circumstances) including the age, location and state of repair of the property. Section 70 is set out in the Appendix below.

8. In *Spath Home Ltd v Chairman of the Greater Manchester, etc Tribunal* (1995) 28 HLR 107 and *Curtis v London Rent Assess Tribunal* (1999) QB 92 the Court of Appeal emphasised 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 that for the purpose 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 Property

9. From Google Maps and information included on the Rent Register, the Tribunal found as follows:

The property comprises a self-contained flat in a building believed to have been constructed in approximately 1900.

The property comprises a lounge, bedroom, kitchen, bathroom and WC and is located on the second floor. It is understood to extend to approximately 45m².

Valuation

10. From *Spath Home Ltd v Chairman of the Greater Manchester etc Tribunal* other registered rents are not relevant as a starting point because they are not market rents.
11. The Tribunal must first determine the market rent for a property of this size, in this location and in its current condition. It must also disregard the personal circumstances of either party. The Tribunal notes that the Rent Officer adopted a starting point of £1,950 per calendar month. Using its own general knowledge of the Greater London property market, the Tribunal agrees with this as a starting point.
12. However, all white goods, carpets and curtains are presumed to be the property of the tenant. In addition, a tenant of a Rent Act property has more onerous repairing obligations than those under an assured shorthold tenancy.

13. In addition, to the above it was noted that there was conflicting evidence on whether the property has Central heating. In initial submissions the tenant had said that there was no central heating and in addition the registration document also states that there is no central heating however on their reply form the landlord had submitted that central heating installed by the landlord did exist at the property .
14. The Tribunal wrote to the parties giving them a further opportunity to make submissions on the existence of central heating in order to clarify the point. By way of reply the tenants confirmed that there was no central heating and that there had been none for the 40-year period of their occupation. No response was received from the Landlord.
15. The Tribunal concludes, on the balance of probabilities, that there is no central heating at the property.
16. The Tribunal, therefore, made the following deductions from the market rent of £1,950 per calendar month to reflect those differences:
 - 1) The repairing obligations of the tenant.
 - 2) Provision of white goods by tenant.
 - 3) Provision of carpets and curtains by tenant.
 - 4) Lack of central heating.

Less: 27%. £526.50 pm)

Adjusted rent: £1423.50 pm.
17. The Tribunal found that there was substantial scarcity in the locality of Greater London having taken judicial notice of long Housing Association and Local Authority waiting lists in Greater London. It, therefore, made deduction in respect of scarcity of 20% (£284.70 per calendar month) from the adjusted market rent to reflect this element. This left an adjusted rent of £1138.80 per calendar month rounded to £1140.00 pm.
18. The Tribunal is then required to apply the Rent Act (Maximum Fair Rent) Order 1999. The calculation was included on the Decision sheet and produced a maximum rent figure of £936.50 per calendar month.

19. The Tribunal must register the lower of the adjusted market rent or maximum fair rent as the fair rent for the property. In this instance, the maximum fair rent produces a lower figure and the Tribunal, therefore, registered the rent at £ per calendar month for this property with effect from 26 April 2024 being the date of the Tribunal Decision.

Name: Mr John A Naylor FRICS FIRPM

Date: 18th May 2024

ANNEX – 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 might 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 this 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 (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. Any appeal in respect of the Housing Act 1988 should 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).

APPENDIX

Rent Act 1977

Section 70 Determination of Fair Rent

- (1) In determining, for the purpose of this part of this Act, what rent is or would be a fair rent under a regulated tenancy of a dwellinghouse, regard shall be had to all the circumstances (other than personal circumstances) and, in particular, to –
 - (a) the age, character, locality and state of repair of the dwellinghouse...F1
 - (b) if any furniture is provided for use under the tenancy, the quantity, quality and condition of the furniture (F2 and)
 - (c) (F2(c)) any premium, or sum in the nature of a premium, which has been or may be lawfully required or received on the grant, renewal, continuance or assignment of the tenancy)
- (2) For the purpose of the determination, it shall be assumed that the number of persons seeking to become tenants of similar dwelling-houses 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.

(3) There shall be disregarded:

(a) any disrepair or other defect attributable to a failure by the tenant under the regulated tenancy or any predecessor in title of his to comply with any terms thereof;

(b) any improvement carried out, otherwise than in pursuance of the terms of the tenancy; by the tenant under the regulated tenancy or any predecessor in title of his;

(c) (d).....F3

(d) If any furniture is provided for use under the regulated tenancy, any improvement to the furniture by the tenant under the regulated tenancy or any predecessor in title of theirs or, as the case may be, any deterioration in the condition of the furniture due to any ill-treatment by the tenant, any person residing or lodging with them, or any sub-tenant of theirs.

(e) F4 [(3a) in any case where under Part 1 of the Local Government Finance Act 1992 the landlord or a superior landlord is liable to pay Council Tax in respect of a hereditament (“*the relevant hereditament*”) of which the dwelling-house forms part, regard shall also be had to the amount of Council Tax which, as at the date on which the application to the rent officer was made, was set by the billing authority –

(a) for the financial year in which that application was made, and

(b) for the category of dwelling within which the relevant hereditament fell on that date,

but any discount or other reduction affecting the amount of Council Tax payable shall be disregarded.

(3b) In subsection (3a) above –

“*hereditament*” means a dwelling within the meaning of Part 1 of the Local Government Finance Act 1992.

“billing authority” has the same meaning as in that part of the Act, and

“category of dwellings” has the same meaning as in Section 30(1) and (2) of that Act.]

- (4) In this section *“improvement”* includes the replacement of any fixture or fitting.

[F5 (4a) in this section *“premium”* has the same meaning as in part IX of this Act and *“sum in the nature of a premium”* means –

- (a) any such loan as is mentioned in Section 119 or 120 of this Act,
- (b) any such excess over the reasonable price of furniture as is mentioned in Section 123 of this Act, and
- (c) Any such advance payment or rent as is mentioned in Section 126 of this Act.]

- (5)