



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

Case reference : LON/00AF/F77/2023/0219

Property : 47 Holmdale Road, Chislehurst, Kent,
BR7 6BY

Landlord : Rochester Diocesan Society

Representative : Dr R Wickham FRICS MRTPI

Tenant : Dr G M Harley & Ms E K Jennings

Representative : Dr G M Harley (in person)

Date of application : 7 May 2023

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

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

Venue : 10 Alfred Place, London, WC1E 7LR

Date of decision : 5 April 2024

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 on 9 March 2023.

2. A fair rent of £1,302 per calendar month was registered on 11 April 2023 following the application, such rent to have effect from that date. The tenant subsequently challenged the registered rent on 7 May 2023, and the Rent Officer has requested the matter be referred to the tribunal for determination.
3. Directions were issued on 21 July 2023 by the Tribunal.
4. The parties were directed to provide reply forms, and invited to submit any relevant information and submissions. Only the landlord provided a reply form, however both the landlord and the tenant provided written submissions.
5. The landlord, in its reply form, indicated that it wished the Tribunal to hold a hearing in this matter. Accordingly, the Tribunal arranged a face-to-face hearing in this matter on 26 January 2024.
6. The Tribunal sought to hold that hearing on 26 January 2024. However, it did not have a copy of the tenancy agreement available to it, nor sufficient information regarding the property to enable a determination without an inspection – which had not been arranged. In addition, the parties' submissions were slightly unfocussed in relation to the legal basis for their respective positions concerning the issue of the 'third bedroom'.
7. Accordingly, the Tribunal issued further directions dated 7 February 2024. A new face-to-face hearing was then arranged for 5 April 2024 to be followed by an inspection later that day.
8. The hearing had originally been reserved to the same Tribunal panel as had dealt with the matter previously, comprised of Mr O Dowty and Mr C Simons. Unfortunately, however, due to a family emergency Mr Simons was not able to attend the second hearing.
9. The Tribunal explained to the parties at the start of the hearing that it considered this was a case suitable to be dealt with by a single panel member alone, that panel member being a valuer chairman, to which neither party objected. In light of the change in panel composition, this hearing was to be a 'fresh start'.

The Hearing

10. A face-to-face hearing was held at 10 Alfred Place, London, WC1E 7LR on 5 April 2024. One of the tenants, Dr Harley, attended in person, accompanied by Mr Doug Parslow, one of her neighbours. Dr Wickham appeared for the landlord, accompanied by Mr Symes from the landlord.
11. At the hearing, a large part of the parties' submissions focussed upon historic issues, and issues in the relationship between landlord and tenant – including the way in which both this matter and others were being handled. Whilst the Tribunal appreciates these submissions, entirely historic or personal issues are not relevant to the Tribunal's very limited role in

determining a fair rent for the property; though the Tribunal notes it appears to be agreed that things could have been done better by the landlord's prior managing agents, but that since Dr Wickham has been involved things have progressed at least better than previously.

12. The house as constructed has 3 bedrooms upstairs. The main disagreement between the parties concerned one of those bedrooms (the 'third bedroom'), and the tenant's alleged use of it. The tenant averred that it was not included in the tenancy agreement, and therefore should not be included in the calculation of a fair rent for the property. What is more, the tenant said that she did not, in general, use that room – and had only used it over the years to store items that had to be moved from other rooms due to flooding and other defects with the rest of the property. The tenant also averred that that room was in a poor condition, listing various issues with it including the double glazing unit and plasterwork being 'blown', and the tenant had occasionally had to heat it and carry out cleaning in it on sanitary grounds.
13. The landlord submitted that the tenant did, in fact, use the room – and provided what they referred to as a 'statutory declaration' (in essence a witness statement) from Mr Symes speaking to the tenant's use of the room over the years. Whilst it was correct that it was excluded from the tenancy agreement (the original, mutually agreed to be entirely unworkable, idea apparently having been that the parish might use the room as an office), the reality was that the tenant occupied that room and it should therefore be included in the fair rent calculation. The landlord averred that they had sought to "regularise" the position by varying the tenancy agreement for the property so that it included the third bedroom, but the tenant had not co-operated.
14. The landlord submitted that, since the prior, aborted hearing (at which the Tribunal had noted that the parties' legal positions were unfocussed in this regard), they had discussed the matter with a lawyer, and had been advised that the third room should be included as the tenant had derived benefit from it. However, the landlord could not provide any further detail or authority in support of this. Under questioning from the panel, the landlord averred that they were not submitting that the Tribunal should simply ignore the acceptedly clear terms of the lease in this regard, but that their submission was that the fair rent registration should acknowledge the fact that circumstances had overtaken that agreement to some extent in the intervening period. The Tribunal noted, as at the prior aborted hearing, that the landlord suggested that the third room was occupied by the tenant without the landlord's permission – which appeared to mean they thought the tenant was a trespasser in that room rather than a tenant. The Tribunal asked whether someone could be both a tenant and a trespasser in the same area, to which the landlord was not able to give a definitive answer.
15. The tenant averred that the property, if let in a good condition on the market, would be worth around £2,000 per calendar month (pcm) – or £2,400-£2,500pcm if the third bedroom was to be included.

16. The tenant further submitted that the property is not double glazed throughout, and instead the front door and windows to the side of it are single glazed, as is a small window in the kitchen. The property is, however, difficult to heat as there is a constant flow of air through the front door, which the tenant has installed brushes to try and prevent.
17. The tenant said they had provided all of the white goods (including the cooker) at the property, as well as floor coverings and curtains save for the bathroom and kitchen (though the tenant had had to repair the bathroom floor herself when there was a leak). The property had originally been let with furniture, however over the years the tenant has replaced it.
18. In addition, the tenant had re-grouted the tiles in the bathroom and had replaced the kitchen sink. Whilst the tenant accepted they were responsible for maintaining the interior, the tiling, they said, was part of the structure of the property and therefore should have been done by the landlord.
19. The tenant also referred to the external condition of the property, with blown render, and the dampness caused by water ingress in the storage 'eaves' cupboard in the front bedroom.
20. The tenant averred that she had paid the council tax at the property, which appeared to include the third room, even though contractually she was not obliged to do so.
21. The landlord averred that the property might let as a 2 bed house for £2,000PCM in the market, if let in "good tenantable repair" but not a perfect condition, or £2,400pcm if it was refurbished. If the property were to be valued as a 3 bed, as they had averred, the landlord would expect a value of £2,300pcm if let in "good tenantable repair" or £2,800pcm if refurbished.
22. The landlord averred that, whilst the property was not perfect, it was in good tenantable repair – and problems had been dealt with. The property had originally been let with carpets and curtains.

The Inspection

23. The Tribunal inspected the property on the same day after the hearing. The Tribunal was accompanied by its case officer Mrs Foluke Lewis, Dr Wickham and Dr Harley. Ms Jennings, the other tenant, was present very briefly at the start of the inspection, and during the inspection Mr Parslow also arrived. Mr Symes was present, but waited outside the property has had been agreed in advance at the conclusion of the hearing.
24. The property is a circa 1930s two storey, semi-detached house with a garage and a garden, located on Holmdale Road in the London Borough of Bromley. On the ground floor the property offers a hallway, a lounge, a dining room and a small kitchen. On the first floor, the property has three bedrooms and a bathroom.

25. The property is generally in a fair to good condition. As the tenant submitted, the door and its side windows are single glazed, and there is a slight gap between the door and the frame. There is a further, small, single glazed window in the kitchen. The kitchen is somewhat dated, and the bathroom is a little basic. The front living room (double glazed) window unit has some condensation between the panes. The storage cupboard in the front bedroom has an obvious water penetration issue from outside which is causing dampness.
26. The 'third bedroom' is in a poor condition, with damaged plasterwork. It was not in use by the tenant on the day of the Tribunal's inspection.
27. Externally, the property is in a fair condition, however there is damage to the render – particularly around the 'third bedroom'.

The Law

28. 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.
29. 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.
30. The Tribunal are 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*".
31. The market rents charged for assured tenancy lettings often form appropriate comparable transactions from which a scarcity deduction is made.
32. These market rents are also adjusted where appropriate to reflect any relevant differences between those of the subject and comparable rental properties.

33. 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.
34. **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 26 March 2010 at £765 per calendar month. The rent registered on 11 April 2023 subject to the current objection and subsequent determination by the Tribunal is not relevant to this calculation.

Valuation

35. In the first instance, the Tribunal considered whether the 'third bedroom' should be included in the valuation or not, even were the tenant to be using it. The tenant had averred that it should not, as it was excluded by the tenancy agreement – which says, at clause 7 (k):

It is expressly agreed that the smaller upstairs front room remains in the possession of the Landlords and does not form any part of the property hereby demised

36. The landlord's case was that, whilst the tenancy agreement did contain this restriction, circumstances had changed and the occupation of the room should be reflected.
37. The Tribunal was not persuaded by the landlord's argument. It is the landlord's own case that any use of that room by the tenant would have been without the landlord's permission, which if true would make Dr Harley and Ms Jennings trespassers in that room rather than tenants. The Tribunal does not have jurisdiction to award mesne profits, and instead must value in accordance with the tenancy. In this case, the tenancy agreement provided clearly states that the 'third bedroom' is not part of the tenancy. The landlord did not provide any authority to support the suggestion that it should be included in the current rent registration exercise, which would be needed to support an argument that such a clear term in a tenancy agreement should be disregarded.
38. Accordingly, the Tribunal finds that the third bedroom is not part of the tenancy – and should not therefore be included in the current determination of a fair rent regardless of whether it is used by the tenant or not, which the Tribunal notes is by no means an accepted fact.
39. In terms of market value, the only evidence provided by either party was 2 asking rents from some time ago (and therefore long before the valuation date) provided by the landlord for 4 bed properties. Asking rents do not

offer very good evidence of value for the Tribunal to consider, and in any case the landlord did not rely particularly upon them.

40. Instead, both parties suggested a value of £2,000 per calendar month for the property, were it to be valued excluding the third bedroom, albeit on slightly different bases. The tenant's submission was that the property would achieve £2,000pcm if let in a good condition on the market, whereas the landlord averred that £2,000pcm reflected a property let in a state of "good tenantable repair" – which they believed the subject to be – as opposed to a recently refurbished property.
41. The Tribunal considered the rent in line both with the submissions provided by the parties and its own expert knowledge of rents in the local area of the subject property. The Tribunal felt that the value proposed of £2,000pcm (if let in the market on the terms considered usual) was a good starting point, however that – as the landlord submitted - it reflected a letting in a 'good tenantable repair' condition rather than a perfect one. That being said, whilst the Tribunal felt this starting point would generally reflect the condition of the property, including reflecting things such as the fittings in the kitchen and bathroom, the fact the front door and some of the windows are single glazed, the small gap between the front door and its frame and the condensation to a double glazing unit in the front room, there are other items of disrepair such as the condition of the exterior and the dampness to the bedroom storage cupboard that would not be expected of a property in 'good tenantable repair' on the market.
42. This hypothetical rental starting point of £2,000pcm 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.
43. The lease terms of the tenancy are such that the tenant is responsible for internal fixtures, fittings and decoration at the property. The differences between these lease terms and those that would be expected in the market are a material valuation consideration, and a deduction of 7.5% from the hypothetical rent is made to reflect them.
44. The Tribunal made a deduction of 5% from the hypothetical rent to account for the tenant's providing white goods, most of the floor coverings, curtains, and other similar furnishings and fittings at the property – as well as carrying out minor works in the kitchen and bathroom. Whilst the Tribunal notes that the property was originally let with carpets and curtains and other items of furniture, these would have been provided some time ago and would almost certainly have required replacing since the tenancy began – something which is accepted in a letter dated 21 October 2019 from the landlords to the tenants, which says that:

...

We are totally realistic in accepting that most, if not all, of these contents have become time expired and disposed of to be replaced by your own furniture and fittings. Additionally we are grateful that you have maintained your responsibility to keep the interior of the property in good order by ensuring the décor is kept in reasonable and acceptable order, plus you have laid laminate flooring to replace what is presumed became time worn carpet.

...

45. As the Tribunal notes at paragraph 41 above, whilst it considered that the starting point of £2,000pcm adopted largely reflected the condition of the property, the external condition of the property and the water ingress and dampness in the front bedroom storage cupboard require adjustment for. The Tribunal made a deduction of 2.5% to account for these items of disrepair.
46. The Tribunal made no deduction regarding the tenant's submission that the landlord should pay the council tax at the property. The Tribunal's jurisdiction in this area is solely concerned with determining a fair rent, and it considered that the starting point it had adopted of £2,000pcm reflected a letting on standard terms - which would be on the basis that a hypothetical tenant would pay for council tax and all other standard bills separately, in addition to their rent.
47. 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.
48. 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. South east 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 south east London.
49. 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 south east London and therefore made a further deduction of 20% from the adjusted market rent to reflect this element.

50. 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.

51. Table 1 below provides details of the fair rent calculation:

Property:	47 Holmdale Road, Chislehurst, BR7 6BY					
Fair rent calculation in accordance with s(70) Rent Act 1977						
Market Rent			£2,000	per month		
Disregards					Deduction per month	as % of monthly rent
Lease terms					£150.00	7.50%
White goods, floor coverings, curtains, tenant works, etc					£100.00	5.00%
Condition of exterior and storage cupboard					£50.00	2.50%
			Total deductions		£300.00	15.00%
			Market rent less deductions		£1,700.00	per month
Less Scarcity	20.00%	of Market rent less deductions			£340.00	
Adjusted Market Rent					£1,360.00	per month uncapped rent
Maximum capped rent in accordance with Rent Acts (Maximum Fair Rent) Order 1999					£1,359.00	per month maximum capped rent
			Fair Rent		£1,359.00	per month

Table 1

Decision

52. As the value of £1,360 per calendar month arrived at by the Tribunal is above the maximum rent prescribed by The Rent Acts (Maximum Fair Rent) Order of £1,359 per calendar month, the Fair Rent that can be registered is capped by that order.

53. The statutory formula applied to the previously registered rent is at Appendix A.

54. Details of the maximum fair rent calculations are provided with the attached notice of decision.

55. Accordingly, the sum that will be registered as a fair rent with effect from 5 April 2024 is **£1,359 per calendar month.**

Valuer Chairman: Mr O Dowty MRICS

Dated: 20 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:

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

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 $(x-y) + P$ 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.

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).